

SUMMARY

Tennis Channel is a national cable sports network that provides comprehensive coverage of major tennis events, including the tennis Grand Slams and nearly all of the top tennis tournaments worldwide, as well as substantial original non-event programming of interest to tennis fans and tennis players. Comcast, the largest multichannel video programming distributor in the nation, currently carries Tennis Channel on its Sports and Entertainment Package, an expensive and narrowly-penetrated premium tier. This carriage complaint is necessitated by Comcast's discriminatory refusal to provide Tennis Channel with the broader carriage that it provides to the similarly situated sports networks it owns (such as the Golf Channel and Versus) and that is otherwise appropriate in light of Tennis Channel's quality and performance.

In June 2009, following protracted discussions centered on Tennis Channel's insistence on being carried on broadly penetrated tiers comparable to those Comcast affords to its affiliated networks, Comcast declined to make any changes in Tennis Channel's carriage or tiering arrangements. During these discussions, Tennis Channel provided Comcast with substantial information about major investments it had made in programming and service during recent years, such as its launch of Tennis Channel HD and its new in-depth coverage of the four tennis Grand Slams, and about the growth it had achieved in

Comcast did not challenge these showings, and it provided no reason for its decision, which has stranded Tennis Channel on a premium tier received—for a substantial extra charge—by only one tenth as many Comcast subscribers as Golf Channel and Versus. Even though those programming services are by all objective standards competitive with and comparable to Tennis Channel, they are carried on

Comcast's most widely received programming tiers and are available to subscribers at no extra charge. In fact, Comcast relegates *only* unaffiliated services like Tennis Channel to its narrowly-penetrated premium sports tier.

This differential treatment is entirely consistent with the "different level of scrutiny" that Comcast's President, Stephen Burke, has admitted Comcast affords its affiliated networks. According to Mr. Burke, Comcast treats affiliated networks "like siblings as opposed to strangers"; that is presumably why these channels receive enhanced carriage opportunities that unaffiliated networks do not receive.

There is no doubt that Comcast's discriminatory refusal to provide Tennis Channel with broader carriage is based on its explicit understanding that by doing so Comcast is harming the network's ability to compete in the cable marketplace. Comcast's own executives have confirmed their recognition that carriage of any program service on Comcast's premium sports tier "would adversely affect the license revenue" earned by that network, and that the tier is "not viable" if the network is "ad-supported," as Tennis Channel and Comcast's affiliated sports channels are. And Comcast is itself remarkably sensitive to any actions by others that reduce the reach of the networks it owns. Thus, when DIRECTV announced its intention to move Versus to a less penetrated tier because of concerns about the channel's quality and performance, a Versus executive called the move "a non-starter" and stated that Versus would not "accept a situation where Versus can lose 6 million viewers." In short, Comcast has acknowledged that placement on narrowly-penetrated tiers severely undermines a sports network's ability to compete in the cable marketplace.

The limited carriage Comcast provides to Tennis Channel causes specific and concrete harm to its ability to compete for viewers, advertisers, and the rights to cablecast tennis events. Moreover, Comcast's position as the market leader, with power in many of the most important media markets, and its ability to influence the decisions of other cable companies, even further exacerbate these harms.

This is not a circumstance that may be dismissed simply as the unfortunate result of otherwise permissible business decisions by Comcast. As this Complaint demonstrates, there are no material operational differences—in subject matter interest, in quality of service, , or in any other objective standard of performance—that would justify the disparity between how Comcast treats Tennis Channel and how it treats its owned sports networks. Indeed, when measured against the very factors Comcast purports to use to calculate the carriage potential of individual program services, Tennis Channel outranks both the Golf Channel and Versus.

It is inescapable that Comcast's discrimination in the terms and nature of Tennis Channel's carriage results solely from a decision—proscribed by Section 616 of the Communications Act—to protect its networks from competition with an unaffiliated programming service, and to weaken an entity that stands in the way of Comcast's ability to achieve its own internal programming plans.

Congress adopted Section 616 to further the public interest goal of protecting programming diversity and competition in the cable television market. It explicitly reached the judgment that such diversity and competition would be imperiled if cable system operators could discriminate against unaffiliated networks simply because they did not own them. That is precisely what Comcast has done here, and this case is

the paradigmatic example of how a cable operator like Comcast—the nation’s largest and most powerful cable operator—can engage in overt and predatory discrimination and undermine the congressional goal of a healthy marketplace populated with networks able to compete and prosper without regard to affiliation.

It is for these reasons that Tennis Channel seeks remedial orders that would require Comcast to carry Tennis Channel fairly, on the same basis as it carries its own affiliated services.

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unaffiliated programmers.² Pursuant to Section 616, the Commission promulgated rules intended to afford programmers with relief from such abuse.³

3. This Complaint involves actions by Comcast Cable Communications, LLC [hereinafter Comcast], the nation's largest cable operator,⁴ to use its inherent market power—in precisely the way prohibited by the Commission—to disadvantage Tennis Channel, an unaffiliated network owned by The Tennis Channel, Inc. [hereinafter Tennis Channel], and to protect competing networks with which Comcast is affiliated.

4. This is not a case in which a company like Comcast is making a rational business decision that has the unintended effect of damaging an unaffiliated programmer.⁵ Comcast's discriminatory misconduct here both is blatant and intentional—evidenced by the striking fact that it carries *all* of its affiliated sports networks on broadly-distributed programming tiers, while it relegates Tennis Channel (and most other unaffiliated sports networks) exclusively to an expensive premium tier that is not received by about 90 percent of Comcast's subscribers.

5. As this Complaint and the attached exhibits demonstrate, Comcast's conduct is plainly and intentionally discriminatory within the meaning of Section 616. Indeed, Comcast's President has admitted that Comcast treats affiliated networks "like siblings as

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(a)(5), 106 Stat. 1460, attached at Exh. 5.

³ See 47 C.F.R. §§ 76.1300 *et seq.* (2009), attached at Exh. 12. See also *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 and Development of Competition and Diversity in Video Programming Distribution and Carriage*, 9 FCC Rcd 2642 (1993) [hereinafter *Second Report and Order*], attached at Exh. 6.

⁴ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 13th Annual Report, 24 FCC Rcd 542, 627 n.636 (rel. Jan. 16, 2009) [hereinafter *13th Annual Competition Report*].

⁵ The language of Section 616 would reach even those decisions. 47 U.S.C. § 536.

opposed to strangers”—that affiliated networks receive carriage benefits that unaffiliated networks do not—in facial violation of Section 616.⁶ One such benefit available to Comcast-affiliated services is that no Comcast-owned network is carried exclusively on the premium sports tier, where Comcast carries Tennis Channel. In the words of another Comcast executive, that kind of carriage forces the relevant programmers to suffer economic conditions that are “not viable.”⁷ Exempting its services from carriage on the sports tier and relegating the sports services in which it has no interest to that carriage—even when they are fully comparable to those Comcast owns—similarly constitutes a facial violation of Section 616.

6. In sum, Tennis Channel’s growth, programming quality, and—its very position in the consumer marketplace in which it and Comcast’s similarly situated affiliated networks compete—render it unmistakably clear that Comcast takes actions against it that constitute deliberate discrimination so as to protect Comcast-affiliated networks against increasing competition.

STATEMENT OF FACTS

A. Jurisdiction

7. This Complaint is brought in accordance with and pursuant to the jurisdiction provided by Section 616 of the Communications Act of 1934⁸ and Section 76.1302 of the Commission’s rules.⁹ The notice required by 47 C.F.R. § 76.1302(b) was provided by a

⁶ Tr. of R. at 1695:17-1696:22, *NFL Enterprises LLC v. Comcast Cable Comms., LLC*, File No. CSR-7876-P [hereinafter *NFL Enterprises Hr’g*], Apr. 16, 2009 (testimony of Stephen Burke), attached at Exh. 21.

⁷ Tr. of R. at 1911:16-1912:6, *NFL Enterprises Hr’g*, Apr. 17, 2009, attached at Exh. 23 (testimony of Jeffrey Shell) (“[I]f you are . . . an ad-supported network . . . then you have to price yourself such that the – not to be on a sports tier, because my view was that it didn’t work.”).

⁸ 47 U.S.C. § 536.

⁹ 47 C.F.R. § 76.1302.

letter from Ken Solomon, Chairman and Chief Executive Officer of Tennis Channel, to Comcast's President, Stephen Burke, on December 10, 2009.¹⁰

B. The Parties

1. Tennis Channel

8. Tennis Channel is a video programming vendor, as defined in 47 C.F.R. § 76.1300(e). Its mailing address is 2850 Ocean Park Boulevard, Suite 150, Santa Monica, CA 90405, and its telephone number is (310) 314-9400.

9. Tennis Channel launched on May 15, 2003 with a broad range of racquet-sport-related programming.¹¹ Comcast began carrying the network in 2005.¹²

10. Like many programmers, Tennis Channel offered preferential terms to distributors that, like Comcast, agreed to carry the network before it had become well-established.¹³ Thus, under the 2005 agreement, which is still in effect, Comcast received a preferential rate—

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Although Comcast was required to launch Tennis Channel on systems serving a specified number of subscribers, the contract tier on which Comcast would carry Tennis Channel.¹⁵

¹⁰ A copy of Tennis Channel's letter to Comcast, along with proof of delivery, is attached to this Complaint as Exh. 29.

¹¹ Declaration of Ken Solomon, ¶ 4 (Jan. 4, 2010), attached at Exh. 3 [hereinafter Solomon Decl.].

¹² See Comcast & Tennis Channel, Affiliation and Distribution Agreement attached at Exh. 8 [hereinafter Affiliation Agreement]; Solomon Decl. ¶ 5.

¹³ See generally Affiliation Agreement.

¹⁴ *Id.*

¹⁵ Affiliation Agreement.

11. In the four years since its launch on Comcast systems, Tennis Channel has become the leading provider of 24/7 tennis programming and is indeed the only cable network in the nation dedicated to covering the sport.¹⁶ In 2008, Tennis Channel offered more than hours of worldwide event coverage, including major coverage of three of the four Grand Slam events: the Australian Open, the French Open, and Wimbledon.¹⁷ It added the fourth Grand Slam, the U.S. Open, as well as other prominent event coverage such as exclusive telecasts of every worldwide and United States Davis Cup and Fed Cup match, in 2009.¹⁸ Tennis Channel's event coverage is spread evenly across the year, with the Grand Slams beginning in January, May, June, and August, respectively, and other major tournaments and series year-round.¹⁹

12. In addition to covering more than 70 top tennis tournaments worldwide, Tennis Channel offers substantial non-event content, including hundreds of original lifestyle, instructional, and fitness series, specials, and short-form programs that feature the sport's most popular athletes, historical figures, and its most highly-regarded experts.²⁰ Moreover, Tennis Channel has been recognized for its programming quality. This past summer, for example, one observer concluded that "Tennis Channel has arrived as a real force and an equal to . . . ESPN2 on all the big tennis events."²¹

¹⁶ See, e.g., Steven Zeitchik, "Tennis, Everyone? Future's Not as Fuzzy; Cable, Online Deals Have Sport on Upswing," *The Hollywood Reporter* (July 3, 2008).

¹⁷ Solomon Decl. ¶¶ 4, 8, 9.

¹⁸ *Id.*

¹⁹ Solomon Decl., Exh. B.

²⁰ Solomon Decl. ¶ 4.

²¹ Jim Williams, "Tennis Channel Is Making Its Mark Covering the French Open," *Washington Examiner* (June 2, 2009).

13. Today, more than million subscribers receive Tennis Channel from about 130 different distributors nationwide.²² The vast majority of those distributors—more than two thirds—offers Tennis Channel to subscribers without requiring them to purchase a premium sports tier, even though many distributors have discretion regarding their placement of the network.²³ These include such large distributors as Comcast’s in-market competitors DIRECTV, Dish Network, and Verizon, and other cable operators like Cox, Insight, and Cequel.²⁴

14. Comcast, the nation’s largest cable operator, is one critical exception. Comcast generally carries Tennis Channel on its premium Sports and Entertainment Package,²⁵ for which customers must pay a fee of about \$5 each month over and above the amount they already pay for digital cable service.²⁶ The subscriber fee for this tier is many times the fee that Comcast pays to acquire Tennis Channel for each subscriber.²⁷ With only limited exceptions, Comcast has carried Tennis Channel on the premium sports tier since it began carrying the network in 2005.²⁸ As discussed further below, this carriage pattern contrasts sharply with Comcast’s carriage of networks in which it has an economic interest. For example, Comcast carries Versus and the Golf Channel, which compete directly with Tennis Channel, on its analog

²² Solomon Decl. ¶ 5.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*; Comcast, “Sports - Sports Entertainment Package,” <http://www.comcast.com/Corporate/Programming/sports/SEPackage.html> (2009), attached at Exh. 13.

²⁶ Comcast, “Select a Package,” <http://www.comcast.com/shop/buyflow/default.ashx> (2009), attached at Exh. 14.

²⁷ Solomon Decl. ¶ 5.

²⁸ *Id.* Comcast’s systems generally launched Tennis Channel on the premium sports tier; a few systems launched Tennis Channel on a digital basic tier but then relocated it to the premium sports tier, where it is now carried on all Comcast’s systems nationwide except one. *Id.*

basic tier, ensuring that these networks reach virtually every Comcast customer, and at no additional surcharge beyond the cost of basic cable.

15. Although Comcast's sports tier has suffered consistently from low penetration, Comcast has made several recent changes to the tier that will make it even less desirable. During 2009, Comcast moved several networks that it historically carried on the sports tier—including the NHL Network and NBA TV—to more broadly penetrated digital tiers.²⁹ Notably, Comcast has a direct or indirect financial interest in each of these networks.³⁰ Comcast's parent company owns athletic teams whose events are telecast on each of these networks, and it also holds an equity interest in each network.³¹ The recent retiering of these networks will further reduce the overall attractiveness of the sports tier to subscribers and diminish their incentive to pay extra to acquire it. Only about _____ of Comcast's subscribers, or about _____, have been willing to pay for this premium sports tier,³² and the foregoing changes are likely to reduce the tier's reach still further.

16. In sum, Comcast treats Tennis Channel in a fashion starkly different from the way it treats competing sports services with which it is affiliated, including services like the Golf Channel and Versus, which are offered on an analog basic tier to nearly all of Comcast's 24

²⁹ *See, e.g.*, Comcast, "Important News for Comcast Customers" (June 2009), attached at Exh. 25.

³⁰ *See* Declaration of Hal Singer, ¶ 15 (Jan. 4, 2010), attached at Exh. 1 [hereinafter Singer Decl.]. Comcast also added the NFL Network, with which it is not affiliated, to a digital basic tier after it settled a program carriage complaint brought against it at the FCC by NFL Enterprises LLC, an affiliate of the National Football League.

³¹ *Id.*

³² Solomon Decl. ¶ 5.

million subscribers—approximately as many Comcast subscribers as Tennis Channel receives.³³

17. Comcast has stranded Tennis Channel on its sports tier even though its head of programming, Jeff Shell, has admitted that “if you’re an ad-supported network” like Tennis Channel, “the sports tier that Comcast has . . . is not viable.”³⁴ As noted, the sports tier is significantly less viable now than it was at the time Mr. Shell made this statement, given the retiering of certain networks that Comcast historically offered on the tier.

2. Comcast

18. Comcast is a cable operator and a multichannel video programming distributor (MVPD) within the meaning of 47 C.F.R. § 76.1300(d). Its mailing address is One Comcast Center, Philadelphia, PA 19103, and its telephone number is (215) 286-1700.

19. Comcast is a “market leader”³⁵ in every sense of that phrase. With approximately 24 million subscribers, it is not only the nation’s largest cable operator, but also the largest MVPD of any type in the country.³⁶ It has customers in 39 states and the District of Columbia³⁷ and

³³ Comcast of Washington, DC, Channel Lineup, *available at* <http://www.comcast.com/Customers/Clu/ChannelLineup.ashx> (Jan. 4, 2010), attached at Exh. 30 [hereinafter Comcast D.C. Lineup].

³⁴ Tr. of R. at 1911:16-1912:6, *NFL Enterprises Hr’g*, Apr. 17, 2009 (testimony of Jeffrey Shell) (“[I]f you are . . . an ad-supported network . . . then you have to price yourself such that the – not to be on a sports tier, because my view was that it didn’t work.”).

³⁵ Ben Grossman, “NBCU Exploring Partnerships for Fresh ‘Lipstick,’” *Broadcasting & Cable* (Feb. 2, 2009).

³⁶ Comcast, Press Release, “Comcast Reports Third Quarter 2009 Results,” at 2 (Nov. 4, 2009), attached at Exh. 26 [hereinafter Comcast 3Q09 Results].

³⁷ Comcast Investor Relations – Comcast Products and Services, http://www.cmcsa.com/products_services.cfm (last visited Nov. 5, 2009), attached at Exh. 16.

³⁸ Its size gives it leverage in the distribution agreements it negotiates and allows it to generate significant revenues.³⁹

20. It is, consequently, not surprising that Comcast is viewed as “a leader in the industry” and that “[o]ther cable operators” view it as a “bellwether” in developing their own “business models.”⁴⁰ Comcast has “clout”—“the ability to make or break cable programming across the country.”⁴¹ “If an aspiring cable channel cannot win carriage on [Comcast and Time Warner], its fate is sealed. It’s doomed.”⁴² In brief, Comcast has the very kind of disproportionate influence in the video programming marketplace that led Congress to adopt Section 616 in the first place.

21. In addition to its role as an MVPD, Comcast is affiliated with a number of cable programming networks, several of which compete directly against Tennis Channel and all of which enjoy notably better carriage with Comcast than the Tennis Channel.

22. Comcast’s parent company has a financial interest in the Golf Channel,⁴³ the MLB Network,⁴⁴ the NHL Network,⁴⁵ NBA TV,⁴⁶ and a variety of other national networks.⁴⁷

³⁸ SNL Kagan, “All Video by DMA - 3rd Quarter 2009” (2009), attached at Exh. 19.

³⁹ Comcast, Press Release, “Comcast Reports Third Quarter 2009 Results,” at tbl. 1 (Nov. 4, 2009), attached at Exh. 26 (disclosing that Comcast generated more than \$26.575 million in revenues during the first three quarters of 2009).

⁴⁰ Leonard Kevin Grace, “Talkback,” *Multichannel News* (July 13, 2009) (internal quotation marks omitted).

⁴¹ *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors to Time Warner Cable, Inc., et al.*, Mem. Op. & Order, 21 FCC Rcd 8203, 8367 (2006) [hereinafter *Adelphia Order*] (Dissenting Statement of Commissioner Michael J. Copps).

⁴² *Id.*

⁴³ Comcast 3Q09 Results, Exh. 26, at 3.

⁴⁴ Comcast Corp., SEC Form 8-K, Art. I, § 1.01 (Dec. 4, 2009) [hereinafter Comcast 8-K], attached at Exh. 28.

Like Tennis Channel, these networks are national channels focused on coverage of a single sport.⁴⁸ For example, like Tennis Channel, Golf Channel focuses on a single sport that is watched and played predominantly by affluent adults.⁴⁹ These networks compete with Tennis Channel for viewers and advertisers.

23. Comcast's parent also owns Versus, a national sports network that offers programming coverage of multiple sports. Versus competes with Tennis Channel for viewers and advertisers, and it recently has competed with Tennis Channel for the right to telecast tennis programming.⁵⁰

24. Finally, Comcast's parent owns a number of regional sports networks, including Comcast SportsNet California, Comcast SportsNet Mid-Atlantic, Comcast SportsNet Northwest, Comcast SportsNet Philadelphia, Comcast SportsNet Bay Area, and Comcast

⁴⁵ In addition to its direct ownership stake in the NHL Network, Comcast's parent owns the Philadelphia Flyers NHL team, whose games are covered on the network. Comcast 8-K, Art. I, § 1.01, Exh. 28.

⁴⁶ Comcast's parent owns the Philadelphia 76ers NBA team, whose games are covered on NBA TV; it thus owns a stake in the NBA and a piece of the league's network. Comcast 3Q09 Results, Exh. 26, at 4.

⁴⁷ See generally Comcast 3Q09 Results, Exh. 26; Comcast 8-K, Exh. 28.

⁴⁸ See Comcast, "Company History | Golf Channel," <http://www.thegolfchannel.com/company-history/> (2009), attached at Exh. 15; MLB Network: About, <http://mlbnetwork.mlb.com/network/about/> (2009); Comcast, Press Release, "Comcast Brings NBA TV to Digital Classic Customers Increasing Distribution of League's Network," <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=875> (June 4, 2009).

⁴⁹ Declaration of Timothy Brooks (Jan. 4, 2010), attached hereto at Exh. 2, at §§ III(1)(a), III(6)(a) [hereinafter Brooks Decl.].

⁵⁰ Comcast 3Q09 Results, Exh. 26, at 4. In 2006 Versus (then known as Outdoor Life Network) and Tennis Channel shared rights to the U.S. Davis Cup, and in 2007 the two networks jointly distributed the WTA Tour Championships. Comcast, Press Release, "The USTA Signs OLN and The Tennis Channel as U.S. Davis Cup Television Partners for 2006," <http://www.versus.com/nw/article/view/12415/> (Feb. 7, 2006); On the Baseline Tennis News, "2007 WTA Tour Championships TV Schedule for Versus, Tennis Channel" (Oct. 20, 2007), attached at Exh. 9. See also Solomon Decl. ¶ 27.

SportsNet South (collectively, “Comcast SportsNet”).⁵¹ These networks compete with Tennis Channel on a regional basis for viewers and advertisers. In addition, these networks carry programming coverage of World TeamTennis regional events.⁵² Tennis Channel competes with Comcast SportsNet for World TeamTennis rights,⁵³ and Tennis Channel currently broadcasts World TeamTennis national events.⁵⁴

25. Comcast originally launched the Golf Channel as a premium channel, but it moved the network to a basic tier within months after its launch, because it concluded that distributing a sports network on a premium basis was not economically sustainable.⁵⁵ Indeed, Comcast has acknowledged that the Golf Channel obtained this broader distribution, which it

⁵¹ Comcast 3Q09 Results, Exh. 26, at 3.

⁵² World TeamTennis, “Advanta World TeamTennis on TV: Comcast SportsNet California,” http://www.wtt.com/page.aspx?article_id=1373 (2009), attached at Exh. 17-A; World TeamTennis, “Advanta World TeamTennis on TV: Comcast SportsNet Bay Area,” http://www.wtt.com/page.aspx?article_id=1374 (2009), attached at Exh. 17-B; World TeamTennis, “Advanta World TeamTennis on TV: Comcast SportsNet Northwest,” http://www.wtt.com/page.aspx?article_id=1375 (2009), attached at Exh. 17-C; World TeamTennis, “Advanta World TeamTennis on TV: Comcast SportsNet South,” http://www.wtt.com/page.aspx?article_id=1376 (2009), attached at Exh. 17-D; World TeamTennis, “Advanta World TeamTennis on TV: Comcast SportsNet New England,” http://www.wtt.com/page.aspx?article_id=1377 (2009), attached at Exh. 17-E; World TeamTennis, “Advanta World TeamTennis on TV: Comcast SportsNet Mid-Atlantic,” http://www.wtt.com/page.aspx?article_id=1372 (2009), attached at Exh. 17-F; World TeamTennis, “Advanta World TeamTennis on TV: Comcast SportsNet Philadelphia,” http://www.wtt.com/page.aspx?article_id=1378 (2009), attached at Exh. 17-G.

⁵³ Solomon Decl. ¶ 26.

⁵⁴ World TeamTennis, “Advanta World TeamTennis on TV,” http://www.wtt.com/page.aspx?article_id=1363 (2009), attached at Exh. 18.

⁵⁵ Joe Schlosser, “Cable’s Class of 1995: A Look at How the Major Cable Launches of That Year Have Fared,” *Broadcasting & Cable* (Mar. 17, 1997), attached at Exh. 7 (“In January 1995, The Golf Channel teed up as a premium service hoping to entice the estimated 25 million-40 million golfers and golf viewers in the country to pay for exclusive golf tournament coverage. Eight months later, the channel converted to a basic cable network after interest from the gallery seemed stymied by the pay-to-watch theory.”).

called “one of the most important keys to a fledgling cable network’s success,” specifically because the network was affiliated with it and other MVPDs.⁵⁶

26. Comcast generally carries Versus and Comcast SportsNet on the same basic programming tier as the one on which it carries the Golf Channel.⁵⁷

27. Comcast launched the MLB Network—in which it holds an equity interest—on a digital basic tier. According to one news report, “the reason that the MLBN has been able to enjoy a compatible arrangement with cable broadcasters is that it gave up a share of its equity [to Comcast and other distributors] in order to reach that goal.”⁵⁸

28. Likewise, Comcast announced this past summer its decision to move the NHL Network, which covers the games of the Philadelphia Flyers, the Comcast-owned hockey team, to a digital basic tier.⁵⁹ Although Comcast did not disclose the terms of its agreement with the National Hockey League (NHL)—the entity that also provides the most valuable

⁵⁶ Comcast, “Company History | Golf Channel,” *supra* note 48 (“The cable operator investment [from Comcast and others] not only infused necessary capital to keep the business going, it brought with it one of the most important keys to a fledgling cable network’s success – distribution.”).

⁵⁷ *See, e.g.*, Comcast D.C. Lineup.

⁵⁸ Diane M. Grassi, “MLB Network Rolls Out with Bait and Switch,” *Sports Central* (Jan. 9, 2009). Likewise, Comcast has announced plans to launch a network called the U.S. Olympic Network in 2010 on a digital basic tier. Comcast & United States Olympic Committee, Press Release, “USOC and Comcast Partner To Launch the U.S. Olympic Network” (July 8, 2009). It decided to carry this affiliated network broadly even though NBC has television rights to the Olympic Games through 2012 and even though the International Olympic Committee and other key stakeholders opposed the network’s launch. The venture ultimately was suspended over that criticism, but the experience illustrates Comcast’s consistent efforts to provide preferential terms even to ill-fated sports networks without substantial programming if they are affiliated. *See* “Olympic Network Was Doomed To Flame Out,” Company Town, *Los Angeles Times*, <http://latimesblogs.latimes.com/entertainmentnewsbuzz/2009/08/olympic-network-was-doomed-to-crash-out-of-the-gate.html> (Aug. 19, 2009).

⁵⁹ Comcast Corp., Press Release, “Comcast to Offer Fans More Access to NHL Network Programming” (June 2, 2009).

programming for Comcast-owned Versus—it disclosed in early December 2009 that it now holds more than 15 percent of the equity in the NHL Network.⁶⁰

29. Finally, Comcast initially carried NBA TV on its premium sports tier, but it has since moved that network to a digital basic tier as well. Comcast’s parent company itself owns an indirect share of NBA TV by virtue of its ownership of an NBA franchise, the Philadelphia 76ers.⁶¹

30. According to published data,⁶² each of these Comcast-affiliated networks costs Comcast more per subscriber for carriage than Tennis Channel, even though each of these affiliated networks receives much broader distribution.⁶³ According to SNL Kagan, Comcast charges a rate of about

The MLB Network costs approximately ⁶⁴ while NBA TV costs ⁶⁵ and the NHL Network costs ⁶⁶

⁶⁰ Comcast 8-K, Art. I, § 1.01.

⁶¹ Comcast 3Q09 Results, Exh. 26, at 4.

⁶² All rates cited in this paragraph are for 2009; 2010 rates are likely to be no more than a few cents different. SNL Kagan, *Economics of Basic Cable Networks* at 53 (2009) [hereinafter *Economics of Basic Cable Networks*], attached at Exh. 20.

⁶³ The contemplated price for the Olympic Network, *see* note 58, *supra*, has not been announced publicly.

⁶⁴ *Economics of Basic Cable Networks* at 53.

⁶⁵ *Id.*; *see also* Danielle Sessa & Todd Shields, “Baseball’s New Television Network Avoids NFL’s Cable Fumbles,” *Bloomberg News* (Dec. 31, 2008).

⁶⁶ *Economics of Basic Cable Networks* at 53.

C. Comcast's Discriminatory Conduct

1. Background

31. Comcast has a history of violating its duty to treat unaffiliated programmers in a non-discriminatory manner and to enter into business relationships that do not restrain their ability to compete fairly in the cable marketplace. Indeed, it has been the subject of more program carriage complaints than any other distributor.⁶⁷ In each case, the Media Bureau found that the programmer had established a *prima facie* case that Comcast had violated Section 616.⁶⁸ All of these cases either are still ongoing or were settled by Comcast before a final Federal Communications Commission (FCC) decision.

32. In recognition of the serious risk that Comcast would use its power to undermine content diversity by discriminating against unaffiliated programmers, the Commission also established a special program carriage condition on its approval of Comcast's acquisition of certain Adelphia Communications Corporation cable systems.⁶⁹

⁶⁷ See *TCR Sports Broad. Holding, L.L.P. v. Comcast Corp.*, Complaint, File No. CSR-6911-N (June 14, 2005) (settled after being designated for hearing by the Media Bureau); *NFL Enterprises, LLC v. Comcast Cable Comms., LLC*, Complaint, File No. CSR-7876-P (May 6, 2008) (settled after completion of hearing before an FCC Administrative Law Judge); *Herring Broad., Inc. v. Comcast Corp.*, Complaint, File No. CSR-7907-P (Apr. 21, 2008) (pending after completion of hearing before an FCC Administrative Law Judge); *TCR Sports Broad. Holding, L.L.P. v. Comcast Corp.*, Complaint, File No. CSR-8001-P (July 1, 2008) (pending after completion of hearing before an FCC Administrative Law Judge).

⁶⁸ *Herring Broad., Inc. v. Time Warner Cable Inc., et al.*, Mem. Op. & Hearing Designation Order, 23 FCC Rcd 14787 (2008) [hereinafter *Omnibus HDO*]; *TCR Sports Broad. Holding, L.L.P. v. Comcast Corp.*, 21 FCC Rcd 8989 (2006).

⁶⁹ *Adelphia Order*, 21 FCC Rcd at 8287, ¶ 190. The Commission subsequently suspended the program carriage condition in "light of [its] anticipated revision of [the generally-applicable] program carriage procedures." *Comcast Corp., Petition for Decl. Ruling that The America Channel is not a Regional Sports Network*, 22 FCC Rcd 17938, 17946-47 (2007).

33. And Comcast has acknowledged the threat that its market dominance is understood to pose to diversity in the video programming industry. It has volunteered to accept program carriage conditions on the FCC's approval of its proposal to acquire NBC Universal.⁷⁰

34. Finally, the Commission has found that in a parallel context Comcast engaged in abusive behavior by discriminating against unaffiliated content providers seeking access to Comcast's Internet subscribers.⁷¹ In that network neutrality case, as in this one, Comcast prevented its subscribers from accessing unaffiliated sources of content in order to favor its own preferred sources. The Commission concluded that Comcast's efforts to undermine network neutrality constituted a "discriminatory and arbitrary practice [that] unduly squelches the dynamic benefits of an open and accessible Internet and does not constitute reasonable network management."⁷²

35. As shown below, Comcast's treatment of Tennis Channel is a textbook example of its use of predatory and abusive tactics—all designed to shield its own services, in this case particularly the Golf Channel and Versus—from the kind of vigorous marketplace competition that Congress sought to preserve and promote through Section 616.

⁷⁰ It bears noting that, while conceding its obligation to promote programming diversity, Comcast has actually offered little to achieve that goal: it has committed to add only a handful of independent networks to more penetrated tiers without specifying which networks (and whether they will be competitors with Comcast's networks); and it has agreed to do so on unspecified "customary terms and conditions," which themselves may of course prove discriminatory. See David L. Cohen, Executive Vice President, Comcast Corp., Memorandum, "Comcast/GE Announcement Regarding NBC Universal," at 5 (Dec. 3, 2009).

⁷¹ *Formal Complaint of Free Press and Public Knowledge Against Comcast for Secretly Degrading Peer-to-Peer Applications*, Mem. Op. & Order, 23 FCC Rcd 13028, 13028 (2008) (concluding that, in order to benefit its affiliated video-on-demand services, Comcast "selectively target[ed] and interfere[d] with connections of peer-to-peer (P2P)" video services received by its Internet subscribers). Comcast has appealed the Commission's decision to the U.S. Court of Appeals for the D.C. Circuit.

⁷² *Id.*

2. Tennis Channel's Recent Expansion

36. Early in its history, Tennis Channel made the strategic decision to improve its competitive position and its cable carriage profile through a systematic plan to enhance the quality of its technical service and content production and the range of tennis events it made available to subscribers.⁷³ That plan was concluded by 2009.⁷⁴

37. In January 2008, Tennis Channel launched Tennis Channel HD, a new channel that made Tennis Channel an industry leader in high-definition sports programming.⁷⁵ Tennis Channel spent more than _____ in 2008 to create Tennis Channel HD, and it

⁷⁶

38. Later in 2008, Tennis Channel completed the expansion of its tournament programming. It offered more than _____ hours of worldwide event coverage in 2008, an average of more than _____ every week of the year.⁷⁷ (Tennis Channel would offer coverage of even more tennis matches if it were more broadly distributed and, therefore, had sufficient revenues to cover the cost of producing that coverage.⁷⁸) By comparison, the Golf Channel offered about _____ of event coverage in 2008, and Versus offered only about

⁷⁹

⁷³ Solomon Decl. ¶ 6.

⁷⁴ *Id.*

⁷⁵ *Id.* ¶¶ 6-7.

⁷⁶ *Id.* ¶ 7. *See also* Letter from Jennifer T. Gaiski, Sr. Vice President, Content Acquisition, Comcast, to Nancy Pingitore, Account Director, Tennis Channel (July 26, 2007) (acknowledging Tennis Channel's offer to provide Tennis Channel HD _____), attached at Exh. 9.

⁷⁷ Solomon Decl. ¶ 8 & Exh. A.

⁷⁸ Solomon Decl. ¶ 4.

⁷⁹ Solomon Decl., Exh. A. *See also* Singer Decl. ¶ 18.

39. By 2009, Tennis Channel had acquired rights to broadcast portions of all four Grand Slam tournaments—the French Open, the Australian Open, Wimbledon, and the U.S. Open—as well as virtually every other top tournament in the world, including the Davis Cup, the Association of Tennis Professionals World Tour Masters 1000, and the Women’s Tennis Association Premier tournaments.⁸⁰ Each Grand Slam tennis event lasts two weeks, and each of the four is the sport’s equivalent of a Super Bowl.⁸¹ In contrast, the Golf Channel does not offer live coverage of any of golf’s Majors, which are that sport’s comparable events.⁸² In all, Tennis Channel covered more than 70 top tennis tournaments during 2009 worldwide.⁸³

40. Tennis Channel’s investments in content have been substantial. The network spent almost [redacted] to acquire and telecast the Grand Slams in 2008 and 2009, as well as [redacted] for other event programming.⁸⁴

41. On a parallel track, tennis has recently experienced unique growth as a participatory sport⁸⁵—an expansion of public involvement and interest that has been fully consistent with Tennis Channel’s unique growth in popularity with viewers over this period.

42. The dramatically increased viewer interest in tennis and Tennis Channel’s substantial investment in programming and service delivery has resulted in enhanced viewer satisfaction with Tennis Channel. Between 2007 and 2009—coinciding with Tennis Channel’s significant programming expansion—the number of viewers who reported in an independent industry survey that they were “very satisfied” with Tennis Channel grew substantially, as did

⁸⁰ Solomon Decl. ¶ 9.

⁸¹ *Id.*

⁸² Singer Decl. ¶ 18.

⁸³ Solomon Decl. ¶ 4.

⁸⁴ *Id.* ¶ 8.

⁸⁵ See paragraph 81, *infra*.

the number of viewers who indicated that Tennis Channel was important to their enjoyment of cable television.⁸⁶

43.

⁸⁷ Mr.

Timothy Brooks, an independent media consultant, a former executive of several cable networks, and a former chairman of the Media Ratings Council, an independent industry ratings body, concluded that over the first nine months of 2009,

,⁸⁸

89

44.

⁸⁶ Brooks Decl. § III(4)(c).

⁸⁷ *Id.*

⁸⁸ *Id.* § III(2)(j).

⁸⁹ *Id.* § III(3)(a).

⁹⁰ *Id.* § III(2)(e).

⁹¹ *Id.*

3. Comcast's Limitation of Tennis Channel to the Sports Tier

45. By early 2009, Tennis Channel had achieved and could document dramatic growth and unique popularity; ; license fees among the lowest of sports networks; and high value proposition to distributors. At that point, it proposed that Comcast move the network from the limited-distribution sports tier to a more broadly-penetrated tier— comparable to the carriage Tennis Channel is afforded on the systems of many other MVPDs, including those of Comcast's principal direct competitors, DIRECTV, Dish Network, and Verizon, as well as other cable companies such as Cox.⁹³

46. After a number of presentations outlining these points, on March 4, 2009, Comcast's Executive Vice President – Content Acquisition, Madison Bond, responded by telephone to Tennis Channel's proposal. Mr. Bond told Tennis Channel's Chairman and Chief Executive Officer, Ken Solomon, that Comcast would consider repositioning Tennis Channel only if Tennis Channel offered Comcast a financial "incentive."⁹⁴

⁹² *Id.*

⁹³ Solomon Decl. ¶¶ 10-11.

⁹⁴ *Id.* ¶ 13. To the best of Tennis Channel's knowledge, Versus, the Golf Channel, and Comcast SportsNet, which are affiliated with Comcast, have never been required to offer an "incentive" in exchange for broad carriage on Comcast's systems. In particular, when Comcast repositioned the Golf Channel from premium to basic months after its launch because of poor performance,

47. Mr. Bond reiterated this demand in a March 30 telephone call with Mr. Solomon.⁹⁵ In that conversation, Mr. Bond indicated that he thought Tennis Channel would never be able to provide a significant enough financial incentive since, in Mr. Bond's view, it would be "too expensive" for Tennis Channel.⁹⁶

48. Tennis Channel did offer incentive to Comcast at a May 12, 2009 meeting at Comcast headquarters.⁹⁷

49. Tennis Channel offered because (for reasons discussed herein) broad distribution is essential to Tennis Channel's business model, and Tennis Channel believes (as Comcast's own executives believe) that it is not economically feasible to be carried—only on the limited-distribution sports tier.¹⁰⁰

50. During the meeting, Tennis Channel showed how the rapid expansion of Tennis Channel's programming and the increase in its popularity put the network on a par with

see notes 55-56, *supra*, Tennis Channel is unaware that Comcast demanded any "incentive." *See* Solomon Decl. ¶ 14.

⁹⁵ Solomon Decl. ¶ 14.

⁹⁶ *Id.*

⁹⁷ *Id.* ¶ 17.

⁹⁸ *Id.*; *see also* Tennis Channel Proposal to Comcast (May 12, 2009), attached at Exh. 24.

⁹⁹ *See* paragraphs 10 and 30, *supra*.

¹⁰⁰ Solomon Decl. ¶ 18.

the Comcast-affiliated sports networks carried on Comcast's analog or digital basic tiers.¹⁰¹ It also described the ways in which carrying Tennis Channel more broadly would create advantages for Comcast as a distributor.¹⁰²

51. After a month without substantive contact between Tennis Channel and Comcast, Mr. Bond called Mr. Solomon on June 9, 2009 to announce that Comcast was rejecting the incentives that Tennis Channel had offered.¹⁰³ Rather than offer any counterproposal or explaining the decision, Mr. Bond indicated that Comcast would not agree to give Tennis Channel the level of distribution it sought—or, indeed, any increased national distribution—under any circumstances.¹⁰⁴ During recent pre-Complaint discussions, Comcast has again refused to propose any concrete carriage terms that would provide improved or non-discriminatory treatment for Tennis Channel.¹⁰⁵

52. Comcast's June 9 decision to reject Tennis Channel's request and carry Tennis Channel on significantly less favorable terms than its affiliated sports networks—even though Tennis Channel compares favorably to Comcast's similarly situated affiliates—constituted an act of discrimination in violation of Section 616 of the Communications Act of 1934¹⁰⁶ and the Commission's program carriage rules.¹⁰⁷

¹⁰¹ *Id.* ¶ 19

¹⁰² *Id.*

¹⁰³ *Id.* ¶ 20.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* ¶ 29.

¹⁰⁶ 47 U.S.C. § 536.

¹⁰⁷ 47 C.F.R. §§ 76.1300 *et seq.* See also *Omnibus HDO*.

LEGAL STANDARD

53. Under the Commission’s program carriage rules, an MVPD may not “engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”¹⁰⁸

54. The Commission will find that an MVPD has discriminated against an unaffiliated network in violation of the program carriage rules if: (a) the unaffiliated network is “similarly situated” with an affiliated network;¹⁰⁹ (b) the MVPD treated the similarly situated networks differently because of their affiliation;¹¹⁰ and (c) the differential treatment unreasonably harmed the unaffiliated network’s ability to compete.¹¹¹

55. If the Commission finds that an MVPD has violated the program carriage rules, it will “order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor’s programming on defendant’s video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor’s programming.”¹¹²

¹⁰⁸ *Id.* § 76.1301(c).

¹⁰⁹ *Omnibus HDO* ¶¶ 27, 39, 51, 75; *TCR Sports Broad. Holding, L.L.P. v. Time Warner Cable Inc.*, Order on Review, DA 08-2441, ¶¶ 14-15, 27-29 (MB Oct. 30, 2008) [hereinafter *TCR*].

¹¹⁰ *TCR* ¶ 29 (finding differential treatment where the affiliated network was carried on analog basic and the cable operator agreed to carry the independent network, if at all, only on digital basic); *Omnibus HDO* ¶ 76.

¹¹¹ *TCR* ¶ 30; *Omnibus HDO* ¶¶ 77-78. The complainant need not show that, “without carriage, [the complainant] cannot compete at all, *i.e.*, would exit the industry, operate at a loss, or suffer some similar major disadvantage.” *TCR* ¶ 30. Instead, it is sufficient to show that the differential treatment “restrained [the complainant’s] ability to compete fairly for viewers, advertisers, and sports programming rights.” *Id.* ¶ 31.

¹¹² 47 C.F.R. § 76.1302(g)(1).

I. TENNIS CHANNEL IS SIMILARLY SITUATED WITH COMCAST'S AFFILIATED SPORTS NETWORKS.

56. In order to establish that unaffiliated programming services are “similarly situated” with those in which an MVPD has an interest, a complainant under Section 616 is not required to show that two networks are “identical.”¹¹³ Instead, a complainant will successfully have demonstrated that the two networks are similarly situated if, for example, it showed that they generally compete with each other and have similar levels of viewer popularity.¹¹⁴ With respect to Comcast’s affiliated sports networks, Tennis Channel fully satisfies this standard.

57. Tennis Channel and the Comcast affiliates described above are all sports television networks.¹¹⁵ All of these networks (including the Comcast SportsNet networks in the aggregate) are distributed on a national basis.¹¹⁶

58. As sports networks, Tennis Channel, Versus, and the Golf Channel compete for the attention of the same pool of viewers. First, like many sports networks, the three networks attract affluent viewers: According to a survey by the independent research firm Simmons Market Research Bureau, Inc., Tennis Channel’s median viewer has a household income of _____, while the viewers of Golf Channel and Versus have median household incomes of _____ and _____, respectively.¹¹⁷ Of viewer households with incomes above \$100,000, the median income for Tennis Channel viewers is _____.¹¹⁸ That puts Tennis

¹¹³ *Omnibus HDO* ¶¶ 27, 39, 51, 75.

¹¹⁴ *TCR* ¶¶ 27-28 (finding the Mid-Atlantic Sports Network, a regional sports network focused on Washington Nationals and Baltimore Orioles baseball games, similarly situated with News 14 Carolina, a regional news channel operated by Time Warner).

¹¹⁵ Solomon Decl. ¶ 11; Singer Decl. ¶ 18.

¹¹⁶ Solomon Decl. ¶¶ 11, 12.

¹¹⁷ Singer Decl. ¶ 19; Brooks Decl. §§ III(2)(j), III(3)(f).

¹¹⁸ Brooks Decl. § III(2)(i).

Channel and the Golf Channel, whose median household income in the \$100,000-and-higher survey was _____, together in the _____ networks for median income among these affluent households.¹¹⁹ The networks' viewers also are gender-mixed but predominantly male: nearly _____ percent of Tennis Channel viewers are male and about _____ percent of Golf Channel and Versus viewers are male.¹²⁰

59. The three networks also compete directly for advertisers.

_____ percent of Versus's revenue from its top 30 advertisers comes from companies that have purchased advertising on Tennis Channel or from companies that evaluated formal proposals from Tennis Channel during one of the past four "up-front" periods during which advertisers seek such proposals.¹²¹ The comparison between Tennis Channel and Golf Channel is even more striking: _____ percent of the revenue that Golf Channel earns from its top 30 advertisers comes from those that have purchased advertising on Tennis Channel or from companies that evaluated Tennis Channel proposals during one of the past four "up-fronts."¹²²

60. Finally, Tennis Channel competes with Versus and Comcast SportsNet for tennis programming. Versus has carried professional tennis programming. Indeed, Tennis

¹¹⁹ *Id.*

¹²⁰ Singer Decl. ¶ 19; Brooks Decl. §§ III(2)(i), III(3)(e).

¹²¹ Declaration of Gary Herman, ¶ 8 (Jan. 4, 2010), attached at Exh. 4 [hereinafter Herman Decl.].

¹²² *Id.* ¶ 9. The fact that sports networks—and, particularly, sports networks with similar demographics—compete for these advertisers is confirmed by Comcast's recent announcement that it would leverage synergies in advertising sales among its sports networks by launching a consolidated Comcast Sports Sales group within the company. Jon Show & John Ourand, "Comcast Combines Versus, Golf Channel Sales Efforts," *Street & Smith's Sports Business Journal*, at 03 (Jan. 26, 2009). That conclusion also is shown by the fact that, according to a study of affluent viewers by Ipsos Mendelsohn, Tennis Channel competes regularly with Golf Channel for advertisers. Brooks Decl. § III(2)(j).

Channel and Versus shared rights to tennis tournaments in 2006 and 2007.¹²³ Similarly, like Tennis Channel, Comcast SportsNet covers tennis (having carried the SAP Open and World TeamTennis in 2009), and the networks presently share rights to telecast World TeamTennis events.¹²⁴

61.

„125

62.

¹²³ Solomon Decl. ¶ 26; Singer Decl. ¶ 22.

¹²⁴ Solomon Decl. ¶ 26; Singer Decl. ¶ 22. *See also* notes 52 & 54, *supra*.

¹²⁵ Brooks Decl. § I(2). *See also id.* §§ III(2)(a), III(3)(f).

¹²⁶ *Id.* § III(2)(g).

¹²⁷ *See* ¶ 44, *supra*.

¹²⁸ Brooks Decl. § I(2).

63.

Finally, as was the case with Tennis Channel and the Golf Channel, Mr. Brooks found that Versus attracts an audience that is gender-mixed but skewed toward men, further evidence that the networks compete for many of the same advertisers and viewers.¹³⁴ These conclusions are consistent with those of expert economist Dr. Hal Singer, who found that “Tennis Channel is similarly situated to Comcast’s affiliated, national sports networks carried on the Standard Service tier, the Golf Channel and Versus.”¹³⁵

¹²⁹ *Id.* § III(2)(j).

¹³⁰ *Id.* § III(3)(a).

¹³¹ *Id.* § III(3)(b).

¹³² *Id.* § III(3)(a).

¹³³ *Id.* § III(3)(c).

¹³⁴ *Id.* § III(3)(e).

¹³⁵ Singer Decl. ¶ 2. *See also id.* ¶¶ 17-22.

II. COMCAST DISCRIMINATES AGAINST TENNIS CHANNEL BECAUSE IT IS UNAFFILIATED.

64. The second prong of the Commission's program carriage discrimination test asks whether the cable operator is treating the unaffiliated network in a less satisfactory way than it is treating its similarly-situated affiliated networks on the basis of affiliation.¹³⁶

Comcast's poorer treatment of Tennis Channel, compared to its affiliated sports networks, is incontrovertible, as is the admitted fact that the basis for the different treatment is affiliation.

65. Comcast distributes Versus and the Golf Channel to virtually all of its 24 million subscribers—on the least expensive programming tier that it offers aside from its Limited Basic Service tier—and those subscribers can receive the network without paying an additional fee.¹³⁷ The Comcast SportsNet networks likewise are available to the vast majority of subscribers to the Comcast systems that distribute them.¹³⁸

66. In contrast, Comcast customers who want to receive Tennis Channel must subscribe to a premium tier (including a number of other sports services)¹³⁹ and must pay an additional \$5 each month for the programming, in addition to the rate that they must pay to purchase an entry-level package of digital (rather than analog) cable programming and acquire a digital cable box.¹⁴⁰ Only about ten percent of Comcast's subscribers have taken this step.¹⁴¹

¹³⁶ TCR ¶ 29 (finding differential treatment where the affiliated network was carried on analog basic and the cable operator agreed to carry the independent network, if at all, only on digital basic).

¹³⁷ Comcast D.C. Lineup; Singer Decl. ¶¶ 2, 14.

¹³⁸ *Id.*

¹³⁹ In Washington, D.C., the tier includes the Big Ten Network, Horse Racing Television, TV Games, the Fox College Sports regional channel, Fox Soccer Channel, GolTV, Speed Channel (also available as an extra-charge HD channel), NFL Red Zone, and CBS College Sports. Comcast D.C. Lineup at 8.

¹⁴⁰ See Comcast, "Select a Package," Exh. 14.

¹⁴¹ Solomon Decl. ¶ 5.

The low subscribership to the tier—and Comcast’s failure to relegate even one of its affiliated sports networks to the tier—provide additional evidence that the sports tier is not a viable opportunity for any network.

67. When the Golf Channel—originally a premium channel—faced difficulty competing shortly after its launch because of the inevitably low subscribership that it received, Comcast shifted the network to a basic tier, even though at that time Golf Channel had not achieved widespread success, and it did not have a strong programming lineup.¹⁴² Comcast has conceded that it took this step specifically because it owned the Golf Channel.¹⁴³ Comcast’s refusal to offer the same benefit to Tennis Channel, after being shown compelling evidence that broader carriage was warranted, is a specific act of discrimination, particularly since Tennis Channel is a far more attractive and developed network than the nascent Golf Channel that Comcast granted broader coverage to in 1995.

68. What is striking about Comcast’s treatment of its affiliated networks is that it is uniform: Comcast generally carries its affiliated networks on broadly-penetrated tiers. In contrast, the premium sports tier is occupied *only* by unaffiliated networks.¹⁴⁴ That is consistent with Comcast President Stephen Burke’s observation that Comcast treats its affiliated networks “like siblings as opposed to strangers”—meaning that affiliated networks receive benefits from Comcast that unaffiliated networks do not.¹⁴⁵ Among these benefits are, according to Mr. Burke, “a better audience with” Mr. Bond and other Comcast executives who make

¹⁴² See paragraph 25 & notes 55-56, *supra*.

¹⁴³ *Id.*

¹⁴⁴ See, e.g., Comcast D.C. Lineup at 8.

¹⁴⁵ Tr. of R. at 1695:17-1696:22, *NFL Enterprises Hr’g*, Apr. 16, 2009 (testimony of Stephen Burke).

distribution decisions and “a different level of scrutiny” when Comcast evaluates whether and how it will carry a network.¹⁴⁶

69. This disparity between Comcast’s treatment of its affiliated and unaffiliated sports networks is illustrated by Comcast’s carriage decisions for its Washington, D.C. cable system, which are typical of the carriage terms on Comcast systems nationwide. The following table describes the carriage situation on that system.

TABLE 1: SPORTS PROGRAMMING ON COMCAST BY TIER
AS OF JANUARY 2010 (WASHINGTON, D.C.)

“Standard Service”	Affiliation	“Digital Classic”	Affiliation	“Sports Entertainment”	Affiliation
ESPN	No	ESPN Classic	No	Fox Soccer Channel	No
ESPN2	No	ESPN U	No	Fox College Sports	No
Golf Channel	Yes	MLB Network	Yes*	Tennis Channel	No
Versus	Yes	NBA TV	Yes**	CBS College Sports	No
SportsNet MA	Yes	NHL Channel	Yes***	Go!TV	No
MASN	No [^]			Speed	No
				Big Ten Network	No
				Horse Racing Television	No
				TV Games	No
				NFL Red Zone	No ^{^^}

Sources: Comcast Channel Lineup, available at <http://www.comcast.com/Customers/Clu/ChannelLineup.aspx> (accessed on Jan. 4, 2010); affiliation is from *13th Annual Competition Report*, Appendix C, Table C-1; Comcast 8-K at 6.

Notes: * Comcast owns 8.3 percent of MLB Network. ** Comcast holds equity in NBA TV through its ownership interest in the National Basketball Association. *** Comcast owns 15.6 percent of the NHL Channel, and the League provides anchor programming for Versus. [^] MASN is carried subsequent to a settlement of a carriage complaint, as is the NFL Network, which is carried on Comcast’s “Digital Starter” tier, which is Comcast’s most broadly distributed level of digital service. ^{^^} Comcast also sells the HD version of NFL Red Zone as a part of its extra-charge HD package.

70. As this table makes clear, Comcast carries most of the networks that its parent company owns outright on its broadly-distributed “Standard Service” tier, which is available to nearly all of its subscribers. Other networks in which Comcast has a shared financial interest are carried on an intermediate digital basic tier. And all of the sports networks that are entirely independent of Comcast—that is, in which Comcast holds no financial interest—are carried on the poorly-penetrated premium sports tier unless Comcast is forced to carry a network differently, as it is with the ESPN family of networks, which have sufficient market power to

¹⁴⁶ *Id.*

demand broad distribution,¹⁴⁷ and MASN and the NFL Network, which Comcast repositioned following settlement of FCC program carriage complaints against it.¹⁴⁸

71. Comcast's discriminatory treatment also is revealed in the strikingly more favorable channel positioning it affords to the sports networks it owns. According to Comcast's Washington, D.C. lineup, it carries Versus, Comcast SportsNet, and the Golf Channel on low channel numbers (7, 10, and 11, respectively) that book-end ESPN and ESPN2, the two channels that are likely to be the most heavily used by sports fans.¹⁴⁹ Tennis Channel—at channel 735—is about as far away as possible from this so-called “beachfront real estate.”¹⁵⁰ In stark contrast to Comcast's discriminatory numbering decisions, Verizon carries the Golf Channel HD and Tennis Channel HD near each other at channels 593 and 590, respectively; on DIRECTV, these networks are 218 and 217; and on Dish Network, they are 401 and 400.¹⁵¹

72. Favorable channel positioning is essential to the success of a network because positioning at low-numbered channels—near popular local broadcast stations, for instance—drives traffic to networks, whereas networks that are far away from the bottom of the channel list are less likely to receive casual traffic.¹⁵² Comcast's preferential positioning of its affiliated networks makes it more likely that sports viewers will watch Comcast-affiliated sports channels casually when switching channels to or from ESPN and ESPN2, whereas Tennis

¹⁴⁷ See Singer Decl. ¶ 15.

¹⁴⁸ *Id.*

¹⁴⁹ Comcast D.C. Lineup at 1.

¹⁵⁰ *Id.* at 8.

¹⁵¹ Singer Decl. ¶ 18.

¹⁵² Brooks Decl. § IV(1)(d).

Channel is likely to be seen predominantly by the Comcast subscribers who intentionally seek it out.¹⁵³

73. Thus, Comcast's preferential treatment of its affiliated networks, with respect to channel positioning and more generally, helps those networks compete against unaffiliated sports channels regardless of the programming they offer. Removing unaffiliated options from the frequently-traveled low channel numbers and segregating them in an extra-pay tier makes it far less likely that a viewer seeking to watch sports will watch the unaffiliated Tennis Channel. But, as Dr. Singer has observed, disadvantaging Tennis Channel also allows "Comcast . . . to expand its footprint from golf, hockey, and bull riding into complementary sports programming, including tennis."¹⁵⁴ Comcast's motivation to do so, Dr. Singer has explained, "is particularly salient because Comcast's objective according to its 2008 Annual Report is to expand its reach into sports programming: 'We have invested and expect to continue to invest in *new and live-event programming . . .*'"¹⁵⁵ Dr. Singer also observed that "Comcast's 'Programming segment,' 'which consists primarily of [its] consolidated national programming networks, including E!, Golf Channel, VERSUS, G4 and Style,' earned revenues of \$1.4 billion in 2008" and that the "programming division's operating cash flow grew at 28.3 percent in the second quarter of 2009, whereas its . . . cable division grew by only 4.1 percent."¹⁵⁶ "[T]he fact that Comcast already carried tennis programming on two of its networks . . . and Comcast's stated intentions to expand its sports programming footprint" cause Dr. Singer "to infer that

¹⁵³ Singer Decl. ¶¶ 18, 31; Comcast D.C. Lineup at 8.

¹⁵⁴ Singer Decl. ¶ 41.

¹⁵⁵ *Id.* See also Solomon Decl. ¶ 26 (reporting "that Comcast had entered what were ultimately unsuccessful discussions [with the USTA] about acquiring rights to cablecast the U.S. Open").

¹⁵⁶ Singer Decl. ¶ 41 (citations omitted).

Comcast highly values the programming rights currently secured by Tennis Channel.”¹⁵⁷

Acquiring those rights, Dr. Singer found, could among other results allow Comcast to “seek higher carriage fees from its downstream rivals (DirecTV, Dish, and Verizon) as a means of raising rivals’ costs.”¹⁵⁸

74. Other than as an effort to advantage its affiliated networks, there is no rational basis for Comcast’s decision to carry its affiliated sports networks on basic tiers but to limit the unaffiliated Tennis Channel to the premium sports tier.¹⁵⁹ Indeed, the data show that Comcast’s discriminatory conduct works in several respects to the disadvantage of Comcast’s cable division—for example, by reducing Comcast’s ability to earn revenue from Tennis Channel local advertising availabilities in programming and making Comcast less attractive to consumers evaluating which competing distributor (including, most significantly, DIRECTV, Dish Network, and Verizon) offers the most attractive programming packages. Nonetheless, the protection that this carriage decision provides against meaningful additional competition for the Golf Channel, Versus, and other networks more than makes up for this forgone revenue for the Comcast corporate family as a whole.¹⁶⁰

III. COMCAST’S DISCRIMINATION UNREASONABLY RESTRAINS TENNIS CHANNEL’S ABILITY TO COMPETE FAIRLY.

75. The third prong of the Commission’s program carriage test is whether the cable operator’s affiliation-based discrimination “unreasonably restrain[s] the ability of an

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* ¶¶ 2, 23-38. *See also* Section III(A), *infra*.

¹⁶⁰ Singer Decl. ¶ 40.

unaffiliated video programming vendor to compete fairly.”¹⁶¹ If so, the cable operator has violated Section 616.

A. Comcast’s Affiliation-Based Discrimination Is Unreasonable.

76. As Dr. Singer has concluded, Comcast’s affiliation-based discrimination is unreasonable.¹⁶² That is, Comcast behaves differently from the way that a reasonable distributor, considering only the relevant non-affiliation-based factors, would behave.¹⁶³ Dr. Singer has concluded that “[t]here are two potential anticompetitive motivations for Comcast’s discriminatory conduct: (1) to protect Comcast’s affiliated programmers from greater competition, and (2) to extend Comcast’s market power into additional areas of sports programming.”¹⁶⁴

77. Indeed, Comcast’s carriage decisions with respect to Tennis Channel are inconsistent with the factors outlined by the president of Comcast Corporation’s programming division, Jeff Shell, as relevant to those decisions: (i) the quantity of event coverage offered by the network;¹⁶⁵ (ii) the extent to which viewers are engaged in the sport or sports covered, as measured by viewer participation in those sports;¹⁶⁶ and (iii) the “value proposition” of a network.¹⁶⁷

78. On each of these metrics, Tennis Channel performs as well as or better than Comcast’s affiliated sports networks that receive broader carriage. Specifically:

¹⁶¹ 47 U.S.C. § 536(a)(3).

¹⁶² Singer Decl. ¶¶ 38-43.

¹⁶³ *Id.*

¹⁶⁴ *Id.* ¶ 40.

¹⁶⁵ Direct Testimony of Jeff Shell, *NFL Enterprises Hr’g*, ¶ 4.

¹⁶⁶ *Id.* ¶ 11.

¹⁶⁷ *Id.* ¶¶ 4, 5, 7, 8, 13, 15, 23.

79. Quantity of event coverage. In 2008, Tennis Channel offered more than hours of worldwide event coverage, and the vast majority of Tennis Channel's covered tournament events are Tennis Channel exclusives within the United States.¹⁶⁸ This figure compares favorably with the and hours of event coverage offered in 2008 by the Golf Channel and Versus, respectively.¹⁶⁹

80. Similarly, Tennis Channel has exclusive rights to telecast significant portions of all four of the major events in its field, the Grand Slams.¹⁷⁰ It also covers the world's top 70 tennis tournaments.¹⁷¹ The Golf Channel does not offer live or first-run coverage of the most significant events in its field, the Majors, which are telecast instead on CBS, NBC, and ESPN.¹⁷² Moreover, the Golf Channel's event coverage usually involves less popular early rounds of tournaments, with the more popular late rounds typically covered by other networks.¹⁷³ Versus's most popular programming is ice hockey and the Tour de France. The remainder of its programming includes bullriding, cagefighting, and other events that it has sought for years to replace with more marketable and mainstream sports programming.¹⁷⁴ Versus covers only two games in the ice hockey championship series, the Stanley Cup Finals, with the later (and most popular) games telecast on NBC.¹⁷⁵ Because of the small number of desirable events carried on

¹⁶⁸ Solomon Decl. ¶ 8 & Exh. A.

¹⁶⁹ *Id.*

¹⁷⁰ Solomon Decl. ¶ 4.

¹⁷¹ *Id.*

¹⁷² Singer Decl. ¶ 18.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

Versus, DIRECTV called the network “a paid programming and infomercial channel with occasional sporting events.”¹⁷⁶ (DIRECTV no longer carries Versus on its system.)¹⁷⁷

81. Viewer participation. Tennis, like golf, is a sport in which many viewers also participate.¹⁷⁸ Unlike most other sports, the popularity of tennis as a sport is expanding rapidly. Based on a recent study by SGMA International, the leading sports industry trade association, the *Wall Street Journal* reported that tennis is “the fastest-growing sport in the country.”¹⁷⁹ The SGMA study showed that participation in tennis between 2000 and 2008.¹⁸⁰ That statistic is particularly significant because, as the *Journal* observed, tennis “was one of only four sports to experience any increase during the study period and [it] outpaced its nearest rival, racquetball, by 32%”¹⁸¹; racquetball also is covered occasionally on Tennis Channel. In contrast, participation in golf, and participation in ice hockey, Versus’s most popular sport, .¹⁸² And in absolute terms, tennis participation is at a record high: a November 2009 study showed that 30.1 million Americans are tennis players.¹⁸³

¹⁷⁶ Mike Reynolds, “Versus, DirecTV Disconnect in Carriage Dispute: Parties Blame Each Other As Comcast’s National Sports Service Goes Dark on Top DBS Operator,” *Multichannel News* (Sept. 1, 2009).

¹⁷⁷ Singer Decl. ¶ 38.

¹⁷⁸ Singer Decl. ¶¶ 19, 29.

¹⁷⁹ Hannah Karp, “Is Tennis Hip Again?,” *Wall St. J.* (Mar. 18, 2009). *See also* SGMA Int’l, “USA Sports Participation Study 2008 vs. 2000” (2008) [hereinafter SGMA Int’l], attached at Exh. 10.

¹⁸⁰ SGMA Int’l, *supra*.

¹⁸¹ Karp, *supra* note 179.

¹⁸² SGMA Int’l, *supra* note 179.

¹⁸³ United States Tennis Ass’n, Press Release No. 199-2009, “U.S. Tennis Participation Tops 30 Million People for the First Time in More Than 25 Years” (Nov. 17, 2009), attached at Exh. 27; Solomon Decl. ¶ 3.

82. “Value proposition” of a network. In judging whether a network represents a good “value,” Comcast has said that it considers the rate charged by the network in comparison to the popularity of the network’s programming.¹⁸⁴ As an absolute matter, Golf Channel and Versus have markedly higher rates than Tennis Channel. Moreover, according to published figures, the ratio between the license fee charged for Golf Channel

83. After considering these and other factors, Dr. Singer has concluded that a reasonable distributor would carry Tennis Channel on terms that are comparable to or better than the terms on which it carried Versus and the Golf Channel.¹⁹⁰ More generally, he has concluded

¹⁸⁴ Direct Testimony of Jeff Shell, *NFL Enterprises* Hr’g, ¶¶ 4, 5, 7, 8, 13, 15, 23. *See also* Tr. of R. at 1678:10-20, *NFL Enterprises* Hr’g, Apr. 16, 2009 (testimony of Stephen Burke) (explaining that Comcast makes tiering decisions by considering whether “the price value [is] there” for a network).

¹⁸⁵ Singer Decl. ¶ 24 & tbl. 4.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* ¶ 24.

¹⁸⁸ *See* paragraph 89, *infra*.

¹⁸⁹ *See* Singer Decl. ¶ 24 & tbl. 4; Brooks Decl. § III(2)(k).

¹⁹⁰ *Id.* ¶¶ 27, 44. *See also* Brooks Decl § III(6)(d) (“Based on this data Tennis Channel, Golf Channel and Versus should be able to generate comparable revenue if they had comparable distribution, and viewer satisfaction with Tennis Channel is high. I would therefore expect them

that a reasonable distributor considering all the relevant non-affiliation-based factors would not have treated these networks differently.¹⁹¹ Because Comcast treats Tennis Channel's competitors with which it is affiliated far better than it treats Tennis Channel, Dr. Singer has concluded that, as an economic matter, Comcast's behavior would be neither reasonable nor economically efficient unless it reflected a judgment relating to the affiliation of the networks.¹⁹²

B. Comcast's Discrimination Restrains Tennis Channel's Ability To Compete Fairly.

84. Finally, Comcast's discrimination has immediately and dramatically harmed Tennis Channel's ability to compete against other similarly situated cable networks, including the Golf Channel, Versus, and Comcast SportsNet.

85. Impairment of overall distribution and subscription fee revenue.

Comcast's President Stephen Burke has noted that tiering of a sports network would necessarily "reduce[] the network's number of subscribers," which "would adversely affect the license revenue" earned by the network.¹⁹³ Indeed, Comcast's failure to carry Tennis Channel at the level of carriage offered to Versus and Golf Channel has deprived Tennis Channel of more than 21 million subscribers.¹⁹⁴ Because Tennis Channel is paid by distributors—including Comcast—

to be treated at least the same when it comes to distribution. However with respect to Comcast this has not been the case.").

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Tr. of R. at 1741:16-1742:1, *NFL Enterprises Hr'g*, Apr. 16, 2009 (testimony of Stephen Burke), attached at Exh. 22.

¹⁹⁴ Singer Decl. ¶¶ 2, 30. The fact that Comcast's sports tier has not amassed more subscribers is itself evidence of this harm. As Dr. Singer has concluded, sports programming is an "experience good," meaning that consumers are most likely to gain interest in it only after they have experience with it. And while consumers can gain casual experience with Comcast's affiliated sports networks because they are available on general-interest tiers, Comcast subscribers are unlikely to have the same exposure to Tennis Channel. *Id.* ¶ 30. *See also* Brooks Decl. § IV(1)(d).

on a per-subscriber basis, the loss of this substantial number of subscribers directly deprives Tennis Channel of revenue, while Comcast's affiliated networks, which receive broader distribution on Comcast's systems, continue to earn larger license fees, both on a per-subscriber basis and in total.¹⁹⁵ These larger license fees can be used to invest in more attractive programming, appeal to more advertisers, attract more viewers, and otherwise improve the network; without those fees, these steps are much more challenging.¹⁹⁶ These investments are particularly important because networks with smaller distribution ordinarily receive less unpaid publicity than their more broadly-distributed competitors; that has been particularly true, for example, in the case of Tennis Channel's competition with the Golf Channel for media attention.¹⁹⁷ For all of these reasons, Comcast's differential treatment puts Tennis Channel at a competitive disadvantage against Comcast's affiliated sports networks and other networks with which it competes.¹⁹⁸

86. The subscriber deficit caused by Comcast's discrimination is particularly harmful to Tennis Channel because Comcast is the dominant cable operator in of the nation's ten largest television markets, and it has a substantial presence in of the top ten markets.¹⁹⁹ Tennis Channel's success depends not only on attracting a large number of total subscribers but also on targeting core and casual tennis fans alike located in major television

¹⁹⁵ Solomon Decl. ¶ 22.

¹⁹⁶ Singer Decl. ¶¶ 30-39.

¹⁹⁷ Brooks Decl. §§ IV(1)(a), IV(1)(b).

¹⁹⁸ See Singer Decl. ¶ 32.

¹⁹⁹ SNL Kagan, "All Video by DMA - 3rd Quarter 2009" (2009), attached at Exh. 19. See also Herman Decl. ¶ 12.

markets dominated by Comcast—as well as advertisers and programming licensors that are seeking audiences in such markets.²⁰⁰

87. This effect is further magnified because many smaller MVPDs follow Comcast's lead, and Tennis Channel's poorer distribution by Comcast makes it more difficult for Tennis Channel to negotiate for equitable distribution by other distributors.²⁰¹

88. Impairment of advertising revenue. As Comcast's Mr. Burke also has acknowledged, the smaller viewership of Comcast's premium sports tier reduces the value of advertising on the networks that, like Tennis Channel, are placed there.²⁰² In Tennis Channel's experience, advertisers view distribution as one of the most important factors in their purchasing decisions.²⁰³ Indeed, many national advertisers use a threshold number of subscribers—often stated as around 40 million subscribers—as a method for judging whether a network will be considered a viable competitor for national advertising purchases.²⁰⁴ Although it is not the case that a network with fewer than 40 million subscribers will earn no advertising revenues, having a distribution level substantially below that threshold makes it more difficult for the network to attract national advertisers.²⁰⁵

89.

²⁰⁰ Solomon Decl. ¶ 21.

²⁰¹ *Id.* ¶ 23; Singer Decl. ¶¶ 2, 32.

²⁰² Tr. of R. at 1741:20-1742:1, *NFL Enterprises* Hr'g, Apr. 16, 2009 (testimony of Stephen Burke).

²⁰³ Herman Decl. ¶ 10.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* ¶¶ 24-25; Brooks Decl. § IV(1)(e).

²⁰⁹ Conversely, distributing Tennis Channel to substantially fewer households means that Comcast does not have to compete as aggressively to win a greater share of national advertisers' budgets for the Golf Channel and Versus.

90. Because of these challenges, potential Tennis Channel advertisers, including top cable advertisers, have excluded the network as a competitor for national advertising contracts.²¹⁰ Indeed,

informed Tennis Channel that the network was too narrowly distributed to warrant a media buy, even though

, and that it would have placed business with Tennis Channel if not for its relatively low distribution.²¹¹ In contrast,

spent to advertise

on the Golf Channel and Versus, respectively, through May of 2009. (For its part,

²⁰⁷ Herman Decl. ¶ 24; Brooks Decl. § II(1)(c).

²⁰⁸ Herman Decl. ¶ 24; Brooks Decl. § II(1)(d).

²⁰⁹ Herman Decl. ¶ 25; Brooks Decl. § IV(1)(e).

²¹⁰ Herman Decl. ¶ 16.

²¹¹ *Id.*

spent about _____ on the Golf Channel and about _____ on Versus during the same period.)²¹²

91. Similarly, even advertisers that target upper-income customers, such as _____, agree that Tennis Channel delivers the audience demographics they desire and is a good fit for their respective brands, but have declined to advertise on Tennis Channel because of its limited distribution.²¹³

92. The reduced number of subscribers caused by Comcast's discrimination, especially in major markets, requires Tennis Channel to invest more resources in advertising sales than would be necessary if Tennis Channel were broadly distributed by Comcast.²¹⁴ And because Tennis Channel—which charges a very low license fee to its distributors in order to ensure broad distribution—relies on advertising revenue to thrive, the harm to its ability to compete for advertising business affects the network in a particularly detrimental manner.²¹⁵

93. Impairment in ability to compete for programming. Reduced distribution also makes it more difficult for Tennis Channel to acquire rights to the most desirable tournaments.²¹⁶ For example, _____ officials were reluctant to award tournament rights to Tennis Channel because the network was not distributed broadly enough.²¹⁷ In order to secure these rights, Tennis Channel had to promise officials that

²¹² *Id.*

²¹³ *Id.* ¶ 17.

²¹⁴ Tr. of R. at 1741:20-1742:1, *NFL Enterprises Hr'g*, Apr. 16, 2009 (testimony of Stephen Burke).

²¹⁵ See Solomon Decl. ¶ 23.

²¹⁶ *Id.* ¶ 24.

²¹⁷ *Id.* ¶ 25.

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94. Likewise, the rightsholders of the [redacted] would not grant Tennis Channel live coverage of the singles finals matches (the most popular matches of any tournament) due to distribution concerns, and instead awarded the rights to [redacted].²¹⁹ The other portions of these tournaments, however, were carried on Tennis Channel.²²⁰

95. Similarly, [redacted] was chosen over Tennis Channel to air semi-finals and final matches of the [redacted]

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96. Deprivation of economies of scale. Finally, Comcast's discrimination has prevented Tennis Channel from competing on an equal basis with Comcast's affiliated networks and other large sports networks by depriving Tennis Channel of economies of scale. Many of the expenses of a cable network—such as personnel, equipment, infrastructure, and programming expenses—are fixed regardless of the network's number of subscribers.²²²

Because a greater number of subscribers increases a network's revenues—through subscriber

²¹⁸ *Id.*

²¹⁹ *Id.* ¶ 24.

²²⁰ *Id.*

²²¹ *Id.*

²²² Singer Decl. ¶ 33.

fees and advertising—without proportionally increasing the cost to the network, it is less expensive, on a per-subscriber basis, for a broadly-distributed network to operate than it is for a more narrowly-distributed network providing a comparable service.²²³ This effect is magnified because networks like Tennis Channel that have fewer subscribers must spend money to market their service to new subscribers in order to persuade them to spend an additional \$5 each month—many times the rate that Comcast pays for Tennis Channel—to watch it.²²⁴ Likewise, networks with broader distribution also receive more unpaid publicity in the popular press.²²⁵ In short, Comcast has created disincentives for new viewers to learn about Tennis Channel while making it more expensive for Tennis Channel to operate and more difficult for it to achieve publicity. These are essential steps to suppressing a competitor to Comcast's own sports networks.

97. As a result of these harms to Tennis Channel, networks that have broader distribution and enjoy economies of scale are better able to reinvest revenues in their services and provide enhanced programming to consumers²²⁶—whereas Tennis Channel, as a result of Comcast's discrimination, has been forced to limit its programming expenses. One immediate impact on Tennis Channel of Comcast's discrimination is that its high per-subscriber expenses have forced the network to limit marketing, production, and programming expenses, including expenses associated with instructional programming focusing on health and fitness.²²⁷ Tennis

²²³ *Id.*; see also Solomon Decl. ¶ 27.

²²⁴ Solomon Decl. ¶ 27. In addition, analog customers must pay to upgrade to digital cable.

²²⁵ Brooks Decl. § IV(1)(a).

²²⁶ Singer Decl. ¶ 34.

²²⁷ Solomon Decl. ¶ 28.

Channel also was not able to renew agreements to cover certain smaller tournaments during 2010 because of budget constraints.²²⁸

* * *

98. Comcast's President, Stephen Burke, has admitted that placement of an ad-supported sports network like Tennis Channel on a premium sports tier would "affect the network's ability to compete with other networks."²²⁹ The president of Comcast Corporation's programming group, Jeff Shell, agrees, admitting that "if you're an ad-supported network" like Tennis Channel, "the sports tier that Comcast has . . . is not viable."²³⁰

99. Versus representatives recently echoed these statements while opposing DIRECTV's repositioning of Versus in August 2009. Versus President Jamie Davis stated that DIRECTV's repositioning of Versus on a more narrowly distributed and more expensive tier was "a non-starter" for the network.²³¹ Mr. Davis also said that he could not "accept a situation where Versus can lose 6 million viewers" as a result of DIRECTV's relocation of Versus to the tier on which it carries Tennis Channel and most other sports networks,

far more deeply-

penetrated than the level at which Comcast carries Tennis Channel on its own systems.²³²

100. In short, Comcast has acknowledged repeatedly—at least in the case of its affiliated networks—that placement on a narrowly-penetrated tier severely undermines a

²²⁸ *Id.*

²²⁹ Tr. of R. at 1741:12-1742:11, *NFL Enterprises Hr'g*, Apr. 16, 2009 (testimony of Stephen Burke).

²³⁰ Tr. of R. at 1911:16-1912:6, *NFL Enterprises Hr'g*, Apr. 17, 2009 (testimony of Jeffrey Shell) ("[I]f you are . . . an ad-supported network . . . then you have to price yourself such that the – not to be on a sports tier, because my view was that it didn't work.").

²³¹ Mike Reynolds, "Versus-DirecTV Dispute About Subscriber Loss," *Multichannel News* (Sept. 2, 2009).

²³² Stuart Levine, "DirecTV, Versus Continue Feud," *Variety* (Sept. 1, 2009).

network's ability to compete fairly. That conclusion is equally true for unaffiliated networks, particularly ones like Tennis Channel that are small relative to their Comcast-affiliated competitors. Comcast's decision here to relegate Tennis Channel to a sports tier notwithstanding its quality and vitality—solely because it is unaffiliated—constitutes a blatant violation of Section 616 and the Commission's program carriage rules.

REQUEST FOR RELIEF

101. The Media Bureau should require Comcast to carry Tennis Channel on non-discriminatory terms and conditions. Specifically, Comcast should carry Tennis Channel on each of its systems on a programming tier that is no less distributed than the most highly-penetrated tier on which it carries one or more of its affiliated sports networks.²³³ And it should carry Tennis Channel in standard definition on all of its systems and in high definition on all of its systems that support high-definition programming.²³⁴

102. Moreover, Comcast should be required to pay a license fee for its carriage of Tennis Channel equal to

until

²³⁵

²³³ Based on Comcast's current carriage patterns, this would be its Standard Service tier, *see* Comcast D.C. Lineup at 1, since Comcast presently carries the Golf Channel, Versus, and Comcast SportsNet on that tier.

²³⁴ If at any time during the effective period of this remedy, Comcast carries the video programming of any of its affiliated sports networks on any distribution service that is not defined as a cable system, Comcast should be required, at Tennis Channel's option, to carry Tennis Channel on such system at a rate equal to the per-subscriber fee that would apply if such carriage were on a cable system.

²³⁵ *See* Affiliation Agreement

103. Comcast should be required to launch or reposition Tennis Channel within 30 days of the Media Bureau's order requiring such carriage, and it should maintain Tennis Channel at its expanded position until the expiration of the parties' carriage agreement

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104. Comcast should be required to negotiate in good faith with Tennis Channel for a new agreement to govern carriage of Tennis Channel after expiration of the parties' existing agreement. The Media Bureau should require that such an agreement provide that Tennis Channel will be carried (in both standard definition and in high definition) on each Comcast system (1) on a tier that is no less distributed than the most highly-penetrated tier on which Comcast carries one or more of its affiliated sports networks; and (2) at a rate that is no less than

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105. Although Comcast may offer pretextual justifications for its misconduct, the fundamental facts underlying this Complaint are basic and undisputed. Disposition of this dispute does not require extensive discovery or resolution of any factual disputes. Accordingly, the Media Bureau should grant the requested relief based on the pleadings.²³⁸

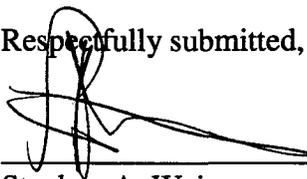
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²³⁷ The same conditions that apply to Comcast's carriage during the current term should apply to any such renewal term. *See* notes 233-234, *supra*.

²³⁸ *See Second Report and Order*, 9 FCC Rcd at 2655. If the Bureau determines that any particular issue cannot be resolved on the pleadings, it should designate only that issue for hearing. To expedite resolution of this Complaint, the Bureau should clarify that all factual issues resolved in the Bureau order are not included within the hearing designation.

106. If Comcast seeks Commission review of the Media Bureau's order requiring non-discriminatory carriage of Tennis Channel, Comcast should be required, at Tennis Channel's option, to carry Tennis Channel on the terms ordered by the Bureau for an additional period equal to the time elapsed between the staff decision and the Commission's ruling.²³⁹

Respectfully submitted,



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January 5, 2010

²³⁹ See 47 C.F.R. § 76.1302(g)(1).

VERIFICATION

I, Ken Solomon, am Chairman and Chief Executive Officer of The Tennis Channel, Inc. I verify that (1) I have read this submission; (2) to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and (3) this Complaint is not interposed for any improper purpose.



Ken Solomon
Chairman and Chief Executive Officer
The Tennis Channel, Inc.
2850 Ocean Park Blvd., Suite 150
Santa Monica, CA 90405
(310) 314-9400

January 5, 2010

CERTIFICATE OF SERVICE

I, Robert M. Sherman, hereby certify that on this fifth day of January, 2010, I caused a true and correct copy of the foregoing Program Carriage Complaint to be served by overnight delivery upon:

Stephen Burke, President
Comcast Cable Communications, LLC
One Comcast Center
Philadelphia, PA 19103

with copies to Comcast's counsel:

Lee M. Goldsmith, Senior Counsel
Comcast Cable Communications, LLC
One Comcast Center, 50th Floor
Philadelphia, PA 19103

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Washington, D.C. 20006


Robert M. Sherman

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**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
The Tennis Channel, Inc. v. Comcast Cable) Docket No. CSR-___-P
Communications, LLC)
)
)

To: Chief, Media Bureau

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INTRODUCTION

1. I have been asked by counsel for The Tennis Channel, Inc. (“Tennis Channel”) to address economic issues raised by the tiering policy of Comcast Cable Communications LLC (“Comcast”) vis-à-vis Tennis Channel, on the one hand, and Comcast’s affiliated national sports networks, including the Golf Channel and Versus, on the other. In particular, I have been asked to analyze from an economic perspective (1) whether Comcast’s refusal to carry Tennis Channel on a highly penetrated tier on Comcast’s cable systems constitutes discrimination based on affiliation; and (2) whether Comcast’s conduct has impaired Tennis Channel’s ability to compete vis-à-vis Comcast’s affiliated, national sports networks for programming, advertisers, viewers, and multi-channel video programming distributors (“MVPDs”).

2. Based on my review of the materials, I have reached the following conclusions:

- Comcast gives preferential carriage terms to its affiliated, national sports networks. In particular, Comcast-owned Versus and the Golf Channel are carried on Comcast’s “Standard Service” tier, whereas Tennis Channel is carried on Comcast’s “Sports Entertainment Tier,” which reaches a much smaller audience and can only be obtained by Comcast’s subscribers for an extra charge.
- Given this preferential treatment, the relevant inquiry is whether Tennis Channel, the Golf Channel, and Versus are “similarly situated,” as disparate treatment of similarly situated networks would demonstrate that Comcast engaged in discrimination. I conclude that Tennis Channel is similarly situated to Comcast’s affiliated, national sports networks carried on the Standard Service tier, the Golf Channel and Versus. All three networks carry “sports and leisure programming” viewed by affluent audiences that skew male and, with respect to the Golf Channel and Tennis Channel, that enjoy participating in the sports they watch on television. National sports networks, including but not limited to the Golf Channel, Versus, and Tennis Channel, compete as a *class* for viewers and advertisers. For example, a review of the top 30 advertisers on the Golf Channel and Versus reveals that there is overlap with Tennis Channel’s past, current, and recent prospective advertisers. Although there is no requirement that two networks carry the *same* programming to be considered “similarly situated,” as it turns out, Comcast—through Versus and its Comcast SportsNet channels—has competed directly with Tennis Channel for tennis programming rights (the U.S. Davis Cup and World TeamTennis). In light of the fact that the networks are similarly situated, Comcast’s preferential treatment of the Golf Channel and Versus demonstrates discrimination against Tennis Channel.

- A review of potential efficiency justifications further indicates that Comcast's discriminatory conduct lacks any procompetitive motivation. Tennis Channel performs equivalently to or better than Comcast's affiliated, national sports networks with respect to popularity, pricing, participation, and percentage of event programming. Moreover, other MVPDs tend to carry Tennis Channel on more highly penetrated tiers than does Comcast, and I would expect a reasonable MVPD in Comcast's position considering the relevant non-affiliation-based factors to carry Tennis Channel in a similar manner.
- As a direct result of its discriminatory policy, Comcast prevents Tennis Channel from reaching an additional 21.0 million subscribers. Because of Comcast's sheer size, if Comcast alone were to carry Tennis Channel on a tier that reached nearly all of its basic subscribers—as it does for the Golf Channel and Versus—then Tennis Channel's subscribers would increase from approximately

The growth that would accompany access to Comcast's basic subscribers alone would materially improve Tennis Channel's ability to compete effectively for national advertisers and programmers. Moreover, because Comcast's carriage decisions are followed by other cable operators, the deficit in Tennis Channel's distribution caused by Comcast's discrimination is likely even larger, further impairing Tennis Channel's ability to compete for both advertisers and programming content.

3. The harm to Tennis Channel owing to Comcast's discriminatory tiering policy will likely redound to the harm of advertisers and viewers. Comcast's viewers are harmed by their inability to watch Tennis Channel without incurring an extra charge. By insulating its affiliated networks from greater competition for national advertisers, Comcast could raise prices to advertisers that seek to purchase time on its affiliated sports networks. Moreover, to the extent that Comcast's discrimination against an unaffiliated national sports network such as Tennis Channel allows Comcast to secure the exclusive rights to valuable sports programming (for example, to Grand Slam tennis programming), Comcast can then impair the efficiency of rival MVPDs by denying downstream rivals access to that input on reasonable terms.

QUALIFICATIONS

4. My name is Hal J. Singer. I am President and Managing Partner of Empiris, LLC. I am also an adjunct professor at the McDonough School of Business at Georgetown University. My areas of economic expertise are antitrust, industrial organization, finance, and regulation. I

have applied my expertise to several regulated industries, including telecommunications, video programming, insurance, and health care.

5. I have published a book chapter in *Access Pricing: Theory, Practice and Empirical Evidence* (Justus Haucap and Ralf Dewenter eds., Elsevier Press 2005) and in *Handbook of Research in Trans-Atlantic Antitrust* (Philip Marsden, ed., Edward Elgar Publishing 2006). I am also the co-author of the book *Broadband in Europe: How Brussels Can Wire the Information Society* (Kluwer/Springer Press 2005).

6. I have published scholarly articles in many economics and legal journals, including *American Economic Review Papers and Proceedings*, *Berkeley Technology Law Review*, *Canadian Journal of Law and Technology*, *Federal Communications Law Journal*, *Harvard Journal of Law and Technology*, *Hastings Law Journal*, *Journal of Business and Finance*, *Journal of Business Law*, *Journal of Competition Law and Economics*, *Journal of Financial Transformation*, *Journal of Industrial Economics*, *Journal of Insurance Regulation*, *Journal of Network Industries*, *Journal of Regulatory Economics*, *Journal of Telecommunications and High Tech Law*, *Review of Network Economics*, *Telecommunications Policy Journal*, *Topics in Economics Analysis and Policy*, and *Yale Journal on Regulation*.

7. Two of my articles are of particular relevance to this proceeding: "The Competitive Effects of a Cable Television Operator's Refusal to Carry DSL Advertising," *Journal of Competition Law and Economics* (Vol. 2, No. 2, pp. 301-31, 2006); and "Vertical Foreclosure in Video Programming Markets: Implications for Cable Operators," *Review of Network Economics* (Vol. 6, 2007).

8. In regulatory proceedings, I have presented economic testimony in several forums, including the U.S. Federal Communications Commission ("FCC"), the U.S. Federal

Trade Commission, the Antitrust Division of the U.S. Department of Justice, the U.S. National Highway Traffic and Safety Administration, the House of Commons of Canada, the Canadian Radio-television and Telecommunications Commission, and the U.S. Congressional Budget Office. My written testimony on the effect of telecom entry on cable television prices was cited extensively by the Department of Justice in a November 2008 report titled *Voice, Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumers*.¹

9. I have served as an economic expert for the NFL Network and for MASN, which owns the television rights to live baseball games of the Baltimore Orioles and the Washington Nationals, in several carriage disputes. On June 2, 2008, the arbitrator in *MASN v. Time Warner*, Judge Daniel H. Margolis, ruled that Time Warner “did discriminate against MASN based on affiliation in not negotiating for carriage of MASN on an analog tier.”² In his decision, Judge Margolis cited my analysis on behalf of MASN on several occasions³ in support of his decision that MASN’s offer price “accurately reflects the fair market value of the rights to carry MASN in its North Carolina television territory.”⁴ In its October 30, 2008 *Order on Review* rejecting Time Warner’s appeal of the arbitrator’s decision, the Media Bureau cited my oral testimony during Phase II in support of the proposition that “the carriage decisions of four of the largest MVPDs operating in North Carolina—that serve the overwhelming majority of non-TWC subscribers to paid television service in North Carolina—are an appropriate reference point for assessing fair market value.”⁵ A declaration that I submitted to the Media Bureau also was cited extensively in

1. Department of Justice, *Voice, Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumers*, Nov. 17, 2008, available at http://www.usdoj.gov/atr/public/press_releases/2008/239479.htm.

2. *TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, Case No: 71-472-E-00697-07, June 2, 2008, at 22.

3. *Id.* at 19, 19 n.13, and 21.

4. *Id.* at 22.

5. *TCR Sports Broad. Holding, L.L.P. v. Time Warner Cable Inc.*, Order on Review, DA 08-2441, ¶ 47, n.186 (MB Oct. 30, 2008).

the Bureau's order designating a program carriage complaint by the National Football League for hearing.⁶

10. In addition to these carriage disputes, I have served as a testifying expert in several litigation matters. My experience as a testifying expert in litigation is summarized in my Curriculum Vitae, which is attached to this report.

11. Before joining Empiris, I was president of Criterion Economics, an economic consulting firm based in Washington D.C. Prior to that, I worked as a senior economist at LECG, an economic consulting firm based in Emeryville, California. In addition, I have worked as an economist for the Securities and Exchange Commission and the Army Corps of Engineers.

12. I earned M.A. and Ph.D. degrees in economics from the Johns Hopkins University and a B.S. *magna cum laude* in economics from Tulane University.

13. I file this report in my individual capacity. I have no financial stake in the outcome of this case.

I. COMCAST'S DIFFERENT CARRIAGE OF GOLF CHANNEL, VERSUS, AND TENNIS CHANNEL CONSTITUTES DISPARATE TREATMENT

14. Comcast carries Tennis Channel on its "Sports Entertainment" tier. In contrast, Comcast carries its affiliated, national sports networks, the Golf Channel and Versus, on its "Standard Service Tier." According to Tennis Channel's internal estimates, Comcast's "Sports Entertainment" tier was projected to reach _____ subscribers by the end of 2009.⁷ As of the third quarter of 2009, Comcast had approximately 23.8 million total subscribers,⁸ nearly all of whom have access to Comcast's affiliated sports networks on Comcast's "Standard

6. *Herring Broad., Inc. v. Time Warner Cable Inc., et al.*, Mem. Op. & Hearing Designation Order, 23 FCC Rcd 14787 ¶¶ 77, 79, 81, 82, 83, 86 (2008).

7.

8. Comcast Reports Third Quarter 2009 Results, Nov. 4, 2009, at 3.

Service.” Accordingly, Comcast carried Tennis Channel on a tier that reached of its subscribers (equal to divided by), but it carried the Golf Channel and Versus on a tier that reached nearly percent of its subscribers.

15. In general, Comcast gives preferential treatment to its affiliated networks, Versus and the Golf Channel, relative to unaffiliated sports networks. Table 1 shows the tier on which sports programming appears in Comcast’s channel lineup in the Washington, D.C. area in January 2010, which is generally representative of its carriage of Golf Channel, Versus, and Tennis Channel in other areas.

TABLE 1: SPORTS PROGRAMMING ON COMCAST BY TIER
AS OF JANUARY 2010 (WASHINGTON, D.C.)

“Standard Service”	Affiliation	“Digital Classic”	Affiliation	“Sports Entertainment”	Affiliation
ESPN	No	ESPN Classic	No	Fox Soccer Channel	No
ESPN2	No	ESPN U	No	Fox College Sports	No
Golf Channel	Yes	MLB Network	Yes*	Tennis Channel	No
Versus	Yes	NBA TV	Yes**	CBS College Sports	No
SportsNet MA	Yes	NHL Channel	Yes***	GolTV	No
MASN	No [^]			Speed Channel	No
				Big Ten Network	No
				Horsereading Television	No
				TV Games	No
				NFL Red Zone	No ^{^^}

Sources: Comcast Channel Lineup, available at <http://www.comcast.com/Customers/Clu/ChannelLineup.aspx> (accessed on Jan. 4, 2010); affiliation is from 13th Annual Report, Appendix C, Table C-1; Comcast 8-K, filed 12/04/09 for the Period Ending 12/03/09, at 6.

Notes: * Comcast owns 8.3 percent of MLB Network. ** Comcast holds equity in NBA TV through its ownership in the National Basketball Association. *** Comcast owns 15.6 percent of the NHL Channel, and the League provides anchor programming for Versus. [^] MASN is carried subsequent to a settlement of a carriage complaint, as is the NFL Network, which is carried on Comcast’s “Digital Starter” tier, which is Comcast’s most broadly distributed level of digital service. ^{^^} Comcast also sells the HD version of the NFL Red Zone as part of its extra-charge HD package.

As Table 1 shows, *none* of the sports networks carried on Comcast’s “Sports Entertainment” tier is affiliated with (or owned by) Comcast. In contrast, with the exception of ESPN channels—which have sufficient countervailing market power vis-à-vis Comcast by virtue of their significant sports holdings to obtain broad access for their networks—all of the sports networks that are carried on Comcast’s “Standard Service” tier are either affiliated with (and owned by) Comcast (Versus, the Golf Channel, SportsNet Mid-Atlantic), or are carried by Comcast

subsequent to the settlement of an FCC program-carriage complaint (MASN). For completeness, Table 1 also shows sports networks carried on Comcast's "Digital Classic" tier in Washington, D.C., which achieves greater distribution than its Sports Entertainment tier but less distribution than its Standard Service tier. On its Digital Classic tier, Comcast owns a minority equity stake in the MLB Network (8.3 percent), the NHL Network (15.6 percent), and NBA TV (through its equity stake in the National Basketball Association).⁹ Moreover, the National Hockey League provides Versus its anchor programming (live professional hockey games). With the exception of the two ESPN networks on the Digital Classic tier, which again have countervailing market power, it appears that a sports network can avoid being relegated to Comcast's Sports Entertainment tier so long as Comcast is at least modestly involved in its success; significant involvement leading to outright ownership yields access to Comcast's Standard Service tier and all the associated benefits, including exposure to a much larger audience and a more desirable channel number.

16. The relevant comparison here is Comcast's carriage policy for its affiliated, national sports networks, Versus and the Golf Channel, on the one hand, and for Tennis Channel, an unaffiliated network, on the other. Placing Versus and the Golf Channel on its Standard Service tier while relegating Tennis Channel to the Sports Entertainment tier constitutes evidence of disparate treatment. The fact that the Golf Channel and Versus are similarly situated to Tennis Channel—a point to which I turn next—demonstrates that this disparate treatment constitutes discrimination.

9. Comcast Spectacor owns the Philadelphia 76ers, which jointly owns the National Basketball Association along with the other teams, and thereby owns part of the equity in NBA TV. See Comcast Corp. SEC Form 10-K for fiscal year ended Dec. 31, 2007, at 1.

II. TENNIS CHANNEL IS SIMILARLY SITUATED TO VERSUS AND THE GOLF CHANNEL

17. To an economist, disparate treatment of two similarly situated subjects shows discrimination. Having established above that Comcast treats Tennis Channel and other unaffiliated sports programmers differently from its affiliated sports networks with respect to tiering, one must then determine whether Tennis Channel is similarly situated to Comcast's most comparable affiliated networks, the Golf Channel and Versus. If it is not, then Comcast's disparate treatment by itself does not indicate whether Comcast is engaged in discrimination, although other evidence still could demonstrate that discrimination occurred.

18. Before determining whether the three networks are similarly situated, I give a brief description of each network here. Event coverage serves as the "anchor" programming for these sports networks, while other material (such as replays of classic games) serves as the "shoulder" programming.

- **The Tennis Channel:** Tennis Channel owns television rights to the French Open, the Australian Open, Wimbledon, the U.S. Open, and the U.S. Davis Cup.¹⁰ By 2009, it aired matches from over 50 ATP/WTA Pro Tournaments;¹¹ when combined with its other programming, Tennis Channel aired more than _____ hours of live or first-run event coverage in 2008. The shoulder programming on Tennis Channel consists of lifestyle series and specials, including profiles of tennis icons, tennis instruction, and tennis-related health and fitness, travel, and fashion shows.¹²
- **Versus:** In 2006, the Outdoor Life Network was rebranded as Versus. In addition to the NHL and the Tour de France, Versus presents sports from certain collegiate conferences, Indy Racing League, World Extreme Cagefighting, and the Professional Bull Riders.¹³ Comcast classifies Versus as "sports and leisure programming," a category that would include Tennis Channel.¹⁴ According to the *Los Angeles Times*, Versus is "Comcast's attempt to become a player in the sports television business. It has been aggressively going after major sports over the last few years, trying to distance the channel from its past when it was known as the Outdoor Life Network and best known for fishing and

10. Tournament Schedule, *available at* http://www.tennischannel.com/game/tournament_schedule.aspx#1.

11. 2009 Tournaments.xls.

12. About Us, *available at* <http://www.tennischannel.com/aboutus/pressrelease/pressreleasedetail.aspx?id=143>.

13. Mike Reynolds, *Updated: Versus-DirecTV Dispute About Subscriber Loss Network President Davis Says DBS Provider Wants Sports Service To Shed 6 Million Subscribers*, MULTICHANNEL NEWS, Sept. 2, 2009.

14. Comcast Corp. SEC Form 10-K, for the fiscal year ended Dec. 31, 2008, at 29.

hunting shows.”¹⁵ During 2008, Versus broadcast only _____ hours of anchor programming.¹⁶

- **The Golf Channel:** The Golf Channel provides coverage of early rounds of a variety of golf tournaments. However, the most significant golf events (“the Majors”) are aired on CBS, NBC, and ESPN, but not on Golf Channel. The shoulder programming on the Golf Channel includes private instruction from golf professionals. The Golf Channel was launched on January 17, 1995.¹⁷ In 2007, the Golf Channel secured a 15-year, exclusive agreement with the PGA Tour.¹⁸ It covers the Mercedes Championship, the Sony Open, the Bob Hope Chrysler Classic, and early-round coverage of the remaining FedExCup season, including the World Golf Championships, The Tour Championship and The Players Championship. The Golf Channel aired about _____ hours of anchor programming in 2008.¹⁹

As I demonstrate below, sports networks are viewed by MVPDs and advertisers as a class. Indeed, Comcast treats its affiliated, national-sports networks similarly; for example, Comcast uses the same advertising sales group for the Golf Channel and Versus. Although Tennis Channel, the Golf Channel, and Versus offer programming from different sports (with the important caveat that Versus offers some tennis programming), the three sports networks are direct competitors for advertisers and viewers. Indeed, Comcast’s most significant in-region rivals—Verizon,²⁰ DirecTV,²¹ and Dish Network²²—position these three networks on nearby channels. In contrast, Comcast itself carries the networks far differently; on its Washington, D.C. system, Comcast’s affiliated networks, Versus and the Golf Channel, are channels 7 and 11, respectively, while Tennis Channel is channel 735.²³

15. Joe Flint, *DirecTV, Comcast fight over Versus distribution*, LOS ANGELES TIMES, Sept. 2, 2009.

16.

17. About Us, Golf Channel website, available at <http://www.thegolfchannel.com/company-history>.

18. *Id.*

19.

20. Tennis Channel HD, the Golf Channel HD, and Versus HD are channels 592, 593, and 590, respectively, on _____ Verizon’s _____ channel _____ lineup. See <http://www22.verizon.com/Residential/FiOSTV/ChannelLineup/ChannelLineup.htm?zipCode=22124>.

21. Tennis Channel HD and the Golf Channel HD are channels 217 and 218, respectively, on DirecTV’s channel lineup. See <http://www.directv.com/see/pdf/chnl lineup.pdf>. DirecTV does not carry Versus.

22. Tennis Channel and the Golf Channel are channels 400 and 401, respectively, on Dish Network’s channel lineup. See http://www.dishnetwork.ws/Flyers/HD_Channel_Lineup.pdf.

23. Comcast Channel Lineup, available at <http://www.comcast.com/Customers/Clu/ChannelLineup.ashx> (accessed on Jan. 4, 2010).

19. The target audience of Tennis Channel is very similar to those of the Golf Channel and Versus. All three networks target wealthy households that partake in and watch leisure sports. The median household income of Tennis Channel's viewers is [redacted].²⁴ By comparison, the median household income of the Golf Channel's and Versus's viewers is [redacted] and [redacted], respectively.²⁵ All three networks skew towards male audiences: nearly [redacted] of Tennis Channel's viewers are male, and [redacted] of the Golf Channel's and Versus's viewers are male.²⁶ Tennis Channel and the Golf Channel focus on sports that have high levels of audience participation: [redacted] of Tennis Channel's viewers participate in tennis, and [redacted] of the Golf Channel's viewers participate in golf.²⁷ (See section on participation in efficiency justifications below.) Given that golf and tennis are both leisure activities often consumed at resorts and clubs, it is reasonable to infer that the Golf Channel and Tennis Channel vie for the attention of the same households.

20. Because of the overlapping demographics, it follows that Tennis Channel, the Golf Channel, and Versus target the same advertisers. Indeed, as Tables 2 and 3 below demonstrate, a significant percentage of the Golf Channel's and Versus's actual advertising customers overlap with Tennis Channel's advertising customers. In particular, [redacted] of Versus's revenue from its top 30 advertising customers during the first five months of 2009 comes from companies that have purchased advertising on Tennis Channel, and [redacted] of the

24. Tennis Channel Simmons Custom Proprietary Prototype 2007 [hereinafter *Simmons Prototype*].

25. Simmons NCS 12-month Fall 2007.

26. *Simmons Prototype, supra* (showing [redacted] for Tennis Channel, [redacted] for Golf Channel, and [redacted] for Versus). Even if one focuses on a subset of viewers with high incomes, the male shares of the audience are [redacted] the networks. See Mendelsohn Survey of Affluent Homes 2009 (showing [redacted] for Tennis Channel, [redacted] for Golf Channel, and [redacted] for Versus).

27. *Simmons Prototype* (for Tennis Channel participation data); Golf Channel data based on any viewing to Respective Sport (Broadcast/Cable) vs. Participation in Past 12 Months.

Golf Channel's top 30 advertising revenue during that period comes from companies that are Tennis Channel clients.

**TABLE 2: OVERLAP BETWEEN VERSUS'S AND TENNIS CHANNEL'S ADVERTISING CUSTOMERS
(VERSUS'S TOP 30 ADVERTISING CUSTOMERS)**

Source:
Note: Dec. 29, 2008 to May 31, 2009.

TABLE 3: OVERLAP BETWEEN THE GOLF CHANNEL'S AND TENNIS CHANNEL'S ADVERTISING CUSTOMERS (GOLF CHANNEL'S TOP 30 ADVERTISING CUSTOMERS)

Source:
Note: Dec. 29, 2008 to May 31, 2009.

This significant overlap of customers () demonstrates that these three networks generally compete as a class for advertisers. In addition to these overlapping *actual* customers, Tennis Channel has competed for other customers who currently advertise on the Golf Channel or on Versus. In particular, when one accounts for top-30 customers to which Tennis Channel has made presentations in the last two years, the overlap in customers increases to of Versus top-30 revenues and of Golf Channel top-30 revenues.²⁸ Even if Tennis Channel never gets that business, for the purpose of demonstrating that the three networks compete against one another, it is relevant that Tennis Channel is going after that business.

21. Comcast itself recognizes this competition among providers of programming regarding leisure sports like golf and tennis. For example, Comcast classifies Versus as “sports and leisure programming”²⁹ in its Annual Report. Moreover, Comcast recently consolidated its Versus and the Golf Channel ad sales staffs,³⁰ underscoring how these leisure sports networks compete as a class.

22. Finally, Tennis Channel competes directly against Versus for the same programming rights. From June 2006 through December 2008, Versus and Tennis Channel shared television rights to the U.S. Davis Cup, with each network holding the right to telecast a

28.

29. Comcast Corp. SEC Form 10-K, for the fiscal year ended Dec. 31, 2008, at 29.

30. Jon Show & John Ourand, *Comcast Combines Versus, Golf Channel Sales Efforts*, STREET & SMITH'S SPORTS BUSINESS JOURNAL, Jan. 26, 2009, page 03 (“Comcast is combining the national sales teams of Versus and Golf Channel under the Comcast Sports Sales banner, which will be led by advertising sales president David Cassaro...Golf Channel, which is in 82 million homes, was the last Comcast sports network with an independent sales team. Versus is in 74 million homes. Cassaro said there were companies that already advertise across both networks [Versus and the Golf Channel], and that the multiplatform offering ‘has yielded more sales,’ though he wouldn’t name names.”).

portion of the tournament exclusively.³¹ As of January 2009, Tennis Channel held those rights on an exclusive basis,³² implying that Tennis Channel won the exclusive bidding for that programming. Moreover, another Comcast-affiliated sports network, Comcast SportsNet Mid-Atlantic, has the regional rights to World TeamTennis, while national World TeamTennis events are carried on Tennis Channel.³³

III. COMCAST'S DISCRIMINATION LACKS ANY EFFICIENCY JUSTIFICATION

23. In this section, I consider four efficiency rationales that Comcast previously has offered to explain its inferior treatment of unaffiliated sports networks. Because none of these rationales has merit in the case of Tennis Channel, however, I conclude that the disparate treatment is based on affiliation and is therefore discriminatory.

A. Comparisons of Price or Ratings-Adjusted Price

24. Comcast might argue that Tennis Channel is not appropriately priced in general or with respect to its popularity. Compared with the other nationally rated sports networks carried by Comcast, however, Tennis Channel is the least expensive, costing on average per subscriber per month—and only per subscriber per month charged to Comcast. Table 4 shows the 2009 average price per subscriber per month by national sports network and the average price per

31. About Us, *available at* <http://www.tennischannel.com/aboutus/pressrelease/pressreleasedetail.aspx?id=146>.

32. About Us, *available at* <http://www.tennischannel.com/aboutus/pressrelease/pressreleasedetail.aspx?id=172>.

33. Press Release, *Comcast SportsNet and WTT's Washington Kastles announce 2009 partnership*, *available at* http://www.wtt.com/teams/kastles/PDF/CSN-Kastles%20partnership%202009%20FINAL%20_2_.pdf.

TABLE 4: AVERAGE PRICE PER SUBSCRIBER PER MONTH AND PER RATING POINT,
BY NATIONAL SPORTS NETWORK

Network	Average Price Per Sub Per Month		
	1	2	3 = 1 / 2
ESPN			
NFL Network			
ESPN2			
Versus			
Golf Channel			
Speed			
Tennis Channel			
AVERAGE***			

Source: Estimated Affiliated Revenue Per Sub.xls (citing SNL Kagan data). Kagan, *The Economics of Basic Cable Networks* (2009), Average 24-Hour Rating By Cable Network, at 47.

Note: * Tennis Channel charged Comcast

As Table 4 shows, Tennis Channel is favorably priced compared to Versus () and the Golf Channel (). In September 2009, Versus reportedly sought to increase its rate for DirecTV from \$0.21 to \$0.26 per subscriber to month (representing a \$0.04 discount off its average rate of \$0.30 per subscriber per month according to SNL Kagan).³⁶ By comparison, Tennis Channel's average monthly price per subscriber was \$0.15 in 2009.

34.

35. See Declaration of Timothy Brooks, § III (2)(k).

36. Diane Pucin, *Battle lines still drawn in Versus vs. DirecTV*, LOS ANGELES TIMES, Sept. 30, 2009. According to DirecTV, Versus ranked 61st out of 74 advertising-supported networks, and the majority of its programming is "a glorified infomercial." See Stuart Levine, *DirectTV-Versus continue feud*, VARIETY, Sept. 1, 2009.

37

25. Tennis Channel is also attracting significant national audiences over each two-week coverage period.

. Accordingly, any potential claim that

Tennis Channel is not priced appropriately given its popularity does not seem plausible.

B. Share of Event Programming

26. Comcast might argue that there is insufficient live programming on Tennis Channel compared to Comcast's affiliated networks, Versus and the Golf Channel. Table 5

37. Comcast & Tennis Channel, Affiliation and Distribution Agreement, at ¶¶ 5.1.1, 5.1.2, 5.1.3.

38.

39.

40.

41.

shows the ratio of “anchor-event” programming—defined here as coverage of sporting events either on a live basis or within two weeks of the event but not replays of “classic” events or other non-event programming—to total programming hours for the three networks.

TABLE 5: ANCHOR EVENT PROGRAMMING PERCENTAGES, BY NETWORK (2008-09)

	Calendar Year 2008	First Half 2009
<i>Versus</i>		
Live or First-Run Delayed		
Same Day Encore		
Live Encore (Within 2 Weeks)		
<i>Total Anchor-Event Programming</i>		
All Other Programming		
Total Hours of Programming		
Anchor-Event Programming as % of Total Hours of Programming		
Golf Channel		
Tournament Play Live or First-Run Delayed		
Same Day Encore		
Live Encore (Within 2 Weeks)		
<i>Total Anchor-Event Programming</i>		
All Other Programming		
Total Hours of Programming		
Anchor-Event Programming as % of Total Hours of Programming		
Tennis Channel		
Tournament Play Live or First-Run Delay		
Same Day Encore		
Live Encore (Within 2 Weeks)		
<i>Total Anchor-Event Programming</i>		
All Other Programming		
Total Hours of Programming		
Anchor-Event Programming as % of Total Hours of Programming		

Source:

Notes: Calendar year 2008 runs from 12/31/2007 to 12/28/2008; first half of 2009 runs from 12/29/08 to 6/28/09.

As Table 5 shows, between [redacted] of all programming on Tennis Channel is anchor-event programming. In contrast, between [redacted] of all programming on the Golf

Channel is anchor-event programming, and between of all programming on Versus is anchor-event programming. Accordingly, it would also be factually incorrect for Comcast to argue that the Golf Channel and Versus show more anchor-event programming than Tennis Channel.

C. Carriage Decisions of Other Programming Distributors

27. Comcast might argue that other cable operators place Tennis Channel on a less penetrated tier. Yet Comcast's peers carry Tennis Channel on tiers that reach on average the proportion of subscribers than does Comcast. As Table 6 shows, based on year-end projections of Comcast's sports-tier subscribers, Tennis Channel reaches approximately of Comcast's 23.8 million basic subscribers.⁴² Table 6 also summarizes the tiering decisions of Comcast's closest peers, defined as all MVPDs with over two million basic subscribers.

TABLE 6: TIERING DECISIONS OF LARGE MVPDS AS OF DECEMBER 2009

Distributor	Total Basic Subscribers	Tennis Channel Subscribers	Tennis Channel Penetration to Basic Subscribers
	1	2	3 = 2 / 1
Comcast			
DirecTV			
Time Warner / Bright House			
Dish			
Cox			
Charter			
NCTC*			
Verizon			
Cablevision			
Totals (excluding Comcast)			

Source: SNL Kagan, except NCTC is from September 2009 subscriber payment report (the latest available).

Notes: Large MVPDs are defined as those with over two million basic subscribers. Basic subscribers as of September 2009, except Bright House & Cox as of June 2009. Tennis Channel subscribers projected as of December 2009, based off of actual September 2009 subscriber payment reports from affiliates, plus projected growth & new launches through December 2009. * NCTC member systems that carry Tennis Channel through NCTC; excludes Verizon & Cablevision.

42. Letter from Ken Solomon to Matt Bond, Apr. 22, 2009.

Relative to its peers, Comcast carries Tennis Channel on a tier that reaches about [redacted] of the industry average excluding Comcast ([redacted]). Indeed, Comcast's principal in-region rivals, Dish, DirecTV, and Verizon, carry Tennis Channel on a tier that is between [redacted] more highly penetrated than Comcast's sports tier. The fact that Comcast competes for the *same* subscribers with DirecTV, Dish, and Verizon implies that the tiering decision of these three in-region rivals with respect to Tennis Channel should be given the greatest weight in any analysis of rival carriage of Tennis Channel. Moreover, a significant majority of the distributors that carry Tennis Channel—

—carry the network on a non-sports-tier basis. Based on my analysis I would expect that a reasonable MVPD in Comcast's position that considered the relevant factors other than affiliation would carry Tennis Channel in a manner that is consistent with the carriage decisions of these distributors.

28. Accordingly, Comcast cannot plausibly argue that its tiering policy vis-à-vis Tennis Channel is supported by the choices of its peers—unless, of course, Comcast cites the choices of smaller, out-of-region cable operators with which it does not compete for the same subscribers. Those comparisons are less valuable proxies, in part because smaller cable operators often follow Comcast's lead in making carriage decisions. Regardless, any reliance by Comcast on the carriage decisions of other distributors would fail because the majority of cable operators that carry Tennis Channel do so on terms that do not require subscribers to purchase an expensive sports-only tier.

D. Participatory Sports

29. Finally, Comcast might argue that the Golf Channel and Versus carry sports that enjoy higher participation among viewers. But according to a Sporting Goods Manufacturers Association international study reported by the *Wall Street Journal*, “participation [in tennis] has grown 43% since 2000 and jumped 9.6% last year, while baseball, golf, gymnastics and football shed participants over the same period.”⁴³ According to that study, tennis

show growth since 2008.⁴⁴ The study found that tennis’ broad popularity has increased dramatically over the last eight years (by _____), while golf (by _____) and ice hockey (by _____) experienced declines.⁴⁵ In 2009, tennis participation in the United States topped 30 million players for the first time in more than two decades, according to a survey by the Taylor Research Group on behalf of the Tennis Industry Association (TIA) and the USTA.⁴⁶ Once again, Comcast appears to be foreclosed from making this potential efficiency argument.

IV. AS A RESULT OF COMCAST’S DISCRIMINATORY CONDUCT, TENNIS CHANNEL IS SIGNIFICANTLY RESTRAINED IN ITS ABILITY TO COMPETE FOR ADVERTISERS, VIEWERS, AND PROGRAMMERS

30. As a consequence of Comcast’s discriminatory tiering policy, Tennis Channel is restrained in its ability to compete effectively for viewers, advertisers, and programmers. Because of Comcast’s sheer size, if Comcast alone were to carry Tennis Channel on a tier that reached nearly all of its basic subscribers—as it does for its affiliated, national sports networks—then Tennis Channel’s subscribers would increase to _____. This would put Tennis Channel into a range that advertisers and programming licensors often consider to be nationally

43. *Is Tennis Hip Again*, THE WALL STREET JOURNAL, Mar. 18, 2009.

44.

45. *Id.* at 7, 9, 11.

46. Press Release, *U.S. tennis participation tops 30 million people for the first time in more than 25 years*, Nov. 17, 2009.

distributed.⁴⁷ In prior proceedings, the Commission has received testimony from numerous national networks explaining that networks generally are considered “viable for ratings and advertising purposes” once they have achieved a level of distribution of near 40 million households.⁴⁸ A network’s distribution also affects its ability to obtain programming.⁴⁹

A. Denial of Carriage Harms Tennis Channel’s Ability to Compete Against Other Networks

31. As long as Tennis Channel’s reach remains substantially below 40 million national subscribers, Tennis Channel is restrained in its ability to compete effectively for advertisers and programmers, many of which view national distribution (defined by thresholds in the range of 40 million subscribers) as a prerequisite for making a network a meaningful contender. Because of Comcast’s discriminatory carriage of Tennis Channel, the network also is restrained in its ability to compete effectively for viewers, as sports programming is an “experience good”⁵⁰ that can best be learned about while surfing the channels. Indeed, most Comcast subscribers will not be aware of the existence of Tennis Channel or the nature of the

47. See Declaration of Gary Herman.

48. Federal Communications Commission, Report On the Packaging and Sale of Video Programming Services, Nov. 14, 2004, at 44-45 (citing testimony from Hallmark stating that few national advertisers will buy advertising from a network with 20 million subscribers and the cost per thousands at that level generally is not competitive;

; citing testimony from a coalition of programmers stating that a national niche network needs to achieve a threshold level of at least 30 million to 40 million subscribers in order to be considered as a possible advertising vehicle for national advertising; citing testimony from A&E stating that to attract sufficient advertising revenue to afford to pay for and provide a meaningful quantity of original programming, a network must reach approximately sixty million subscribers; citing testimony from Viacom stating that a network usually needs a subscriber base of approximately 50 million, which represents about half of the country’s households, to serve as an effective advertising vehicle).

49. *Id.*

50. The idea of “experience goods” dates back to a 1970 paper showing that it was more difficult to determine utility associated with quality than with price and that certain goods must be used before a determination on utility can be determined. See Philip Nelson, *Information and Consumer Behavior*, 78 J. POL. ECON. 311 (1970). Since then, experience goods have been formalized to be goods for which consumers do not know their preferences before consumption. This concept has been applied to a variety of industries, most notably retail goods including electronics, appliances, clothing, food, and toys. See Yeon-Koo Che, *Customer Return Policies for Experience Goods*, 44 J. IND. ECON. 17, 18 (1996); Douglas Gale & Robert Rosenthal, *Price and Quality Cycles for Experience Goods*, 25 RAND J. ECON. 590 (1994); Carl Shapiro, *Optimal Pricing of Experience Goods*, 14 BELL J. ECON., 497 (1983).

programming available on Tennis Channel; it is impossible to gain that experience if a network is available only on a sports tier, to which a consumer must affirmatively subscribe. In contrast, Comcast subscribers can gain experience with the Golf Channel and Versus casually, as those channels are available to them without the need to subscribe to a sports tier. Thus, Comcast's subscribers will be more likely in the future to watch the Golf Channel and Versus, with which they have experience, than to watch Tennis Channel, with which they do not have experience and to which they do not have ready access. This issue is becoming more salient because, as described below, Comcast has repositioned many of the most attractive sports tier networks after it or a cable operator with which it frequently purchases programming acquired equity in the network, making the sports tier even less attractive to subscribers.

32. Moreover, the effects of Comcast's discrimination go beyond the number of subscribers that Tennis Channel, Versus, and the Golf Channel have on Comcast's systems. Other vertically integrated cable operators carry Versus and the Golf Channel on highly penetrated tiers (most likely pursuant to a formal or informal reciprocal carriage arrangement⁵¹). Furthermore, smaller (even non-integrated) cable operators tend to follow Comcast's carriage lead. Consequently, Comcast's broad carriage of Versus and the Golf Channel combined with its narrow carriage of Tennis Channel contributes to an even broader gap—

—after all distributors are taken into account. This gap exacerbates the already significant gap in subscribers on Comcast systems alone, and it significantly impairs Tennis Channel's ability to compete for advertisers, viewers, and programming content. As a

51. Vertically integrated cable operators have been recognized to enter into reciprocal carriage agreements. See Jun-Seok Kang, *Reciprocal Carriage of Vertically Integrated Cable Networks*, Indiana University Working Paper (Aug. 30, 2005) at *i* (“The research supports the reciprocal carriage hypothesis by finding that: (1) A vertically integrated MSO is more likely than a non-vertically integrated MSO to carry the start-up basic cable networks of other MSOs; and, (2) a vertically integrated MSO is no more likely than a non-vertically integrated MSO to carry independent start-up basic cable networks.”).

result of those impairments—and a relative strengthening of the market power of the Comcast-affiliated sports networks—further harm is likely to redound to advertisers (in the form of higher advertising prices), to viewers (in the form of higher carriage fees), and to the licensors of programming content.

33. Economists have derived market conditions under which exclusionary conduct can harm competition. In particular, when markets exhibit economies of scale or when markets display network effects, exclusionary conduct can impose barriers to entry and expansion that make rivals smaller, causing them to be less efficient and therefore less capable of restraining the incumbent's prices.⁵² This market condition appears to be satisfied here. By refusing or conditioning a programmer's access to its highly penetrated tiers, Comcast deprives rival sports networks such as Tennis Channel of critical economies of scale.⁵³ Because many costs of the cable network (including program acquisition costs) are invariant to the number of subscribers, increasing a network's number of subscribers (and therefore increasing advertising and license revenues) reduces the cost of providing service on a per-subscriber basis.

34. A review of the economic literature suggests that the scale economies associated with national television advertising are significant. Advertisers can receive better returns by advertising with larger audiences, and as a result, advertising rates generally increase with audience size.⁵⁴ Accordingly, the ads that smaller networks sell are sold at a significant discount disproportionate to the rates charged by their larger and more widely distributed competitors.

52. See, e.g., Einer Elhauge, *Defining Better Monopolization Standards*, 56 STANFORD L. REV. 253 (2003).

53. See, e.g., Dennis W. Carlton, *A General Analysis of Exclusionary Conduct and Refusal to Deal—Why Aspen and Kodak Are Misguided*, 68 ANTITRUST L. J. 659 (2001)

54. See, e.g., Johan Arndt & Julian L. Simon, *Advertising and Economics of Scale: Critical Comments on the Evidence*, 32 J. IND. ECON. 229, 231-2 (1983); Dong Chen & David Waterman, *Vertical Foreclosure in the U.S. Cable Television Market: An Empirical Study of Program Network Carriage and Positioning*, Oct. 2005, at 7. Advertisers may also consider factors such as the season and time of day. But these factors are not affected by Comcast's tiering decision.

35. National sports networks such as Tennis Channel are highly dependent on advertising revenue. According to SNL Kagan, nearly half of total revenue for a national network is derived from advertising revenue; in contrast, advertising revenues comprise only 15 to 20 percent of total revenues for regional sports networks.⁵⁵ According to public reports, Tennis Channel incurred negative cash flow from its inception in 2002 through 2008.⁵⁶ Tennis Channel's inability to spread its licensing fees across a larger base of customers prevents it from achieving profitability, while Comcast's decision to grant its affiliated networks access to more subscribers makes it easier for those networks to become more profitable.

36. Comcast's affiliated sports networks enjoy additional economies of scale in the sale of advertising. As a result of a recent consolidation of its Versus and the Golf Channel ad sales staffs, Comcast Sports Sales has extended its reach by selling advertisements seen by more viewers.⁵⁷ Comcast advertising sales President David Cassaro recently noted that this strategy "has yielded more sales."⁵⁸

37. Comcast and its programming affiliates also recognize the value of gaining access to a distributor's highly penetrated tier. According to Dish Network, Comcast blacked out NHL games on Comcast's Outdoor Life Network (OLN, now known as Versus) when Dish Network declined to carry OLN on a tier to which at least 40 percent of Dish's customers subscribed.⁵⁹

55. Derek Baine, *Comcast sports networks: Opening the kimono on \$2 billion in hidden value*, SNL Kagan, Oct. 8, 2009.

56. *Network Economics, supra*, at 535.

57. Jon Show & John Ourand, *Comcast Combines Versus, Golf Channel Sales Efforts*, STREET & SMITH'S SPORTS BUSINESS JOURNAL, Jan. 26, 2009, page 03 ("Comcast is combining the national sales teams of Versus and Golf Channel under the Comcast Sports Sales banner, which will be led by advertising sales president David Cassaro...Golf Channel, which is in 82 million homes, was the last Comcast sports network with an independent sales team. Versus is in 74 million homes. Cassaro said there were companies that already advertise across both networks [Versus and the Golf Channel], and that the multiplatform offering 'has yielded more sales,' though he wouldn't name names.").

58. *Id.*

59. See EchoStar Comments, Dec. 23, 2005, at 3-5.

Comcast took the position in 2005 that national sports programming should *not* be relegated to poorly penetrated tiers. A spokesperson for OLN promoted the network's hockey programming by stating that "[h]ockey is a major sport that deserves to be seen as other major sports are on a broadly distributed tier."⁶⁰

38. Finally, during its recent and ongoing carriage dispute with DirecTV, Versus admitted that a sports tier was an unacceptable environment for a sports network. Before September 1, 2009, Versus had roughly 75 million subscribers.⁶¹ When DirecTV threatened to move Versus to a sports tier (a loss of six million subscribers) on September 1, Jamie Davis, president of Versus, commented: "I hope things can be resolved amicably, *but I can't accept a situation where Versus can lose 6 million viewers.*"⁶² Versus ran newspaper ads in Florida and Utah imploring DirecTV customers to switch providers: "If you have DirecTV, you can't watch this game," before asking subscribers to call to "demand the coverage you deserve."⁶³ It also told viewers that they could "switch [their] television provider" at www.versus.com.⁶⁴ Dish Network currently carries Versus on the same tier where it carries Tennis Channel.⁶⁵ DirecTV discontinued carriage of Versus after the parties' contract expired on September 1, 2009, and as of the date of this declaration, DirecTV still does not carry Versus.⁶⁶ As Table 1 demonstrates, Comcast carries Versus, an affiliated network, on Comcast's "Standard Service" tier.

39. Nondiscriminatory carriage of Comcast would have had immediate effects toward mitigating the competitive harms described above. As of December 2009, Tennis Channel

60. *EchoStar pulls OLN after failing to show NHL games*, ASSOCIATED PRESS, Oct. 20, 2005.

61. *Viewer statistics for U.S. sports networks*, REUTERS NEWS, June 29, 2009.

62. *Stuart Levine, DirecTV-Versus continue feud*, VARIETY, Sept. 1, 2009.

63. Mike Reynolds, *Versus, DirecTV Talk; Remain Disconnected Talks Have Yet to Bridge the Gap Over Pricing, Positioning*, MULTICHANNEL NEWS, Sept. 19, 2009 (emphasis added).

64. *Id.*

65. *Id.*

66. Mike Reynolds, *Versus sub count takes 9 million hit as previews end*, MULTICHANNEL NEWS, Dec. 10, 2009.

reached about Because of Comcast's sheer size, if Comcast alone were to carry Tennis Channel on a tier that reached nearly all of its basic subscribers—as it does for its affiliated, national sports networks—then Tennis Channel's subscribers would increase from approximately where it stands today to approximately

Increased subscriber numbers on Comcast systems would improve Tennis Channel's ability to compete for viewers, advertisers, and programming (particularly by enabling viewers to experience the channel without having to commit to paying significant sums for it and by putting Tennis Channel over the rough 40 million subscriber threshold employed by national advertisers and licensors of programming); it would make other cable operators more likely to provide comparable carriage terms to Tennis Channel, Versus, and the Golf Channel; and it would better enable Tennis Channel to take advantage of economies of scale and scope.

B. Denial of Carriage as a Mechanism for Advantaging Comcast as a Sports Programmer

40. Comcast's decisions might not be profit-maximizing when one considers its role as an MVPD, but they might be profit-maximizing when one considers its efforts to advantage affiliated networks. There are two potential anticompetitive motivations for Comcast's discriminatory conduct: (1) to protect Comcast's affiliated programming from greater competition, and (2) to extend Comcast's market power into additional areas of sports programming. The harms discussed in Part A, above, which occur regardless of Comcast's motivation, have the effect of eliminating or hindering Tennis Channel as a competitor for advertisers, viewers, and programming, and making it easier for Comcast's affiliated networks to succeed in those markets.

41. A second potential motivation for Comcast's discriminatory conduct is that Comcast seeks to expand its footprint from golf, hockey, and bull riding into complementary sports programming, including tennis. That motivation is particularly salient because Comcast's objective according to its 2008 Annual Report is to expand its reach into sports programming: "We have invested and expect to continue to invest in *new and live-event programming* that will cause our programming expenses to increase in the future."⁶⁷ Comcast's "Programming segment," which "consists primarily of [its] consolidated national programming networks, including E!, Golf Channel, VERSUS, G4 and Style," earned revenues of \$1.4 billion in 2008.⁶⁸ The (upstream) programming division's operating cash flow grew at 28.3 percent in the second quarter of 2009, whereas its (downstream) cable division grew by only 4.1 percent.⁶⁹ Given the fact that Comcast already carried tennis programming on two of its networks (Versus and Comcast SportsNet), and given Comcast's stated intentions to expand its sports programming footprint, it is reasonable to infer that Comcast highly values the programming rights currently secured by Tennis Channel. With those rights on an exclusive basis, Comcast could seek higher carriage fees from its downstream rivals (DirecTV, Dish, and Verizon) as a means of raising rivals' costs. Alternatively, as the Commission has concluded in other contexts,⁷⁰ Comcast could

67. Comcast SEC Form 10-K, for the fiscal year ended Dec. 31, 2008, at 29 (emphasis added).

68. *Id.*

69. Comcast 2nd Quarter 2009 Results, Aug. 6, 2009, at 4.

70. See *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses*, MB Dkt. No. 05-192, Memorandum Opinion and Order, released July 21, 2006, FCC 06-105, ¶ 118 ("One way by which vertically integrated firms can raise their rivals' costs is to charge higher programming prices to competing MVPDs than to their affiliated MVPDs."). See also *id.* ¶ 123 ("We find that the transactions [the Adelphia purchase and related cluster-driven swaps] would enable Comcast and Time Warner to raise the price of access to RSNs by imposing uniform price increases applicable to all MVPDs, including their own systems, by engaging in so-called 'stealth discrimination,' or by permanently or temporarily withholding programming. As commenters contend, such strategies are likely to result in increased retail rates and fewer choices for consumers seeking competitive alternatives to Comcast and Time Warner."); Federal Communications Commission, *Sunset of Exclusive Contract Provisions, Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, CS Dkt. Nos. 07-29, 07-198, Report and Order, rel. Oct. 1, 2007, ¶ 53 ("We also find that three additional developments since 2002 provide cable-affiliated programmers with an even greater economic incentive

deny that exclusive programming to its downstream rivals as a means of degrading their quality of service.

42. Comcast has a long history of denying carriage for discriminatory reasons to unaffiliated sports networks such as MASN and the NFL Network. In both cases, Comcast sought to acquire the underlying programming of the unaffiliated sports networks on an exclusive basis. With respect to MASN, Comcast sought the rights to the Washington Nationals games from Major League Baseball. With respect to the NFL Network, Comcast sought the rights to eight live (Thursday- and Saturday-night) games from the NFL. When it failed to obtain what it sought, Comcast retaliated by refusing to carry MASN and the NFL Network on Comcast's digital tier. (As noted in Table 1, Comcast ultimately settled these carriage disputes.) Comcast's dealings with the Big Ten Network, another unaffiliated sports network, reveal the same exclusionary pattern. In June 2008, a spokesperson for the Big Ten Network, an unaffiliated regional sports network, told the *Philadelphia Inquirer* that "Comcast wouldn't sign a deal *because the Philadelphia company* [that is, Comcast] *didn't own at least part of the new network*, and it was treating the new network differently than Comcast's own sports networks, Versus and the Golf Channel, which have limited audiences and low ratings."⁷¹ In what follows, I briefly review the pressures placed on unaffiliated sports networks to assign equity to vertically integrated cable operators in exchange for broader carriage. My review is not meant to be exhaustive; for example, although Comcast disclosed its direct ownership interest⁷² in the NHL

to withhold programming from competitive MVPDs: (i) the increase in horizontal consolidation in the cable industry; (ii) the increase in clustering of cable systems; and (iii) the recent emergence of new entrants in the video market place, such as telephone companies.").

71. Bob Fernandez, *Comcast, Big Ten reach pay-TV deal*, PHILADELPHIA INQUIRER, June 20, 2008 (emphasis added).

72. Comcast SEC Form 8-K, filed 12/04/09 for the Period Ending 12/03/09, at 6 (showing ownership of 15.6 percent of NHL Network).

Network around the time⁷³ that it moved the network from the Sports Tier to a more broadly penetrated digital tier, the NHL anecdote is not reviewed here.

1. MLB Network

43. Major League Baseball's television network, MLB Network, debuted in January 2009 with 50 million subscribers. The network "got the distribution [it] needed," according to president and CEO Tony Petitti.⁷⁴ MLB "learned from mistakes made in launching other single-sport networks" and the resulting distribution difficulties those networks faced.⁷⁵ The network "avoided such distribution problems"⁷⁶ by partnering with DirecTV and three leading cable companies, Time Warner, Comcast, and Cox. According to one sports analyst, "the reason that the MLBN has been able to enjoy a compatible arrangement with cable broadcasters is that *it gave up a share of its equity in order to reach that goal.*"⁷⁷ DirecTV, Time Warner, Comcast, and Cox together acquired a third of the MLB Network. Unsurprisingly, each offers the network as part of its digital basic package.⁷⁸

2. NBA TV

44. Comcast changed its tiering decision vis-à-vis NBA TV following a deal between the NBA and Turner, which gave Turner, a division of Time Warner, a share of NBA TV's profits. Comcast has an incentive to carry Time Warner's affiliated programming broadly to the extent that Time Warner would reciprocate by carrying Comcast's affiliated programming

73. The disclosure of Comcast's direct ownership was made in December 2009. *Id.* The NHL Network was re-tiered in the Washington, D.C. area around July 30, 2009. See Important News for Comcast Customers, June 2009.

74. Bill Doyle, *Tardy MLB Finally Debuts; New Network Largest Launch*, WORCESTER TELEGRAM & GAZETTE, Jan. 9, 2009 [hereinafter *Tardy MLB Finally Debuts*].

75. *Tardy MLB Finally Debuts, supra.*

76. *Id.*

77. Dianne M. Grasse, *MLB Network Rolls Out with Bait and Switch*, SPORTS CENTER, Jan. 9, 2009, available at http://www.sports-central.org/sports/2009/01/09/mlb_network_rolls_out (emphasis added).

78. *Tardy MLB Finally Debuts, supra.*

broadly.⁷⁹ In 1999, the NBA launched NBA TV, the league's television network.⁸⁰ As of the 2006-07 basketball season, NBA TV had only 12 million subscribers, as most cable operators, including Comcast and Time Warner, carried the network on a sports tier.⁸¹ In November 2006, *Reuters* reported that "Time Warner owns a 2 percent stake in NBA TV and [NBA Commissioner David] Stern said the cable company and the league are discussing an increase in that stake."⁸² In August 2007, *Variety* reported that NBA TV was "relegated to digital sports tiers ... If Time Warner, which owns cable systems reaching more than 14 million subscribers, agreed to shift NBA TV from sports tiers to digital basic, the network would add millions of new customers."⁸³ In January 2008, while in the midst of renewal discussions with existing distributors, the NBA made a deal with Turner Sports, an affiliate of Time Warner Cable, that passed operations of NBA Digital, including NBA TV and NBA.com, to Turner Sports in an effort to revamp the entities' marketing and programming.⁸⁴ The deal granted Turner an undisclosed share of the profits from the NBA TV and the NBA's other digital services.⁸⁵ The NBA, which handled distribution negotiations for NBA TV, also planned to offer equity in the network to other MVPDs to secure adequate carriage.⁸⁶ Following these transactions, the NBA

79. Vertically integrated cable operators have been recognized to enter into reciprocal carriage agreements. See Jun-Seok Kang, *Reciprocal Carriage of Vertically Integrated Cable Networks*, Indiana University Working Paper (Aug. 30, 2005) at *i* ("The research supports the reciprocal carriage hypothesis by finding that: (1) A vertically integrated MSO is more likely than a non-vertically integrated MSO to carry the start-up basic cable networks of other MSOs; and, (2) a vertically integrated MSO is no more likely than a non-vertically integrated MSO to carry independent start-up basic cable networks.").

80. Barry Jackson, *MLB Network Read to Launch*, MIAMI HERALD, July 18, 2008.

81. *NBA sees bigger TV deal with partners*, REUTERS, Nov. 28, 2006.

82. *Id.*

83. John Dempsey, *NBA TV may bounce to Time Warner Media conglom could take over hoops network*, VARIETY, Aug. 21, 2007.

84. NBA.com Press Release, *Turner Broadcasting and NBA Broaden Partnership with Digital Rights Agreement* (Jan. 17, 2008) [hereinafter *NBA Press Release*].

85. Daniel Frankel, *NBA TV makes novel partnership; Turner Sports in charge of day-to-day programming*, DAILY VARIETY, Oct. 24, 2008.

86. Jon Lafayette, *NBA Drives to Hole; New Programs, Marketing Set for Network*, TELEVISION WEEK, Oct. 6, 2008.

announced that it had secured—at great cost—distribution on Time Warner’s digital basic tier.⁸⁷ In June 2009, NBA TV secured distribution to Comcast’s 11 million “Digital Classic” subscribers, up from the 2 million Comcast subscribers it reached before the NBA deal with Turner Sports.⁸⁸ In the span of one year, in which the NBA surrendered equity in its network to a vertically integrated cable operator (Time Warner), NBA TV’s distribution skyrocketed from 12 million subscribers in the 2008-09 season to 45 million subscribers in the 2009-10 season.⁸⁹

3. The NFL Network

45. Because the Commission is familiar with the Comcast-NFL dispute, I describe the major developments briefly here. In 2006, the NFL elected to televise eight live NFL games per year on its network, NFL Network. In doing so, it declined the opportunity to assign those games to a rival sports network, including Comcast-affiliated Versus. In an apparent reaction to its failure to secure exclusive distribution rights for those games, Comcast moved the NFL Network from a digital tier to its Sports Entertainment Package shortly thereafter. The NFL Network initiated a carriage complaint before the Commission; separate contract litigation was initiated in a New York state court. In August 2009, the NFL Network and Comcast reached a settlement. Subsequent to that agreement, Comcast carried the NFL Network on Comcast’s more popular Digital Classic or Digital Starter tiers,⁹⁰ increasing the NFL Network’s subscribers on Comcast from two to eleven million.⁹¹ In sum, given Comcast’s prior discriminatory conduct vis-à-vis The Big Ten Network, MASN, and the NFL Network, and given the pressures applied by cable operators to the MLB Network, NBA TV, and the NHL Network to exchange equity for broader

87. *NBA TV reaches 45 million U.S. homes with carriage deals*, REUTERS, Oct. 22, 2009.

88. Deborah Yao, *Comcast Reaches Deal to Add NBA TV to Popular Digital TV Tier*, ASSOCIATED PRESS, Jun. 3, 2009; Bob Fernandez, *Comcast to Put NBA TV on ‘Digital Classic’ Tier*, PHILADELPHIA INQUIRER, Jun. 3, 2009.

89. *NBA TV reaches 45 million U.S. homes with carriage deals*, REUTERS, Oct. 22, 2009.

90. Brian Mackey, *Comcast settles dispute with NFL Network*, News-Leader, May 20, 2009.

91. Joe Flint, *DirecTV, Comcast fight over Versus distribution*, LOS ANGELES TIMES, Sept. 2, 2009.

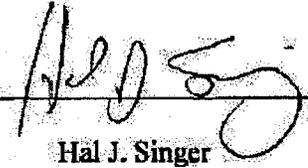
carriage, it is reasonable to infer that Comcast's discrimination here is motivated by a desire to extend its sports programming footprint into tennis.

CONCLUSION

46. Comcast carries its affiliated national sports networks, Versus and the Golf Channel, on its "Standard Service" tier, yet it relegates Tennis Channel to its "Sports Entertainment" tier. Because Versus, the Golf Channel, and Tennis Channel are similarly situated, given their competition for similar sets of viewers, advertisers, and programming rights, and based on my analysis of the relevant economic factors, I conclude that Comcast's conduct reflects discrimination and that such discrimination is neither reasonable nor efficient for Comcast unless it reflects a judgment relating to the affiliation of the networks. I also find that Comcast's discriminatory behavior prevented Tennis Channel from competing effectively against Versus, the Golf Channel, and other sports networks. Comcast likely engages in such conduct to protect its programming interests and to extend its reach into tennis programming. I also conclude that a reasonable distributor that was not discriminating against Tennis Channel would carry that network on terms comparable to those on which it carries Versus and the Golf Channel. Finally, I have considered four potential efficiency justifications that might explain Comcast's conduct in a more generous light, but I find that none of these considerations would, in the case of Tennis Channel, cause a reasonable distributor to carry it less favorably than the Comcast affiliated sports networks discussed here.

* * *

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct. Executed on January 4, 2010.



Hal J. Singer

APPENDIX 1: CURRICULUM VITAE

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EMPIRIS, L.L.C., Washington, D.C.: Managing Partner and President, 2008-present.

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CRITERION ECONOMICS, L.L.C., Washington, D.C.: President, 2004-2008. Senior Vice President, 1999-2004.

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U.S. SECURITIES AND EXCHANGE COMMISSION, OFFICE OF ECONOMIC ANALYSIS, WASHINGTON, D.C.: Staff Economist, 1997-98.

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AUTHORED BOOKS AND BOOK CHAPTERS

Valuing Life Settlements as a Real Option, co-authored with Joseph R. Mason, in *LONGEVITY TRADING AND LIFE SETTLEMENTS* (Vishaal Bhuyan ed., John Wiley & Sons 2009).

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19. *The Benefits of a Secondary Market for Life Insurance*, 38 REAL PROPERTY, PROBATE AND TRUST JOURNAL 449 (2003), co-authored with Neil A. Doherty.
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2. Caroline Behrend, et al. vs. Comcast Corporation, Civil Action No. 03-6604 (E.D. Pa.).
3. In the Matter of Distribution of the 2000-03 Copyright Royalty Funds, Dkt. No. 2008-2 CRB CD 2000-03 (Copyright Royalty Judges).
4. Cindy Johnson et al. v. Arizona Hospital and Health Care Association et al., Case No. 07-01292 (SRB) (D. Az.).
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6. TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation, File No. CSR-8001-P (Federal Communications Commission).
7. Meijer, Inc. & Meijer Distribution, Inc., et al. v. Abbott Laboratories, Case No. C 07-5985 CW (N.D. Ca.).
8. NFL Enterprises LLC. v. Comcast Cable Communications, LLC, File No. CSR-7876-P (Federal Communications Commission).
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1. Why the iPhone Won't Last Forever and What the Government Should Do to Promote Its Successor (prepared for Mobile Future), co-authored with Robert Hahn (Sept. 21, 2009).
2. The Economic Impact of Eliminating Preemption of State Consumer Protection Laws (prepared for the American Bankers' Association), co-authored with Joseph R. Mason (Aug. 21, 2009).
3. Economic Effects of Tax Incentives for Broadband Infrastructure Deployment (prepared for the Fiber to the Home Council), co-authored with Jeffrey Eisenach and Jeffrey West (Dec. 23, 2008).
4. The Effect of Brokered Deposits and Asset Growth on the Likelihood of Failure (prepared for Morgan Stanley, Citigroup, and UBS), co-authored with Joseph Mason and Jeffrey West (Dec. 17, 2008).
5. Estimating the Benefits and Costs of M2Z's Proposal: Reply to Wilkie's *Spectrum Auctions Are Not A Panacea* (prepared for CTIA), co-authored with Robert W. Hahn, Allan T. Ingraham and J. Gregory Sidak (July 23, 2008).
6. Is Greater Price Transparency Needed in The Medical Device Industry? (prepared for Advanced Medical Technology Association), co-authored with Robert W. Hahn (Nov. 30, 2007).
7. Should the FCC Depart from More than a Decade of Market-Oriented Spectrum Policy? Reply to Skrzypacz and Wilson (prepared for CTIA), co-authored with Gerald Faulhaber and Robert W. Hahn (Jun. 18, 2007).
8. Improving Public Safety Communications: An Analysis of Alternative Approaches (prepared for the Consumer Electronics Association and the High Tech DTV Coalition), co-authored with Peter Cramton, Thomas S. Dombrowsky, Jr., Jeffrey A. Eisenach, and Allan Ingraham (Feb. 6, 2007).
9. The Budgetary Impact of Eliminating the GPOs' Safe Harbor Exemption from the Anti-Kickback Statute of the Social Security Act (prepared for the Medical Device Manufacturers Association) (Dec. 20, 2005).
10. Reply to "The Life Settlements Market: An Actuarial Perspective on Consumer Economic Value" (prepared for Coventry First), co-authored with Eric Stallard (Nov. 15, 2005).
11. The Competitive Effects of Telephone Entry into Video Markets (prepared for the Internet Innovation Alliance), co-authored with Robert W. Crandall and J. Gregory Sidak (Nov. 9, 2005).

12. How Do Consumers and the Auto Industry Respond to Changes in Exhaust Emission and Fuel Economy Standards? A Critique of Burke, Abeles, and Chen (prepared for General Motors Corp.), co-authored with Robert W. Crandall and Allan T. Ingraham (Sept. 21, 2004).
13. Inter-City Competition for Retail Trade in North Texas: Can a TIF Generate Incremental Tax Receipts for the City of Dallas? (prepared for Harvest Partners), co-authored with Thomas G. Thibodeau and Allan T. Ingraham (July 16, 2004).
14. An Accurate Scorecard of the Telecommunications Act of 1996: Rejoinder to the Phoenix Center Study No. 7 (prepared for BellSouth), co-authored with Robert Crandall (Jan. 6, 2004).
15. Competition in Broadband Provision and Implications for Regulatory Policy (prepared for the Alcatel, British Telecom, Deutsche Telekom, Ericsson, France Telecom, Siemens, Telefónica de España, and Telecom Italia), co-authored with Dan Maldoom, Richard Marsden, and Gregory Sidak (Oct. 15, 2003).
16. The Effect of Ubiquitous Broadband Adoption on Investment, Jobs, and the U.S. Economy (prepared for Verizon), co-authored with Robert W. Crandall (Sept. 17, 2003).
17. The Deleterious Effect of Extending the Unbundling Regime on Telecommunications Investment (prepared for BellSouth), co-authored with Robert W. Crandall (July 10, 2003).
18. Letter Concerning Spectrum Auction 35 to the Honorable Michael K. Powell, Chairman, Federal Communications Commission, from Peter C. Cramton, Robert W. Crandall, Robert W. Hahn, Robert G. Harris, Jerry A. Hausman, Thomas W. Hazlett, Douglas G. Lichtman, Paul W. MacAvoy, Paul R. Milgrom, Richard Schmalensee, J. Gregory Sidak, Hal J. Singer, Vernon L. Smith, William Taylor, and David J. Teece (Aug. 16, 2002).

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1. *Irrational Expectations: Can a Regulator Credibly Commit to Removing an Unbundling Obligation?*, AEI-Brookings Joint Center Related Publication No. 07-28, co-authored with Jeffrey A. Eisenach (Dec. 2007).
2. *An Antitrust Analysis of Google's Proposed Acquisition of DoubleClick*, AEI-Brookings Joint Center Related Publication No. 07-24, co-authored with Robert W. Hahn (Sept. 2007).
3. *Inter-City Competition for Retail Trade in North Texas: Can a TIF Generate Incremental Tax Receipts for the City of Dallas?*, co-authored with Thomas G. Thibodeau and Allan T. Ingraham (revise and resubmit to JOURNAL OF REAL ESTATE RESEARCH) (July 16, 2004).
4. *An Economic Assessment of the Weight-Based CAFE Standard Proposed by the National Highway Traffic Safety Administration*, co-authored with Robert W. Crandall and Allan T. Ingraham (Apr. 2004).
5. *How Common Are "Conflicts of Interests" in the Investment Banking Industry?*, co-authored with Charles W. Calomiris (Dec. 2003).
6. *Does Clustering by Incumbent MSOs Deter Entry by Overbuilders?* (July 2002).

SPEAKING ENGAGEMENTS

1. *Wireless Innovation Luncheon*, MOBILE FUTURE, Washington, D.C., Nov. 3, 2009.
2. *Second Life Settlements & Longevity Summit*, INSURANCE-LINKED SECURITIES & LIFE SETTLEMENTS, New York, N.Y., Sept. 30, 2009.
3. *Perspectives on Investment and a National Broadband Plan*, AMERICAN CONSUMER INSTITUTE, Washington, D.C., Sept. 4, 2009.

4. *Markets and Regulation: How Do We Best Serve Customers?*, Wireless U. Communications Policy Seminar, UNIVERSITY OF FLORIDA PUBLIC UTILITY RESEARCH CENTER, Tampa, FL., Nov. 13, 2008.
5. *The Price Of Medical Technology: Are We Getting What We Pay For?* HEALTH AFFAIRS BRIEFING, Washington, D.C., Nov. 10, 2008.
6. *Standard Setting and Patent Pools*, LAW SEMINARS INTERNATIONAL, Arlington, VA., Oct. 3, 2008.
7. *The Changing Structure of the Telecommunications Industry and the New Role of Regulation*, INTERNATIONAL TELECOMMUNICATIONS SOCIETY BIENNIAL CONFERENCE, Montreal, Canada, June 26, 2008.
8. *The Debate Over Network Management: An Economic Perspective*, AMERICAN ENTERPRISE INSTITUTE CENTER FOR REGULATORY AND MARKET STUDIES, Washington, D.C., Apr. 2, 2008.
9. *Merger Policy in High-Tech Industries*, GEORGE MASON UNIVERSITY SCHOOL OF LAW, Washington, D.C., Feb. 1, 2008.
10. *Telecommunications Symposium*, U.S. DEPARTMENT OF JUSTICE ANTITRUST DIVISION, Washington, D.C., Nov. 29, 2007.
11. *Wireless Practice Luncheon*, FEDERAL COMMUNICATIONS BAR ASSOCIATION, Washington, D.C., Nov. 29, 2007.
12. *Association for Computing Machinery's Net Neutrality Symposium*, GEORGE WASHINGTON UNIVERSITY, Washington, D.C., Nov. 12, 2007.
13. *Regulators' AdvanceComm Summit*, NEW YORK LAW SCHOOL, New York, N.Y., Oct. 14, 2007.
14. *Annual Conference*, CAPACITY USA 2007, New York, N.Y., Jun. 26, 2007.
15. *William Pitt Debating Union*, UNIVERSITY OF PITTSBURGH, SCHOOL OF ARTS & SCIENCES, Pittsburgh, PA., Feb. 23, 2007.
16. *Annual Conference*, WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, Washington, D.C., June 27, 2006.
17. *Annual Conference*, MEDICAL DEVICE MANUFACTURERS ASSOCIATION, Washington, D.C., June 14, 2006.
18. *Annual Conference*, ASSOCIATION FOR ADVANCED LIFE UNDERWRITING, Washington, D.C., May 1, 2006.
19. *Entrepreneur Lecture Series*, LAFAYETTE COLLEGE, Easton, PA., Nov. 14, 2005.

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1. *Why the iPhone Won't Last Forever and What the Government Should (or Shouldn't) Do to Promote Its Successor*, MILKEN INSTITUTE REVIEW (forthcoming 2009), co-authored with Robert W. Hahn.
2. *Streamlining Consumer Financial Protection*, THE HILL, Oct. 13, 2009, co-authored with Joseph R. Mason.
3. *Is Greater Price Transparency Needed in the Medical Device Industry?*, HEALTH AFFAIRS (2008), co-authored with Robert W. Hahn and Keith Klovers.
4. *Foxes in the Henhouse: FCC Regulation through Merger Review*, MILKEN INSTITUTE REVIEW (First Quarter 2008), co-authored with J. Gregory Sidak.
5. *Don't Drink the CAFE Kool-Aid*, WALL STREET JOURNAL, Sept. 6, 2007, at A17, co-authored with Robert W. Crandall.

6. *The Knee-Jerk Reaction: Misunderstanding the XM/Sirius Merger*, WASHINGTON TIMES, Aug. 24, 2007, at A19, co-authored with J. Gregory Sidak.
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MEMBERSHIPS

American Economics Association

REVIEWER

JOURNAL OF COMPETITION LAW AND ECONOMICS

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MANAGERIAL AND DECISION ECONOMICS

TELECOMMUNICATIONS POLICY

PERSONAL INFORMATION

American citizen, born March 31, 1972. Married to Ingrid Arraut Singer. Two daughters: Alexis and Kayla. Resident of Oakton, Virginia.

January 4, 2010

2

January 4, 2010

Declaration of Timothy Brooks

I. INTRODUCTION

1. I have been retained by Tennis Channel to analyze data reflecting the viewer popularity of Tennis Channel compared to that of competing networks owned by Comcast Corporation. I have also looked at the possible reasons for any differences observed.
2. Based on the data I have examined I conclude that Tennis Channel is similar in audience appeal to Golf Channel and Versus. This conclusion is based on viewer satisfaction scores and other widely accepted measures. Moreover I believe that Tennis Channel has been harmed by its lack of distribution relative to Golf Channel and Versus, in terms of absolute audience levels and therefore revenue. Its popularity within its limited area of availability is evidence of the wider success it would have but for the distribution limitations imposed upon it by Comcast.

II. QUALIFICATIONS

1. My name is Timothy Brooks and I am an independent media consultant specializing in, among other things, television audience measurement. Since I began my private consultancy in January 2008 I have been engaged by a variety of private-sector firms and industry groups to advise them on research-related matters. Prior to 2008 I had 39 years experience in the field of media research, most recently as Executive Vice President of Research for Lifetime Entertainment Services (2000-2007). Prior to that I was Senior Vice President of Research for USA Networks, Senior Vice President/Media Research Director at NW Ayer advertising agency, and in several research positions at NBC-TV, the NBC Stations Division, and Westinghouse Broadcasting. I have served as chairman of the board of the Media Rating Council, chairman of the board of the Advertising Research Foundation, founding member of the Council for Research Excellence, and in a leadership role on boards and committees of other industry associations. I have been honored with awards from several of them, including Lifetime Achievement Award (ARF, 2008) and Excellence and Integrity in Media Research (CAB, 1995). I taught media research as an adjunct professor at C.W. Post Center, Long Island University, for nine years and have written several award winning books, including a standard reference book on television history. My full *curriculum vitae* is attached.

III. ANALYSIS OF WHETHER TENNIS CHANNEL IS SIMILARLY SITUATED WITH COMCAST-OWNED NETWORKS

1. Methodology

a. I was asked to compare Tennis Channel with relevant Comcast-owned competitors. I believe the most appropriate comparisons are with Golf Channel and, secondarily, with Versus. Like Tennis Channel, Golf Channel is a targeted network focusing primarily on a single sport; both provide extensive play-by-play coverage of their respective sports; both sports are widely popular, primarily adult-oriented and somewhat upscale in appeal; yet Golf Channel has been given significantly wider distribution on Comcast systems. The programming on Versus is somewhat more diffuse, however it is also exclusively sports-oriented (hockey, college football, bicycle racing, etc.); appeals to a primarily adult audience; and the network has also been given wide distribution by Comcast. Both Golf Channel and Versus are believed to receive distribution to 80% to 100% of Comcast's 23.6 million homes,

. Comcast also operates the Comcast regional sports networks and has lesser degrees of ownership in a number of other sports networks including MLB Network, NHL Network, and (somewhat more indirectly) NBA TV. It also has varying degrees of ownership in a variety of networks that are not sports oriented (E!, Style, G4, TV One, PBS Kids Sprout). Without ruling out the possibility that Comcast may be discriminating with respect to these networks I have focused my analysis on its wholly-owned Golf Channel and Versus, which are sports-oriented and given virtually universal distribution by Comcast.

b.

c.

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f.

This is the result of a number of factors including reduced visibility in outside media, reduced income affecting marketing budgets, reduced exposure to channel surfers, and less ability to compete for top-tier events, most of whose owners want wide distribution. Tennis Channel is subject to these distribution related handicaps, but there are numerous indications that it has nevertheless managed to become very comparable in audience popularity to more widely distributed networks in households where both can be seen.

g. In addition to others types of third-party data can shed light on the relative popularity of television networks. I asked for and was provided with data from the Mendelsohn Survey of Affluent Homes, Beta Subscriber Studies, SNL Kagan, and the SGMA Sports Participation Study, among others. Data tabulations were carried out to my specifications. I also accessed certain publicly available information from the internet and other sources.

2. Comparison of the Tennis Channel audience with that of Golf Channel.

¹ Distribution figures and date of commencement of ratings by Golf Channel and Versus from "Economics of Basic Cable Networks," 2009 Edition, published by SNL Kagan.

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h. Another important point of comparison is demographic information on the types of viewers watching each network. This is critical to advertisers, most of whom wish to reach viewers under age 55 (typically 18-49 or 25-54) and a reasonable balance of men and women. Demographics thus indicate the economic viability of two networks when they have comparable distribution.

i. One source that is available is the Mendelsohn Survey of Affluent Homes which surveys households with HH incomes over \$100,000, an important component of both networks' audiences. The median HH income for Tennis Channel viewers among the group surveyed by Mendelsohn is _____, and for Golf Channel viewers _____. Both are above the overall median for the group, _____.⁵ Both are also male skewed, which would make it likely that they would compete for the same advertising dollars. To the extent that there are slight differences Tennis Channel has a somewhat higher proportion of women and households with children, which would make it even more attractive to some major national advertisers than Golf Channel, if they had comparable distribution.

Past Seven Day Viewers (Adults)

	<u>Tennis Channel</u>	<u>Golf Channel</u>
Men		
Women		
Have Children		

Source: Mendelsohn Survey of Affluent Homes, 2009

j. Another source for demographic comparison is the 2007 Simmons National Consumer Study. Based on prototyped data, this also shows both Tennis Channel and Golf Channel viewing households to be male skewed and have above average income (the median for all networks is _____).

⁵ Mendelsohn Survey of Affluent Homes, 2009.

Viewing Households

Tennis Channel Golf Channel

Men

Women

Median HH Income

Source: Tennis Channel Simmons Custom Proprietary Prototype 2007. Golf Channel Simmons NCS 12-Month Fall 2007.

j. In Summary,

. They are also demographically similar. Based on this I believe Tennis Channel would be a strong competitor to Golf Channel for a wide range of national advertisers but for its limited distribution.

3. Comparison of Tennis Channel audience with that of Versus

a. After Golf Channel, Versus is the next-closest match to Tennis Channel among the Comcast networks. It has also received favorable distribution treatment from Comcast, and is currently in approximately 76 million households nationwide. Like Tennis Channel, Versus focuses on competitive sports, but with a wide mix of sports (none in great depth). Originally called the Outdoor Life Network (OLN), it changed its name to Versus in the mid 2000s and began shifting its programming emphasis from fishing, hunting and outdoor "adventure" sports (skiing, extreme sports) to more traditional competitive sports such as college football and basketball, hockey, cycling, boxing, and auto racing. The network has invested heavily in a limited number of high-profile franchises such as NHL Hockey and the Tour de France. However much of its schedule is filled with lower-rated sports, and it is not known as the "home" of any major sport.

b.

c. Although Versus promotes itself as "the fastest-growing sports cable network in the country,"⁶

⁶ *Los Angeles Times*, August 22, 2009, "DirecTV Says It Will No Longer Carry Versus Network." by Diane Pucin. The quote was attributed to a statement released by Versus during a carriage dispute with DirecTV.

d.

e. Demographically, Versus is male-skewed and therefore competes for many of the same advertisers as Tennis Channel and Golf Channel. Tennis Channel's somewhat better composition among women (for a sports channel) would make it a particularly effective competitor for advertising but for its distribution disadvantage.

Past Seven Day Viewers (Adults)

Tennis Channel Versus

Men

Women

Source: Mendelsohn Survey of Affluent Homes, 2009

f. Simmons shows a similar demographic relationship based on all viewers.

Viewing Households

Tennis Channel

Men

Women

Median HH Income

Source: Tennis Channel Simmons Custom Proprietary Prototype 2007. Versus Simmons NCS 12-Month Fall 2007.

g. In summary, although Versus has major advantages in distribution

Overall the data suggest that Tennis Channel would be comparable in audience performance to Versus if it had comparable distribution.

4. Measures of viewer satisfaction.

a. While audience size is the principal basis of advertising sales for both a network and its distributors (who receive inventory on the network to sell locally), viewer satisfaction is also a key measure for distributors as it reflects subscribers' willingness to remain subscribers and/or to buy enhanced services. I therefore asked for impartial, third-party attitudinal measures for Tennis Channel. Beta Research Corporation releases regular syndicated reports of this type tracking viewer satisfaction with individual cable networks. These are used throughout the industry as an impartial "benchmark" on viewer attitudes.

b. Tennis Channel is included in the 2009 Beta Digital Basic Cable Subscriber Study, which covers 43 networks carried on digital tiers. Tennis Channel's satisfaction score among its viewers is on a scale of 1.0 (lowest) to 4.0 (highest), which is the score achieved by any network measured. of Tennis

Channel viewers said they were "very satisfied" with the network, which is of scores achieved by the networks measured. And 68% of viewers rated Tennis Channel as important to their enjoyment of cable TV, with several well-known networks including Comcast-owned G4 and Style, which Comcast carried on the basic tier as well.

c. Importantly, Tennis Channel in all of these measures compared to the prior year, . It should be noted that in 2008 Tennis Channel acquired the rights to the U.S. Open for 2009 and beyond, completing its acquisition of all four "grand slam" tournaments (French Open, Australian Open, Wimbledon, U.S. Open). It also launched a 24/7 high-definition feed in 2008.

Beta Viewer Satisfaction Measures for Tennis Channel

	<u>2009</u>	<u>2008</u>	<u>2007</u>
Satisfaction (1-4 scale)			
"Very Satisfied"			
Impt. to Enjoyment of Cable			

Source: September 2009 Beta Digital Basic Cable Subscriber Study

d. Another Beta measure is the average perceived dollar value of each network as assigned by viewers of the network. Tennis Channel viewers gave the network a dollar value of per month, the dollar value assigned by viewers of any of the 43 networks measured.

e. Inclusion in Beta reports is voluntary and neither Golf Channel nor Versus appears in the Digital Basic Cable Study. However Versus is reported in the 2009 Beta Basic Cable Networks study, where it received a satisfaction score and "very satisfied" score, the comparable scores for Tennis Channel in the digital study. In addition, both of the Versus scores were compared to the prior year.

Beta Viewer Satisfaction Measures for Versus

	<u>2009</u>	<u>2008</u>
Satisfaction (1-4 scale)		
"Very Satisfied"		
Impt. to Enjoyment of Cable		

Source: November 2009 Beta Basic Cable Subscriber Study

f. In summary Beta data indicates that Tennis Channel is very popular with its viewers relative to other networks, and is increasing in favor. Versus, in a parallel report, is rated by its viewers, and its scores were down in 2009. Golf Channel chose not to be measured in either report.

5. Popularity of tennis generally.

a. While the level of participation in a sport is not directly related to the popularity of that sport on television (e.g., football), it can be useful as a directional measure of growth or decline in interest in that sport. Significant growth in participation suggests that the sport is likely to gain in viewer interest as well in the coming years. Direction of change is therefore more important in this analysis than absolute levels.

b. I requested information on sports participation generally, as reported in the regular tracking study of the Sporting Goods Manufacturers Association (SGMA). That study shows that following a period of little growth in the 1990s, tennis as a participatory sport has been showing extremely robust growth since the year 2000. Tennis is in fact _____ during this period, with participation _____ Most other major sports, including _____

Participation Among Major Sports (000)

	<u>2000</u>	<u>2008</u>	<u>Gain/loss</u>
Tennis			
Basketball			
Golf			
Sailing			
Baseball			
Ice Skating			
Football			
Ice Hockey			

Source: SGMA USA Sports Participation Study

c. My conclusion from this information is that there is substantial participation in both tennis and golf, but that participation in tennis has been _____ the past eight years. Golf, _____. This should bode well for interest in Tennis Channel going forward and is another reason why distributors would logically be expected to consider giving it greater exposure.

6. Implications.

a. Tennis Channel is in the same programming category as the Comcast-owned Golf Channel. Both offer a full-day schedule revolving around a single participatory sport, and the sports are even similar in demographic appeal (adult, upscale), although the tennis audience is somewhat broader.

_____. This is true despite the considerable handicaps imposed on Tennis Channel by limited distribution.

b. Tennis Channel can also be compared with the Comcast-owned Versus network, which has a more mixed schedule of sports that are just below the top tier of TV sports (NFL, NBA, Major League Baseball).

c. Other measures reinforce the view that Tennis Channel is highly competitive in audience appeal. Tennis Channel's Beta viewer satisfaction scores are

Finally tennis is not only one of the largest participatory sports in America (more than 18 million participants in 2008),

. Participation in golf,

d. Based on this data Tennis Channel, Golf Channel and Versus should be able to generate comparable revenue if they had comparable distribution, and viewer satisfaction with Tennis Channel is high. I would therefore expect them to be treated at least the same when it comes to distribution. However with respect to Comcast this has not been the case.

IV. HARM DONE

1. Based on my analysis I conclude that the limited distribution of Tennis Channel by Comcast has negatively impacted the network's ability to generate and advertising revenues.

a. Several factors negatively impact a limited distribution network's ability to maximize its audience, and thus rob it of revenues relative to more widely-distributed competitors. First, limited distribution results in reduced press attention for the network; fewer references in sports pages, fewer listings in guide sections, fewer mentions in the media at large. Most media prefer to publicize networks that all or most of their readers or viewers can see. This makes it hard for a limited distribution network to draw viewers to its events, and for potential viewers to even know when its event coverage is scheduled. To verify this effect I requested a search of mentions in the press of Tennis Channel and Golf Channel during the same span of time, mid December 2008 to mid December 2009.⁷ The difference in media coverage was striking.

⁷ It was not feasible to search for mentions of "Versus" due to its generic name.

Press Mentions: Year Ending December 2009

Tennis Channel	826 stories
Golf Channel	3,432 stories

Difference: +315%

Source: Westlaw ALLNEWS Article Search of approximately 9,300 publications.

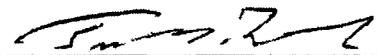
b. Paid media can be difficult to afford, because of the reduced marketing budgets that result from limited advertising income.

c. Limited distribution makes it difficult to compete for the rights to high-profile events. The owners of those events want the widest exposure possible, to avoid harming the market value of the event itself. Failure to attract top-tier events places further downward pressure on ratings.

d. Limited distribution also means limited exposure to occasional viewers, such as channel surfers, some of whom can be converted into regular viewers over time - but only if they are exposed to the network in the first place. Absence from the lineup entirely on broadly penetrated tiers eliminates any possibility that the majority of casual viewers can sample a network. Favorable channel placement where carried is also an important factor in driving audiences as evidenced by the fact that some networks have paid large sums to be placed close to the most popular networks (e.g., broadcast channels), and I note that Tennis Channel has also been disadvantaged by Comcast in this regard. For example in Washington DC Comcast carries Golf Channel on ch. 11 while Tennis Channel is on ch. 735. In contrast DirecTV more logically carries Tennis Channel on ch. 217 and Golf Channel on ch. 218; Dish Network carries Tennis Channel on ch. 400 and Golf Channel on ch. 401; and Verizon Fios carries Tennis Channel HD on ch. 592 and Golf Channel HD on ch. 593.

e. Finally, as noted earlier, limited distribution makes it unfeasible for a network

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct. Executed on January 4, 2010.



TIMOTHY BROOKS

CURRICULUM VITAE

TIM BROOKS
27 Greenway Drive
Greenwich, CT 06831
203-531-1842
tim@timbrooks.net
www.timbrooks.net

Consultant, former television industry executive and award-winning author specializing in media research and the history of television and other media.

Professional Experience

Independent Consultant

2008 -

- Engaged by a variety of private-sector firms and industry groups to advise them on research-related matters.

Lifetime Entertainment Services

2000 - 2007

Executive Vice President, Research
Senior Vice President, Research

- Member of senior management team, reporting to President/CEO. Headed research department, worked closely with programming, advertising sales, marketing, affiliate relations, finance, digital, corporate communications and other departments on current operations and new ventures. Lifetime became the number one rated cable network during this period.
- Participated in launch of Lifetime Real Women and relaunch of Lifetime Movie Network; launch of *Lifetime Magazine*; relaunch of successful women's internet site.

USA Networks

1991 - 1999

Senior Vice President, Research
Vice President, Research

- Member of senior management team, reporting to President/CEO. Headed research department. Worked closely will all other departments on current operations and new ventures. Negotiated numerous supplier contracts, coordinated company-wide research contracts involving multiple divisions of USA Networks.
- Member of the three-person team that structured the programming and business plan for the highly successful Sci-Fi Channel (1992).
- Intimately involved in the launch of USA's Latin American and European networks in 1994 and 1995; conducted consumer research in nine countries in Europe, Latin America and Asia.

NW Ayer

1989 - 1990

Senior Vice President/Media Research Director

- Headed research department.
- Member of core team that pitched and won the 1992 Olympics account for Ayer.
- Helped develop multi-media advertising plans, evaluated media plans of networks.

NBC-TV Network

1977 - 1988

Director, Program and Advertising Research
Director, Television Network Research
Manager, Audience Measurement Analysis

- Middle manager and later senior manager in the NBC-TV research department, initially responsible for evaluating scheduling plans and estimating ratings for both programming and sales. Later advanced to director of East Coast program testing, primarily responsible for consumer testing of daytime programming, made-for-TV movies and promotional campaigns.

Television Advertising Representatives, Inc. (Group W)

1976 - 1977

Assistant Director, Research & Marketing

Prior Positions

1970 - 1976

Manager, Daytime/Nighttime Research, NBC-TV
Research Analyst, NBC Stations Division
Sales Research Analyst, WCBS-TV
Co-Founder, TV spot production company (while at Syracuse University)

Industry Leadership

Council for Research Excellence

- Founding member, board of directors (2005-2007), member of the Media Engagement Committee (2005-date) which fielded a groundbreaking observational study of video consumer behavior in the new media environment.
- Also worked with the Set-Top Box Committee on an investigation of activities in that emerging field.

Advertising Research Foundation (ARF)

- Chairman of the Board (1998-1999), board of directors (1995-2000), chairman of Video Electronic Media Council (1995-2007).
- Promoted learning and dialogue between buyer and seller segments of the industry at numerous well-attended events I organized through the Video Electronic Media Council.

Media Rating Council (MRC)

- Chairman of the Board (1997-1999), chairman of cable committee (1993-1996), board of directors (1991-2007).
- I was the first representative of the cable industry to chair this influential organization, which audits and accredits syndicated research companies including television, radio and print measurement firms.

Cabletelevision Advertising Bureau (CAB)

- Member of the research committee (1991-2007), longtime member of the technical subcommittee which worked with Nielsen and others to maintain the quality of their research procedures and adapt to the changing media requirement.

George Foster Peabody Awards

- Board of Directors (2007-date). The board evaluates entries and determines winners of the Peabody Awards.

Cable and Telecommunications Association for Marketing (CTAM)

- Board of Directors (2006-2007), three-term chairman of the research committee (2003-2006), chairman of conference committee (2002).

Television Association of Programmers-Latin America

- Founding member of the industry trade group that now represents more than 30 pay television channels operating in Latin America (1994-1999).
- Helped structure first region-wide research documenting viewership of international channels in Central and South America.

Honors, Awards

2008 Advertising Research Foundation Lifetime Achievement Award

2007 CableFAX 100 Outstanding Service Award

2007 Advertising Research Foundation Outstanding Service Award

2007 Grammy Award for Best Historical Album, for CD *ALost Sounds*@

2006 Society for American Music Irving Lowens Award for Distinguished Scholarship in American Music, for book *Lost Sounds: Blacks and the Birth of the Recording Industry*.

2005 ASCAP Deems Taylor Award for *Lost Sounds*

2005 Association for Recorded Sound Collections Award for Excellence for *Lost Sounds*

2004 Association for Recorded Sound Collections Lifetime Achievement Award

2002 Cable and Telecommunications Association for Marketing TAMI Award

2000 Association for Recorded Sound Collections Award for Excellence for *The Columbia Master Book Discography*.

1995: CableTelevision Advertising Bureau Jack Hill Award for Excellence and Integrity in Media Research.

1981 San Francisco State University Broadcast Preceptor Award for *The Complete Directory to Prime Time Network and Cable TV Shows*

1980 American Book Award for *The Complete Directory to Prime Time Network and Cable TV Shows*

Biography has appeared annually in *Who=s Who in America* since 1990.

Selected Publications, Speeches

- *The Complete Directory to Prime Time Network and Cable TV Shows, 1946-Present* (co-author). Ballantine Books: 1979; 9th Edition, 2007. A standard reference on U.S. television programming, used throughout the industry and by the public. Nine editions and more than half a million copies in print.
- *The Complete Directory to Prime Time TV Stars*. Ballantine Books, 1987.
- *Lost Sounds: Blacks and the Birth of the Recording Industry, 1890-1919*. University of Illinois Press, 2004. Widely praised, called by the *New York Times* "an act of cultural reclamation."
- Numerous articles on television and the music industry in publications including *CASRO Journal*, *Mediafax* (online), *American Music*, *ARSC Journal*, *Popular Music & Society*, *High Fidelity*, *Grove*, *Notes*, others. Some of these articles are on my website.
- Speeches and panels at industry conferences, including those of the Advertising Research Foundation, Cable and Telecommunications Association for Marketing, Radio-TV Research Council, Association for Recorded Sound Collections, Society for American Music, others.

Other Professional Activities

- Adjunct Professor of Communications, C.W. Post Center, Long Island University (1979-1988). Designed courses in Audience Research and TV Program History in degree program.
- Extensively quoted in the trade and general press on television audience matters and on current and especially historical trends. Appearances on *60 Minutes*, *Good Morning America*, *CNN*, *Fox Business News*, *MSNBC*, etc. Quoted in *The New York Times*, *Wall Street Journal*, *Los Angeles Times*, *USA Today*, *Variety*, *Multichannel News*, *Broadcasting & Cable* (profiled in 5/15/00 issue), etc. Since 1979 I have appeared on more than 300 TV and radio talk shows, and conducted seven national media tours on behalf of my books.
- Longtime officer of the Association for Recorded Sound Collections (1979-date), including President, Conference Chair, committee chair.
- Director of the Historical Recording Coalition for Access and Preservation (2008-date).
- Army Captain, served in U.S. and Vietnam.

Education

- **B.A.**, Economics, Dartmouth College
- **M.S.**, TV-Radio, Syracuse University
- Additional graduate level courses in sociology (degree program), business law, and computer programming.

12-20-09

3

DECLARATION OF KEN SOLOMON

I, Ken Solomon, hereby declare:

Background

1. I have served as the Chairman and Chief Executive Officer of Tennis Channel since 2005. In this role, I secure programming for the network, oversee Tennis Channel's distribution, negotiate carriage contracts with cable and satellite providers, guide the development of a network audience, and seek out and cultivate an advertiser base for the network.

2. I have more than 20 years of experience in cable, new media, television production, distribution, and advertising. Prior to my work at Tennis Channel, I founded and led Fine Living Network, where I developed the network from concept to launch in just over a year and helped the network earn 25 million subscribers, through agreements with distributors representing 73% of the cable and satellite universe, in just over three years. Immediately prior to launching Fine Living, I served as founding President of iBlast, where I was responsible for building the nation's largest and farthest-reaching digital distribution network, with 18 major broadcast groups comprising 246 individual television stations, covering 93 percent of U.S. television households. I also served as President of Universal Studios Television, where I oversaw program and asset development and distribution activities on a worldwide basis for primetime network, cable, syndication, and made-for-television movies, and as co-head of DreamWorks Television, where I helped to create and develop extensive worldwide television operations. I have also held senior positions at News Corporation and Buena Vista Domestic Television.

3. Tennis is one of America's most rapidly growing sports, both in participation and in viewership. Based on a recent study by SGMA International showing that participation in tennis grew between 2000 and 2008—a period when most other sports, including golf and hockey, showed —*The Wall Street Journal* recognized tennis's increased prominence, calling it “the fastest growing sport in the country” in March 2009. Tennis participation is widespread in addition to being fast-growing: figures recently released by the United States Tennis Association show that 30.1 million Americans are tennis players—a figure that is at a 25-year high. Tennis' U.S. Open is the largest annual paid sporting event in the world, with more than 720,000 ticket holders and increased viewership every year. Other major tennis events are similarly popular, and tennis viewership on television is also up. For example, over the past two years, viewership of the Australian Open and French Open has risen 42% and 18%, respectively.

4. Tennis Channel is a national sports network that launched on May 15, 2003 with a broad range of racquet-sport-related programming. It is the only cable network in the nation dedicated to covering men's and women's tennis, and it has become the leading outlet for the sport. We have exclusive rights to telecast portions of three of the four Grand Slam events: the French Open, the Australian Open, and Wimbledon. In 2009, we added the fourth Grand Slam, the U.S. Open, as well as other prominent event coverage like exclusive telecasts of every worldwide and United States Davis Cup and Fed Cup match. We also cover the world's top 70 tennis tournaments—and we would further expand our already substantial coverage of many of these tournaments if we had the additional subscriber revenues to cover the associated production costs. In addition, we produce substantial non-event content, including hundreds of original lifestyle, instructional, and fitness series, specials, and short-form programs featuring

tennis's most popular athletes, legends, and most highly regarded experts. We have been recognized for our programming quality. This past summer, for example, the *Washington Examiner* concluded that "Tennis Channel has arrived as a real force and an equal to . . . ESPN2 on all the big tennis events." We also have received tennis industry honors such as being named as one of *Tennis Week's* Best of the Best for our acquisition of telecast rights to three of the four grand slams and receiving the Joseph C. Cullman 3rd Award from the International Tennis Hall of Fame and Museum for our contributions to awareness of tennis. Tennis Channel has had unique success in part because the duration of tennis matches is indeterminate, making scheduling difficult for other networks, and because other networks have been unwilling to make the schedule adjustments necessary to carry the large volume of tennis events that occur throughout the year worldwide.

5. Today, more than subscribers receive Tennis Channel from about 130 different distributors nationwide. The vast majority of those distributors—more than two thirds—offer Tennis Channel to subscribers without requiring them to purchase a premium sports tier even though many distributors have discretion regarding their placement of the network. These include large distributors like Comcast's direct competitors DIRECTV, Dish Network, and Verizon, as well as other cable distributors like Cox, Insight, and Cequel. In contrast, Comcast generally distributes Tennis Channel solely on its premium sports tier, which it calls the Sports and Entertainment Package. To receive the Sports and Entertainment Package, Comcast's customers must pay a fee of about \$5 each month in addition to the amount they already pay for digital cable service; this sum is many times the amount

that Comcast pays us for Tennis Channel service. Comcast has carried Tennis Channel on the premium sports tier with only limited exceptions since it began carrying

the network in 2005: Comcast's systems generally launched Tennis Channel on the premium sports tier; a few systems launched Tennis Channel on a digital basic tier but then

moved it to the

premium sports tier, where it is now carried on all Comcast's systems nationwide except one.

About of Comcast's subscribers, or , pay for this premium sports tier. By every measure, Comcast's sports tier has been a failure.

Tennis Channel's Improved Content and Ratings

6. Early in its history, Tennis Channel made the strategic decision to improve its competitive position and its cable carriage profile through a systematic plan to enhance the quality of its technical service, content production, and the range of tennis events it made available to subscribers because we saw a significant and unmet consumer demand for these enhanced services. We implemented this plan over the course of three years, planning and undertaking several major investments in content and other features of our service; these investments enhanced the network's programming breadth and quality so that they surpassed peer networks. Our plan was completed in 2008.

7. In January 2008, we launched Tennis Channel HD, a new channel that made Tennis Channel an industry leader in native high-definition sports programming,

. To create Tennis Channel HD, we spent on a new studio, upgraded equipment, and creating and maintaining two separate programming feeds, one in HD and one without. All told, we spent more than

in 2008 to upgrade to high-definition programming—a considerable investment, particularly given our size.

8. Also in 2008 and in 2009, we dramatically expanded our tournament programming, spending almost [redacted] to acquire and telecast the Grand Slams, as well as [redacted] for other event programming. We offered more than [redacted] worldwide event coverage in 2008—an average of more than [redacted]—and the vast majority of Tennis Channel’s covered tournament events are Tennis Channel exclusives within the United States. This extensive coverage met strong consumer demand that, for scheduling and other reasons, other sports broadcasters could not satisfy. (An analysis comparing Tennis Channel’s event coverage to the comparable programming on the Golf Channel and Versus, which was prepared under my supervision, is attached at Exhibit A.)

9. By 2009, we had acquired rights to broadcast significant portions of all four Grand Slam tournaments: the French Open, the Australian Open, Wimbledon, and the U.S. Open. We also had secured rights to virtually every other top tournament in the world, including the U.S. Davis Cup, the Association of Tennis Professionals World Tour Masters 1000, and the Women’s Tennis Association Premier tournaments. Each Grand Slam event lasts two weeks, and each of the four is the tennis equivalent of the Super Bowl. In addition, we produced major tournament coverage that ultimately was telecast by [redacted], and we also have produced programming for [redacted]. As discussed further below, we produce programming for other networks because content providers will not grant us exclusive rights to this programming due to our lower subscriber base. Our 2009 tournament schedule, which lists our most significant tournament coverage, is attached at Exhibit B.

Comcast’s Discrimination Against Tennis Channel

10. In light of the major investments in and growth of our service over the past several years, our significantly enhanced programming (including the 2009 U.S. Open), our

and unique popularity, license fees among the lowest of sports networks, and the high value proposition we offered to distributors, I proposed in early 2009 that Comcast carry Tennis Channel on

11. The requested carriage would have been consistent with the treatment that a significant majority of the multichannel video programming distributors (MVPDs) that carry the network—including Comcast's chief direct competitors, DIRECTV, Dish Network, and Verizon, as well as other cable companies such as Cox—afford to Tennis Channel. It also would have allowed us to compete more fairly against Comcast's affiliated sports networks—the Golf Channel, Versus, the MLB Network, NBA TV, and the NHL Network, as well as the Comcast SportsNets—all of which (including the Comcast SportsNet channels in the aggregate) are distributed on a national basis. Comcast's affiliated sports networks perform comparably to Tennis Channel yet are carried by Comcast on significantly more favorable terms.

12. On February 6, 2009, I met with Comcast President Stephen Burke in Philadelphia to ask whether Comcast would consider repositioning Tennis Channel. Mr. Burke informed me that he wanted to discuss the issue with Comcast's Executive Vice President – Content Acquisition, Madison Bond, and that Mr. Bond would follow up with me.

13. On March 4, 2009, I spoke to Mr. Bond on the telephone for approximately an hour and fifteen minutes. During the call, I described the deliberate steps Tennis Channel had taken to improve the quality and quantity of its programming, that followed, and why I thought Tennis Channel deserved broader carriage. Mr. Bond inquired about Tennis Channel's carriage on other MVPDs, such as DIRECTV, Dish Network, Cox, and Verizon, and I explained to him that none of these distributors carries Tennis Channel on a sports

tier-only basis. Ultimately, Mr. Bond responded that Comcast would reposition Tennis Channel only if Tennis Channel offered Comcast a financial “incentive.” I understood this to mean that Mr. Bond was demanding a reduction in Comcast’s effective per-subscriber license fee for Tennis Channel. To the best of my knowledge, Comcast’s affiliates Versus, the Golf Channel, and Comcast SportsNet have never been required to offer an “incentive” in exchange for broad carriage on Comcast’s systems; in particular, when Comcast repositioned the Golf Channel from premium to basic months after the network’s launch because of poor performance, I do not believe that Comcast demanded any “incentive” beyond any industry-standard volume discounts that may have existed in its Golf Channel carriage agreement. In any case, both the Golf Channel and Versus cost Comcast approximately the per-subscriber fee that Tennis Channel charges.

14. On March 30, I had another telephone call with Mr. Bond. Mr. Bond reiterated Comcast’s demand for a financial “incentive” for broader carriage. In that conversation, Mr. Bond indicated that he thought Tennis Channel would never provide any financial “incentive” since, in Mr. Bond’s view, it would be “too expensive” for Tennis Channel to do so. Mr. Bond also suggested that Tennis Channel undertake a market-by-market promotional campaign and invited me to make a presentation at Comcast’s headquarters in Philadelphia to explain more fully why broader carriage is warranted.

15. On April 22, 2009, I wrote a letter to Mr. Bond seeking to schedule a date to meet with him in Philadelphia. In the letter, I stressed Tennis Channel’s improved programming, and I requested broader carriage for the network that would reflect the value and quality of Tennis Channel’s programming. We ultimately scheduled that meeting for May 12, 2009.

16. Tennis Channel CFO Bill Simon and Senior Vice President of Distribution Patrick Wilson accompanied me to the May 12 meeting at Comcast Headquarters with Mr. Bond; Allan Singer, then Comcast's Senior Vice President of Content Acquisition; Jennifer Gaiski, Comcast's Vice President of Content Acquisition; Derek Harrar, Senior Vice President & General Manager, Video Services; and Comcast counsel Lee Goldsmith. At the meeting, I gave a presentation discussing the growth of Tennis Channel and the extent its programming had expanded and improved in the past two years.

17. During the May 12 presentation, I also offered Comcast a significant "incentive" of the type that Mr. Bond had demanded.

18. We offered _____ to Comcast because broad distribution on Comcast's systems is essential to our business model, and we believed that it was not economically feasible to be carried— _____—only on the limited-distribution sports tier.

19. During the meeting, I emphasized that the rapid expansion of Tennis Channel's programming and the increase in its popularity put the network on par with the sports networks carried on analog or digital basic tiers. I also explained that _____ would help Comcast as a distributor by

20. After a month without substantive contact between Tennis Channel and Comcast, Mr. Bond called me on June 9, 2009 to announce that Comcast was rejecting the incentives that Tennis Channel had offered. Mr. Bond did not offer any counterproposal or express any willingness to continue discussions with us, nor did he offer us any explanation. He simply indicated that Comcast would not agree to give us the level of distribution we sought—or, indeed, any increased distribution.

The Effects of Comcast's Discrimination

21. Comcast's carriage of Tennis Channel on the premium sports tier made substantially fewer viewers available to Tennis Channel than the number of viewers available to Tennis Channel's Comcast-owned competitors. This deficit was particularly harmful to us because Comcast is the dominant cable operator, particularly in many of the nation's largest television markets, and our success depends not only on attracting a large number of total subscribers but also on targeting both core and casual tennis fans that are located in major television markets—as well as advertisers and programming licensors that are seeking audiences in such markets.

22. We are paid by distributors, including Comcast, on a per-subscriber basis, so this smaller viewership results in lower licensing revenues than we would earn if Tennis Channel were more broadly distributed. This reduced revenue, in turn, impairs our ability to invest in our

channel and keep it competitive with other sports networks. Ultimately, this affects our ability to operate as a profitable venture and thus survive on an ongoing basis. This effect is magnified because MVPDs often inquire about Tennis Channel's level of carriage on Comcast (the nation's largest distributor), and many smaller MVPDs follow Comcast's lead. As a result, Tennis Channel's poorer distribution by Comcast makes it more difficult for Tennis Channel to negotiate for equitable distribution by other distributors.

23. The restricted carriage we receive from Comcast, especially in major markets, requires us to invest more resources in advertising sales than would be necessary if Comcast provided us with broader distribution. And because we rely on advertising revenue to survive—particularly since we charge a very low license fee to our distributors—the harm to our ability to compete for advertising business has hit us particularly hard.

24. In addition, reduced distribution makes it more difficult for us to acquire rights to the most desirable matches and tournaments. For example, the rightsholders of the _____ would not grant Tennis Channel live coverage of each tournament's last singles finals match (the most popular matches of any tournament) due to distribution concerns, and instead awarded the rights to _____. The other portions of these tournaments, however, were carried on Tennis Channel. Likewise, _____ was chosen over Tennis Channel to air semi-finals and final matches of the _____.

25. Our limited distribution also made officials reluctant to award tournament rights to the Tennis Channel because they believed the network was not distributed broadly enough. In order to secure these rights, we had to promise officials that

26. As these examples illustrate, other sports networks compete with Tennis Channel for tennis programming, in addition to competing with it for viewers and advertisers. Indeed, Comcast's affiliated networks are among our competitors for such rights. In 2006, we shared rights to the U.S. Davis Cup with Versus (then known as Outdoor Life Network), and in 2007 we and Versus jointly distributed the WTA Tour Championships. We also compete with Comcast SportsNet for tennis programming rights; Comcast SportsNet covers tennis (having carried the SAP Open and World TeamTennis in 2009), and we presently share with Comcast SportsNet the rights to telecast World TeamTennis events.

Were Comcast to carry Tennis Channel more broadly, we would be able to compete more fairly against Comcast's affiliated networks for programming.

27. Finally, Comcast's refusal to carry Tennis Channel more broadly has limited our ability to compete with other networks with broader distribution, since most of the costs of operating a cable network are fixed, and adding more subscribers (and the attendant revenues associated with subscribers) makes it less expensive, on a per-subscriber basis, to operate a network. This budgetary problem is particularly strong for us because, unlike more broadly

distributed networks, we must spend money to persuade Comcast subscribers to pay an additional \$5 each month to receive our channel.

28. One immediate impact of Comcast's discrimination is that our high per-subscriber expenses have forced us to limit a number of marketing, production, and programming expenses, including expenses associated with instructional programming focusing on health and fitness, high-definition tournament coverage, and coverage of certain charity events. We also were forced not to renew agreements to cover certain smaller tournaments during 2010 because of budget constraints.

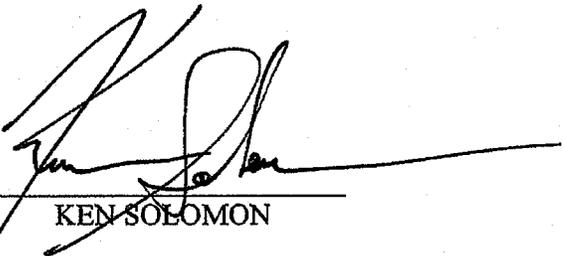
* * *

29. On December 10, 2009, I sent a letter to Stephen Burke, Comcast's President, in which I encouraged him to contact me to discuss resolution of Tennis Channel's dispute with Comcast and informed him that, if the matter was not resolved informally, Tennis Channel would file a program carriage complaint against Comcast. I specifically asked Comcast to do what it had failed to do in the past: make a concrete proposal setting forth fair and non-discriminatory carriage terms. As in our prior negotiations, Comcast refused to do this.

* * *

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing declaration is true and correct.

Executed on January 4, 2010.


KEN SOLOMON

TAB A

	2008 <u>Full Year</u>	2009 <u>First Half</u>
<i>Versus</i>		
Live or First Run Delayed		
Same Day Encore		
Live Encore (Within 2 Weeks)		
<i>Total Anchor-Event Programming</i>		
All Other Programming		
Total Hours of Programming		
Anchor-Event Programming as % of Total Hours		

	2008 <u>Full Year</u>	2009 <u>First Half</u>
<i>Golf Channel</i>		
Tournament Play Live or First-Run Delayed		
Same Day Encore		
Live Encore (Within 2 Weeks)		
<i>Total Anchor-Event Programming</i>		
All Other Programming		
Total Hours of Programming		
Anchor-Event Programming as % of Total Hours		

	2008 <u>Full Year</u>	2009 <u>First Half</u>
<i>Tennis Channel</i>		
Tournament Play Live or First Run Delay		
Same Day Encore		
Live Encore (Within 2 Weeks)		
<i>Total Anchor-Event Programming</i>		
All Other Programming		
Total Hours of Programming		
Anchor-Event Programming as % of Total Hours		

Full Year 2008: 12/31/2007 - 12/28/2008

First Half 2009: 12/29/08 - 6/28/09

"Anchor-Event Programming" is defined as coverage of sporting events on a live basis or within two weeks after the event occurred. "All Other Programming" includes "classic" coverage of sporting events beyond two weeks after the event occurred as well as non-event programming.

Tab B



2009 TENNIS CHANNEL TOURNAMENTS

WEEK OF	TOURNAMENTS / SPONSOR**	LOCATION	BODY	TYPE
JANUARY				
1	29-Dec	Hyundai Hopman Cup XXI	Perth, Western Australia	ITF CUP
2	5-Jan	Brisbane	Brisbane, Australia	ATP 250
2	5-Jan	Chennai Open	Chennai, India	ATP 250
3	12-Jan	Medibank Sydney International (AOS)	Sydney, Australia	WTA Premier
3	12-Jan	Medibank International	Sydney, Australia	ATP 250
4	19-Jan			
5	26-Jan	Australian Open	Melbourne, Australia	LTA SLAM
4	19-Jan			
5	26-Jan	Australian Open Today	Melbourne, Australia	LTA SLAM
FEBRUARY				
6	2-Feb	Fed Cup by BNP Paribas: 1st Rnd	Surprise, AZ	ITF CUP
6	9-Feb	SA Tennis Open	Johannesburg, South Africa	ATP 250
7	9-Feb	Open DGF Suez	Paris, France	WTA Premier
7	9-Feb	ABN AMRO World Tennis Tournament	Rotterdam, Netherlands	ATP 500
8	16-Feb	Dubai Tennis Championships	Dubai, U.A.E	WTA Premier
9	23-Feb	Abierto Mexicano Telcel	Acapulco, Mexico	ATP 500
9	23-Feb	The Dubai Tennis Championships	Dubai, U.A.E	ATP 500
9	23-Feb	Delray Beach Int'l Tennis Champs	Delray Beach, FL	ATP 250
MARCH				
10	2-Mar	Davis Cup by BNP Paribas: 1st Rnd	Birmingham, Alabama	ITF CUP
11	9-Mar			
12	16-Mar	Indian Wells Tennis Championships	Indian Wells, CA	WTA Premier
13	23-Mar	Capitala World Tennis Championships	Abu Dhabi, UAE	Exhibition
13	23-Mar			
14	30-Mar	Sony Ericsson Open	Miami, FL	WTA Premier
APRIL				
15	6-Apr	U.S. Men's Clay Court Championships	Houston, TX	ATP 250
15	6-Apr	Champions Cabo	Cabo San Lucas, Mexico	ISE CHAMP
15	6-Apr	MPS Group Championships	Ponte Vedra Beach, FL	WTA Int'l
15	6-Apr	Andalucia Tennis Experience	Andalucia, Spain	WTA Int'l
16	13-Apr	Monte Carlo Rolex Masters	Monte-Carlo, Monaco	ATP 1000
17	20-Apr	Open Sabadell Atlántico	Barcelona, Spain	ATP 500
17	20-Apr	Fed Cup by BNP Paribas: Semis	Prague, Czech Republic	ITF CUP
18	27-Apr	Internazionali BNL d'Italia	Rome, Italy	ATP 1000
18	27-Apr	Porsche Tennis Grand Prix	Stuttgart, Germany	WTA Premier
MAY				
19	4-May	Internazionali BNL d'Italia	Rome, Italy	WTA Premier
19	4-May	Grand Cayman Legends Championships	Cayman Islands, UK	ISE CHAMP
20	11-May	Mutua Madrileña Masters Madrid	Madrid, Spain	ATP 1000
20	11-May	Mutua Madrileña Masters Madrid	Madrid, Spain	WTA Premier
21	18-May	Warsaw Open	Warsaw, Poland	WTA Premier
21	18-May	Interwetten Austrian Open	Kitzbuhel, Austria	ATP 250
22	25-May			
23	1-Jun	FRENCH OPEN	Paris, France	FFT SLAM
22	25-May			
23	1-Jun	French Open Tonight	Paris, France	FFT SLAM
JUNE				
24	8-Jun	AEGON Championships	London, England	ATP 250
25	15-Jun	AEGON International Women's Open	Eastbourne, England	WTA Premier
26	22-Jun			
27	29-Jun	Wimbledon Primetime	London, England	AELTC SLAM
JULY				
28	6-Jul	Davis Cup by BNP Paribas: Early Round	Sweden	ITF CUP
28	6-Jul	Int'l Tennis Hall of Fame	Newport, RI	ATP Induction
30	20-Jul	International German Open	Hamburg, Germany	ATP 500
30	20-Jul			
30	27-Jul	World Team Tennis (WTT)	Newport, Philly, DC, New York	WTT League



2009 TENNIS CHANNEL TOURNAMENTS

WEEK OF		TOURNAMENTS / SPONSOR**	LOCATION	BODY	TYPE
30	20-Jul	Indianapolis Tennis Championships (OUSOS)	Indianapolis, IN	ATP	250
31	27-Jul	LA Tennis Open (OUSOS)	Los Angeles, CA	ATP	250
31	27-Jul	Bank of the West Classic (OUSOS)	Stanford, CA	WTA	Premier
31	27-Jul	Allianz Suisse Open Gstaad	Gstaad, Switzerland	ATP	250
AUGUST					
32	3-Aug	Legg Mason Tennis Classic (OUSOS)	Washington, DC	ATP	500
32	3-Aug	L.A. Women's Tennis Championships (OUSOS)	Los Angeles, CA	WTA	Premier
33	10-Aug	Rogers Masters (OUSOS)	Montreal, Canada	ATP	1000
33	10-Aug	W&S Financial Group Women's Open (OUSOS)	Cincinnati, OH	WTA	Premier
34	17-Aug	W&S Financial Group Masters (OUSOS)	Cincinnati, OH	ATP	1000
34	17-Aug	Rogers Cup by National Bank (OUSOS)	Toronto, Canada	WTA	Premier
36	31-Aug	US OPEN	Flushing Meadows, NY	USTA	SLAM
37	7-Sep				
36	31-Aug				
37	7-Sep	"US Open Tonight" (working title)	Flushing Meadows, NY	USTA	SLAM
36	31-Aug	"US Open This Morning" (working title)	Flushing Meadows, NY	USTA	SLAM
37	7-Sep				
SEPTEMBER					
38	14-Sep	Davis Cup by BNP Paribas: Semifinals	TBD	ITF	CUP
40	28-Sep	Toray Pan Pacific Open Tennis Tournament	Tokyo, Japan	WTA	Premier
OCTOBER					
41	5-Oct	China Open	Beijing, China	WTA	Premier
41	5-Oct	China Open	Beijing, China	ATP	500
41	5-Oct	AIG Japan Open Tennis Championships	Tokyo, Japan	ATP	500
41	5-Oct	The Championships at The Palisades	Charlotte, NC	ISE	CHAMP
42	12-Oct	Shanghai	Shanghai, China	ATP	1000
43	19-Oct	Kremlin Cup	Moscow, Russia	WTA	Premier
43	19-Oct	Cancer Treatment Centers of America Champs	Surprise, AZ	ISE	CHAMP
43	19-Oct	IF Stockholm Open	Stockholm, Sweden	ATP	250
44	26-Oct	Sony Ericsson Championships	Doha, Qatar	WTA	Premier
NOVEMBER					
45	2-Nov	Fed Cup by BNP Paribas: Final	TBD	ITF	CUP
45	2-Nov	Davidoff Swiss Indoors Basel	Basel, Switzerland	ATP	500
45	2-Nov	Open de Tennis Comunidad Valenciana	Valencia, Spain	ATP	500
46	9-Nov	BNP Paribas Masters	Paris, FRA	ATP	1000
47	16-Nov	Barclays ATP World Tour Finals	London, England	ATP	TOUR FINAL
48	23-Nov				
49	30-Nov	Davis Cup by BNP Paribas: FINAL	TBD	ITF	CUP
DECEMBER					
50	7-Dec	Emirates NBD The Legends 'Rock' Dubai	Dubai, UAE	ISE	CHAMP

4

DECLARATION OF GARY HERMAN

I, Gary Herman, hereby declare:

1. I am Tennis Channel's Senior Vice President of Advertising Sales. In this position, my current responsibilities include driving Tennis Channel's national advertising sales efforts for television and the Internet.

2. I have twenty-six years' worth of experience in the television advertising industry. Starting in 1983, I worked for Westinghouse Broadcasting Company as an Account Executive for KYW-TV, where I also served as the political advertising specialist. I was promoted to handle national sales for the five Westinghouse owned-and-operated stations in the Mid-Atlantic Region; this group came to include a number of CBS owned-and-operated stations when CBS merged with Westinghouse in the mid 1990's. In October 2000, I became the head of national advertising sales for the DIY Network and Fine Living Network; my seven years in this position gave me extensive experience with emerging networks and complemented my earlier experience with more established networks like CBS. In August 2007, I took my current position at Tennis Channel.

Tennis Channel's Competitors

3. Tennis Channel seeks the attention of viewers with a number of characteristics. As a whole, the demographic to which we appeal is gender-mixed but males. On average, our viewers also are than the general population.

4. Tennis Channel, like many networks, is advertising-supported, meaning that it depends upon advertising revenue—as a supplement to licensing revenue—to survive. Advertising-supported networks compete against each other for advertising revenues, and in my

experience advertisers generally compare competing networks to determine what portion of a pre-set advertising budget will be spent with each competitor.

5. In my experience, advertisers commonly make purchasing choices with reference to a particular demographic of viewer that they wish to reach. We therefore compete with other networks that reach viewers that have traits in common with ours. Most significantly, we compete with other sports networks, including multi-sport networks (such as ESPN, FSN (formerly known as Fox Sports Net), Comcast-owned Versus, and Comcast SportsNet) and single-sport networks (such as Fox Soccer Channel and several other Comcast-affiliated networks like the Golf Channel, the MLB Network, NBA TV, and the NHL Network). To some degree, we also compete with lifestyle and news channels that do not focus predominantly on sports but that target affluent viewers.

6. As a result, Tennis Channel's advertisers often ask me and my staff to compare Tennis Channel with the sports networks noted above, including the sports networks that are affiliated with Comcast, with respect to each network's ability to reach demographics desired by each advertiser. My understanding is that advertisers make these requests because they are deciding how much of their limited advertising budgets should be spent on Tennis Channel as compared to the other channels that they are considering. In other words, Tennis Channel competes with each of these networks—including the Golf Channel, Versus, the MLB Network, NBA TV, and the NHL Network, and the Comcast SportsNets—for advertising revenues.

7. This is true in part because Tennis Channel's base of advertisers overlaps substantially with the advertisers targeted by the Golf Channel and Versus. To illustrate this overlap, I supervised the creation of a set of two charts (attached as Exhibit A) that compare

Tennis Channel's customer base (the advertisers that recently have placed advertisements on Tennis Channel or that have met with Tennis Channel to discuss possible advertising contracts over the past two years) to the 30 advertisers that represent the most significant portion of advertising revenues for the Golf Channel and Versus, respectively. (In preparing these charts, I excluded, to the best of my knowledge, endemic advertisers, which are advertisers that promote products or services specific to a particular sport and that are not likely to advertise on a network that does not focus on that sport.) According to my analysis, the overlap between Tennis Channel's advertisers, on the one hand, and the advertisers of the Golf Channel and Versus, on the other hand, is substantial.

8. For example, _____ of Versus's revenue from its top 30 advertisers comes from companies that recently have purchased advertising on Tennis Channel. In addition, a full _____ of Versus's top-30 revenues come from those advertisers or from companies that have received formal proposals for advertising arrangements with Tennis Channel during one of the four "up-front" cycles, during which advertisers accept such proposals from networks, over the past two years.

9. There is even more overlap between Golf Channel and Tennis Channel advertisers. _____ of Golf Channel's top-30 revenues are from companies that recently have purchased Tennis Channel advertising, and a full _____ percent of Golf Channel's top-30 revenues come from Tennis Channel advertisers or recent "up-front" prospects.

Advertising Sales

10. In my experience, advertisers consider the extent of a network's distribution extremely important in making their purchasing decisions. To be viewed in the industry as being a meaningful competitor for national advertising purposes, many advertisers use a rule of thumb

that a network should have at least roughly 40 million subscribers to be considered nationally distributed. Though advertisers will display some flexibility on the exact number of subscribers they view as the threshold for purchasing national advertising, the farther a network is from the 40 million subscriber level, the less able it generally is to attract national advertisers.

11. Several times a year, Tennis Channel offers a free preview, or “freeview,” to many of the distributors that carry it. During these periods, the network’s audience typically expands from about million to about 40-50 million subscribers. As described in more detail below, during a freeview period, Tennis Channel is able to attract more advertisers and increased advertising revenues than during non-freeview periods. The enhanced advertising revenues during these freeview periods indicate that national advertisers value the quality of Tennis Channel’s programming but believe that the network’s limited distribution detracts from its value to advertisers.

12. In addition to concerns about a network’s overall number of subscribers, some advertisers consider the overall location of those subscribers. In the industry, location is generally signified by the viewer’s , which is a media market designated by Advertisers, particularly those that seek to target affluent viewers, may consider the extent to which a network is viewed in the largest media markets in the country, because they want to be sure that their advertisements are viewed heavily in those large markets. In my role coordinating advertising sales for Tennis Channel, I also consider distribution in large DMAs important because advertisers and their agents are more likely to purchase advertising on a network that they have watched. My greatest concern with regard to Tennis Channel’s distribution in large DMAs is our carriage on Comcast’s systems

because, according to SNL Kagan,

Harm To Tennis Channel As a Result of Comcast's Tiering

13. Because Tennis Channel is only available in about million homes—below the rule-of-thumb threshold of about 40 million—many companies that otherwise would be interested in advertising on Tennis Channel are unwilling to do so. Other companies do business with Tennis Channel but at a lower volume and price than I anticipate would be the case if Tennis Channel were distributed more broadly to the millions of Comcast subscribers who currently do not receive the network. Also, as noted above, Comcast is in a special position to harm Tennis Channel not just because of its size, but also because of its dominance in many of the top media markets; Tennis Channel's narrow carriage by Comcast thus hinders our ability to reach significant urban populations desired by advertisers and consequently hinders our ability to compete for advertising revenues.

14. If Tennis Channel were carried by Comcast as broadly as it carries its affiliated Golf Channel and Versus, Tennis Channel would have at least 40 million subscribers—and it would have a much larger presence in the most important DMAs. But because of Comcast's refusal to broadly carry the network, certain major advertising agencies have been reluctant to purchase time on Tennis Channel for their clients.

15. For example, publicly available information indicates that spent about in advertising on Golf Channel between January and May 2009. The company spent about for advertising on Tennis Channel during a two-week period when Tennis Channel was offering a freeview and was distributed to about 50 million subscribers. did not consider buying advertising on Tennis Channel

at any other time during the year when we were distributed in _____ million or fewer homes.

_____ has cited Tennis Channel's limited distribution as its key reason for not buying advertising on our network outside of the freeview period.

16. To take another example, potential Tennis Channel advertisers, including top cable advertisers _____, have excluded the network as a competitor for national advertising contracts because of its reduced nationwide distribution and _____ information. Indeed, _____ informed Tennis Channel that the network was too narrowly distributed to warrant a media buy, even though _____

_____ In contrast, _____ spent _____ to advertise _____ on the Golf Channel and Versus, respectively, through May of 2009. (For its part, _____ spent about _____ on the Golf Channel and about _____ on Versus during the same period.)

17. Similarly, advertisers that target upper income consumers—such as _____—have agreed that Tennis Channel delivers the right audience demographics and is a good fit for their respective brands but have declined to advertise on Tennis Channel because of our limited distribution.

18. _____ position, in particular, is consistent with a 2009 survey by Ipsos Mendelsohn of viewers with household incomes over \$100,000. Mendelsohn surveys and similar measures of audience concentration are one important factor that advertisers and their agencies use to evaluate how efficient a particular network is at reaching a target audience.

These surveys show Tennis Channel to be favorably situated relative to Golf Channel and Versus. Notwithstanding this, Tennis Channel's weaker distribution impairs its ability to compete with these channels.

19. Mendelsohn found that, compared to the viewers of about 80 other cable networks, Tennis Channel viewers are most likely to own a domestic or imported luxury car. Mendelsohn ranked viewers of Comcast-affiliated NBA TV as the most likely to own such a car; Comcast-affiliated Golf Channel viewers were most likely.

20. Of particular relevance to the case of *Comcast v. NBCUniversal*, Mendelsohn reported that 33% of Tennis Channel's viewers spend \$1,000 or more on their credit cards each month, compared to 15% of Golf Channel's audience and 10% of Versus's audience. Our survey ranks us as number two out of all of the cable networks surveyed.

21. In addition to these advertisers that have declined to purchase advertising time on Tennis Channel for distribution reasons, Tennis Channel's distribution deficit also means that the network receives lower prices per unit of advertising time and lower total advertising revenues than it otherwise would command.

22. This point is illustrated by, among other things, the fact that more advertisers are more willing to advertise, and to pay higher prices to advertise, on Tennis Channel during a freeview period when our network reaches approximately 50 million subscribers.

23. The increases in Tennis Channel's per-unit rates and total advertising revenues during the freeview period are primarily attributable not to the events featured during these periods—which so far have included the French Open and the U.S. Open—but rather to the change in the network's distribution during these periods. When Tennis Channel has aired Grand Slam events with comparable viewer popularity, including during freeview periods in

which Tennis Channel is distributed to approximately 34 million subscribers, as it has with the Australian Open, for instance, it has not experienced increases in advertising rates and revenue comparable to those during the freeview periods during which it is distributed to approximately 50 million subscribers. Average unit rates during these periods increase between times the average unit rates during non-freeview periods.

24. Narrower penetration has reduced Tennis Channel's advertising sales revenues in other ways as well.

25.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct.

Executed on January 4, 2010.



GARY HERMAN

TAB A

EXHIBIT 4-A
REDACTED

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PL 102-385, 1992 S 12

Page 1

PL 102-385, October 5, 1992, 106 Stat 1460

(Cite as: 106 Stat 1460)

UNITED STATES PUBLIC LAWS
102nd Congress - Second Session
Convening January 3, 1992

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Additions and Deletions are not identified in this document.
For Legislative History of Act, see LH database or Report for
this Public Law in U.S.C.C. & A.N. Legislative History section.

PL 102-385 (S 12)

October 5, 1992

CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992

An Act to amend the Communications Act of 1934 to provide increased consumer protection and to promote increased competition in the cable television and related markets, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States
of America in Congress assembled,
<< 47 USCA § 609 NOTE >>

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cable Television Consumer Protection and Competition Act of 1992".

SEC. 2. FINDINGS; POLICY; DEFINITIONS.

<< 47 USCA § 521 NOTE >>

(a) FINDINGS.--The Congress finds and declares the following:

(1) Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost 3 times as much as the Consumer Price Index since rate deregulation.

(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

(3) There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56,000,000 households, over 60 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

- (4) The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.
- (5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure *1461 carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies.
- (6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.
- (7) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934. The distribution of unique noncommercial, educational programming services advances that interest.
- (8) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because--
- (A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;
- (B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of \$10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;
- (C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than \$3,000,000,000 in public broadcasting since 1969; and
- (D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.
- (9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of the Communications Act of 1934 of providing a fair, efficient, and equitable distribution of broadcast services.
- (10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.
- (11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.
- (12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued avail-

ability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

***1462** (13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(18) Cable television systems often are the single most efficient distribution system for television programming. A Government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, ***1463** audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the 2 industries.

(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934,

limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

(21) Cable systems should be encouraged to carry low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming.

(b) STATEMENT OF POLICY.--It is the policy of the Congress in this Act to--

(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.

<< 47 USCA § 522 >>

(c) DEFINITIONS.--Section 602 of the Communications Act of 1934 (47 U.S.C. 531) is amended--

(1) by redesignating paragraph (16) as paragraph (19);

(2) by striking "and" at the end of paragraph (15);

(3) by redesignating paragraphs (11) through (15) as paragraphs (13) through (17), respectively;

(4) by redesignating paragraphs (1) through (10) as paragraphs (2) through (11), respectively;

(5) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) the term 'activated channels' means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;"

(6) by inserting after paragraph (11) (as so redesignated) the following new paragraph:

"(12) the term 'multichannel video programming distributor' means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;" and

(7) by inserting after paragraph (17) (as so redesignated) the following new paragraph:

*1464 "(18) the term 'usable activated channels' means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and".

SEC. 3. REGULATION OF RATES.

<< 47 USCA § 543 >>

(a) AMENDMENT.--Section 623 of the Communications Act of 1934 (47 U.S.C. 543) is amended to read as follows:

"SEC. 623. REGULATION OF RATES.

"(a) COMPETITION PREFERENCE; LOCAL AND FEDERAL REGULATION.--

"(1) IN GENERAL.--No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 612. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

"(2) PREFERENCE FOR COMPETITION.--If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition--

"(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

"(B) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c).

"(3) QUALIFICATION OF FRANCHISING AUTHORITY.--A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that--

"(A) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b);

"(B) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

"(C) procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

"(4) APPROVAL BY COMMISSION.--A certification filed by a franchising authority under paragraph (3) shall be effective *1465 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that--

"(A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

"(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

"(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

"(5) REVOCATION OF JURISDICTION.--Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

"(6) EXERCISE OF JURISDICTION BY COMMISSION.--If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

"(b) ESTABLISHMENT OF BASIC SERVICE TIER RATE REGULATIONS.--

"(1) COMMISSION OBLIGATION TO SUBSCRIBERS.--The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

"(2) COMMISSION REGULATIONS.--Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its *1466 obligations under paragraph (1). In prescribing such regulations, the Commission--

"(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities,

and the Commission;

"(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

"(C) shall take into account the following factors:

"(i) the rates for cable systems, if any, that are subject to effective competition;

"(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals carried on the basic service tier pursuant to paragraph (7)(B), and changes in such costs;

"(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

"(iv) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

"(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

"(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

"(vii) a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1).

"(3) EQUIPMENT.--The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for--

"(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

"(B) installation and monthly use of connections for additional television receivers.

"(4) COSTS OF FRANCHISE REQUIREMENTS.--The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying *1467 franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

"(5) IMPLEMENTATION AND ENFORCEMENT.--The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and en-

forcement of such regulations, which shall include--

"(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

"(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

"(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

"(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

"(6) NOTICE.--The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

"(7) COMPONENTS OF BASIC TIER SUBJECT TO RATE REGULATION.--

"(A) MINIMUM CONTENTS.--Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

"(i) All signals carried in fulfillment of the requirements of sections 614 and 615.

"(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

"(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

"(B) PERMITTED ADDITIONS TO BASIC TIER.--A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

"(8) BUY-THROUGH OF OTHER TIERS PROHIBITED.--

*1468 "(A) PROHIBITION.--A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

"(B) EXCEPTION; LIMITATION.--The prohibition in subparagraph (A) shall not apply to a cable system that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any cable operator after--

"(i) the technology utilized by the cable system is modified or improved in a way that eliminates such technological limitation; or

"(ii) 10 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, subject to subparagraph (C).

"(C) WAIVER.--If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from such requirements for such specified period as the Commission determines reasonable and appropriate.

"(c) REGULATION OF UNREASONABLE RATES.--

"(1) COMMISSION REGULATIONS.--Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

"(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for cable programming services that are unreasonable;

"(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any subscriber, franchising authority, or other relevant State or local government entity alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

"(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of such complaint and that are determined to be unreasonable.

"(2) FACTORS TO BE CONSIDERED.--In establishing the criteria for determining in individual cases whether rates for *1469 cable programming services are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors--

"(A) the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

"(B) the rates for cable systems, if any, that are subject to effective competition;

"(C) the history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

"(D) the rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

"(E) capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

"(F) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned.

"(3) LIMITATION ON COMPLAINTS CONCERNING EXISTING RATES.--Except during the 180-day period following the effective date of the regulations prescribed by the Commission under paragraph (1), the procedures established under subparagraph (B) of such paragraph shall be available only with respect to complaints filed within a reasonable period of time following a change in rates that is initiated after that effective date, including a change in rates that results from a change in that system's service tiers.

"(d) UNIFORM RATE STRUCTURE REQUIRED.--A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.

"(e) DISCRIMINATION; SERVICES FOR THE HEARING IMPAIRED.--Nothing in this title shall be construed as prohibiting any Federal agency, State, or a franchising authority from--

"(1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

"(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

"(f) NEGATIVE OPTION BILLING PROHIBITED.--A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

*1470 "(g) COLLECTION OF INFORMATION.--The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

"(h) PREVENTION OF EVASIONS.--Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

"(i) SMALL SYSTEM BURDENS.--In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

"(j) RATE REGULATION AGREEMENTS.--During the term of an agreement made before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

"(k) REPORTS ON AVERAGE PRICES.--The Commission shall annually publish statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment, of--

"(1) cable systems that the Commission has found are subject to effective competition under subsection (a)(2), compared with

"(2) cable systems that the Commission has found are not subject to such effective competition.

"(l) DEFINITIONS.--As used in this section--

"(1) The term 'effective competition' means that--

"(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

"(B) the franchise area is--

"(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

"(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or

"(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.

"(2) The term 'cable programming service' means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for *1471 the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis."

<< 47 USCA § 543 NOTE >>

(b) EFFECTIVE DATE.--The amendment made by subsection (a) shall take effect 180 days after the date of enactment of this Act, except that the authority of the Federal Communications Commission to prescribe regulations is effective on such date of enactment.

<< 47 USCA § 534 >>

SEC. 4. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

Part II of title VI of the Communications Act of 1934 is amended by inserting after section 613 (47 U.S.C. 533)

the following new section:

"SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

"(a) CARRIAGE OBLIGATIONS.--Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b).

"(b) SIGNALS REQUIRED.--

"(1) IN GENERAL.--(A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

"(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.

"(2) SELECTION OF SIGNALS.--Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that--

"(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

"(B) if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

"(3) CONTENT TO BE CARRIED.--(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and *1472 advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

"(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

"(4) SIGNAL QUALITY.--

"(A) NONDEGRADATION; TECHNICAL SPECIFICATIONS.--The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

"(B) ADVANCED TELEVISION.--At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

"(5) DUPLICATION NOT REQUIRED.--Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

"(6) CHANNEL POSITIONING.--Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

*1473 "(7) SIGNAL AVAILABILITY.--Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 623(b)(3).

"(8) IDENTIFICATION OF SIGNALS CARRIED.--A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

"(9) NOTIFICATION.--A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

"(10) COMPENSATION FOR CARRIAGE.--A cable operator shall not accept or request monetary payment or

other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that--

"(A) any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system;

"(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17, United States Code, as indemnification for any increased copyright liability resulting from carriage of such signal; and

"(C) a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

"(c) LOW POWER STATION CARRIAGE OBLIGATION.--

"(1) REQUIREMENT.--If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b)--

"(A) a cable operator of a cable system with a capacity of 35 or fewer usable activated channels shall be required to carry one qualified low power station; and

*1474 "(B) a cable operator of a cable system with a capacity of more than 35 usable activated channels shall be required to carry two qualified low power stations.

"(2) USE OF PUBLIC, EDUCATIONAL, OR GOVERNMENTAL CHANNELS.--A cable operator required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant to section 611, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

"(d) REMEDIES.--

"(1) COMPLAINTS BY BROADCAST STATIONS.--Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The cable operator shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning in accordance with this section by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

"(2) OPPORTUNITY TO RESPOND.--The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

"(3) REMEDIAL ACTIONS; DISMISSAL.--Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

"(e) INPUT SELECTOR SWITCH RULES ABOLISHED.--No cable operator shall be required--

"(1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device; or

"(2) to provide information to subscribers about input selector switches or comparable devices.

"(f) REGULATIONS BY COMMISSION.--Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regulations *1475 shall include necessary revisions to update section 76.51 of title 47 of the Code of Federal Regulations.

"(g) SALES PRESENTATIONS AND PROGRAM LENGTH COMMERCIALS.--

"(1) CARRIAGE PENDING PROCEEDING.--Pending the outcome of the proceeding under paragraph (2), nothing in this Act shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

"(2) PROCEEDING CONCERNING CERTAIN STATIONS.--Within 270 days after the date of enactment of this section, the Commission, notwithstanding prior proceedings to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity, shall complete a proceeding in accordance with this paragraph to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity. In conducting such proceeding, the Commission shall provide appropriate notice and opportunity for public comment. The Commission shall consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television stations for purposes of subsection (a). In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

"(h) DEFINITIONS.--

"(1) LOCAL COMMERCIAL TELEVISION STATION.--

"(A) IN GENERAL.--For purposes of this section, the term 'local commercial television station' means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 615(l)(1), licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

"(B) EXCLUSIONS.--The term 'local commercial television station' shall not include--

"(i) low power television stations, television translator stations, and passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

*1476 "(ii) a television broadcast station that would be considered a distant signal under section 111 of title 17, United States Code, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

"(iii) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

"(C) MARKET DETERMINATIONS.--(i) For purposes of this section, a broadcasting station's market shall be determined in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. In considering such requests, the Commission may determine that particular communities are part of more than one television market.

"(ii) In considering requests filed pursuant to clause (i), the Commission shall afford particular attention to the value of localism by taking into account such factors as--

"(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

"(II) whether the television station provides coverage or other local service to such community;

"(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

"(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

"(iii) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph.

"(iv) In the rulemaking proceeding required by subsection (f), the Commission shall provide for expedited consideration of requests filed under this subparagraph.

"(2) QUALIFIED LOW POWER STATION.--The term 'qualified low power station' means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if--

*1477 "(A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations;

"(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

"(C) such station complies with interference regulations consistent with its secondary status pursuant to part 74 of title 47, Code of Federal Regulations;

"(D) such station is located no more than 35 miles from the cable system's headend, and delivers to the principal headend of the cable system an over-the-air signal of good quality, as determined by the Commission;

"(E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

"(F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in part 74 of title 47, Code of Federal Regulations, as in effect on the date of enactment of this section."

<< 47 USCA § 535 >>

SEC. 5. CARRIAGE OF NONCOMMERCIAL STATIONS.

Part II of title VI of the Communications Act of 1934 (47 U.S.C. 531 et seq.) is further amended by inserting after section 614 (as added by section 4 of this Act) the following new section:

"SEC. 615. CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION.

"(a) CARRIAGE OBLIGATIONS.--In addition to the carriage requirements set forth in section 614, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

"(b) REQUIREMENTS TO CARRY QUALIFIED STATIONS.--

"(1) GENERAL REQUIREMENT TO CARRY EACH QUALIFIED STATION.--Subject to paragraphs (2) and (3) and subsection (e), each cable operator shall carry, on the cable system of that cable operator, any qualified

local noncommercial educational television station requesting carriage.

***1478** "(2)(A) SYSTEMS WITH 12 OR FEWER CHANNELS.--Notwithstanding paragraph (1), a cable operator of a cable system with 12 or fewer usable activated channels shall be required to carry the signal of one qualified local noncommercial educational television station; except that a cable operator of such a system shall comply with subsection (c) and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

"(B) In the case of a cable system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station--

"(i) the cable operator shall import and carry on that system the signal of one qualified noncommercial educational television station;

"(ii) the selection for carriage of such a signal shall be at the election of the cable operator; and

"(iii) in order to satisfy the requirements for carriage specified in this subsection, the cable operator of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such cable operator shall use the first channel available to satisfy the requirements of this subparagraph.

"(3) SYSTEMS WITH 13 TO 36 CHANNELS.--(A) Subject to subsection (c), a cable operator of a cable system with 13 to 36 usable activated channels--

"(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

"(ii) may, in its discretion, carry additional such stations.

"(B) In the case of a cable system described in this paragraph which operates beyond the presence of any qualified local noncommercial educational television station, the cable operator shall import and carry on that system the signal of at least one qualified noncommercial educational television station to comply with subparagraph (A)(i).

"(C) The cable operator of a cable system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television stations affiliated with the same network if the programming of such additional stations is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

"(D) A cable operator of a system described in this paragraph which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990, shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e).

"(c) CONTINUED CARRIAGE OF EXISTING STATIONS.--Notwithstanding any other provision of this section, all cable operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried ***1479** on their systems as of March 29, 1990. The requirements of

this subsection may be waived with respect to a particular cable operator and a particular such station, upon the written consent of the cable operator and the station.

"(d) PLACEMENT OF ADDITIONAL SIGNALS.--A cable operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so, subject to approval by the franchising authority pursuant to section 611, by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

"(e) SYSTEMS WITH MORE THAN 36 CHANNELS.--A cable operator of a cable system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

"(f) WAIVER OF NONDUPLICATION RIGHTS.--A qualified local noncommercial educational television station whose signal is carried by a cable operator shall not assert any network nonduplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that cable operator.

"(g) CONDITIONS OF CARRIAGE.--

"(1) CONTENT TO BE CARRIED.--A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.

"(2) BANDWIDTH AND TECHNICAL QUALITY.--A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

"(3) CHANGES IN CARRIAGE.--The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the cable operator, at least 30 days in advance of such repositioning, has provided written notice to the station and all subscribers of the cable system. For purposes of this paragraph, repositioning includes (A) assignment of a qualified local noncommercial educational television station to a cable system channel number different from the cable system channel number to which the station was *1480 assigned as of March 29, 1990, and (B) deletion of the station from the cable system. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

"(4) GOOD QUALITY SIGNAL REQUIRED.--Notwithstanding the other provisions of this section, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television sta-

tion which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission.

"(5) CHANNEL POSITIONING.--Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a qualified local noncommercial educational television station shall be resolved by the Commission.

"(h) AVAILABILITY OF SIGNALS.--Signals carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

"(i) PAYMENT FOR CARRIAGE PROHIBITED.--

"(1) IN GENERAL.--A cable operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.

"(2) DISTANT SIGNAL EXCEPTION.--Notwithstanding the provisions of this section, a cable operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provision of subsection (c), where such signal would be considered a distant signal for copyright purposes unless such station indemnifies the cable operator for any increased copyright costs resulting from carriage of such signal.

"(j) REMEDIES.--

"(1) COMPLAINT.--Whenever a qualified local noncommercial educational television station believes that a cable operator of a cable system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

"(2) OPPORTUNITY TO RESPOND.--The Commission shall afford such cable operator an opportunity to present data, views, and arguments to establish that the cable operator has complied with the signal carriage requirements of this section.

*1481 "(3) REMEDIAL ACTIONS; DISMISSAL.--Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the cable operator has complied with the requirements of this section. If the Commission determines that the cable operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the cable operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the cable operator has fully complied with such requirements, the Commission shall dismiss the complaint.

"(k) IDENTIFICATION OF SIGNALS.--A cable operator shall identify, upon request by any person, those sig-

nals carried in fulfillment of the requirements of this section.

"(I) DEFINITIONS.--For purposes of this section--

"(1) QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.--The term 'qualified non-commercial educational television station' means any television broadcast station which--

"(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

"(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B); or

"(B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the franchise area, (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations.

"(2) QUALIFIED LOCAL NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.--The term 'qualified local noncommercial educational television station' means a qualified noncommercial educational television station--

"(A) which is licensed to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

"(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system."

<< 47 USCA § 325 >>

***1432 SEC. 6. RETRANSMISSION CONSENT FOR CABLE SYSTEMS.**

Section 325 of the Communications Act of 1934 (47 U.S.C. 325) is amended--

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting immediately after subsection (a) the following new subsection:

"(b)(1) Following the date that is one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except--

"(A) with the express authority of the originating station; or

"(B) pursuant to section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

"(2) The provisions of this subsection shall not apply to--

"(A) retransmission of the signal of a noncommercial broadcasting station;

"(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

"(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

"(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

For purposes of this paragraph, the terms 'satellite carrier', 'superstation', and 'unserved household' have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

"(3)(A) Within 45 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation under section 623(b)(1) to ensure that the rates for the basic service tier are reasonable. Such rulemaking proceeding shall be completed within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

"(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and every three years thereafter, make an election between *1483 the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems.

"(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system.

"(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 614 or 615 of any station electing to assert the right to signal carriage under that section.

"(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers."

SEC. 7. AWARD OF FRANCHISES; PROMOTION OF COMPETITION.

(a) ADDITIONAL COMPETITIVE FRANCHISES.--

<< 47 USCA § 541 >>

(1) AMENDMENT.--Section 621(a)(1) of the Communications Act of 1934 (47 U.S.C. 541(a)(1)) is amended by inserting before the period at the end the following: "; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 635 for failure to comply with this subsection".

<< 47 USCA § 555 >>

(2) CONFORMING AMENDMENT.--Section 635(a) of the Communications Act of 1934 (47 U.S.C. 555(a)) is amended by inserting "621(a)(1)," after "section".

<< 47 USCA § 541 >>

(b) FRANCHISE REQUIREMENTS.--Section 621(a) of the Communications Act of 1934 (47 U.S.C. 541(a)) is amended by adding at the end the following new paragraph:

"(4) In awarding a franchise, the franchising authority--

"(A) shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;

"(B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and

"(C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service."

(c) MUNICIPAL AUTHORITIES PERMITTED TO OPERATE SYSTEMS.--Section 621 of the Communications Act of 1934 (47 U.S.C. 541) is amended--

(1) by inserting "and subsection (f)" before the comma in subsection (b)(1); and

(2) by adding at the end the following new subsection:

"(f) No provision of this Act shall be construed to--

"(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the franchise *1484 area, notwithstanding the granting of one or more franchises by such franchising authority; or

"(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor."

<< 47 USCA § 552 >>

SEC. 8. CONSUMER PROTECTION AND CUSTOMER SERVICE.

Section 632 of the Communications Act of 1934 (47 U.S.C. 552) is amended to read as follows:

"SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERVICE.

"(a) FRANCHISING AUTHORITY ENFORCEMENT.--A franchising authority may establish and enforce--

"(1) customer service requirements of the cable operator; and

"(2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator.

"(b) COMMISSION STANDARDS.--The Commission shall, within 180 days of enactment of the Cable Television Consumer Protection and Competition Act of 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing--

"(1) cable system office hours and telephone availability;

"(2) installations, outages, and service calls; and

"(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

"(c) CONSUMER PROTECTION LAWS AND CUSTOMER SERVICE AGREEMENTS.--

"(1) CONSUMER PROTECTION LAWS.--Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.

"(2) CUSTOMER SERVICE REQUIREMENT AGREEMENTS.--Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b). Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section."

<< 47 USCA § 532 >>

SEC. 9. LEASED COMMERCIAL ACCESS.

(a) PURPOSE.--Section 612(a) of the Communications Act of 1934 (47 U.S.C. 532(a)) is amended by inserting "to promote competition in the delivery of diverse sources of video programming and" after "purpose of this section is".

(b) COMMISSION RULES ON MAXIMUM REASONABLE RATES AND OTHER TERMS AND CONDITIONS.--Section 612(c) of such Act (47 U.S.C. 532(c)) is amended--

(1) in paragraph (1) by inserting "and with rules prescribed by the Commission under paragraph (4)" after "purpose of this section"; and

(2) by adding at the end the following new paragraph:

"(4)(A) The Commission shall have the authority to--

*1485 "(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

"(ii) establish reasonable terms and conditions for such use, including those for billing and collection; and

"(iii) establish procedures for the expedited resolution of disputes concerning rates or carriage under this section.

"(B) Within 180 days after the date of enactment of this paragraph, the Commission shall establish rules for determining maximum reasonable rates under subparagraph (A)(i), for establishing terms and conditions under subparagraph (A)(ii), and for providing procedures under subparagraph (A)(iii)."

(c) ACCESS FOR QUALITY MINORITY PROGRAMMING SOURCES AND QUALIFIED EDUCATIONAL PROGRAMMING SOURCES.--Section 612 of such Act (47 U.S.C. 532) is amended by adding at the end thereof the following new subsection:

"(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming source, whether or not such source is affiliated with the cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming or educational programming on that cable system under this subsection.

"(2) For purposes of this subsection, the term 'qualified minority programming source' means a programming source which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term 'minority' is defined in section 309(i)(3)(C)(ii).

"(3) For purposes of this subsection, the term 'qualified educational programming source' means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding \$15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

"(4) Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 615."

(d) CONFORMING AMENDMENT.--Paragraph (5) of section 612(b) of the Communications Act of 1934 (47 U.S.C. 532(b)) is amended to read as follows:

***1486** "(5) For the purposes of this section, the term 'commercial use' means the provision of video programming, whether or not for profit."

SEC. 10. CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS.

<< 47 USCA § 532 >>

(a) AUTHORITY TO ENFORCE.--Section 612(h) of the Communications Act of 1934 (47 U.S.C. 532(h)) is amended--

(1) by inserting "or the cable operator" after "franchising authority"; and

(2) by adding at the end thereof the following: "This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards."

(b) COMMISSION REGULATIONS.--Section 612 of the Communications Act of 1934 (47 U.S.C. 532) is amended by inserting after subsection (i) (as added by section 9(c) of this Act) the following new subsection:

"(j)(1) Within 120 days following the date of the enactment of this subsection, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) by--

"(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

"(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

"(C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

"(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1)."

<< 47 USCA § 531 NOTE >>

(c) PROHIBITS SYSTEM USE.--Within 180 days following the date of the enactment of this Act, the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a cable system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.

<< 47 USCA § 558 >>

(d) CONFORMING AMENDMENT.--Section 638 of the Communications Act of 1934 (47 U.S.C. 558) is amended by striking the period at the end and inserting the following: "unless the program involves obscene ma-

terial."

<< 47 USCA § 533 >>

SEC. 11. LIMITATIONS ON OWNERSHIP, CONTROL, AND UTILIZATION.

(a) CROSS-OWNERSHIP.--Section 613(a) of the Communications Act of 1934 (47 U.S.C. 533(a)) is amended--

(1) by inserting "(1)" immediately after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2) It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any *1487 franchised cable service, in any portion of the franchise area served by that cable operator's cable system. The Commission--

"(A) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph; and

"(B) may waive the requirements of this paragraph to the extent the Commission determines is necessary to ensure that all significant portions of a franchise area are able to obtain video programming."

(b) CLARIFICATION OF LOCAL AUTHORITY TO REGULATE OWNERSHIP.--Section 613(d) of the Communications Act of 1934 (47 U.S.C. 533(d)) is amended--

(1) by striking "any media" and inserting "any other media"; and

(2) by adding at the end thereof the following: "Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction."

(c) COMMISSION REGULATIONS.--Section 613 of the Communications Act of 1934 (47 U.S.C. 533) is amended--

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following new subsection:

"(f)(1) In order to enhance effective competition, the Commission shall, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, conduct a proceeding--

"(A) to prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest;

"(B) to prescribe rules and regulations establishing reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest; and

"(C) to consider the necessity and appropriateness of imposing limitations on the degree to which multichannel video programming distributors may engage in the creation or production of video programming.

"(2) In prescribing rules and regulations under paragraph (1), the Commission shall, among other public interest objectives--

"(A) ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer;

"(B) ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict *1488 the flow of the video programming of such programmers to other video distributors;

"(C) take particular account of the market structure, ownership patterns, and other relationships of the cable television industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests;

"(D) account for any efficiencies and other benefits that might be gained through increased ownership or control;

"(E) make such rules and regulations reflect the dynamic nature of the communications marketplace;

"(F) not impose limitations which would bar cable operators from serving previously unserved rural areas; and

"(G) not impose limitations which would impair the development of diverse and high quality video programming."

<< 47 USCA § 536 >>

SEC. 12. REGULATION OF CARRIAGE AGREEMENTS.

Part II of title VI of the Communications Act of 1934 is amended by inserting after section 615 (as added by section 5 of this Act) the following new section:

"SEC. 616. REGULATION OF CARRIAGE AGREEMENTS.

"(a) REGULATIONS.--Within one year after the date of enactment of this section, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall--

"(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;

"(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

"(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;

"(4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;

"(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

"(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

"(b) DEFINITION.--As used in this section, the term 'video programming vendor' means a person engaged in the production, creation, or wholesale distribution of video programming for sale."

<< 47 USCA § 537 >>

***1489 SEC. 13. SALES OF CABLE SYSTEMS.**

Part II of title VI of the Communications Act of 1934 is further amended by adding at the end thereof the following new section:

"SEC. 617. SALES OF CABLE SYSTEMS.

"(a) 3-YEAR HOLDING PERIOD REQUIRED.--Except as provided in this section, no cable operator may sell or otherwise transfer ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system by such operator.

"(b) TREATMENT OF MULTIPLE TRANSFERS.--In the case of a sale of multiple systems, if the terms of the sale require the buyer to subsequently transfer ownership of one or more such systems to one or more third parties, such transfers shall be considered a part of the initial transaction.

"(c) EXCEPTIONS.--Subsection (a) shall not apply to--

"(1) any transfer of ownership interest in any cable system which is not subject to Federal income tax liability;

"(2) any sale required by operation of any law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; or

"(3) any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.

"(d) WAIVER AUTHORITY.--The Commission may, consistent with the public interest, waive the requirement of subsection (a), except that, if the franchise requires franchise authority approval of a transfer, the Commission shall not waive such requirements unless the franchise authority has approved the transfer. The Commission shall use its authority under this subsection to permit appropriate transfers in the cases of default, foreclosure, or other financial distress.

"(e) LIMITATION ON DURATION OF FRANCHISING AUTHORITY POWER TO DISAPPROVE TRANSFERS.--In the case of any sale or transfer of ownership of any cable system after the 36-month period following

acquisition of such system, a franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time."

<< 47 USCA § 542 >>

SEC. 14. SUBSCRIBER BILL ITEMIZATION.

Section 622(c) of the Communications Act of 1934 (47 U.S.C. 542(c)) is amended to read as follows:

"(c) Each cable operator may identify, consistent with the regulations prescribed by the Commission pursuant to section 623, as a separate line item on each regular bill of each subscriber, each of the following:

"(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

"(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise *1490 agreement to support public, educational, or governmental channels or the use of such channels.

"(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber."

<< 47 USCA § 544 >>

SEC. 15. NOTICE TO CABLE SUBSCRIBERS ON UNSOLICITED SEXUALLY EXPLICIT PROGRAMS.

Section 624(d) of the Communications Act of 1934 (47 U.S.C. 544(d)) is amended by adding at the end the following new paragraph:

"(3)(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge--

"(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

"(ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;

"(iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

"(iv) block the channel carrying the premium channel upon the request of a subscriber.

"(B) For the purpose of this section, the term 'premium channel' shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC-17, or R."

<< 47 USCA § 544 >>

SEC. 16. TECHNICAL STANDARDS; EMERGENCY ANNOUNCEMENTS; PROGRAMMING CHANGES;

HOME WIRING.

(a) TECHNICAL STANDARDS.--Section 624(e) of the Communications Act of 1934 (47 U.S.C. 544(e)) is amended to read as follows:

"(e) Within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems' technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. A franchising authority may require as part of a franchise (including a modification, renewal, or transfer thereof) provisions for the enforcement of the standards prescribed under this subsection. A franchising authority may apply to the Commission for a waiver to impose standards that are more stringent than the standards prescribed by the Commission under this subsection."

(b) EMERGENCY ANNOUNCEMENTS.--Section 624 of such Act (47 U.S.C. 544) is amended by adding at the end the following new subsection:

"(g) Notwithstanding any such rule, regulation, or order, each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations."

(c) PROGRAMMING CHANGES.--Section 624 of such Act (47 U.S.C. 544) is further amended--

*1491 (1) in subsection (b)(1), by inserting ", except as provided in subsection (h)," after "but may not"; and

(2) by adding at the end the following new subsection:

"(h) A franchising authority may require a cable operator to do any one or more of the following:

"(1) Provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

"(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority."

(d) HOME WIRING.--Section 624 of such Act (47 U.S.C. 544) is further amended by adding at the end the following new subsection:

"(i) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber."

<< 47 USCA § 544a >>

SEC. 17. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

The Communications Act of 1934 is amended by adding after section 624 (47 U.S.C. 544) the following new section:

"SEC. 624A. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

"(a) FINDINGS.--The Congress finds that--

"(1) new and recent models of television receivers and video cassette recorders often contain premium features and functions that are disabled or inhibited because of cable scrambling, encoding, or encryption technologies and devices, including converter boxes and remote control devices required by cable operators to receive programming;

"(2) if these problems are allowed to persist, consumers will be less likely to purchase, and electronics equipment manufacturers will be less likely to develop, manufacture, or offer for sale, television receivers and video cassette recorders with new and innovative features and functions; and

"(3) cable operators should use technologies that will prevent signal thefts while permitting consumers to benefit from such features and functions in such receivers and recorders.

"(b) COMPATIBLE INTERFACES.--

"(1) REPORT; REGULATIONS.--Within 1 year after the date of enactment of this section, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to Congress on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and video cassette recorders. Within 180 days after the date of submission of the report required by this subsection, the Commission shall issue such regulations as are necessary to assure such compatibility.

"(2) SCRAMBLING AND ENCRYPTION.--In issuing the regulations referred to in paragraph (1), the Commission shall determine whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals or to restrict *1492 cable systems in the manner in which they encrypt or scramble signals, except that the Commission shall not limit the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' television receivers or video cassette recorders.

"(c) RULEMAKING REQUIREMENTS.--

"(1) FACTORS TO BE CONSIDERED.--In prescribing the regulations required by this section, the Commission shall consider--

"(A) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers in a manner that, while providing effective protection against theft or unauthorized reception of cable service, will minimize interference with or nullification of the special functions of subscribers' television receivers or video cassette recorders, including functions that permit the subscriber--

"(i) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

"(ii) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

"(iii) to use advanced television picture generation and display features; and

"(B) the need for cable operators to protect the integrity of the signals transmitted by the cable operator against

theft or to protect such signals against unauthorized reception.

"(2) REGULATIONS REQUIRED.--The regulations prescribed by the Commission under this section shall include such regulations as are necessary--

"(A) to specify the technical requirements with which a television receiver or video cassette recorder must comply in order to be sold as 'cable compatible' or 'cable ready';

"(B) to require cable operators offering channels whose reception requires a converter box--

"(i) to notify subscribers that they may be unable to benefit from the special functions of their television receivers and video cassette recorders, including functions that permit subscribers--

"(I) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

"(II) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

"(III) to use advanced television picture generation and display features; and

"(ii) to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers or video cassette recorders without passing through the converter box;

"(C) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with *1493 cable systems, of converter boxes and of remote control devices compatible with converter boxes;

"(D) to require a cable operator who offers subscribers the option of renting a remote control unit--

"(i) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and

"(ii) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

"(E) to prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

"(d) REVIEW OF REGULATIONS.--The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology."

<< 47 USCA § 546 >>

SEC. 18. FRANCHISE RENEWAL.

(a) COMMENCEMENT OF PROCEEDINGS.--Section 626(a) of the Communications Act of 1934 (47 U.S.C. 546(a)) is amended to read as follows:

"SEC. 626. (a)(1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

"(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) unless--

"(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

"(B) such a proceeding is commenced by the franchising authority on its own initiative."

(b) PROCEEDING ON RENEWAL PROPOSAL.--Section 626(c)(1) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)) is amended--

(1) by inserting "pursuant to subsection (b)" after "renewal of a franchise"; and

(2) by striking "completion of any proceedings under subsection (a)" and inserting the following: "date of the submission of the cable operator's proposal pursuant to subsection (b)".

(c) REVIEW CRITERIA.--Section 626(c)(1)(B) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)(B)) is amended by striking "mix, quality, or level" and inserting "mix or quality".

(d) CORRECTION OF FAILURES.--Section 626(d) of the Communications Act of 1934 (47 U.S.C. 546(d)) is amended--

*1494 (1) by inserting "that has been submitted in compliance with subsection (b)" after "Any denial of a proposal for renewal"; and

(2) by striking "or has effectively acquiesced" and inserting "or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice".

(e) HARMLESS ERROR.--Section 626(e)(2)(A) of the Communications Act of 1934 (47 U.S.C. 546(e)(2)(A)) is amended by inserting after "franchising authority" the following: ", other than harmless error,".

(f) CONFLICT BETWEEN REVOCATION AND RENEWAL PROCEEDINGS.--Section 626 of the Communications Act of 1934 (47 U.S.C. 546) is amended by adding at the end the following new subsection:

"(i) Notwithstanding the provisions of subsections (a) through (h), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section."

<< 47 USCA § 548 >>

SEC. 19. DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.

Part III of title VI of the Communications Act of 1934 is amended by inserting after section 627 (47 U.S.C. 547) the following new section:

"SEC. 628. DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.

"(a) PURPOSE.--The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies.

"(b) PROHIBITION.--It shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

"(c) REGULATIONS REQUIRED.--

"(1) PROCEEDING REQUIRED.--Within 180 days after the date of enactment of this section, the Commission shall, in order to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market and the continuing development of communications technologies, prescribe regulations to specify particular conduct that is prohibited by subsection (b).

"(2) MINIMUM CONTENTS OF REGULATIONS.--The regulations to be promulgated under this section shall--

"(A) establish effective safeguards to prevent a cable operator which has an attributable interest in a satellite cable programming vendor or a satellite broadcast programming vendor from unduly or improperly influencing the decision of such vendor to sell, or the prices, terms, and conditions of sale of, satellite cable programming or satellite *1495 broadcast programming to any unaffiliated multichannel video programming distributor;

"(B) prohibit discrimination by a satellite cable programming vendor in which a cable operator has an attributable interest or by a satellite broadcast programming vendor in the prices, terms, and conditions of sale or delivery of satellite cable programming or satellite broadcast programming among or between cable systems, cable operators, or other multichannel video programming distributors, or their agents or buying groups; except that such a satellite cable programming vendor in which a cable operator has an attributable interest or such a satellite broadcast programming vendor shall not be prohibited from--

"(i) imposing reasonable requirements for creditworthiness, offering of service, and financial stability and standards regarding character and technical quality;

"(ii) establishing different prices, terms, and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of satellite cable programming or satellite broadcast programming;

"(iii) establishing different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers

served by the distributor; or

"(iv) entering into an exclusive contract that is permitted under subparagraph (D);

"(C) prohibit practices, understandings, arrangements, and activities, including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest or any satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of the date of enactment of this section; and

"(D) with respect to distribution to persons in areas served by a cable operator, prohibit exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, unless the Commission determines (in accordance with paragraph (4)) that such contract is in the public interest.

"(3) LIMITATIONS.--

"(A) GEOGRAPHIC LIMITATIONS.--Nothing in this section shall require any person who is engaged in the national or regional distribution of video programming to make such programming available in any geographic area beyond *1496 which such programming has been authorized or licensed for distribution.

"(B) APPLICABILITY TO SATELLITE RETRANSMISSIONS.--Nothing in this section shall apply (i) to the signal of any broadcast affiliate of a national television network or other television signal that is retransmitted by satellite but that is not satellite broadcast programming, or (ii) to any internal satellite communication of any broadcast network or cable network that is not satellite broadcast programming.

"(4) PUBLIC INTEREST DETERMINATIONS ON EXCLUSIVE CONTRACTS.--In determining whether an exclusive contract is in the public interest for purposes of paragraph (2)(D), the Commission shall consider each of the following factors with respect to the effect of such contract on the distribution of video programming in areas that are served by a cable operator:

"(A) the effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;

"(B) the effect of such exclusive contract on competition from multichannel video programming distribution technologies other than cable;

"(C) the effect of such exclusive contract on the attraction of capital investment in the production and distribution of new satellite cable programming;

"(D) the effect of such exclusive contract on diversity of programming in the multichannel video programming distribution market; and

"(E) the duration of the exclusive contract.

"(5) SUNSET PROVISION.--The prohibition required by paragraph (2)(D) shall cease to be effective 10 years after the date of enactment of this section, unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

"(d) ADJUDICATORY PROCEEDING.--Any multichannel video programming distributor aggrieved by conduct that it alleges constitutes a violation of subsection (b), or the regulations of the Commission under subsection (c), may commence an adjudicatory proceeding at the Commission.

"(e) REMEDIES FOR VIOLATIONS.--

"(1) REMEDIES AUTHORIZED.--Upon completion of such adjudicatory proceeding, the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to the aggrieved multichannel video programming distributor.

"(2) ADDITIONAL REMEDIES.--The remedies provided in paragraph (1) are in addition to and not in lieu of the remedies available under title V or any other provision of this Act.

"(f) PROCEDURES.--The Commission shall prescribe regulations to implement this section. The Commission's regulations shall--

"(1) provide for an expedited review of any complaints made pursuant to this section;

"(2) establish procedures for the Commission to collect such data, including the right to obtain copies of all contracts and documents reflecting arrangements and understandings alleged *1497 to violate this section, as the Commission requires to carry out this section; and

"(3) provide for penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

"(g) REPORTS.--The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c), annually report to Congress on the status of competition in the market for the delivery of video programming.

"(h) EXEMPTIONS FOR PRIOR CONTRACTS.--

"(1) IN GENERAL.--Nothing in this section shall affect any contract that grants exclusive distribution rights to any person with respect to satellite cable programming and that was entered into on or before June 1, 1990, except that the provisions of subsection (c)(2)(C) shall apply for distribution to persons in areas not served by a cable operator.

"(2) LIMITATION ON RENEWALS.--A contract that was entered into on or before June 1, 1990, but that is renewed or extended after the date of enactment of this section shall not be exempt under paragraph (1).

"(i) DEFINITIONS.--As used in this section:

"(1) The term 'satellite cable programming' has the meaning provided under section 705 of this Act, except that such term does not include satellite broadcast programming.

"(2) The term 'satellite cable programming vendor' means a person engaged in the production, creation, or

wholesale distribution for sale of satellite cable programming, but does not include a satellite broadcast programming vendor.

"(3) The term 'satellite broadcast programming' means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.

"(4) The term 'satellite broadcast programming vendor' means a fixed service satellite carrier that provides service pursuant to section 119 of title 17, United States Code, with respect to satellite broadcast programming."

<< 47 USCA § 551 >>

SEC. 20. CUSTOMER PRIVACY RIGHTS.

(a) DEFINITIONS.--Section 631(a)(2) of the Communications Act of 1934 (47 U.S.C. 551(a)(2)) is amended to read as follows:

"(2) For purposes of this section, other than subsection (h)--

"(A) the term 'personally identifiable information' does not include any record of aggregate data which does not identify particular persons;

"(B) the term 'other service' includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

"(C) the term 'cable operator' includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service."

(b) ADDITIONAL ACTIONS REQUIRED.--Section 631(c)(1) of the Communications Act of 1934 (47 U.S.C. 551(c)(1)) is amended by inserting immediately before the period at the end the following: ***1498** "and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator".

<< 47 USCA § 553 >>

SEC. 21. THEFT OF CABLE SERVICE.

Section 633(b) of the Communications Act of 1934 (47 U.S.C. 533(b)) is amended--

(1) in paragraph (2)--

(A) by striking "\$25,000" and inserting "\$50,000";

(B) by striking "1 year" and inserting "2 years";

(C) by striking "\$50,000" and inserting "\$100,000"; and

(D) by striking "2 years" and inserting "5 years"; and

(2) by adding at the end thereof the following new paragraph:

"(3) For purposes of all penalties and remedies established for violations of subsection (a)(1), the prohibited activity established herein as it applies to each such device shall be deemed a separate violation."

SEC. 22. EQUAL EMPLOYMENT OPPORTUNITY.

<< 47 USCA § 554 NOTE >>

(a) FINDINGS.--The Congress finds and declares that--

(1) despite the existence of regulations governing equal employment opportunity, females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries;

(2) increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media; and

(3) rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.

<< 47 USCA § 554 >>

(b) STANDARDS.--Section 634(d)(1) of the Communications Act of 1934 (47 U.S.C. 554(d)(1)) is amended to read as follows:

"(d)(1) Not later than 270 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, and after notice and opportunity for hearing, the Commission shall prescribe revisions in the rules under this section in order to implement the amendments made to this section by such Act. Such revisions shall be designed to promote equality of employment opportunities for females and minorities in each of the job categories itemized in paragraph (3)."

(c) CONTENTS OF ANNUAL STATISTICAL REPORTS.--Section 634(d)(3) of the Communications Act of 1934 (47 U.S.C. 554(d)(3)) is amended to read as follows:

"(3)(A) Such rules also shall require an entity specified in subsection (a) with more than 5 full-time employees to file with the Commission an annual statistical report identifying by race, sex, and job title the number of employees in each of the following full-time and part-time job categories:

"(i) Corporate officers.

"(ii) General Manager.

"(iii) Chief Technician.

"(iv) Comptroller.

"(v) General Sales Manager.

"(vi) Production Manager.

"(vii) Managers.

"(viii) Professionals.

*1499 "(ix) Technicians.

"(x) Sales Personnel.

"(xi) Office and Clerical Personnel.

"(xii) Skilled Craftspersons.

"(xiii) Semiskilled Operatives.

"(xiv) Unskilled Laborers.

"(xv) Service Workers.

"(B) The report required by subparagraph (A) shall be made on separate forms, provided by the Commission, for full-time and part-time employees. The Commission's rules shall sufficiently define the job categories listed in clauses (i) through (vi) of such subparagraph so as to ensure that only employees who are principal decision-makers and who have supervisory authority are reported for such categories. The Commission shall adopt rules that define the job categories listed in clauses (vii) through (xv) in a manner that is consistent with the Commission policies in effect on June 1, 1990. The Commission shall prescribe the method by which entities shall be required to compute and report the number of minorities and women in the job categories listed in clauses (i) through (x) and the number of minorities and women in the job categories listed in clauses (i) through (xv) in proportion to the total number of qualified minorities and women in the relevant labor market. The report shall include information on hiring, promotion, and recruitment practices necessary for the Commission to evaluate the efforts of entities to comply with the provisions of paragraph (2) of this subsection. The report shall be available for public inspection at the entity's central location and at every location where 5 or more full-time employees are regularly assigned to work. Nothing in this subsection shall be construed as prohibiting the Commission from collecting or continuing to collect statistical or other employment information in a manner that it deems appropriate to carry out this section."

(d) PENALTIES.--Section 634(f)(2) of such Act (47 U.S.C. 554(f)(2)) is amended by striking "\$200" and inserting "\$500".

(e) APPLICATION OF REQUIREMENTS.--Section 634(h)(1) of such Act (47 U.S.C. 554(h)(1)) is amended by inserting before the period the following: "and any multichannel video programming distributor".

<< 47 USCA § 334 >>

(f) BROADCASTING EQUAL EMPLOYMENT OPPORTUNITY.--Part I of title III of the Communications Act of 1934 is amended by inserting after section 333 (47 U.S.C. 333) the following new section:

"SEC. 334. LIMITATION ON REVISION OF EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS.

"(a) LIMITATION.--Except as specifically provided in this section, the Commission shall not revise--

"(1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 C.F.R. 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

"(2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.

"(b) MIDTERM REVIEW.--The Commission shall revise the regulations described in subsection (a) to require a midterm review of television broadcast station licensees' employment practices and to require the Commission to inform such licensees of necessary *1500 improvements in recruitment practices identified as a consequence of such review.

"(c) AUTHORITY TO MAKE TECHNICAL REVISIONS.--The Commission may revise the regulations described in subsection (a) to make nonsubstantive technical or clerical revisions in such regulations as necessary to reflect changes in technology, terminology, or Commission organization."

<< 47 USCA § 554 NOTE >>

(g) STUDY AND REPORT REQUIRED.--Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the Congress a report pursuant to a proceeding to review and obtain public comment on the effect and operation of the amendments made by this section. In conducting such review, the Commission shall consider the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting equality of employment opportunity and promotion opportunity, and particularly the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority. The Commission shall forward to the Congress such legislative recommendations to improve equal employment opportunity in the broadcasting and cable industries as it deems necessary.

<< 47 USCA § 555 >>

SEC. 23. JUDICIAL REVIEW.

Section 635 of the Communications Act of 1934 (47 U.S.C. 555) is amended by adding at the end the following new subsection:

"(c)(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 614 or 615 of this Act or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

"(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 614 or 615 of this Act or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order."

SEC. 24. LIMITATION ON FRANCHISING AUTHORITY LIABILITY.

<< 47 USCA § 555a >>

(a) AMENDMENT.--Part IV of title VI of the Communications Act of 1934 is amended by inserting after section 635 (47 U.S.C. 555) the following new section:

"SEC. 635A. LIMITATION OF FRANCHISING AUTHORITY LIABILITY.

"(a) SUITS FOR DAMAGES PROHIBITED.--In any court proceeding pending on or initiated after the date of enactment of this section involving any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, arising from the regulation of cable service

or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

"(b) EXCEPTION FOR COMPLETED CASES.--The limitation contained in subsection (a) shall not apply to actions that, prior to such violation, have been determined by a final order of a court *1501 of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operator's rights.

"(c) DISCRIMINATION CLAIMS PERMITTED.--Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

"(d) RULE OF CONSTRUCTION.--Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by any franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity."

<< 47 USCA § 555 >>

(b) CONFORMING AMENDMENT.--Section 635(b) of the Communications Act of 1934 (47 U.S.C. 555(b)) is amended by inserting "and with the provisions of subsection (a)" after "subsection (a)".

SEC. 25. DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS.

<< 47 USCA § 335 >>

(a) AMENDMENT.--Part I of title III of the Communications Act of 1934 is further amended by inserting after section 334 (as added by section 22(f) of this Act) the following new section:

"SEC. 335. DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS.

"(a) PROCEEDING REQUIRED TO REVIEW DBS RESPONSIBILITIES.--The Commission shall, within 180 days after the date of enactment of this section, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

"(b) CARRIAGE OBLIGATIONS FOR NONCOMMERCIAL, EDUCATIONAL, AND INFORMATIONAL PROGRAMMING.--

"(1) CHANNEL CAPACITY REQUIRED.--The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or information-

al nature.

"(2) USE OF UNUSED CHANNEL CAPACITY.--A provider of such service may utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial programming of an educational or informational nature.

"(3) PRICES, TERMS, AND CONDITIONS; EDITORIAL CONTROL.--A provider of direct broadcast satellite service shall meet the requirements of this subsection by making channel capacity available to national educational programming suppliers, upon reasonable prices, terms, and conditions, as determined by the *1502 Commission under paragraph (4). The provider of direct broadcast satellite service shall not exercise any editorial control over any video programming provided pursuant to this subsection.

"(4) LIMITATIONS.--In determining reasonable prices under paragraph (3)--

"(A) the Commission shall take into account the nonprofit character of the programming provider and any Federal funds used to support such programming;

"(B) the Commission shall not permit such prices to exceed, for any channel made available under this subsection, 50 percent of the total direct costs of making such channel available; and

"(C) in the calculation of total direct costs, the Commission shall exclude--

"(i) marketing costs, general administrative costs, and similar overhead costs of the provider of direct broadcast satellite service; and

"(ii) the revenue that such provider might have obtained by making such channel available to a commercial provider of video programming.

"(5) DEFINITIONS.--For purposes of this subsection--

"(A) The term 'provider of direct broadcast satellite service' means--

"(i) a licensee for a Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations; or

"(ii) any distributor who controls a minimum number of channels (as specified by Commission regulation) using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under part 25 of title 47 of the Code of Federal Regulations.

"(B) The term 'national educational programming supplier' includes any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions."

<< 47 USCA § 332 >>

(b) TECHNICAL AMENDMENT.--Section 331 of such Act as added by Public Law 97- 259 (47 U.S.C. 332) is redesignated as section 332.

<< 47 USCA § 521 NOTE >>

SEC. 26. SPORTS PROGRAMMING MIGRATION STUDY AND REPORT.

(a) STUDY REQUIRED.--The Federal Communications Commission shall conduct an ongoing study on the car-

riage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends in the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends.

(b) REPORT ON STUDY.--The Federal Communications Commission shall, on or before July 1, 1993, and July 1, 1994, submit an interim and a final report, respectively, on the results of the study required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such *1503 reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends required by subsection (a) and such legislative or regulatory recommendations as the Commission considers appropriate.

(c) ANALYSIS OF PRECLUSIVE CONTRACTS REQUIRED.--

(1) ANALYSIS REQUIRED.--In conducting the study required by subsection (a), the Commission shall analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations. In conducting such analysis, the Commission shall consult with the Attorney General to determine whether and to what extent such preclusive contracts are prohibited by existing statutes. The reports required by subsection (b) shall include separate statements of the results of the analysis required by this subsection, together with such recommendations for legislation as the Commission considers necessary and appropriate.

(2) DEFINITION.--For purposes of the subsection, the term "preclusive contract" includes any contract that prohibits--

(A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or

(B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

<< 47 USCA § 521 NOTE >>

SEC. 27. APPLICABILITY OF ANTITRUST LAWS.

Nothing in this Act or the amendments made by this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

<< 47 USCA §§ 325 NOTE, 522 nt, 532 nt, 533 nt, 541 nt, 542 nt, 543 nt, 544 nt,
546 nt, 551 nt, 552 nt, 553 nt, 554 nt, 555 nt, 558 nt >>

<< 47 USCA §§ 334 nt, 335 nt, 534 nt, 535 nt, 536 nt, 537 nt, 544a nt, 548 nt,
555a nt >>

SEC. 28. EFFECTIVE DATE.

Except where otherwise expressly provided, the provisions of this Act and the amendments made thereby shall

take effect 60 days after the date of enactment of this Act.

Approved October 5, 1992.

PL 102-385, 1992 S 12

END OF DOCUMENT

6

LEXSEE 9 FCCR 2642

In the Matter of Implementation of Sections 12 and 19 of the Cable Television
Consumer Protection and Competition Act of 1992; Development of Competition
and Diversity in Video Programming Distribution and Carriage

MM Docket No. 92-265

RELEASE-NUMBER: FCC 93-457

FEDERAL COMMUNICATIONS COMMISSION

9 FCC Rcd 2642; 1993 FCC LEXIS 5415; 73 Rad. Reg. 2d (P & F) 1350

October 22, 1993 Released; Adopted September 23, 1993; As Corrected November 1, 1993

ACTION:

[**1]

SECOND REPORT AND ORDER

JUDGES: By the Commission**OPINION BY:** CATON**OPINION:**

[*2642] I. INTRODUCTION

1. This Second Report and Order adopts rules to implement Section 12 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), which adds a new Section 616 to the Communications Act of 1934 governing agreements between cable operators -- or other multichannel video programming distributors -- and the programming services they distribute. n1 Section 616 is intended to prevent cable systems and [*2643] other multichannel video programming distributors ("multichannel distributors") from taking undue advantage of programming vendors through various practices, including coercing vendors to grant ownership interests or exclusive distribution rights to multichannel distributors in exchange for carriage on their systems. As we have developed regulations pertaining to program access and carriage agreements in this proceeding, we have endeavored to serve the congressional intent to prohibit unfair or anticompetitive actions without restraining the amount of multichannel programming available by precluding legitimate business practices common to a competitive marketplace. Therefore, [**2] the implementing rules for program carriage agreements that we adopt are intended to prohibit those activities specified by Congress in the statute without unduly interfering with legitimate negotiating practices between multichannel video programming distributors and programming vendors. As a result, in this Second Report and Order, we adopt general rules that are consistent with the statute's specific prohibitions regarding actions between distributors and program vendors in forming program carriage agreements, and we will enforce these regulations through a process that will focus on the specific facts pertaining to each negotiation.

n1 Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. (1992).

9 FCC Rcd 2642, *; 1993 FCC LEXIS 5415, **;
73 Rad. Reg. 2d (P & F) 1350

II. BACKGROUND

2. When drafting the 1992 Cable Act, Congress was concerned that increased horizontal concentration and vertical integration in the cable industry have created an imbalance of power between cable operators and program vendors. Specifically, Congress concluded that vertically integrated cable operators have the incentive and ability to favor affiliated programmers over unaffiliated programmers with respect to granting [**3] carriage on their systems. Cable operators or programmers that compete with the vertically integrated entities may suffer harm to the extent that they do not receive such favorable terms. n2 Congress also found that some cable operators have required certain non-affiliated program vendors to grant exclusive rights to programming, a financial interest in the programming, or some other additional consideration as a condition of carriage on the cable system. n3

n2 1992 Cable Act, Section 2(a)(5).

n3 See Senate Report at 24; House Report at 42.

3. The program access provisions of the 1992 Cable Act discussed in the First Report and Order n4 primarily restrict the activities of vertically integrated programming vendors with respect to cable operators and other multichannel programming distributors. Section 616 restricts the activities of cable operators and other multichannel programming distributors when dealing with programming vendors.

n4 See *First Report and Order ("First Report and Order")*, MM Docket No. 92-265, 8 FCC Rcd 3359 (1993).

4. Specifically, Section 616 requires the Commission to adopt regulations that prevent a multichannel distributor [**4] from: (1) requiring a programming vendor to provide it with a financial interest in the programming service as a condition of carrying the program service on its system; (2) coercing a programming vendor to provide it with exclusive rights as a condition of carriage, from retaliating against such a vendor for failing to provide exclusive rights; or (3) engaging in conduct that discriminates on the basis of affiliation of vendors in the selection, terms or conditions for carriage of video programming. In addition, the statute specifies procedures the Commission must adopt for implementation of the above [*2644] provisions, including expedited review of complaints made by a programming vendor and assessment of appropriate penalties for violation of the carriage agreement rules as well as for the filing of frivolous claims. In our Notice of Proposed Rulemaking, n5 the Commission sought comment on specific practices that it should prohibit, as well as on appropriate complaint procedures for addressing allegations of conduct that violates our implementing regulations.

n5 See *Notice of Proposed Rulemaking ("Notice")*, MM Docket No. 92-265, 8 FCC Rcd 194 (1992).

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III. IMPLEMENTATION OF CARRIAGE AGREEMENT PROVISIONS

5. Section 616(a)(1) of the 1992 Cable Act provides that the Commission must adopt rules to prevent a cable operator or other multichannel distributor from requiring a financial interest in a program service as a condition for carriage on the operator's systems. Given that the statute does not prohibit multichannel distributors from holding a financial interest in a programming service, the Notice stated that it may not always be clear whether a cable operator has "required" the programming vendor to provide a financial interest as a condition of carrying a particular programming service. Therefore, we sought comment on the factors we should use to determine whether such a requirement for carriage has occurred.

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6. Second, Section 616(a)(2) directs the Commission to adopt rules that prohibit a cable operator or other multichannel distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage. In this regard, we sought comment on (1) the types of activities [**6] that should constitute indicia of coercion; (2) how we might distinguish between "coercion" and "negotiation"; and (3) whether our implementing rules for Section 616 might preclude as "coercion" certain mutually acceptable arrangements that would otherwise comply with Section 628. Further, the statute clearly states that exclusive arrangements may exist other than as a condition of carriage. Therefore, we also sought comment on our interpretation that Section 616 does not prohibit exclusive arrangements, but that Section 616 must be read together with Section 628(c), which precludes certain exclusive arrangements and establishes standards for determining whether other exclusive contracts are in the public interest.

7. Third, Section 616(a)(3) provides that the new rules must prevent a multichannel distributor from engaging in conduct that unreasonably restrains the ability of an unaffiliated video programming vendor to compete fairly, by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms or conditions for carriage of video programming. In the Notice, we sought comment on the specific conduct that we [**7] should consider a violation of this section. We also proposed that an "unaffiliated video programming vendor" would be a video programming vendor or service in which the multichannel distributor does not have an attributable interest, which could be defined by the broadcast attribution criteria of Section 73.3555 of the Commission's Rules. In addition, we observed that Section 616(a)(3) prohibits multichannel distributors from "discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors." We stated our belief that a practice of discriminating in the context of carriage agreements involves different activities than those discussed with respect to Section 628 regarding programming access, and we sought [*2645] comment on how we should define "discrimination" in the context of Section 616. n6

n6 We note that with respect to these carriage agreement rules, the House Report indicates that "the term 'discrimination' is to be distinguished from how that term is used in connection with actions by common carriers subject to title II of the Communications Act." The House Report further provides that the Commission is to define discrimination with respect to the extensive body of law addressing discrimination in normal business practices. House Report at 110. We sought comment on the appropriate interpretation of this language, particularly with respect to developing standards for identifying "discrimination" governed by Sections 616 and 628.

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Comments

8. General Issues. Several commenters raise general issues regarding the carriage agreement provisions of Section 616. MPAA states that the intent of Section 616 is to ensure that no cable operator or multichannel distributor can demand ownership interests or exclusive rights in programming services in exchange for carriage. Furthermore, MPAA argues that Congress sought to prevent distributors from discriminating in terms of carriage against programming services in which the operator has no ownership interest. n7 Therefore, MPAA claims that the statute clearly proscribes coercive and discriminatory conduct, and that the Commission's rules must discourage such practices and provide effective remedies. To the extent that it is neither possible nor necessary for the rules to define every type of conduct that could evidence coerced or required concessions, MPAA and Time Warner suggest rules using generic language, perhaps amplified by illustrative examples in notes appended to the rules, that may be invoked by individual complaints on a case-by-case basis. n8 MPAA also contends that the Commission should interpret the congressional intent regarding the carriage agreement [**9] provisions of Section 616 independently of the intent of the program access provisions of Section 628, especially concerning the respective standards concerning exclusivity. n9 Similarly, Viacom believes that the competitive problems targeted by Section 616 are more pervasive than the program access issues addressed in Section 628, and thus warrant different and more stringent standards. n10

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n7 See MPAA at 4-5.

n8 See MPAA at 4-5, Time Warner Reply at 22. To the extent that the Commission seeks to define such coercive and discriminatory practices, CSS also recommends that the Commission review sample agreements between program vendors and cable operators that impose restrictive conditions on the vendor's ability to license independent or competitive multichannel distributors in the cable operators' service areas. See CSS at 17. Similarly, Caribbean Satellite Network (CSN) proposes that the Commission examine the totality of circumstances under which a cable operator requires a vendor to provide a financial interest as a condition of carriage, including a cable operator's stalling of negotiations associated with demands for financial interests. See CSN at 5.

n9 See MPAA Reply at 7.

n10 See Viacom Reply at 21.

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9. Alternatively, several parties observe that Section 616 does not prohibit distributors from obtaining financial interests or exclusivity rights, but instead addresses "coercive" conduct and "unreasonable restraints" by distributors, for which direct evidence is available. n11 These parties thus assert that the Commission's implementing rules should only reach conduct that is beyond the normal course of negotiations. Furthermore, Continental believes that imposition of remedies under Section 616, if not subject to sufficient limits, may force distributors to make carriage decisions based on an expectation [*2646] of whether a programmer is likely to seek mandatory carriage if rejected, rather than selecting the programming that best serves the needs of its subscribers. Continental argues that in the absence of wrongful or anticompetitive conduct, the Commission's rules should allow distributors to exercise the freedom to determine whether a particular programming service has the experience and resources to succeed. n12 Moreover, Discovery observes that most program carriage decisions are made at the local level by managers of individual systems, rather than at a national [**11] or regional level by owners of MSOs. As a result, Discovery contends that carriage decisions are generally uninfluenced by the affiliation of a program service's owners. Discovery further contends that the existence of a financial investment or an exclusive contract is not evidence of "coercion" or "required" conduct. n13

n11 See, e.g., Cablevision at 23, Liberty Media at 67.

n12 See Continental at 26-27.

n13 See Discovery at 32.

10. Specific Prohibitions of Section 616. With respect to implementing the statute's specific prohibitions, commenters appear to focus on Section 616(a)(2)'s provision against attempts by a distributor to coerce exclusive rights as a condition of carriage. MPAA, for example, argues that, in contrast to Section 628, Section 616 does not require the Commission to "specify particular conduct that is prohibited," so that adopting generic rules would be sufficient to comply with the statute, rather than attempting to delineate specific behavior that would constitute "coercion." n14 Similarly, Viacom states that although "coercion" may include more than explicit threats or overt intimidation, the Commission should recognize that many negotiating impasses [**12] are not actionable under Section 616. n15 MPAA states that examples of activity that may involve coercion are useful as guided by industry experience, and suggests several indicators for evaluating complaints, including: (1) refusals to carry a service on terms and conditions that are reasonable or standard in the industry for comparable programming; (2) patterns of conduct during the course of dealing between the parties; (3) market dominance by a distributor obtaining exclusivity or ownership, or the absence of a comparable alternative distributor; and (4) the timing of agreement on financial interests or exclusivity relative to the agreement on carriage. n16

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n14 See MPAA at 7-9.

n15 See Viacom Reply at 22.

n16 See MPAA at 7-9.

11. Alternatively, several parties suggest defining "coercion" as narrowly as possible in order to avoid foreclosing the discussion of exclusivity or ownership in aggressive, good-faith negotiations, subject to the constraints of Section 628. n17 Accordingly, these parties recommend viewing "coercion" as conduct that is not reasonably considered good-faith negotiation, or that amounts to the exertion of pressure beyond mere negotiation. In order [**13] to allow for aggressive negotiations on carriage and other terms, TCI suggests that the implementing rules require that complaints alleging "coercion" demonstrate explicit threats by a distributor, stating that such practices are arguably analogous to antitrust standards regarding tying and exclusive dealing. n18 In addition, Cablevision et al. recommend a three-part [*2647] test for identifying "coercion" or retaliatory conduct, involving: (1) the plausibility of coercion, especially with respect to established or powerful program vendors; (2) specific facts of coercion; and (3) alleged facts that the conduct has unreasonably restrained the vendor's ability to compete fairly. n19 Cablevision justifies such a standard by observing that cable operators rarely consider dropping established services in negotiations, and cable operators often provide non-monetary "value" in exchange for exclusivity -- such as placement, carriage, or other commitments -- that could rebut the claim of coercion.

n17 See, e.g., Discovery at 32, Liberty Media at 68, and TCI at 33-36.

n18 Using these lines of precedent, TCI cites several cases to highlight actions or conditions that would or would not evidence "coercion". See TCI at 34.

n19 See Cablevision et al. at 23-26.

[**14]

12. In response, MPAA claims that TCI provides no valid support for its proposal that a finding of "coercion" must require evidence of explicit threats, stating that the provisions established by Congress in Section 616 differ from the antitrust standards referenced by TCI due to the absence of an alternative multichannel video programming distributor. n20 Furthermore, MPAA argues that coerced exclusivity is prohibited by Section 616, even if the Commission would find non-coerced exclusivity to be in the public interest under the standards set forth in Section 628. TCI states that it agrees with a case-by-case application of the implementing regulations for Section 616 in order to allow for aggressive market negotiations, but observes that MPAA's indicia are often unrelated to coercion. n21

n20 MPAA claims that TCI's discussion of the antitrust cases is incomplete in that the court decisions did not hinge on the presence of a threat. MPAA, therefore, cites the "essential facilities" doctrine as a more appropriate standard for comparison. See MPAA Reply at 4-5.

n21 See TCI Reply at 18-20.

13. Another specific statutory provision is set forth in Section 616(a)(3), which [**15] prohibits a distributor from "engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation in the selection, terms, or conditions of carriage." MPAA recommends that the Commission consider several criteria for a prima facie showing of such discrimination, such as: (a) a refusal to carry an unaffiliated service without reasonable business justification; (b) assignment of significantly inferior channel positioning, or other type of inaccessibility to subscribers, as compared to competing affiliated services added to the system during the same time period; (c) unwillingness to engage in

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promotional support, cooperative advertising, or other similar activity performed for comparable affiliated services, without a reasonable business justification; (d) willingness to sell subscriber lists and addresses and other data useful in promotional activity only to affiliated programmers; (e) excluding unaffiliated programming services from mention in standard presentations to potential subscribers, when affiliated services [**16] are named; (f) requiring that unaffiliated services waive rights not waived by any comparable affiliated or unaffiliated service; (g) higher monthly payments to affiliated services than to comparable unaffiliated services without reasonable business justification; (h) imposing more onerous technical quality standards or requirements on an unaffiliated service; and (i) refusing to include a nonaffiliated service in comparable discount packages to those in which comparable affiliated services are offered to subscribers, without a reasonable business justification. n22 Viacom also agrees that discrimination in the context of carriage agreements involves different activities from those discussed under [*2648] Section 628 regarding program access. n23 Other parties recommend that the Commission narrowly construe the prohibition against discrimination by favoring an "affiliated" vendor, so as to avoid discouraging MSO's from making favorable deals with program services in which they have invested. n24 Finally, Continental recommends using the same factors listed in Section 628(c)(2)(B) to justify a distributor's different treatment of various program vendors, including an allowance for [**17] considering creditworthiness, offering of service, financial stability, character, and technical quality. n25

n22 See MPAA at 10.

n23 See Viacom at 21.

n24 See, e.g., Discovery at 32, Cablevision at 26.

n25 See Continental at 25.

Discussion

14. In implementing the provisions of Section 616, we believe that our regulations must strike a balance that not only prescribes behavior prohibited by the specific language of the statute, but also preserves the ability of affected parties to engage in legitimate, aggressive negotiations. Because the statute does not prohibit distributors from acquiring exclusivity rights or financial interests from programming vendors, we believe that resolution of Section 616 complaints will necessarily focus on the specific facts pertaining to each negotiation, and the manner in which certain rights were obtained, in order to determine whether a violation has, in fact, occurred. Accordingly, we adopt general rules that are consistent with the statute's specific prohibitions regarding actions between distributors and program vendors in forming program carriage agreements. With respect to the prohibitions set forth in Section 616(a)(1)-(3), we [**18] will identify specific behavior that constitutes "coercion" and "discrimination" as we resolve particular Section 616 complaints, because the practices at issue will necessarily involve behavior that must be evaluated within the context of specific facts pertaining to each negotiation. In addition, we observe that Section 616(a)(3) prohibits only that conduct "the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly." n26 Thus, the implementing regulations for Section 616 will require that any complainant alleging a violation of Section 616(a)(3) must demonstrate that the effect of the conduct that prompts the complaint is to unreasonably restrain the ability of the complainant to compete fairly.

n26 See 47 U.S.C. § 616(a)(3).

15. We believe that this approach complies with the expressed congressional intent of the program access and carriage agreement provisions of the 1992 Cable Act, by preserving the legitimate aspects of negotiations for multichannel video programming that result in greater availability of programming to the multichannel video marketplace. n27 Indeed, we [**19] believe that these regulations will follow the statute's directive to "rely on the marketplace, to the maximum extent feasible, to achieve greater availability" of the

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relevant programming. n28 We emphasize that this approach remains consistent with our objective of serving "the congressional intent to prohibit unfair and anticompetitive actions without restraining the amount of multichannel programming available by precluding legitimate business practices [*2649] common to a competitive marketplace." n29 Furthermore, as suggested in the Notice, the flexibility that is inherent in this approach will be important in our overall effort to resolve both carriage agreement and program access complaints, so that our implementing rules for Section 616 do not preclude as "coercion" any mutually acceptable arrangements that would otherwise comply with the program access provisions of Section 628. n30 We remind vendors and distributors, however, that our program access regulations prohibit exclusivity in areas unserved by a cable operator, and require prior Commission approval of any exclusivity rights provided in areas served by a cable operator before such rights may be enforced. n31

n27 See 1992 Cable Act, Section 2(b). See also *First Report and Order, MM Docket No. 92-265, 8 FCC Rcd 3403 (1993)*.

n28 See 1992 Cable Act, Section 2(b)(2).

n29 See First Report and Order at 3402; see also *Notice at 194*.

n30 Cite to *Notice at 205*.

n31 See *47 C.F.R. § 76.1002(c)*. Such approval requires a finding that the proposed exclusivity serves the public interest under the factors articulated in the 1992 Cable Act and set forth in § 76.1002(c) of our Rules.

[**20]

16. At the same time, we believe that this method will preclude opportunities for distributors to restrain the ability of certain program vendors to sell programming and compete fairly through attempts to (1) require financial interests in program services as conditions for carriage, (2) coerce exclusive rights or retaliate against vendors that fail to provide such rights, or (3) discriminate among affiliated or nonaffiliated vendors in the selection, terms or conditions of carriage of multichannel video programming. n32 Thus, after reviewing the facts of individual negotiations involved in carriage agreement disputes, the Commission will be able to identify behavior that, in context, is prohibited under Section 616.

n32 See 1992 Cable Act, Section 12(a)(1)-(3).

17. We also observe that the record on this aspect of the 1992 Cable Act has been extremely limited. In the absence of more explicit input from the commenters, we believe that it is neither helpful nor necessary to develop specific indicia of "coercion" at this time, contrary to the suggestions of two commenters. n33 Also, while we believe that it is unnecessary provide further illustrative guidelines, we believe [**21] that behavior such as that suggested by commenters, as described above, can provide useful guidelines for case-by-case inquiry. Such examples may be used by complainants to develop facts to support their complaints, thus serving as models for specific allegations pertaining to unfair program carriage agreements. We also reject the suggestions from commenters that supported alternative tests for identifying "coercion" or "discrimination", because we believe that the unique aspects of individual negotiations will require a more direct examination and evaluation of the facts pertaining to each complaint situation. We emphasize that the statute does not explicitly prohibit multichannel distributors from acquiring a financial interest or exclusive rights that are otherwise permissible. Thus, in the context of good faith, arms-length discussions, multichannel distributors may negotiate for, but may not insist upon, such benefits in exchange for carriage on their systems. We believe that ultimatums, intimidation, conduct that amounts to the exertion of pressure beyond good faith negotiations, or behavior that is tantamount to an unreasonable refusal to deal with a vendor who refuses [**22] to grant financial interests or exclusivity rights in exchange for carriage, should be considered examples of behavior that violates the prohibitions set forth in Section 616.

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n33 We note that we believe that the case-by-case approach adopted for carriage agreements will make it unnecessary for us to thoroughly evaluate the line of antitrust precedents related to "coercion" cited by TCI, MPAA. See TCI at 33-36, MPAA at 7-9.

[*2650] 18. Finally, we reject TCI's suggestion that we should require evidence of explicit threats, because we believe that actual threats may not always comprise a necessary condition for a finding of coercion. Requiring such evidence would establish an unreasonably high burden of proof that could undermine the intent of Section 616 by allowing multichannel distributors to engage in bad faith negotiations that apparently would not violate the statute and our regulations simply because explicit threats were not made during such negotiations. In contrast, we believe that Section 616(a)(2) was intended to prohibit implicit as well as explicit behavior that amounts to "coercion." n34

n34 We also note that on May 20, 1993, CSN filed a motion to amend the First Report and Order in MM Docket NO. 92-265 and to revise procedural dates. CSN contended that various issues raised in their comments were not considered in the First Report and Order. We find that a number of the issues pertained to program carriage agreements, and are addressed in this item. To the extent that issues raised in CSN's comments were relevant to the program access provisions, we find no oversight on our part concerning their issues as they are cited in the comment summary. See, e.g., First Report and Order, Appendix C, n. 91. Accordingly, the motion filed by CSN is hereby denied.

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19. With respect to the prohibitions set forth in Section 616(a)(3), in order to distinguish between programming vendors that are "affiliated" or "nonaffiliated" with particular distributors, we adopt the attribution standard as applied in the program access rules. n35 Specifically, we will consider a vendor to be "affiliated" with respect to a multichannel distributor if the distributor holds five percent or more of the stock of the programmer, whether voting or non-voting. As in the First Report and Order on program access, we will not adopt the single majority shareholder aspect of the broadcast attribution rule. In addition, all officer and director positions and general partnership interests will be attributable, as will limited partnership interests of five percent or greater, regardless of insulation. While certain aspects of this attribution standard may be subject to reconsideration in the program access context, we will adopt a parallel standard in the absence of a detailed rationale that would distinguish the relationships in Section 616 from the vertical integration issues in the program access provisions of Section 628. n36

n35 See First Report and Order at 3370; 47 C.F.R. § 76.1000(b). We note that the same attribution standard was adopted in proceeding adopting the cable rate regulation provisions of the 1992 Cable Act. See Report and Order, MM Docket No. 92-266, FCC 93-177, 58 FR 29736 (May 21, 1993)

n36 See, e.g., Petitions for Reconsideration in MM Docket No. 92-265, filed June 10, 1993 by Black Entertainment Television at 1, Discovery at 2, Liberty Media at 8, Time Warner at 7, Viacom at 2.

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IV. COMPLAINT AND ENFORCEMENT PROCEDURES

20. The Notice also sought comment on the procedures to be established for review of complaints, and on the appropriate penalties and remedies to be ordered. Section 616(a)(4) provides for expedited review of any complaints made by a video programming vendor pursuant to this section. We sought comment on: (1) whether we should follow the same review process as was discussed with respect to Section 628(d), or rather, adopt different complaint procedures; and (2) whether we should afford carriage agreements confidential treatment in full, or rather, only permit confidential or proprietary information to be redacted. Section

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616(a)(5) provides that the Commission must adopt appropriate penalties and remedies for violations of this subsection, including requiring the multichannel video [*2651] programming distributor to carry the unaffiliated program vendor. n37 Accordingly, we sought comment on: (1) procedures that we should establish for mandatory carriage; (2) the appropriate duration for mandatory carriage, given that we do not intend to require the multichannel distributor to carry the aggrieved programming service indefinitely; [**25] (3) guidelines that we should use to determine forfeiture amounts assessed against violators; (4) whether we should also consider ordering remedies other than forfeiture or mandatory carriage, such as establishment of prices, terms and conditions of sale, similar to the remedies specified in Section 628(e)(1). n38 In addition, Section 616(a)(6) provides that the Commission must delineate penalties to be assessed against any person filing a frivolous complaint pursuant to this section. We proposed to assess monetary forfeitures for frivolous complaints and we asked for comment on (1) the factors that should determine whether a complaint is frivolous; (2) guidelines to determine forfeiture amounts; and (3) whether we should base the forfeiture amount on the resources expended by the Commission in considering the claim and by the party defending against the claim.

n37 We note that the House Report states that "[t]his legislation provides new FCC remedies and does not amend, and is not intended to amend, existing antitrust laws. All antitrust and other remedies that can be pursued under current law by video programming vendors are unaffected by this section." House Report at 111.

n38 See 47 U.S.C. § 628(e)(1).

[**26]

Comments

21. Regarding Section 616(a)(4)'s requirement for an expedited review process for complaints by programming vendors, MPAA contends that the same standards of evidentiary support for allegations should apply to both complaints and answers. MPAA also claims that the availability of disputed carriage agreements with redacted proprietary terms would contribute to the body of precedent concerning prohibited conduct, thus deterring violations and minimizing the incidence of unsuccessful complaints. According to MPAA, these considerations appear to outweigh the need to maintain the confidentiality of the entire contract, which a distributor could still request in appropriate cases pursuant to existing Commission procedures for requesting confidential treatment. n39

n39 See MPAA at 11-12.

22. Regarding remedies for violations, MPAA claims that mandatory carriage should be imposed as a remedy for most violations, and that the rules should enable the Commission to set terms and conditions of carriage in appropriate cases. When carriage is ordered as a remedy, MPAA argues that it should continue for a reasonable period of non-discriminatory terms until the parties notify [**27] the Commission that they have reached a voluntary and on-abusive agreement. MPAA also believes that the rules should require consideration of a complaint within 90 days to afford meaningful relief to programming vendors. n40 Alternatively, Continental asserts that the Commission should use a remedy of mandatory carriage only rarely, and should not require it in response to a distributor's mere denial of carriage. n41 In addition, Continental believes that the Commission should not always rely on mandatory carriage, even when wrongful conduct has occurred. n42 Finally, Cablevision states [*2652] that remedies imposed should reflect the harm to the aggrieved vendor. Cablevision recommends limiting the time period for filing a Section 616 complaint to 90 days after the aggrieved violation. If mandatory carriage is warranted, Cablevision contends that the Commission should limit such carriage to one year plus the time period between the Commission's order and the distributor's compliance, with terms of carriage that are reasonable and customary in the industry. Cablevision also recommends that any forfeitures imposed by the Commission on a cable operator should be related to the [**28] alleged harm to the programming vendor, and should not exceed the vendor's lost profits. n43

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n40 See MPAA at 12-14.

n41 See Continental at 25.

n42 Id. at 27.

n43 See Cablevision et al at 27.

Discussion

23. General Procedures. We believe that a complaint process derived from the process we established for adjudicating undue influence complaints filed pursuant to Section 628(c)(2)(A) of the program access provisions of the 1992 Cable Act will provide the most flexible and expeditious means of enforcing the carriage agreement provisions of Section 616. Thus, we hereby adopt a system that promotes resolution of as many cases as possible on the basis of a complaint, answer and reply. Given the statute's explicit direction to the Commission to handle program carriage complaints expeditiously, additional pleadings will not be accepted or entertained unless specifically requested by the reviewing staff. Discovery will not necessarily be permitted as a matter of right in all cases, but only as needed on a case-by-case basis, as determined by the staff. Cases that require a relatively contained amount of discovery (limited to written interrogatories and document production) [**29] will be resolved at the staff level and shall be subject to review directly by the Commission. Interlocutory review shall be permitted only after the staff has ruled on the merits. The ex parte rules governing restricted proceedings will be applied.

24. As a practical matter, however, given that alleged violations of Section 616, especially those involving potentially "coercive" practices, will require an evaluation of contested facts and behavior related to program carriage negotiations, we believe that the staff will be unable to resolve most program carriage complaints on the sole basis of a written record as described above. Rather, we anticipate that resolution of most program carriage complaints will require an administrative hearing to evaluate contested facts related to the parties' specific negotiations. In such cases, after reviewing the complaint, answer and reply, the staff will inform the parties of its determination that resolution of the complaint will require a hearing before an administrative law judge (ALJ). The parties will be given the opportunity to resolve the dispute through the Commission's alternative dispute resolution process (ADR). If ADR is not [**30] selected or is unsuccessful, the case will be designated for hearing before an ALJ. Interlocutory applications for review in such cases will be similarly limited, and any decision rendered by an ALJ shall be directly appealable to the Commission. The ex parte rules governing restricted proceedings will be applied.

25. As we have required in the context of program access complaints, n44 to minimize the number of complaints brought before the Commission we will require that prior to filing a program carriage complaint, an aggrieved programming vendor must first inform the multichannel distributor of its belief that a violation of Section 616 of the 1992 Cable Act has occurred. Such notice must be sufficiently detailed so that the multichannel distributor can determine the specific nature of the potential complaint. This will give the multichannel [*2653] distributor a final opportunity to resolve the dispute without involving the Commission. If the parties still cannot reach resolution, the aggrieved program vendor should file its complaint along with evidence (an affidavit or copy of a certified letter) that the required notice to the multichannel distributor has been given. [**31] n45 Complaints failing to include such evidence will be dismissed. Finally, a one year statute of limitations will apply to carriage agreement complaints. Thus, a complaint filed pursuant to Section 616 must be filed within one year of the date on which one of the following occurs: (a) the complainant enters into a carriage agreement with an multichannel distributor, which the complainant alleges involves a violation of Section 616; (b) the multichannel distributor offers to carry a vendor's programming pursuant to terms that the complainant alleges to violate Section 616; or (c) the complainant notifies an multichannel distributor that it intends to file a complaint based on a request to carry programming that has been denied for reasons that allegedly involve a violation of Section 616. n46

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n44 See 47 C.F.R. § 76.1003(a).

n45 At this time, rather than establish a specific time period for the parties to attempt to resolve the dispute before an aggrieved party may file a complaint at the Commission, we will allow the aggrieved programming vendor to determine the appropriate duration of negotiations. At a minimum, however, the programming vendor must provide the potential defendant ten (10) days to respond to the notice, and allow a reasonable time thereafter -- which will vary given the particular circumstances of each case -- for negotiations.

n46 We do not believe that 90 days, as suggested by Cablevision, provides a sufficient statute of limitations for program carriage complaints. We have adopted a one year statute of limitations for filing complaints alleging violations of our program access regulations, which may involve similar types of behavior and allegations. See 47 C.F.R. § 76.1003(r). The commenters, including Cablevision, have not provided sufficient information that demonstrates the need for a more abbreviated statute of limitations for alleged violations of the program carriage requirements set forth in Section 616.

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26. Remedies. We note that the record offers very little guidance on the subject of remedies, and in particular, provides little insight on the appropriate scope and duration of relief in the form of mandatory carriage of the complainant's programming. Thus, we do not believe that it is possible to prescribe specific requirements for such relief at this time. Instead, we will determine the appropriate relief for program carriage violations on a case-by-case basis. Complainants will be expected to include a request for relief in their complaint, along with any relevant evidence and arguments in support of the relief requested. Available remedies and sanctions include forfeitures, mandatory carriage, or carriage on terms revised or specified by the Commission. n47

n47 For example, if the Commission finds that a carriage agreement includes a coerced financial interest or exclusivity requirement in violation of Section 616, the appropriate remedy may simply be to determine that such terms are unenforceable by the multichannel distributor, and to revise the existing agreement, ordering carriage on the same terms negotiated in that agreement without the coerced financial interest provisions or coerced promise of exclusivity.

[**33]

27. If a complainant seeks mandatory carriage, it should propose specific terms for such carriage, as well as an explanation of its rationale for proposing those terms, such as the existence of comparable terms in other program carriage agreements to which either the complainant or the defendant is a party, or comparable terms that have been approved by the Commission in other program carriage complaint cases. The defendant may oppose the proposed relief in its answer, and may offer alternative remedies without prejudice to any defenses it may raise or responses to the complainant's allegations. Given the wide range of behavior that may potentially give rise to a violation of the rules adopted herein to implement Section 616, we believe that a case-by-case determination of the appropriate remedies based on the specific behavior involved in a particular violation provides the only [*2654] reasonable and meaningful method of enforcing Section 616.

28. With respect to forfeitures, we disagree with the suggestion by Cablevision that the forfeiture amount must be related to the alleged harm to the programming vendor, or that it should be limited to the vendor's "lost profits." [**34] Such a standard has not provided the basis for FCC forfeitures in other contexts, nor is it set forth in the statute. Rather, the Commission will rely upon its forfeiture guidelines to determine the appropriate penalty. n48

n48 See *Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993).

Complaint Process

29. Complaint. When filing a complaint, the burden of proof will be on the programming vendor to establish a prima facie showing that the defendant multichannel distributor has engaged in behavior that is prohibited by Section 616. The complaint must identify the relevant Commission regulation allegedly violated, and must describe with specificity the behavior constituting the alleged violation. The complainant must establish that it is a video programming vendor, as defined in Section 76.1300(d) of the Commission's rules, and that the defendant is an multichannel distributor as defined in Section 76.1300(c).ⁿ⁴⁹ For complaints alleging discriminatory treatment that favors "affiliated" programming vendors,ⁿ⁵⁰ the complainant must provide evidence that the defendant has an attributable interest in the allegedly favored programming vendor, **[**35]** as set forth in Section 76.1300(a). The complaint must be supported by documentary evidence of the alleged violation, or by an affidavit (signed by an authorized representative or agent of the complaining programming vendor) setting forth the basis for the complainant's allegations. If the complaint involves a specific written program carriage agreement, that agreement should be included with the complaint with proprietary information redacted. We agree with MPAA that the availability of disputed carriage agreements with redacted proprietary terms will contribute to the body of precedent concerning prohibited conduct, and will assist parties in future negotiations by deterring violations and minimizing the instance of unsuccessful or frivolous complaints. As stated above, a one-year statute of limitations will be applied to program carriage complaints. Finally, the complaint should specify the relief requested. If the complainant seeks mandatory carriage, the complaint should specify the desired duration and terms of such carriage, and should include the rationale and any documentary evidence supporting such request. If the complainant seeks modification of an existing carriage **[**36]** agreement, it should specify the terms it seeks to change and should propose specific substitute provisions.

ⁿ⁴⁹ See Appendix D.

ⁿ⁵⁰ See Appendix D.

30. Answer and Reply. The defendant will be given thirty (30) days to file its answer responding to the complainant's allegations. The answer should be supported by documentary evidence, or an affidavit (signed by an officer of the defendant) that refutes each allegation made by the complainant or supports any affirmative defenses the defendant may raise. The answer should also include the defendant's response to the relief requested by complainant, as well as any documentary evidence that supports defendant's position. **[*2655]** The complainant will be given twenty (20) days to respond to the defendant's answer.ⁿ⁵¹

ⁿ⁵¹ As stated above, unless specifically requested by the Commission or its staff, additional pleadings such as motions to dismiss or motions for summary judgment will not be considered. We intend to keep pleadings to a minimum to comply with the statutory directive for an expedited adjudicatory process.

31. Staff Determination. After reviewing the complaint, answer and reply, the staff will make what, **[**37]** for the purposes of these proceedings, we will deem a prima facie determination. If the complainant has not made a prima facie case of a violation of our carriage agreement regulations the complaint will be dismissed. If the staff determines that the complainant has made a prima facie showing, the staff will so rule, and will determine whether it can grant relief on the basis of the existing record. If the record is not sufficient to resolve the complaint and grant relief, the staff will determine and outline the appropriate procedures for discovery, or will refer the case to an ALJ for an administrative hearing.

32. Discovery. The staff will determine what additional information is necessary to resolve the complaint, and will develop a discovery process and timetable to resolve the dispute expeditiously.ⁿ⁵² Wherever possible, to avoid discovery disputes and arguments pertaining to relevance, the staff will itself conduct dis-

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covery by issuing appropriate letters of inquiry or requiring that specific documents be produced. The staff will determine whether the materials ordered to be produced to the opposing party should also be filed with the Commission. The staff may order [**38] that any documents or answers to such inquiries will be submitted to the Commission and to the opposing party within a specified time period. Any information exchanged through discovery may be subjected to a protective order upon an appropriate showing by the relevant party that the information is proprietary. n53 If the staff cannot readily determine what additional information is needed to resolve the dispute, it [*2656] should refer the complaint to an ALJ. The staff may also hold a status conference to conduct discovery, and is authorized to issue oral rulings at the status conference which will be confirmed to the parties in writing.

n52 The staff, including ALJs, is directed herein to resolve all program carriage disputes as expeditiously as possible. Given the complexity of the issues that may be raised in such cases, as well as the likely need to resolve factual disputes, we do not believe that it is practicable or advisable to add to the administrative burdens already placed on the FCC staff by the 1992 Cable Act by imposing, at the outset, a uniform requirement on the staff to dispose of these cases within 90 days, as was suggested by MPAA in its comments.

n53 See 47 C.F.R. § 0.459. The parties will be required to take reasonable steps to prevent unauthorized access to protected documents and information. Access to protected materials will be limited to the individual complainant or defendant, the attorneys listed with the Commission as representatives of the parties, their staffs and any expert advisors or analysts. Each party is responsible for informing anyone with access to protected information that the documents or information contained therein may not be disclosed to anyone or any entity other than the Commission. Each party may require the other to disclose in writing the names of all persons who have access to documents and information subject to the protective order. The information contained in any proprietary materials may be disclosed to any person not authorized to receive such information, and may not be used in any activity or function other than the prosecution or defense of the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statements, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's regulations and understands the limitations they impose upon the signing party. No copies of proprietary materials may be made except copies to be used by authorized persons. Each party will be required to maintain a log recording the number of copies made of all proprietary information and the persons to whom the copies were provided. Upon termination of the proceeding, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, will be provided to the producing party. Upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed. The parties may agree to additional reasonable measures to protect the confidentiality of information as the circumstances may require. Such agreement should be confirmed in writing and filed with the Commission. Any failure to abide by the terms of the protective order may result in the imposition of sanctions, including dismissal of the complaint, or censure, suspension of disbarment of the attorneys involved. See 47 C.F.R. § 1.24. See also Appendix D.

[**39]

33. Upon the conclusion of any discovery, the staff may direct the parties to submit briefs, together with proposed findings of fact, conclusions of law and proposed remedies on a specified date. Reply briefs should be filed within the following fifteen (15) days. The parties will be given an additional five (5) days in which to file redacted copies of briefs and reply briefs for the public record when they contain confidential or proprietary information that is subject to a protective order. After a ruling on the merits, either party may file an application for review of the staff's determinations directly to the Commission. Thus ruling will include a timetable for compliance, and will become effective upon release. n54 In the absence of a stay, any relief or remedies imposed therein, with the exceptions of an order requiring mandatory carriage that would require

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the defendant to delete other programming carried on its distribution system in order to carry complainant's programming, will remain in effect pending appeal. Stays will not be routinely granted. If the staff orders mandatory carriage of the complainant's programming, and such carriage would necessitate deletion [**40] of other programming from the defendant's distribution system, the defendant need not carry the programming until the Commission has issued a final ruling on the application for review. In such cases, however, if the Commission upholds in its entirety the relief granted by the staff ruling, the defendant will be required to carry the complainant's programming for an additional time period, beyond that originally ordered by the staff, equal to the amount of time that elapsed between the staff order and the Commission's final decision, on the terms ordered by the staff and upheld by the Commission.

n54 See 47 C.F.R. § 1.102(b).

34. Referral to ALJ. If the staff determines that the complainant has established a prima facie case, and that disposition of the complaint will require the resolution of factual disputes or other extensive discovery, it will so advise the parties in writing. If both parties agree, they may elect to resolve the dispute through ADR. If the parties do not agree to ADR, or if ADR is unsuccessful, the staff will refer the complaint to an ALJ for an administrative hearing. As stated above, we anticipate that the majority of the program carriage complaints [**41] filed will require an administrative hearing to resolve factual disputes related to the negotiations between the parties. ALJs are expected to resolve program carriage complaints expeditiously, and should hold an immediate status conference to establish timetables for discovery, hearing and submission of briefs and proposed findings of fact and conclusions of law. Interlocutory appeals shall be permitted only after a ruling on the merits. A ruling on the merits by the ALJ must be appealed directly to the Commission. Such a ruling will include the relief granted, a timetable for compliance, and will become effective upon release. In the absence of a stay, any relief or remedies imposed therein, with the exception of an order for mandatory carriage that would require deletion of other programming, will remain in effect pending appeal. Stays will not be routinely granted. If the ALJ orders mandatory carriage of the complainant's programming, and such carriage would necessitate deletion of other programming from the defendant's distribution system, the defendant need not carry the programming until the Commission has issued a final ruling on the appeal. As in the case of a staff [**42] order, if the Commission upholds the relief granted by the ALJ in its entirety, the defendant will be required to carry the complainant's programming for an additional time period, beyond that originally ordered by the ALJ, equal to the amount of time that elapsed between ALJ's decision and the Commission's ruling on the appeal, pursuant to the terms ordered by the ALJ and upheld by the Commission.

[*2657] Frivolous Complaints

35. The regulations we have adopted to implement the proscriptions contained in Section 616 of the 1992 Cable Act are intended to avoid constraining aggrieved programming vendors from filing legitimate complaints, but at the same time must afford the statutory protection to multichannel distributors from frivolous complaints. We note that the commenters have offered no suggestions as to what should be deemed a "frivolous" program carriage complaint. Accordingly, as in the case of program access complaints filed under Section 628 of the 1992 Cable Act, n55 we adopt herein a regulation prohibiting the filing of frivolous complaints alleging a violation of Section 616. n56 Our regulations will also require that all complaints alleging violations of Section [**43] 616. n56 Our regulations will also require that all complaints alleging violations of Section 616 must be accompanied by an affidavit signed by an authorized officer or agent of the complainant. To enforce the prohibition against filing frivolous complaints, we will assess monetary forfeitures in accordance with Section 503 of the Communications Act and our forfeiture regulations and policies. For purposes of Section 503(b)(5), one finding that a non-licensee complainant has filed a frivolous complaint under any provision of Section 616 will be sufficient to fulfill the citation requirements of the forfeiture provisions. n57

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n55 See 47 C.F.R. § 76.1003(q).

n56 See Appendix D.

n57 See 47 U.S.C. § 603(b)(5).

36. With respect to the type of complaints that the Commission will deem frivolous, we believe that complaints filed without any effort to ascertain or review the underlying facts should be considered frivolous. We expect that the requirement adopted herein that complaints be accompanied by affidavit should assure that such complaints are based on specific and substantiated facts. When this is not the case, the complainant will be [**44] liable for sanctions for violating our rule against frivolous complaints. Similarly, complainants will be liable for sanctions for filing a frivolous complaint when that complaint is based on arguments that have been specifically rejected by the Commission in other proceedings, or for filing a complaint that has no plausible basis for relief. We expect that further standards with respect to frivolous complaints will develop as specific cases are adjudicated.

V. CONCLUSION

37. In this Second Report and Order, we adopt rules to implement the new Section 616 of the Communications Act regarding program carriage agreements. Given the program access regulations previously adopted, we recognize that enhanced availability of multichannel programming to the public will also depend upon the ability of program vendors to sell their services without becoming subject to coercive or discriminatory practices. Therefore, we seek to establish regulations that prevent multichannel programming distributors from entering into carriage agreements that are conditioned on concessions of various rights, including financial interests or exclusivity. By adopting this process to identify prohibited [**45] conduct in negotiating program carriage agreements, we believe that the implementing regulations remain consistent with the general approach in this proceeding to serve the congressional intent to prohibit unfair and anticompetitive actions without restraining the amount of multichannel programming available by precluding legitimate business practices [*2658] common to a competitive marketplace.

VI. ADMINISTRATIVE MATTERS

A. Final Regulatory Flexibility Analysis

38. The Final Regulatory Flexibility Analysis is attached as Appendix C.

B. Paperwork Reduction Act Statement

39. The decision in this proceeding has been analyzed with respect to the Paperwork Reduction Act of 1980, and has been found to impose new or modified requirements or burdens upon the public. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

C. Ordering Clauses

40. Accordingly, IT IS ORDERED that, pursuant to Sections 2(a), 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152(a), 154(i), and 303(r), Part 76 of the Commission's Rules, 47 [**46] C.F.R. Part 76, IS AMENDED as set forth in Appendix C, below, effective January 10, 1994.

41. IT IS FURTHER ORDERED that MM Docket No. 92-265 IS TERMINATED.

42. For further information in this proceeding, contact James Coltharp, Mass Media Bureau, (202) 632-6302; Diane Hofbauer, Office of the General Counsel, (202) 632-6990.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

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Acting Secretary

APPENDIX:

Appendix A: Section 12 of the Cable Television Consumer Protection and Competition Act of 1992

SEC. 12. REGULATION OF CARRIAGE AGREEMENTS.

Part II of title VI of the Communications Act of 1934 is amended by inserting after section 615 (as added by section 5 of this Act) the following new section:

"SEC. 616. REGULATION OF CARRIAGE AGREEMENTS.

"(a) Regulations. -- Within one year after the date of enactment of this section, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors.

Such regulations shall --

"(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring [**47] a financial interest in a program service as a condition for carriage on one or more of such operator's systems;

"(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

"(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;

"(4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;

"(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

"(6) provide penalties to be assessed against any person filing [**48] a frivolous complaint pursuant to this section.

"(b) Definition. -- As used in this section, the term 'video programming vendor' means a person engaged in the production, creation, or wholesale distribution of video programming for sale."

Appendix B: List of Commenters

Initial Comments

1. Cablevision Industries Corporation, Comcast Cable Communications, Inc., and Cox Cable Communications
2. Caribbean Satellite Network, Inc.
3. Consumer Satellite Systems, Inc.
4. Continental Cablevision, Inc.
5. Discovery Communications, Inc.
6. Liberty Media Corporation

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7. Motion Picture Association of America, Inc.
8. Tele-Communications, Inc.
9. Time Warner Entertainment Company, L.P.
10. WJB-TV Fort Pierce, L.P.

Reply Comments

1. Motion Picture Association of America
2. Sammons Communications, Inc.
3. Tele-communications, Inc.
4. Time Warner Entertainment Company, L.P.
5. Viacom International Inc.

Appendix C: Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

This action is taken to implement Section 12 of the Cable Television [**49] Consumer Protection and Competition Act of 1992.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered:

We have analyzed the comments submitted in light of our statutory directives and have formulated regulations which, to the extent possible, minimize the regulatory burden placed on entities covered by the program carriage agreement provisions of the Cable Act. Different entities will be affected in different ways. Some programming distributors may be forced to alter their policies for negotiating for program carriage, while other vendors may receive benefits in increased flexibility in selling their program services.

IV. Federal Rules which overlap, duplicate or conflict with these rules.

None

V. Paperwork Reduction Act Statement

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new and modified information collection requirements on the public. Implementation of any new or modified requirements [**50] will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Appendix D: Rules

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows.

PART 76 -- CABLE TELEVISION SERVICE

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1. The authority citation for part 76 is revised to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 536, 542, 543, 552.

2. The heading in Subpart Q is added to read as follows:

Subpart Q -- Regulation of Carriage Agreements

3. Subpart Q is added to read as follows:

§ 76.1300 Definitions

As used in this subpart:

(a) **Affiliated.** For purposes of determining whether a video programming vendor is "affiliated" with a multichannel video programming distributor, as used in this subpart, the definitions for "attributable interest" contained in the notes to § 76.501 of this chapter shall be used, provided, however that:

(1) the single majority shareholder provisions of Note 2(b) and the limited partner insulation provisions of Note 2(g) shall not apply; and

(2) the provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting [**51] stock or limited partnership equity interests of five (5) percent or more.

(b) **Buying groups.** The term "buying group" or "agent," for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(c) **Multichannel video programming distributor.** The term "multichannel video programming distributor" means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable [**52] operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

(d) **Video programming vendor.** The term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

4. Section 76.1301 is added to Subpart Q to read as follows:

§ 76.1301 Prohibited Practices

(a) **Financial Interest.** No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems.

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(b) Exclusive rights. No cable operator or other multichannel video programming distributor shall coerce any video programming vendor to provide, or retaliate against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(c) Discrimination. No multichannel video programming distributor shall engage in conduct [**53] the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

5. Section 76.1302 is added to Subpart Q to read as follows:

§ 76.1302 Adjudicatory Proceedings

Any video programming vendor aggrieved by conduct that it alleges to constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission.

(a) Notice required. Any aggrieved video programming vendor intending to file a complaint under this section must first notify the defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in § 76.1301 of this subpart. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) [**54] to respond before filing a complaint with the Commission.

(b) General pleading requirements. Carriage agreement complaint proceedings are generally resolved on a written record consisting of a complaint, answer and reply, but may also include other written submissions such as briefs and written interrogatories. All written submissions, both substantive and procedural, must conform to the following standards:

(1) Pleadings must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy should be pleaded fully and with specificity.

(2) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation, or a defense to such alleged violation.

(3) Facts must be supported by relevant documentation or affidavit.

(4) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority.

(5) Opposing authorities must be distinguished.

(6) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(7) [**55] Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(c) Complaint.

(1) A carriage agreement complaint shall contain:

(i) The name of the complainant and defendant;

(ii) The address and telephone number of the complainant, the type of multichannel video programming distributor that describes the defendant, and the address and telephone number of the defendant;

- (iii) The name, address and telephone number of complainant's attorney, if represented by counsel;
- (iv) Citation to the section of the Communications Act and/or Commission regulation or order alleged to have been violated;
- (v) A complete statement of facts, which, if proven true, would constitute such a violation;
- (vi) Any evidence that supports the truth or accuracy of the alleged facts, including, when relevant, any written carriage agreement between the complainant and the defendant, with proprietary information redacted; [**56]
- (vii) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;
- (viii) For complaints alleging a violation of Section 76.1301(c) of this subpart, evidence that supports complainant's claim that the effect of the conduct complained of is to unreasonably restrain the ability of the complainant to compete fairly;
- (ix) The specific relief sought, and the rationale and any evidence in support of the relief sought.

(2) Every complaint alleging a violation of the carriage agreement requirements shall be accompanied by a sworn affidavit signed by an authorized officer or agent of the complainant. This affidavit shall contain a statement that the affiant has read the complaint and that to the best of the affiant's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted under Commission regulations and policies or is a good faith argument for the extension, modification or reversal of such regulations or policies, and it is not interposed for any improper purpose. If the complaint is signed in violation of this rule, the Commission [**57] upon motion or its own initiative shall impose upon the complainant an appropriate sanction.

(3) The following format may be used in cases to which it is applicable, with such modifications as the circumstances may render necessary:

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, DC 20554

In the matter of

Complainant,

v.

Defendant.

File No. (To be inserted by the Commission)

[Insert Subject/Nature of Violation]

Carriage Agreement Complaint

TO: The Commission.

The complainant (here insert full name of complainant, and if a corporation, the corporate title of such complainant)

1. (Here state the complainant's post office address and telephone number.)
2. (Here insert the name, defendant's method of multichannel video distribution, address and telephone number of defendant).

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3. (Here insert fully and clearly the specific act or thing complained of, together with such facts as are necessary to give full understanding of the matter, including relevant legal and documentary support).

Wherefore, complainant asks (here state specifically the relief desired, including rationale and relevant legal and documentary support for such relief).

(Date)

[**58] (Name of complainant)

(Name, address, and telephone number of attorney, if any)

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (a) of this section has been made.

(d) Answer.

(1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall advise the parties and the Commission fully and completely of the nature of any and all defenses, and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any defendant failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(3) The answer shall state concisely any and all defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies. [**59] If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the answer shall specify so much of it as is true and shall deny only the remainder. The defendant may make its denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the defendant expressly admits. When the defendant intends to controvert all averments, the defendant may do so by general denial.

(4) Averments in a complaint are deemed to be admitted when not denied in the answer.

(5) The answer shall also address the relief requested in the complaint, including legal and documentary support for such response, and may include an alternative relief proposal without prejudice to any denials or defenses raised.

(e) Reply.

Within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters. Failure to reply will [**60] not be deemed an admission of any allegations contained in the answer, except with respect to any affirmative defenses set forth therein.

(f) Motions.

Except as provided in this section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted.

(g) Discovery.

(1) The Commission staff may in its discretion order discovery limited to the issues specified by the Commission. Such discovery may include answers to written interrogatories or document production.

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(2) The Commission staff may in its discretion hold a status conference with the parties, pursuant to paragraph (j) of this section, to determine the scope of discovery.

(3) If the Commission staff determines that extensive discovery is required or that resolution of the complaint will require resolution of disputed facts, the staff will advise the parties that the proceeding will be referred to an administrative law judge in accordance with paragraph (m) of this section.

(h) Confidentiality of proprietary information.

(1) Any materials generated or provided by a party in the course of adjudicating a carriage agreement complaint under this provision may be designated [**61] as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(2) Materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(i) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(ii) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(iii) [**62] Consultants or expert witnesses retained by the parties;

(iv) The Commission and its staff; and

(v) Court reporters and stenographers in accordance with the terms and conditions of this section. These individuals shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statement affirmatively stating, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(3) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraph (h)(2) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(4) Upon termination of the complaint proceeding, including all appeals and petitions, all originals [**63] and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

(i) Other required written submissions.

(1) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence. These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citations to the record, and supported by relevant authority and analysis.

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(2) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including copies of all contracts and documents reflecting arrangements and understandings alleged to violate the carriage agreement requirements set forth in the Communications Act and Section 76.1301 of this subpart, as well as affidavits [**64] and exhibits.

(3) Any briefs submitted shall be filed concurrently by both the complainant and defendant at such time as is designated by the staff. Such briefs shall not exceed fifty (50) pages.

(4) Reply briefs may be submitted by either party within twenty (20) days from the date initial briefs are due. Reply briefs shall not exceed thirty (30) pages.

(5) Briefs containing information which is claimed by an opposing or third party to be proprietary under paragraph (h) of this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter, and shall be clearly marked "Not for Public Inspection." An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited version is submitted and served on opposing parties.

(j) Status conference.

(1) In any carriage agreement complaint proceeding, the Commission staff may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(i) Simplification or narrowing of the issues;

(ii) The necessity for or desirability of amendments to the pleadings, additional [**65] pleadings, or other evidentiary submissions;

(iii) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(iv) Settlement of the matters in controversy by agreement of the parties;

(v) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(vi) The need and schedule for filing briefs, and the date for any further conferences; and

(vii) Such other matters that may aid in the disposition of the complaint.

(2) Any party may request that a conference be held at any time after the complaint has been filed.

(3) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(4) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

(5) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a carriage agreement complaint proceeding [**66] including, inter alia, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the staff.

(k) Specifications as to pleadings, briefs, and other documents; subscriptions.

(1) All papers filed in a carriage agreement complaint proceeding must be drawn in conformity with the requirements of §§ 1.49 and 1.50 of this chapter.

9 FCC Rcd 2642, *, 1993 FCC LEXIS 5415, **;
73 Rad. Reg. 2d (P & F) 1350

(2) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(3) The original of all pleadings and submissions by any party shall be signed by that party, [**67] or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Except when otherwise specifically provided by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certification that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose upon the party an appropriate sanction. Where the pleading or submission is signed by counsel, the provisions of §§ 1.52 and 1.24 of this chapter shall also apply.

(1) Copies; service.

(1) The complainant shall file an original plus two copies of the complaint with the Commission. [**68]

(2) An original plus two copies shall be filed of all pleadings and documents other than the complaint.

(3) The complainant shall serve the complaint on each defendant at the same time that it is filed at the Commission.

(4) All subsequent pleadings and briefs, as well as all letters, documents or other written submissions, shall be served by the filing party on all other parties to the proceeding, together with proof of such service in accordance with the requirements of § 1.47 of this chapter.

(5) The parties to any carriage agreement complaint proceeding brought pursuant to this section may be required to file additional copies of any or all papers filed in the proceeding.

(m) Referral to administrative law judge.

(1) After reviewing the complaint, answer and reply, and at any stage of the proceeding thereafter, the Commission staff may, in its discretion, designate any carriage agreement complaint proceeding for an adjudicatory hearing before an administrative law judge.

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) [**69] days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission.

(3) Unless otherwise directed by the Commission, or upon motion by the Mass Media Bureau Chief, the Mass Media Bureau Chief shall not be deemed to be a party to a carriage agreement complaint proceeding designated for a hearing before an administrative law judge pursuant to this paragraph.

(n) Petitions for reconsideration.

Petitions for reconsideration of interlocutory actions by the Commission's staff or by an administrative law judge will not be entertained. Petitions for reconsideration of a decision on the merits made by the Commission's staff should be filed in accordance with §§ 1.104-1.106 of this chapter.

(o) Interlocutory review.

(1) Except as provided below, no party may seek review of interlocutory rulings until a decision on the merits has been issued by the staff or administrative law judge.

9 FCC Rcd 2642, *, 1993 FCC LEXIS 5415, **;
73 Rad. Reg. 2d (P & F) 1350

(2) Rulings listed in this paragraph are reviewable as a matter of right. An application for review of such ruling may not be deferred and raised as an exception to a decision on [**70] the merits.

(i) If the staff's ruling denies or terminates the right of any person to participate as a party to the proceeding, such person, as a matter of right, may file an application for review of that ruling.

(ii) If the staff's ruling requires production of documents or other written evidence, over objection based on a claim of privilege, the ruling on the claim of privilege is reviewable as a matter of right.

(iii) If the staff's ruling denies a motion to disqualify a staff person from participating in the proceeding, the ruling is reviewable as a matter of right.

(p) Expedited review.

(1) Any party to a carriage agreement complaint proceeding aggrieved by any decision on the merits issued by the staff pursuant to delegated authority may file an application for review by the Commission in accordance with § 1.115 of this chapter.

(2) Any party to a carriage agreement complaint proceeding aggrieved by any decision on the merits by an administrative law judge may file an appeal of the decision directly with the Commission, in accordance with § 1.276(a) and §§ 1.277(a) - (c) of this chapter, except that unless a stay is granted by the Commission, the decision by the administrative [**71] law judge will become effective upon release and will remain in effect pending appeal.

(q) Frivolous complaints.

It shall be unlawful for any party to file a frivolous complaint with the Commission alleging any violation of this subpart. Any violation of this paragraph shall constitute an abuse of process subject to appropriate sanctions.

(r) Statute of limitations.

Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) the multichannel video programming distributor enters into a contract with the complainant that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) the multichannel video programming distributor offers to carry the complainant's programming pursuant to terms that the complainant alleges to violate one or more of the rules contained in this subpart; or

(3) the complainant has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on a request for carriage or to negotiate for carriage of its programming on defendant's distribution system that has been denied or unacknowledged, [**72] allegedly in violation of one or more of the rules contained in this subpart.

(s) Remedies for violations.

(1) Remedies authorized. Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of complainant's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of complainant's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of complainant's programming. In such instances, if the defendant seeks review of the staff or administrative law judge decision, the order for carriage of complainant's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be re-

9 FCC Rcd 2642, *; 1993 FCC LEXIS 5415, **;
73 Rad. Reg. 2d (P & F) 1350

quired to carry the complainant's programming [**73] for an additional period of time equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) Additional sanctions. The remedies provided in paragraph (s) (1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

6. Sections 76.1303-76.1305 are reserved.

ERRATUM

On October 22, 1993, the Commission released its Second Report and Order in MM Docket 92-265, FCC 93-457. To correct an error therein:

Appendix D -- is amended by revising *47 C.F.R. Section 76.1302(l)(1)* to read as follows:

"(1) the complainant shall file an original plus two copies of the complaint with the Commission."

This correction reduces by one the number of copies of the complaint that must be filed with the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart

Chief, Mass Media Bureau

Legal Topics:

For related research and practice materials, see the following legal topics:

Communications Law Federal Acts Cable Television Consumer Protection & Competition Act Communications Law Ownership General Overview Communications Law Video Technologies Multipoint Distribution Service

7

<http://www.broadcastingcable.com>

Fast Track

Must Reading from

**Broadcasting
& Cable**

March 17, 1997

TOP OF THE WEEK / 8

Digital TV needs work FCC commissioners face a series of snags that threaten to hold up the 10-year effort to establish a new broadcasting service. / 8

Bob Wright speaks up In a discussion with *Broadcasting & Cable*, NBC chief Bob Wright says his industry is confused by the avalanche of recent media developments. Wright says he feels "burned" last year over children's educational television, and adds that he's ready to make a stand on the Valley. / 10

Moonrives ID's promising pilots CBS gave the New York advertising company a peek at its fall development. / 11

Congress presses for ratings revamp Pressure from the Hill and advocacy groups to change the age-based TV ratings system to a content-based system may be paying off. Government officials are meeting with TV industry leaders, although the broadcasters say they are remaining firm. / 14

President calls for free airtime President Clinton thinks free airtime for federal candidates is a price broadcasters should pay for their digital TV licenses. Broadcasters call the plan unworkable and unconstitutional. / 18



Bryant Gumbel makes a quick return to TV, this time on CBS, with a five-year, \$35 million deal. / 17

BROADCASTING / 44

NATPE mulls L.A. move To help major distributors control costs and attract more international buyers, NATPE officials are considering relocating syndicator's annual sales convention to Los Angeles after 1999. / 44

'Vibe' clearances near 90% Columbia TriStar Television Distribution has cleared its late-night talk/variety strip *Vibe* on 168 stations covering 89% of the country. / 44

Many broadcasters view proliferating awards shows—such as the Blockbuster Entertainment Awards (B)—as a safe bet for good ratings. / 40

Radio may be set to lure ads from newspapers

Media buyers, planners and industry watchdogs say radio may have a better chance of whittling away at newspaper's lack of ad revenue this year than in the past. / 60

COVER STORY

The Sky is rising

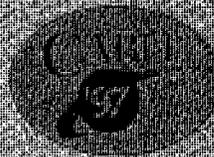
The product of the merger of Rupert Murdoch's ASkyB and Charlie Ergen's EchoStar will comprise eight high-power satellites that will be able to broadcast hundreds of TV channels from California to Maine. / 30

Sky wants to offer more for less

Sky is promising to come to market late this year or early next with a DBS service that will deliver more channels at a lower cost and undercut its entrenched DBS and cable competitors. / 42 Cover art by Leonid Mysakow/SIS

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An update on 1995's major cable launches



Two of the eight cable networks that make up the "class of 1995" have quickly climbed to success, five have made steady progress and one has fallen into relative obscurity. / 65

Life after must carry? If must carry fails to survive Supreme Court scrutiny, some stations—including commercial independents, affiliates and PBS outlets—could be dropped from cable systems. Some believe as many as 500 over-the-air stations could be adversely affected. / 74

Digital boxes loom again on cable horizon

The industry is again buzzing about the prospects for the new box technology expected in appreciable numbers over the next year. / 74

Telemedia

AOL brings on Tartikoff AOL has brought on former NBC entertainment chief Brandon Tartikoff (1) to lead its initiative to create cyber-serials for eventual entry into broadcast or cable TV. / 103

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SeaChange debuts products, services Digital insertion supplier SeaChange International is expanding its portfolio with a satellite spot delivery service and a new movie server product. / 109

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Cable

March 17, 1997

Cable's class of 1995

A look at how the major cable launches of that year have fared

By Joe Schlosser

It has been almost two years since a gutsy little group of eight cable networks got off the ground.

They were tabbed the major newcomers of 1995 (in a Paul Kagan Associates analysis) and include two networks that technically kicked off in December 1994. Two of the eight that constitute "the class of 1995" have quickly climbed to success, five have made steady progress and one has fallen into relative obscurity. Considering the limitations new networks face, analysts say the class has been a "moderate success."

The head of the class is arguably The History Channel.

Since its launch in January 1995, the network has conquered more than 35 million subs and by year's end is expected to be in more than 40 million homes. Last year alone The History Channel added 19.2 million subscribers, nearly double that of any other network. The network is co-owned by Disney, Hearst and GE and counts A&E as a co-owned network.

Not too far back is Home & Garden Television. The E.W. Scripps-backed network has 25.5 million subscribers after a little over two years in the market. Home & Garden gained 12 million subscribers in '96, the fourth-best gain of all cable networks. The network credits its unique and family-oriented programming for that success.

Next come five self-described up-and-coming networks: Classic Sports Network, CNNfn, Outdoor Life Network, Speedvision and The Golf Channel. All count 6 million-10 million subs. The Golf Channel may deserve an asterisk by its name, though. It started 1995 as a premium channel and switched to the basic cable tier that September. Since its conversion, The Golf

NETWORK (launch Date)	SUBSCRIBERS (in millions)		
Home & Garden*	10.0	25.5	30.0
History Channel (January)	9.0	35.5	40.0
Outdoor Life (September)	4.1	6.5	13.5
Great American Country (Dec.)	n/a	1.2	n/a

*Launched end of December 1994 ** Projected

Channel has gained 7 million subs and says it will have an estimated 14.5 million by January 1998.

Bringing up the rear is the low-budgeted Great American Country, backed by Jones Intercable. The 24-hour country music video network, launched in December 1995, has an estimated 1.4 million subscribers.

"The class of 1995 as a whole is doing pretty well," says Bill Marchetti, an analyst with Paul Kagan Associates. "Almost all have compelling programming and have good niches that need to be filled."

The "unique factor" may well be the reason behind the success of The History Channel and Home & Garden Television.

"A good chunk of consumers indicate in surveys that compelling programming and programming that has not been seen before are what they really desire," Marchetti says. "Both The His-

tory Channel and Home & Garden Network do well in surveys because of just that."

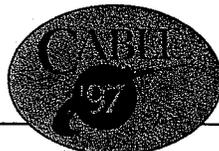
But other networks believe there is more to it.

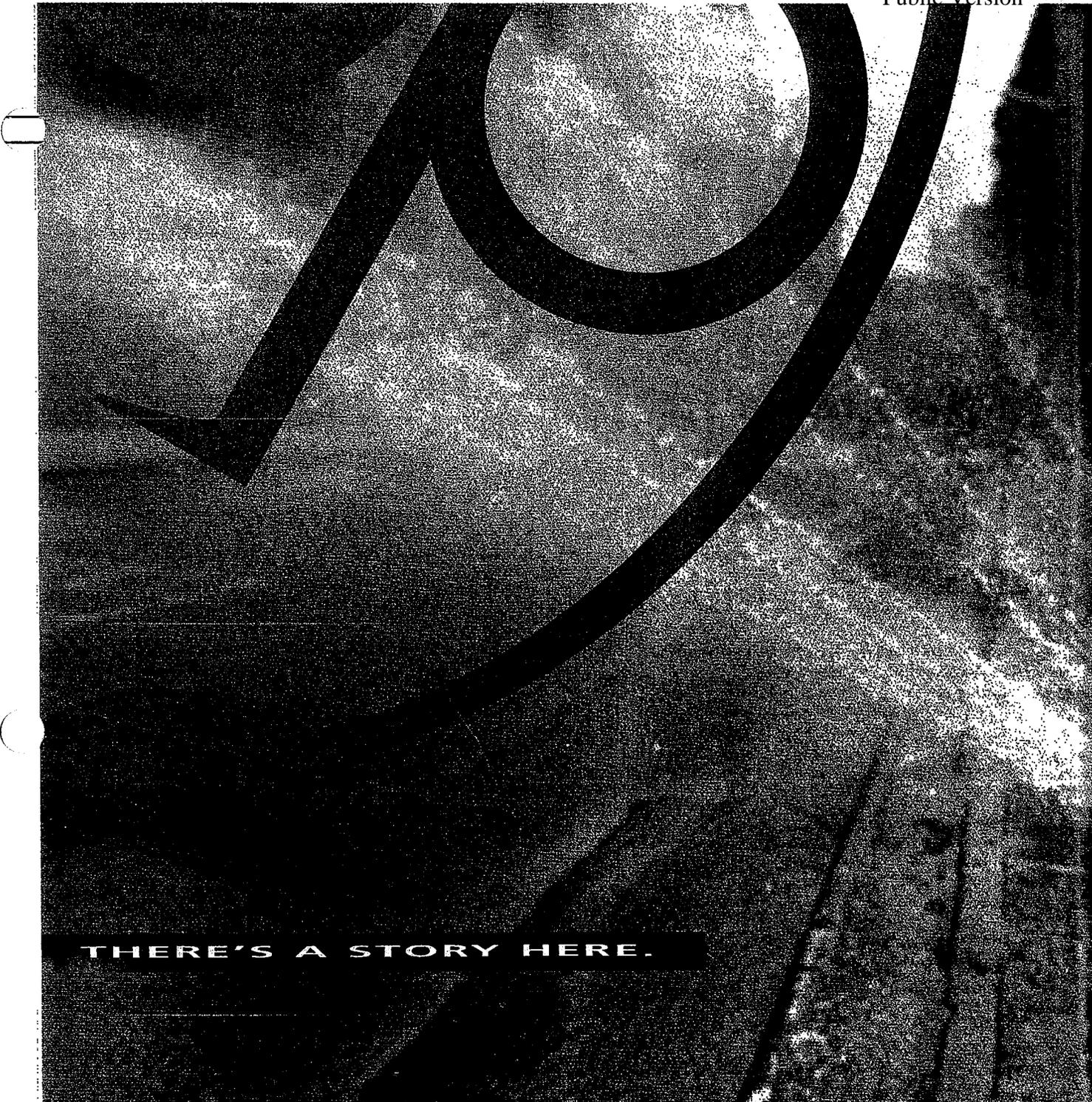
Having a co-owned network and sufficient funding can lift a network into a different subscriber zone. Having an advertising staff already in place or the ability to spin off on the success of an established network is an important support system.

"It does take support. Nothing gets done without having friends, on both a financial and a business level," says Chris Murvin, The Golf Channel's senior vice president of business affairs. "To do your own promoting is tough."

A new trend for start-up cable networks has been the "pay for carriage" scheme made famous by Rupert Murdoch and the Fox News Channel. Six of the eight networks deny paying upfront fees, and most say their networks charge MSOs subscriber fees from the outset.

Only Outdoor Life admits to both. A handful of the networks say they offer operators various "bonus packages."





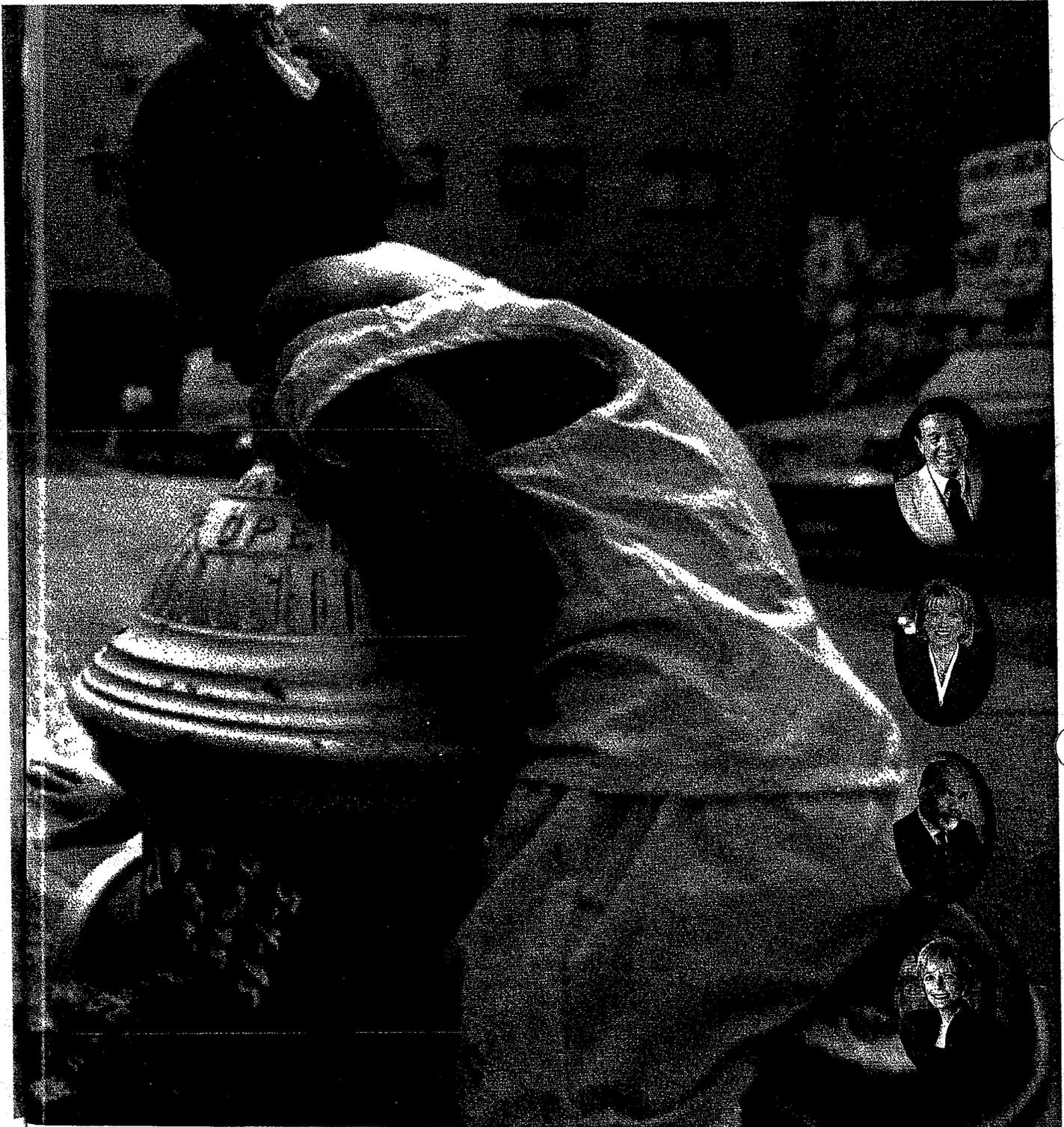
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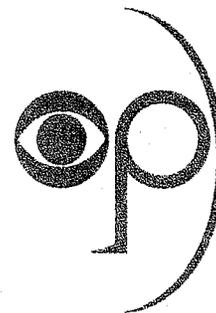
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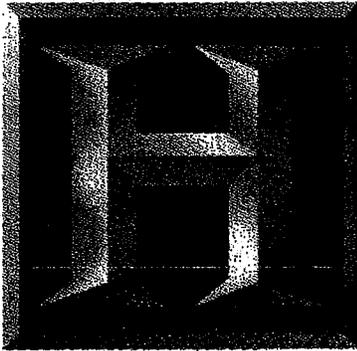
Cable

Such packages generally entail reduced fees and a greater share of advertising revenue.

THE HISTORY CHANNEL

The History Channel has found its niche and then some. Officials from the network estimate that it will be in more than 40 million homes by the end of year and in over 50 million by 2000.

"The overall consumer interest in the programming we offer is unbelievable," says Dan Davids, senior VP and general manager at The History Channel. The network carries documen-



taries, movies and a host of acquired miniseries. Such programming has turned not only operators' heads, but some analysts' as well.

"In a little over two years, what they have done really stands out," Marchetti says of The History Channel. "They are right there with ESPN2, The Learning Channel and Sci-Fi as the top growing networks over the last few years." Even with limited analog space, MSOs have found room for the channel.

"I wouldn't say operators are knocking down our door," Davids says. "But they have shared their research with us and their customers have put us at the top or near it in almost every instance."

Davids says The History Channel is carried in 70 of the top 100 markets and airs in almost every major American city. As part of the A&E Network family, The History Channel has been promoted on A&E and other networks since it launched in January '95.

CNNfn

CNNfn had instant brand recognition and has the backing of a major cable operator. Since its launch in December 1995, the network has followed CNN's lead. In its 14 months on the air,

CNNfn has grown to nearly 8 million subscribers.

"The CNN brand is a treasure," says Lou Dobbs, a CNN executive vice president and on-air presence on both networks. "You cannot overrate the importance of that. CNN gives us not only brand recognition but a breadth of resources that we draw upon for our programming that is absolutely essential."

Asked where CNNfn would be without the CNN branding, Dobbs says with a laugh, "we'd probably look something like our competition."

CNNfn carries live stock quotes from all three major U.S. stock exchanges along with various business news and economic reports. The demographic base is upwardly mobile and, male-dominated, a group that analysts say operators desire. Officials at CNNfn would not project how many subscribers the network will have by year's end.

HOME & GARDEN TELEVISION

According to Susan Packard, Home & Garden's chief operating officer, it's not upfront payments or deals on subscriber fees that are HGTV's major selling point. Rather, the network prides itself on its 100% original programming in prime time and 80% original programming overall. Home & Garden's shows cover everything from home building to crafts to decorating.

"We are unique," Packard says. "We're nonviolent, nonsexual, family fare. Everything on our air is TV-G."

The result she says, can be seen in Home & Garden's strong local ad sales and positive feedback from MSOs and viewers. The network has 25.5 million subscribers and projects it will add another 6 million over the next 12 months. By year's end Packard says, Home & Garden will have well



over 30 million subscribers. During the past six months the network has received carriage on operators in Los Angeles, Chicago

and New York.

"We're moving from suburban to urban," Packard says. "We're starting programming about gardening in smaller areas and other city living-type shows."

THE GOLF CHANNEL



THE GOLF CHANNEL

In January 1995, The Golf Channel teed up as a premium service hoping to entice the estimated 25 million-40 million golfers and golf viewers in the country to pay for exclusive golf tournament coverage. Eight months later, the channel converted to a basic cable network after interest from the gallery seemed stymied by the pay-to-watch theory. Since then, The Golf Channel has seen its subscriber count steadily rise. It is in 8.3 million homes in the U.S. and airs in several Asian nations.

"We should almost be considered for the class of '96," says The Golf Channel's Murvin. "It took us a little while to change the momentum and get operators up to speed. But the switch has really paid dividends."

The Golf Channel is backed by large cable operators and Murdoch's News Corp. Murvin says the financing has helped get the channel on cable systems quickly but that their aid alone is not enough.

"We don't have a sister network like The History Channel has A&E and CNNfn has CNN," he says. "We've had to do it one step at a time. We're trying to use every opportunity we get to get exposure for The Golf Channel."

Murvin says The Golf Channel does not pay upfront carriage fees and that it relies heavily on subscriber fees. The network offers "some incentives,"





While we realize that some people get a little

HOPPED-UP

when they hear

the words "spring break," that's probably because they're thinking about millions of

HORMONAL

young adults reveling

on the beach. But if it's MTV's Spring Break you're thinking about, that's a different story:

it's a supremely exciting weekend of MTV programming with great live musical performances and an excellent concentration of valuable viewers. (Specifically, more than 14.5 million teens and young adults watched

MTV's Spring Break '96—making it the biggest year ever in the show's decade-long history.*) Frankly,

MTV's Spring Break is one big

LOVE-FEST

for those interested in targeting

oodles of big-spending 18-34 year-olds. Sure it takes place on a beach. So what? Ride the wave.



Read between the lines.

Cable

but he says the cost of sports programming is too high to "give away" the channel. Instead, he says, the demographic group the network draws (males 18+ with incomes starting at \$50,000) should be incentive enough.

Murvin also says the buzz generated by golfing phenomenon Tiger Woods has brought a lot of attention to the network. This year The Golf Channel will carry 70 professional tournaments, six senior PGA events, 10 LPGA tournaments and four or five Senior PGA Tour stops.

CLASSIC SPORTS NETWORK

Brian Bedol, Classic Sports' CEO, claims his network is the "only real" independent that launched in '95. Bedol says Classic Sports is the lone network of the eight that does not have leverage in the market through either an MSO backing or a co-owned

network. And, he adds, Classic Sports does not pay MSOs upfront fees but relies instead on subscriber

fees.

"What we have done has been entirely on the merits of the programming and the programming promotion," Bedol says. "We're not complaining, but that is how it is. We are thrilled with where we are right now."

Classic Sports claims just over 10 million subscribers and hopes to have 15 million-20 million by the end of the year. Classic Sports will add a handful of new subscribers this week in Pennsylvania and New Jersey and will announce "many" more in the next few months. The programming on Classic Sports is just that: highlights and entire rebroadcasts of both classic and recent sporting events.

OUTDOOR LIFE

Outdoor Life officials say the network has found its niche. The channel offers a variety of programming, from skiing to horses and to fishing to the environment. The channel combines in one package what a host of different networks offer in bits and pieces, Outdoor Life officials say. The 24-

OUTDOOR LIFE

Television With A View

hour network, which launched in July 1995, says it is now in over 6.5 million homes.

"You can find similar programming occupying a few hours a day on a variety of networks," says Roger Williams, Outdoor Life's executive VP and chief coordinating officer. "Discovery might do some nature programming, ESPN may carry a fishing show in the morning, but no one brings it all together in one place with the depth that we do."

Backed by three large MSOs (Comcast, Cox and Cablevision), Outdoor Life got off to a fast start. After one year, the network had over 4 million subscribers, the majority of them on the three cable systems. Since then, Outdoor Life has steadily grown, and Williams says it will likely reach 13 million by year's end.

"With Cox, Comcast and Continental we had a launch base, a chance to establish the niche and claim the position we have in the marketplace," he says.

Outdoor Life offers operators a \$1 upfront fee for each subscriber as well as other incentives. But Williams says that that is nothing compared with what is going on in the market.

"We're not at 15 million subscribers because we don't go out and offer \$5 a subscriber and five free years for carriage," he says. "We could do that if we weren't investing in our many hours of original programming. That's not our business, though; we want to be thought of as an original programmer, not a rerun network."

SPEEDVISION

Speedvision Network started the same year and in the same Stamford, Conn., building as Outdoor Life. Speedvision also is backed by the same three large MSOs and is marketed in a similar fashion. The network completed its

first year with 7.5 million subscribers and has added another million to get to its current 8.5 million. Williams says the network will be in more than 13 million homes by the end of the year.

Its programming is literally vehicle driven.

Whether the subject is cars, boats or planes, Speedvision seems to have a show about it. Williams



SPEEDVISION
NETWORK

says Speedvision, like Outdoor Life, has over 1,700 hours of original programming a year. The network also carries NASCAR auto racing, mostly qualifying events.

"Just as ESPN and other networks carry certain Outdoor Life programming, it is the same for Speedvision," Williams says. "We offer it 24 hours a day, and most of it is original and not reruns."

GREAT AMERICAN COUNTRY

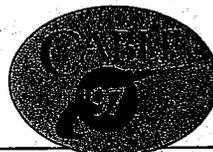


When Great American Country launched in December 1995 with a lineup of all-country music videos, Country Music

Television and The Nashville Network had been on the air for over a decade. Both CMT and TNN are based on country music, and both have a large following. To date, Great American Country, backed by Jones Intercable, stands at only 1 million subscribers after 14 months.

"They were the only real network to start in '95 without their own niche or new, compelling programming," Marchetti says. "Cable operators hesitate a little bit before adding a similar genre."

Great American Country was the only network not to return phone calls from BROADCASTING & CABLE. ■



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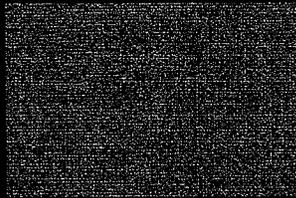
31 DAYS OF OSCAR®

WEDNESDAY

THURSDAY

FRIDAY

SATURDAY



MARCH
PRIMETIME HIGHLIGHTS

BEST ACTOR WINNERS
8:00pm
10:15pm
12:30am
2:00am

BEST PICTURE WINNERS
8:00pm
11:00pm
BEST PICTURE NOMINEES
1:30am
3:45am

BEST ACTRESS WINNERS
8:00pm
10:00pm
12:30am
3:30am

BEST DIRECTING WINNERS
8:00pm
12:00am
2:30am
BEST SUPPORTING ACTOR WINNERS
8:00pm
10:15pm
12:30am

BEST ACTOR WINNERS
8:00pm
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BEST ACTOR NOMINEES
2:00am

BEST PICTURE WINNERS
8:00pm
10:30pm
12:45am
BEST PICTURE NOMINEES
2:45am
4:30am

BEST ACTRESS WINNERS
8:00pm
10:00pm
12:00am

BEST SONG WINNERS
8:00pm
10:00pm
12:00am
1:45am

BEST ACTOR WINNERS
8:00pm
10:30am
12:30am
2:45am

BEST PICTURE WINNERS
8:00pm
12:00am
BEST PICTURE NOMINEES
2:00am
4:10am

BEST ACTRESS WINNERS
8:00pm
10:10pm
12:00am
2:00am

BEST SUPPORTING ACTRESS WINNERS
8:00pm
10:00pm
12:30am

BEST ACTOR WINNERS
8:00pm
10:00pm
11:45pm
1:00am

BEST PICTURE WINNERS
8:00pm
10:00pm
12:00am
2:30am

BEST ACTRESS WINNERS
8:00pm
10:00pm
11:30pm
1:00am

B/W CINEMATOGRAPHY WINNERS
8:00pm
10:30pm
12:00am

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8

EXHIBIT 8
REDACTED

9

EXHIBIT 9
REDACTED

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EXHIBIT 10
REDACTED

11



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*** CURRENT THROUGH PL 111-112, APPROVED 11/30/2009 ***

TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5. WIRE OR RADIO COMMUNICATION
CABLE COMMUNICATIONS
USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

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47 USCS § 536

§ 536. Regulation of carriage agreements

(a) Regulations. Within one year after the date of enactment of this section [enacted Oct. 5, 1992], the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall--

(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;

(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;

(4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;

(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(b) "Video programming vendor" defined. As used in this section, the term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

HISTORY:

(June 19, 1934, ch 652, Title VI, Part II, § 616, as added Oct. 5, 1992, P.L. 102-385, § 12, 102 Stat. 1488.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 5, 1992, P.L. 102-385, § 28, 106 Stat. 1503, which appears as *47 USCS § 325* note, provides that this section shall take effect 60 days after the date of enactment of such Act.

NOTES:

Code of Federal Regulations:

Federal Communications Commission--Multichannel video and cable television service, *47 CFR 76.1* et seq.

Related Statutes & Rules:

This section is referred to in *47 USCS § 573*.

Research Guide:

Am Jur:

74 Am Jur 2d, Telecommunications § 169.

Law Review Articles:

Boudreaux; Ekelund. The Cable Television Consumer Protection and Competition Act of 1992: the triumph of private over public interest. *44 Ala L Rev 355*, Winter 1993.

Saylor. Programming access and other competition regulations of the new cable television law and the Primestar decrees: a guided tour through the maze. *12 Cardozo Arts & Ent LJ 321*, 1994.

Lutzker. The 1992 Cable Act and the first amendment: what must, must not, and may be carried. *12 Cardozo Arts & Ent LJ 467*, 1994.

Bell. Price discrimination: territorial pricing for cable television services and the meeting competition defense under the Cable Television Consumer Protection and Competition Act of 1992. *19 J Legis 63*, 1993.

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C**Effective:[See Text Amendments]**

Code of Federal Regulations Currentness

Title 47. Telecommunication

Chapter I. Federal Communications Commission (Refs & Annos)

Subchapter C. Broadcast Radio Services

Part 76. Multichannel Video and Cable Television Service (Refs & Annos)

Subpart Q. Regulation of Carriage Agreements (Refs & Annos)

→ § 76.1300 Definitions.

As used in this subpart:

(a) **Affiliated.** For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(b) **Attributable interest.** The term “attributable interest” shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(c) **Buying groups.** The term “buying group” or “agent,” for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity rep-

resenting the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(d) **Multichannel video programming distributor.** The term “multichannel video programming distributor” means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

(e) **Video programming vendor.** The term “video programming vendor” means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

[64 FR 67197, Dec. 1, 1999; 69 FR 72046, Dec. 10, 2004]

SOURCE: 37 FR 3278, Feb. 12, 1972; 58 FR 7993, Feb. 11, 1993; 58 FR 17357, April 2, 1993; 58 FR 19626, 19627, April 15, 1993; 58 FR 21109, April 19, 1993; 58 FR 27670, May 11, 1993; 58 FR 29753, May 21, 1993; 58 FR 33561, June 18, 1993; 58 FR 42250, Aug. 9, 1993; 58 FR 60395, Nov. 16, 1993; 59 FR 9934, March 2, 1994; 59 FR 25342, May 16, 1994; 59 FR 52344, Dec. 5, 1994; 61 FR 18510, April 26, 1996; 61 FR 28708, June 5, 1996; 63 FR 38094, July 15, 1998; 64 FR 6569, Feb. 10, 1999; 64 FR 28108, May 25, 1999; 65 FR 68101, Nov. 14, 2000; 66 FR 7429, Jan. 23, 2001; 67 FR 680, Jan. 7, 2002; 69 FR 2849, Jan. 21, 2004; 70 FR 21670, April 27, 2005; 70 FR 76529, Dec. 27, 2005, unless otherwise noted.

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

47 C. F. R. § 76.1300, 47 CFR § 76.1300
Current through December 3, 2009; 74 FR 63530

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C**Effective:[See Text Amendments]**

Code of Federal Regulations Currentness

Title 47. Telecommunication

Chapter I. Federal Communications Commission (Refs & Annos)

Subchapter C. Broadcast Radio Services

▣ Part 76. Multichannel Video and Cable Television Service (Refs & Annos)

▣ Subpart Q. Regulation of Carriage Agreements (Refs & Annos)

→ § 76.1301 Prohibited practices.

(a) Financial interest. No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems.

(b) Exclusive rights. No cable operator or other multichannel video programming distributor shall coerce any video programming vendor to provide, or retaliate against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(c) Discrimination. No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

SOURCE: 37 FR 3278, Feb. 12, 1972; 58 FR 7993, Feb. 11, 1993; 58 FR 17357, April 2, 1993; 58 FR

19626, 19627, April 15, 1993; 58 FR 21109, April 19, 1993; 58 FR 27670, May 11, 1993; 58 FR 29753, May 21, 1993; 58 FR 33561, June 18, 1993; 58 FR 42250, Aug. 9, 1993; 58 FR 60395, Nov. 16, 1993; 59 FR 9934, March 2, 1994; 59 FR 25342, May 16, 1994; 59 FR 52344, Dec. 5, 1994; 61 FR 18510, April 26, 1996; 61 FR 28708, June 5, 1996; 63 FR 38094, July 15, 1998; 64 FR 6569, Feb. 10, 1999; 64 FR 28108, May 25, 1999; 65 FR 68101, Nov. 14, 2000; 66 FR 7429, Jan. 23, 2001; 67 FR 680, Jan. 7, 2002; 69 FR 2849, Jan. 21, 2004; 70 FR 21670, April 27, 2005; 70 FR 76529, Dec. 27, 2005, unless otherwise noted.

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

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Code of Federal Regulations Currentness

Title 47. Telecommunication

Chapter I. Federal Communications Commission (Refs & Annos)

Subchapter C. Broadcast Radio Services

▣ Part 76. Multichannel Video and Cable Television Service (Refs & Annos)

▣ Subpart Q. Regulation of Carriage Agreements (Refs & Annos)

→ § 76.1302 Carriage agreement proceedings.

(a) Complaints. Any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes:

(b) Prefiling notice required. Any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in § 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(c) Contents of complaint. In addition to the requirements of § 76.7 of this part, a carriage agreement complaint shall contain:

(1) The type of multichannel video programming distributor that describes complainant, the address and telephone number of the complainant, and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;

(3) For complaints alleging a violation of § 76.1301(c) of this part, evidence that supports complainant's claim that the effect of the conduct complained of is to unreasonably restrain the ability of the complainant to compete fairly.

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (b) of this section has been made.

(d) Answer.

(1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without

any prejudice to any denials or defenses raised.

(e) Reply. Within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(f) Time limit on filing of complaints. Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with a video programming distributor that a party alleges to violate one or more of the rules contained in this section; or

(2) The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section, and such offer to carry programming is unrelated to any existing contract between the complainant and the multichannel video programming distributor; or

(3) A party has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.

(g) Remedies for violations--

(1) Remedies authorized. Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defend-

ant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the video programming vendor's programming for an additional period equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) Additional sanctions. The remedies provided in paragraph (g)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

[59 FR 43777, Aug. 25, 1994; 64 FR 6574, Feb. 10, 1999; 64 FR 36605, July 7, 1999]

SOURCE: 37 FR 3278, Feb. 12, 1972; 58 FR 7993, Feb. 11, 1993; 58 FR 17357, April 2, 1993; 58 FR 19626, 19627, April 15, 1993; 58 FR 21109, April 19, 1993; 58 FR 27670, May 11, 1993; 58 FR 29753, May 21, 1993; 58 FR 33561, June 18, 1993; 58 FR 42250, Aug. 9, 1993; 58 FR 60395, Nov. 16, 1993; 59 FR 9934, March 2, 1994; 59 FR 25342,

May 16, 1994; 59 FR 52344, Dec. 5, 1994; 61 FR 18510, April 26, 1996; 61 FR 28708, June 5, 1996; 63 FR 38094, July 15, 1998; 64 FR 6569, Feb. 10, 1999; 64 FR 28108, May 25, 1999; 65 FR 68101, Nov. 14, 2000; 66 FR 7429, Jan. 23, 2001; 67 FR 680, Jan. 7, 2002; 69 FR 2849, Jan. 21, 2004; 70 FR 21670, April 27, 2005; 70 FR 76529, Dec. 27, 2005, unless otherwise noted.

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

47 C. F. R. § 76.1302, 47 CFR § 76.1302
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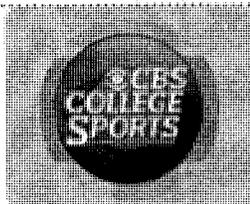
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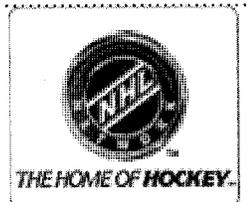
CBS College Sports Network

- * Watch 130 live games - dozens in HD - all season long.
- * Catch a full season schedule of games from Conference-USA, Mountain West Conference, and the Atlantic-10 featuring Memphis, BYU, Xavier and more.



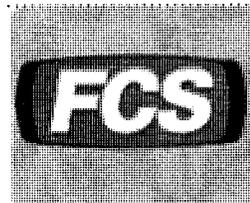
NBA TV

- * The NBA Draft is On Demand with NBA TV! Watch player profiles, past draft highlights and more.
- * Up to 4 live additional games every week.



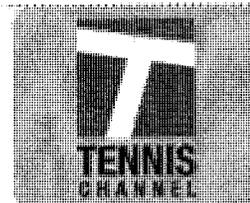
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- * 52-week coverage of the world's best tournaments including the Australian Open, French Open, Wimbledon and US Open.
- * A hybrid of lifestyle, pop-culture, travel, health, tennis instruction, and entertainment programming.

**Channels in the Sports Entertainment Package vary by market.
Additional channels may include:**

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- * GOL TV
- * The Horseracing Network
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NFL Network On Demand is subject to the NFL's blackout policy.

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\$29.99

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Promotional Rate is \$29.99/month for 6 month(s) for eligible customers, ongoing price is \$55.05/month

- + See All Features
- + See Channel Lineup
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Offers & Plans

Features Summary

Monthly Price

channels you expect like MTV, Discovery Channel, Nickelodeon, ESPN, and CNN. Plus, you get access to On Demand – a library with thousands of movies, kids' shows, network favorites, music videos and more that are ready to watch when you are. And you'll get all your local programming so you can stay in touch with the news, sports and weather that matter most to you.

Promotional Rate is \$29.99/month for 12 month(s) for eligible customers, ongoing price is \$55.05/month

- + See All Features
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- + See Terms and Conditions

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Digital Preferred

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With Digital Preferred you'll get more than 100 digital channels. But you'll also get access to the amazing On Demand library, which includes thousands of movies, kids' shows, network favorites, music videos and more that are ready to watch when you are.

Promotional Rate is \$44.99/month for 6 month(s) for eligible customers, ongoing price is \$72.00/month

- + See All Features
- + See Channel Lineup
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than 100 digital channels. But you'll also get access to the amazing On Demand library, which includes thousands of movies, kids' shows, network favorites, music videos and more that are ready to watch when you are.

Promotional Rate is \$44.99/month for 12 month(s) for eligible customers, ongoing price is \$72.00/month

- + See All Features
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Our ultimate package comes loaded with all the movies, sports, kids and entertainment programming you love – much of it available On Demand for free, ready to watch whenever you want. You'll get four premium channels and their multiplexes, the Sports Entertainment Package, more than 150 digital cable channels, over 45 digital music channels, an interactive program guide, Parental Controls, and much more.

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- + See All Features
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Digital Premier

Get Digital Premier with On Demand – including HBO, Showtime, Starz and more – for only \$84.99 a month for the first year with a 1-year minimum term agreement for new subscribers!

\$84.99

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Offers & Plans**Features Summary****Monthly Price**

Our ultimate package comes loaded with all the movies, sports, kids and entertainment programming you love – much of it available On Demand for free, ready to watch whenever you want. You'll get four premium channels and their multiplexes, the Sports Entertainment Package, more than 150 digital cable channels, over 45 digital music channels, an interactive program guide, Parental Controls, and much more.

Promotional Rate is \$84.99/month for 12 month(s) for eligible customers, ongoing price is \$119.45/month

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Digital Starter

With Digital Starter you get the popular channels you expect like MTV, Discovery Channel, Nickelodeon, ESPN, and CNN. You get access to the Channel 1 On Demand programming with your digital set-top box. And you'll get all your local programming so you can stay in touch with the news, sports and weather that matters most to you.

\$55.05**Add to Cart**

- + [See All Features](#)
- + [See Channel Lineup](#)
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Digital Preferred

With Digital Preferred, you'll enjoy more than 100 digital cable channels, over 45 music channels, an interactive program guide, and easy-to-use Parental Controls. You'll get access to the Channel 1 On Demand library of thousands of shows and movies (most of them free) ready to watch when you are.

\$72.00**Add to Cart**

- + [See All Features](#)
- + [See Channel Lineup](#)
- + [See Terms and Conditions](#)

Offers & Plans	Features Summary	Monthly Price
Digital Preferred Plus	<p>With Digital Preferred Plus you'll get HBO, Showtime, Starz! and their multiplexes, more than 100 digital cable channels, over 45 digital music channels, an interactive program guide, and easy-to-use Parental Controls. Perhaps best of all, you'll get access to the amazing Channel 1 On Demand library of movies, sports, and kids' programs, including HBO and Starz On Demand. Most of them are free and all are ready to watch when you are.</p> <p>+ See All Features + See Channel Lineup + See Terms and Conditions</p>	<p>\$112.45 Add to Cart</p>

Digital Premier	<p>Our ultimate package loaded with all the movies, sports, kids and entertainment programming you love – much of it available On Demand at no additional charge, ready to watch whenever you want. You'll get all five premium channels and their multiplexes, more than 100 digital cable channels, over 40 digital music channels, an interactive program guide, Parental Controls, and much more.</p> <p>+ See All Features + See Channel Lineup + See Terms and Conditions</p>	<p>\$119.45 Add to Cart</p>
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Offers & Plans	Features Summary	Monthly Price
Standard Cable	<p>This economical package gives you and your family popular cable networks, plus your local channels for area news, sports coverage, weather, kids' shows, and more! All delivered right to you. You'll get channels like ESPN, CNN, Discovery Channel, Nickelodeon, MTV, and more. Looking for the choice and convenience of Channel 1 On Demand? Hop up to our Enhanced or Digital Cable packages.</p> <p>+ See All Features + See Channel Lineup</p>	<p>\$55.05 Add to Cart</p>

Offers & Plans**Features Summary****Monthly Price**

+ See Terms and Conditions

Basic Cable

For local news, area sports coverage, kids' programs, and weather forecasts for your neighborhood, Comcast's Basic Cable delivers. You'll get to enjoy your favorite local broadcast networks without the need for an antenna. And you'll have a selection of other cable channels at an affordable price. But remember, if you want the choices and convenience of Channel 1 On Demand, you'll want to consider our Enhanced or Digital Cable packages.

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HDTV

HDTV for customers with Digital Classic or above

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DVR

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The technology is advanced, but using it is simple. Pause any show on any channel, instantly replay live TV, watch a scene in slow motion, or rewind the show you've been watching. Easily record your favorite shows or an entire season, all with the touch of two of a button. And with the built-in dual tuner, you can even watch one channel while recording another. You'll never have to worry about the hassle of videotapes again!

+ See All Features**+ See Terms and Conditions****Subscriptions****Howard Stern On Demand
Monthly Subscription****\$10.99****Add to Cart**

Welcome to Howard Stern's outrageous world! Howard TV On Demand is the only place to see the Stern show -- the crazy cast of characters and wild antics. Howard TV offers an exclusive view of daily Sirius shows as well as original programming conceptualized by the sultan of shock himself. Get these brand new shows plus access to the very best classic shows in Howard's television library 24 hours a day, 7 days a week all on demand. Subscribe today!

+ See All Features**+ See Terms and Conditions****Disney Family Movies On
Demand****\$5.99****Add to Cart**

Watch your favorite Disney movies On Demand whenever you want. Disney Family Movies includes unlimited On Demand access to approximately 10 to 12 Disney movies per month as well as additional content. Each month you'll see a new selection of your favorite Disney movies.

- + See All Features
- + See Terms and Conditions

here! On Demand

\$7.99

Add to Cart

here! offers an exclusive mix of groundbreaking series, authentic original films, acclaimed theatrical releases and award winning documentaries and specials. With new titles added every week, here! brings the best in gay and lesbian entertainment into your home with all the 24/7 convenience On Demand provides. Watch whatever you want, whenever you want. Pause, Fast Forward and Rewind.

- + See All Features
- + See Terms and Conditions

Filipino On Demand Monthly Subscription

\$7.99

Add to Cart

Get the one-of-a-kind Filipino cable entertainment experience!

Comcast brings you all-time Pinoy movie favorites and hit concerts with Filipino On Demand, powered by ABS-CBN. Get 24/7 access to over 10 Filipino movies and live concerts anytime day or night. Because it is On Demand, you can start, stop, pause, rewind or fast-forward so you're always in control.

- + See All Features
- + See Terms and Conditions

Entertainment Packages

Sports Entertainment Package

\$5.00

Add to Cart

We've turned every sports fan's dream into reality.

There's a perfect package for every fan — if you love one sport, or if you love them all. From football to basketball and professional to collegiate sports, you'll be able to follow your favorite teams no matter where you live. And, you're sure to find a package that gives you all the highlights you want, when you want with Channel 1 On Demand.

Promotional Rate is \$5.00/month for 12 month(s) for eligible customers, ongoing price is \$5.00/month

- + See All Features
- + See Terms and Conditions

Family Tier

\$29.95

Add to Cart

A package created especially for the whole family. You'll enjoy a range of family-friendly programming from popular networks, including children's, educational, and religious channels. You'll also get local broadcast networks, public access, and Spanish language channels. In total, Family Tier provides about 35–40 channels, including up to 16 Family Tier-specific channels and many favorites from our Basic Cable service.

- + See All Features
- + See Terms and Conditions

CableLatino

\$25.95

Add to Cart

Para todos! This Spanish-language package comes with a digital set-top box and includes access to 45 digital music channels, Parental Controls, and Channel 1 On Demand en Español, with over 100 hours of movies, kids' stuff, soccer highlights, and more! Enjoy news, sports, movies, great kids' programming, and much more. Channels include Canal 52MX, ¡Sopresa!, PBS Kids Sprout, VeneMovies, Cine Mexicano, Cinelatino, and HTV Música.

- + See All Features

+ See Terms and Conditions

MLB Extra Innings® - Half Season

4 payments of \$34.75

Add to Cart

Do You Live Baseball? Catch all of the big league action with MLB EXTRA INNINGS® on Comcast. Even if you live in one city and your team is in another, MLB EXTRA INNINGS® lets you see the biggest stars and hottest match-ups with up to 80 out-of-market games each week throughout the action-packed regular season.

+ See All Features

+ See Terms and Conditions

●●●●●● Indicates promotional pricing. Certain restrictions apply. After promotional period, regular monthly rate for ordered service applies. Not all offers and services are available in all areas.

Service is only provided to Comcast wired and serviceable locations. The above serviceability information is based upon a preliminary serviceability inquiry. Service offerings are contingent upon Comcast's verification that the specific address covered by the service request is a Comcast wired and serviceable location.

* Pricing and service offerings displayed on this site are for residential Comcast customers of participating Comcast systems only. Commercial and business pricing and service offerings differ. Prices do not include taxes and franchise fees. Services and pricing are subject to change. Services are subject to terms and conditions of Comcast's subscriber agreements and other applicable terms and conditions.

Comcast Cable: Prices do not include local tax, franchise or installation fees. Prices are subject to change. Not all products available in all areas. Certain services are available separately or as part of other levels of service. You must subscribe to Basic Service to receive other services or levels of service of video programming. Equipment required.

Comcast High-Speed Internet: Equipment fees not included in monthly service charge. Prices do not include applicable taxes, installation or franchise fees. Pricing, content and features may change and may vary by area. Call your local Comcast office for restrictions and complete details about service, prices, and equipment in your area. Pricing and service offerings displayed on this site are for residential Comcast customers only. Commercial and business pricing and service offerings differ. Speed comparisons are dependent on Comcast High-Speed Internet service tier selected (6 Mbps, 8 Mbps or 16 Mbps) and are based on download speeds vs. standard 1.5 Mbps DSL service. Not all service tiers are available in all areas. Many factors affect speed. Actual speeds vary and are not guaranteed. Maximum upload speeds range between 384 Kbps and 2 Mbps depending on the service tier selected and can be even faster with PowerBoost®.

Comcast Digital Voice: Offer available to new residential customers that select Comcast for all their home calling needs. Monthly pricing does not include our Regulatory Recovery Fee, which is not a tax or government-required; federal, state, or local taxes and other fees; or other applicable charges (e.g., per-call charges or international calling). Equipment charges may apply. Unlimited Package pricing applies to direct-dialed domestic calls from home only. Other restrictions apply.

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History of GOLF CHANNEL

In early 1990, cable-entrepreneur Joseph E. Gibbs began his quest to launch a 24-hour golf network. As fate would have it, that same year Gibbs opened up his Birmingham, Ala., home to host one of the pros playing in the PGA Championship. That pro was none other than The King himself, Arnold Palmer. An immediate friendship developed between the two and that bond sparked the idea that became the GOLF CHANNEL.

“Getting to know Arnold was when I realized how great this game of golf really is,” Gibbs said. “Walking with Arnold on the golf course, I saw how much the people loved him and loved being around him. That impressed and overwhelmed me.”

Gibbs, who already had built three successful cable and communication companies, had the business experience to launch a network. But Gibbs knew his inexperience in golf and the lack of connections within the golf industry would hamper his ability to get his idea off the ground. Arnold would prove to be the key!

In February '93, Gibbs and Palmer publicly announced their plans to launch GOLF CHANNEL at the Bob Hope Chrysler Classic. They began raising capital through multiple sources including six of the country's leading cable operators. The cable operator investment not only infused necessary capital to keep the business going, it brought with it one of the most important keys to a fledgling cable network's success – distribution.

GOLF CHANNEL was launched on January 17, 1995, and was the first fully digital production facility in the United States. GOLF CHANNEL recruited an experienced management team, an expert lineup of broadcasters and developed a varied programming schedule. In its first year, GOLF CHANNEL televised 23 domestic tournaments and 41 European and Australian events.

Since then, the network has been the gold standard for other niche cable start-ups and has become golf's home on television. GOLF CHANNEL is available in more than 120 million homes worldwide through cable, satellite and wireless companies.

In 1996, GolfChannel.com was launched and has grown to become the #1 golf site on the Internet. As a one-stop portal for all things golf, not only is GolfChannel.com the destination for the latest news and scores, but also a place to find services to help the recreational golfer enjoy golf more and improve his/her game. GolfChannel.com also is helping to grow the game of golf overall through platforms like facilitating online tee times, video instruction, event participation through the GOLF CHANNEL Amateur Tour and travel through its various sites offering golf services around the world.

In 2007, GOLF CHANNEL embarked on its unprecedented 15-year agreement as the exclusive cable television home for the PGA TOUR. GOLF CHANNEL is in partnership with PGA TOUR featuring complete coverage of the season's opening Mercedes Championship, the Sony Open, the Bob Hope Chrysler Classic, and early-round coverage of the remaining FedExCup season, including the World Golf Championships, THE TOUR Championship and THE PLAYERS Championship, the PGA TOUR's crown jewel. In total, GOLF CHANNEL provides coverage of 47 PGA TOUR events. Additionally, beginning in 2010, the network and the LPGA Tour will embark on a historic, 10-year partnership that will make GOLF CHANNEL the exclusive cable home of the premier women's professional golf tour, a partnership which also includes exclusive rights to the biennial Solheim Cup.

GOLF CHANNEL is also the exclusive television home of the Nationwide Tour, European Tour, Canadian Tour, and cable home of the Champions Tour, with a generous mix of other competition from the USGA and PGA of America.

The network was honored in 2008 with its first Emmy Award for its virtual, putting-line technology – called AimPoint – which is showcased during GOLF CHANNEL's coverage of some of the world's top golfing events on the PGA TOUR and LPGA Tour.

In addition to being the leader in golf tournament coverage, GOLF CHANNEL is the home of innovative, insightful and entertaining programming, including news, instruction and original specials and series – like the award-winning Big Break, The Haney Project and Golf in America.

GOLF CHANNEL is part of the Comcast Programming Group which also includes E! Entertainment Television, Style Network, VERSUS, G4,

PBS KIDS Sprout, TV One and ten Comcast SportsNet networks. Comcast Corporation serves more than 24 million cable customers and 100,000 employees nationwide.



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Cable Products & Services

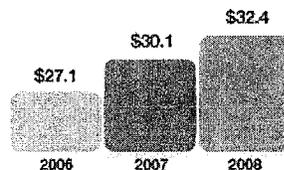
Cable Products & Services

[Video](#)[High-Speed Internet](#)[Phone](#)[Business Services](#)[Our Network](#)

Comcast Cable is our largest business — it generated approximately \$34 billion or 95% of our consolidated revenue in 2008. Comcast Cable delivers video, high-speed Internet and digital voice services to residential and commercial customers. Comcast Cable also operates our regional sports networks.

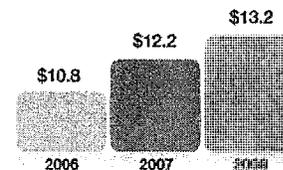
Cable Revenue³

- \$ in billions



Cable Operating Cash Flow^{1, 3}

- \$ in billions



See Notes and Definitions below.

Video

Largest cable provider in the U.S. with 24 million video customers in 39 states and D.C.

[Learn More](#)

High-Speed Internet

Largest residential broadband Internet service provider in North America with 15 million customers

[Learn More](#)

Phone

Third largest residential U.S. phone provider with 6.5 million residential phone customers

[Learn More](#)

Business Services

We provide video, high-speed Internet and phone services to small and medium-sized businesses in our markets

[Learn More](#)

Notes and Definitions

CMCSA	CMCSK
Volume	5,307,100
Change	+0.02
Last Trade	\$17.38
12/09/09 10:04 AM ET	
Detailed Quotes	
Volume	2,379,100
Change	+0.08
Last Trade	\$16.62
12/09/09 10:04 AM ET	
Detailed Quotes	

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TAB A



CALENDAR

TEAMS	DATE	TIME
Sacramento @ Philadelphia (Featuring Venus Williams - PNL)	AUGUST 7 Saturday	8:00PM
Newport Beach @ Washington (Featuring Serena Williams - WAG)	AUGUST 8 Saturday	4:00AM
Boston @ New York (Featuring John McEnroe, BOS & Martina Navratilova - NYS)	AUGUST 13 Saturday	8:00PM
Philadelphia @ Newport Beach (Featuring Andre Agassi - NPB)	AUGUST 22 Saturday	5:00PM
WTT FINALS @ Washington Kastles, Washington DC	AUGUST 29 Saturday	8:00PM

Matches and times are subject to change. All times eastern.

Tab B

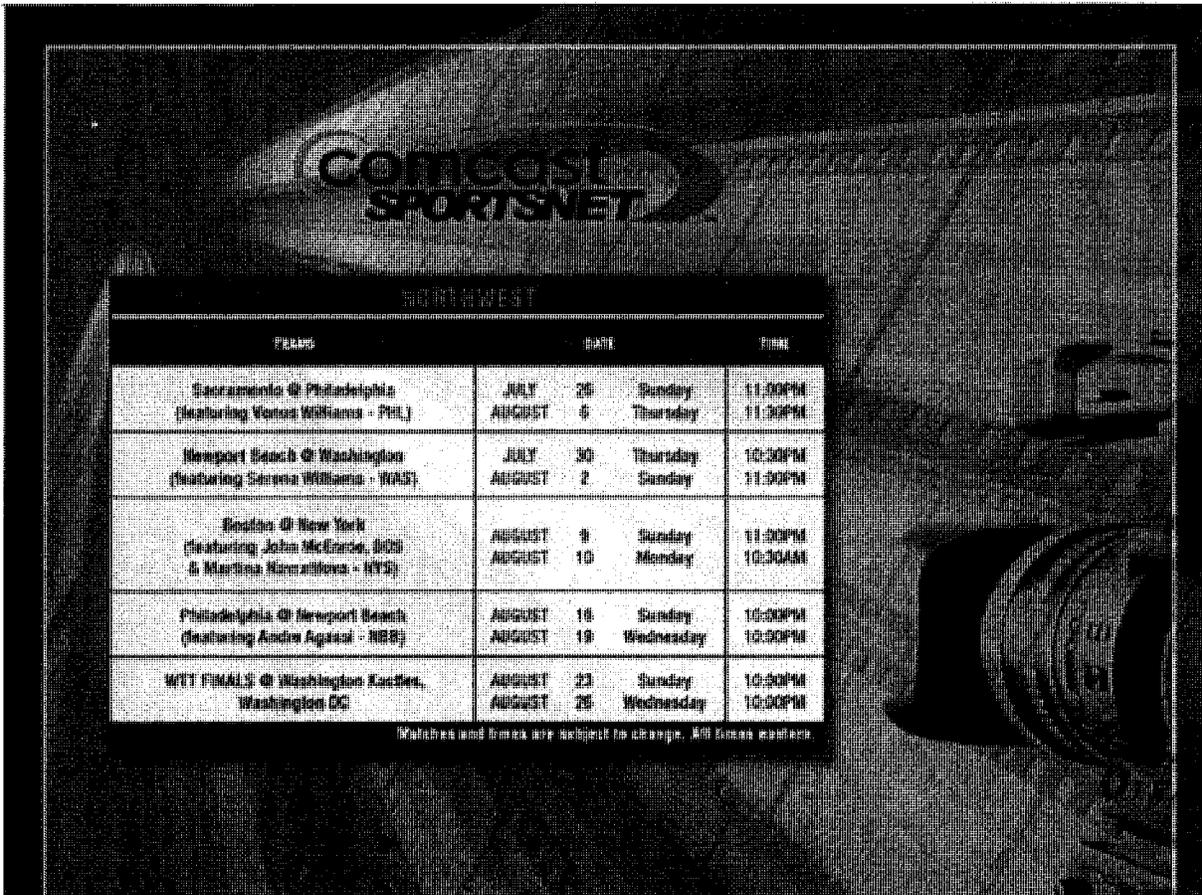


DATE AREA

TEAMS	DATE	TIME
Sacramento @ Philadelphia	AUGUST 5 Wednesday	5:00PM
Sacramento @ Philadelphia (RE-AIR)	AUGUST 6 Saturday	11:00PM
Newport Beach @ Washington	AUGUST 10 Monday	9:30PM
Newport Beach @ Washington (RE-AIR)	AUGUST 11 Tuesday	5:00PM
Boston @ New York (Featuring John McEnroe, BOB & Martina Navratilova - NTR)	AUGUST 16 Sunday	5:00PM
Boston @ New York (RE-AIR) (Featuring John McEnroe, BOB & Martina Navratilova - NTR)	AUGUST 23 Friday	6:00PM
Philadelphia @ Newport Beach	AUGUST 24 Monday	5:00PM
Philadelphia @ Newport Beach (RE-AIR)	AUGUST 25 Tuesday	9:30PM
WTT FINALS @ Washington Kastles, Washington DC	AUGUST 27 Thursday	5:00PM
WTT FINALS @ Washington Kastles, Washington DC (RE-AIR)	AUGUST 28 Friday	9:30PM

Matches and times are subject to change. All times eastern.

Tab C



COMCAST SPORTSNET

NORTHWEST

EVENTS	DATE		TIME
Sacramento @ Philadelphia (featuring Venus Williams - PHL)	JULY 26	Sunday	11:00PM
	AUGUST 6	Thursday	11:30PM
Newport Beach @ Washington (featuring Serena Williams - WAS)	JULY 30	Thursday	10:30PM
	AUGUST 2	Sunday	11:30PM
Boston @ New York (featuring John McEnroe, #25 & Martina Navratilova - NYN)	AUGUST 9	Sunday	11:30PM
	AUGUST 10	Monday	10:30AM
Philadelphia @ Newport Beach (featuring Andre Agassi - NBR)	AUGUST 16	Sunday	10:30PM
	AUGUST 18	Wednesday	10:30PM
WTT FINALS @ Washington Kastles, Washington DC	AUGUST 23	Sunday	10:30PM
	AUGUST 26	Wednesday	10:00PM

Matches and times are subject to change. All times eastern.

Tab D

COMCAST SUNSET

SOUTH

FRASE	DATE	TIME
Sacramento @ Philadelphia (Featuring Kenny Williams - PHIL)	JULY 26 - Sunday	12:30PM
Sacramento @ Philadelphia (PH-ATL) (Featuring Kenny Williams - PHIL)	JULY 27 - Monday	12:30PM
Newport Beach @ Washington (Featuring Kenny Williams - WASH)	AUGUST 2 - Sunday	12:30PM
Newport Beach @ Washington (PH-ATL) (Featuring Kenny Williams - WASH)	AUGUST 4 - Tuesday	12:30PM
Beacon @ New York (Featuring John Madigan, SCAL & Martin Stortzmann - NYNY)	AUGUST 9 - Sunday	12:30PM
Beacon @ New York (PH-ATL) (Featuring John Madigan, SCAL & Martin Stortzmann - NYNY)	AUGUST 11 - Tuesday	12:30PM
Philadelphia @ Newport Beach (Featuring Andre Agassi - PHIL)	AUGUST 16 - Sunday	12:30PM
Philadelphia @ Newport Beach (PH-ATL) (Featuring Andre Agassi - PHIL)	AUGUST 18 - Tuesday	1PM
WTTU PHOENIX @ Washington Kastles, Washington DC	AUGUST 23 - Sunday	12:30PM
WTTU PHOENIX @ Washington Kastles, Washington DC (PH-ATL)	AUGUST 24 - Monday	12:30PM

Times and dates are subject to change. All times eastern.

Tab E



TEAM	DATE	TIME	TYPE
Department of Transportation Washington, DC - 10/1	10/1	10	News
Department of Health Washington, DC - 10/1	10/1	10	News
State of New York Albany, NY - 10/1	10/1	10	News
State of New York, NY - 10/1 Albany, NY - 10/1	10/1	10	News
Department of Energy Washington, DC - 10/1	10/1	10	News
NY State of Education Albany, NY - 10/1	10/1	10	News
Department of Justice Washington, DC - 10/1	10/1	10	News
State of New York, NY - 10/1 Albany, NY - 10/1	10/1	10	News
State of New York, NY - 10/1 Albany, NY - 10/1	10/1	10	News
Department of Justice Washington, DC - 10/1	10/1	10	News
NY State of Education Albany, NY - 10/1	10/1	10	News

Subject to change without notice.

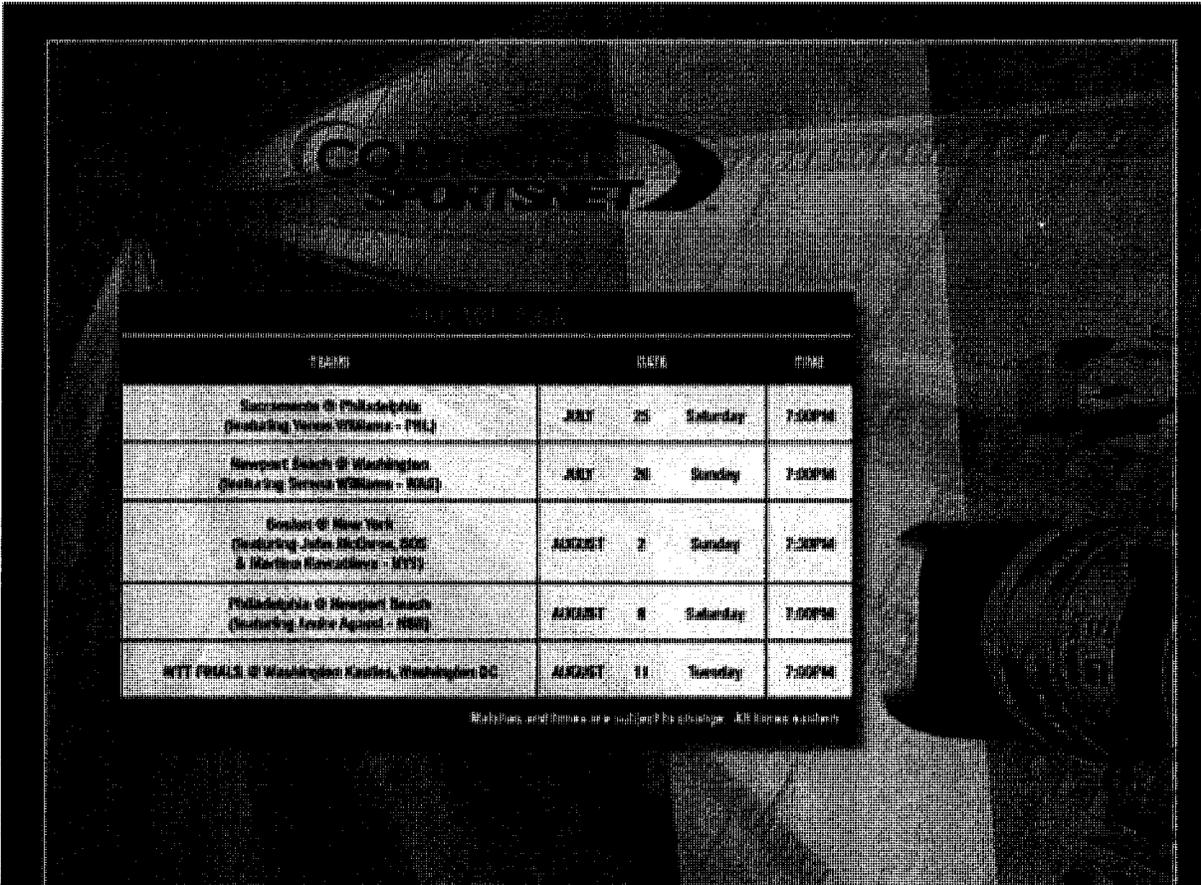
Tab F



TEAMS	DATE	TIME
Sacramento @ Philadelphia (featuring Venus Williams - PHIL)	JULY 21 Tuesday	7:00PM
Newport Beach @ Washington (featuring Serena Williams - WAS)	JULY 22 Wednesday	7:00PM
Boston @ New York (featuring John McEnroe, BOS & Martina Navratilova - NYS)	JULY 23 Thursday	7:00PM
Philadelphia @ Newport Beach (featuring Andre Agassi - NBE)	JULY 24 Friday	7:00PM
WTT FINALS @ Washington Kastles, Washington DC	AUGUST 1 Saturday	7:00PM

Matches and times are subject to change. All times eastern.

Tab G



18

ADVANTA WTT PRO LEAGUE TENNIS

World Team Tennis televises matches on National, Regional and Local Cable networks, reaching more than 50 million households during the Advanta WTT Pro League season. Look for WTT matches to air throughout July and culminate with the Advanta WTT Finals broadcast on July 29 on Tennis Channel. Media partners include: Comcast SportsNet, Cox Communications, Fox Sports Net, Madison Square Garden Network, Mediacom, Tennis Channel, and Time Warner Cable. See chart for nationally televised matches and view the complete schedule, including real-time live scoring updates of all 73 regular season and post-season matches, at WTT.com.

NATIONAL CABLE SCHEDULE			
Sacramento @ Philadelphia (featuring Venus Williams - PHL)	July 20	7:00 pm	VA
Newport Beach @ Washington (featuring Serena Williams - WAS)	July 21	7:00 pm	VA
Boston (featuring Martina Hingis) @ New York (featuring John McEnroe)	July 22	7:00 pm	VA
Philadelphia @ Newport Beach (featuring Andre Agassi - PHL)	July 23	7:00 pm	VA
ADVANTA WTT FINALS	July 29	7:00PM	VA

Matches and times are subject to change. All times eastern.

RIGHTS PARTNERS:



19

EXHIBIT 19
REDACTED

EXHIBIT 20
REDACTED

21

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

NFL ENTERPRISES LLC,

Complainant,

v.

COMCAST CABLE
COMMUNICATIONS, LLC,

Defendant.

MB Docket
No. 08-214

File No.

CSR-7876-P

Volume 7

The Federal Communications Commission
Hearing Room TW-A363
445 12th Street, SW
Washington, D.C. 20554

Thursday, April 16, 2009

9:30 a.m.

BEFORE:

RICHARD L. SIPPEL,

Chief Administrative Law Judge

1 that you were now saving, correct?

2 A No. Programs -- channels come in
3 and out of distribution in a cable company.
4 Typically, you would add a couple of channels
5 every year, you might reposition one every
6 year or every other year. And when you make
7 those kinds of changes, you typically don't
8 adjust the price up or down.

9 Q Mr. Burke, I believe Mr. Carroll
10 pointed out that you own both Versus and the
11 Golf Channel, correct?

12 A We do.

13 Q And I take it that there are
14 benefits to having those channels owned by a
15 cable distributor, are there not?

16 A I'm not sure what you mean.

17 Q Well, you may recall when my
18 colleague, Mr. Schmidt here, when he took your
19 deposition, I don't know, probably about a
20 month ago, a few weeks ago, and he asked you
21 if there are benefits, and you mentioned that
22 there were -- that it's fair to say that the

1 programming channels that we own get treated

2 like siblings as opposed to like strangers.

3 Do you remember that?

4 A I do.

5 Q So the channels that you own get a

6 better audience with the cable distributor,

7 correct?

8 A They certainly would have a chance

9 to spend more time with the people who are on

10 the cable side than a network that was not

11 affiliated with our company.

12 Q And they would get a different

13 level of scrutiny, correct?

14 A Yes, I think that is a fair

15 statement.

16 Q And they would get a better

17 ability to sell to the cable distributor than,

18 say, a non-affiliated independent channel

19 would, correct, sir?

20 A I think they would probably get

21 more time to make their case. That is clearly

22 true.

22

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

NFL ENTERPRISES LLC,

Complainant,

v.

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COMMUNICATIONS, LLC,

Defendant.

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9:30 a.m.

BEFORE:

RICHARD L. SIPPEL,

Chief Administrative Law Judge

1 Channel to a premium sports tier with narrow
2 distribution?

3 A No.

4 Q Never worried about that?

5 A No.

6 Q Have you ever worried that another
7 MVPD might do that?

8 A No.

9 Q You've never worried that another
10 MVPD might do that?

11 A No.

12 Q It wouldn't be a good thing in
13 your view of Versus or the Golf Channel got
14 tiered by other carriers, correct?

15 A That's correct.

16 Q Because you agree that tiering
17 reduces the network's number of subscribers,
18 correct?

19 A That's correct.

20 Q And reduced subscribership would
21 adversely affect the licensing revenue,
22 correct?

1 A Licensing and advertising.

2 Q Licensing and advertising revenue,
3 and by adversely affecting licensing and
4 revenue, you'd also adversely affect the
5 network's ability to secure content in a
6 competitive marketplace, would you not?

7 A Certainly could.

8 Q And it would therefore affect the
9 network's ability to compete with other
10 networks. Is that a fair statement?

11 A I guess that's a fair statement.

12 MR. PHILLIPS: One moment, Your
13 Honor.

14 I now at ten after six in the
15 evening, assuming that clock still has power,
16 Your Honor --

17 JUDGE SIPPEL: Yes.

18 MR. PHILLIPS: -- I'm done.

19 Thank you very much, Mr. Burke.

20 JUDGE SIPPEL: Thank you.

21 And Mr. Schonman.

22 MR. SCHONMAN: Good evening, Mr.

23

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

NFL ENTERPRISES LLC,

Complainant,

v.

COMCAST CABLE
COMMUNICATIONS, LLC,

Defendant.

MB Docket
No. 08-214

File No.

CSR-7876-P

Volume 8

The Federal Communications Commission
Hearing Room TW-A363
445 12th Street, SW
Washington, D.C. 20554

Friday, April 17, 2009

9:30 a.m.

BEFORE:

RICHARD L. SIPPEL,
Chief Administrative Law Judge

1 THE WITNESS: That appears to be
2 right, Your Honor. That is correct.

3 JUDGE SIPPEL: So, in other words,
4 you were responding to him when you sent him
5 your message?

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: And your message
8 was, "The best way for them to ensure the
9 success of NFL Network is to go with us." Am
10 I reading it right?

11 THE WITNESS: You are reading it
12 right, yes.

13 JUDGE SIPPEL: Okay. Go ahead,
14 I'm sorry, Mr. Schmidt. You go ahead, sir.

15 BY MR. SCHMIDT:

16 Q Do you recall telling me in your
17 deposition that if you're an ad-supported
18 network the sports tier that Comcast has, as
19 currently configured, doesn't work for you?

20 A Yes.

21 Q It is not viable for an ad-
22 supported network.

1 A I think if you are -- want to be
2 an ad-supported network the way I define it,
3 which is a broad amount of advertising
4 revenue, then you have to price yourself such
5 that the -- not to be on a sports tier,
6 because my view was that it didn't work.

7 MR. SCHMIDT: Okay. Nothing
8 further.

9 JUDGE SIPPEL: I am just curious
10 about this 108 Exhibit. This is all happening
11 on the 25th of January, which is the day
12 before the -- that significant telephone -- am
13 I right? The day of the conversation was the
14 26th, or was it the 27th?

15 MR. SCHMIDT: 27th, Your Honor.

16 JUDGE SIPPEL: 27th, all right.
17 It was two days before. But look at the time,
18 11:45 at night. 11:39 at night. All right.
19 What was happening here? I mean, this is
20 obviously not -- this is not run-of-the-mill
21 business, is it?

22 THE WITNESS: Well, it is possible

24

EXHIBIT 24
REDACTED

25

Important news for Comcast customers.

On or about July 30, 2009, the following changes will take place to the Alexandria and Arlington channel lineup:

- The following channels will be added to the Digital Classic Service channel lineup:
 - NBA TV on channel 749*
 - NHL Network on channel 739*
- The NFL Network and NFL Network HD will be added to the Digital Starter Service lineup and will remain on channel 733* and channel 246** respectively.
- ESPN Classic will move from Digital Classic Service to the Sports Entertainment Package and will remain on channel 723*.
- NHL Network will move from channel 734* to channel 739* of the Sports Entertainment Package.

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Digital converter or CableCard Additional fees may apply. Please call 1-800-COMCAST for pricing, service and equipment details. *To receive HDTV signals, either a HDTV capable television set (not provided by the Company) and a HDTV capable digital converter are required. Additional fees may apply. HDTV capable digital converter and remote required to receive many HD features and benefits. HD programming limited to the programming provided to Comcast in HD format. Limited Basic Service is required to receive other levels of video service. THE INTERNATIONAL. © 2009 Columbia Pictures Industries, Inc. All Rights Reserved. WATCHMEN © 2009 Warner Bros. Entertainment Inc., Paramount Pictures Corporation and Legendary Pictures. All Rights Reserved. WATCHMEN and all related characters and elements are trademarks of and © DC Comics. Smiley Logo: TM The Smiley Company. All Rights Reserved. UNDISCOVERED © 2009 Screen Gems, Inc. All Rights Reserved. Programming and scheduling subject to change. SHOWTIME and related marks are registered trademarks of Showtime Networks Inc., a CBS Company. Wizards © Lions Gate Television Inc. All Rights Reserved. Visit starz.com for artwork/schedules. Starz and related channels and service marks are the property of Starz Entertainment, LLC. Starz On Demand is included with your Starz subscription at no additional charge. Step Brothers © 2008 Columbia Pictures Industries, Inc. All Rights Reserved. HBO® Cinema® and related channels and service marks are the property of Home Box Office, Inc. All WWE programming, talent names, images, likenesses, slogans, wrestling moves, trademarks, logos and copyrights are the exclusive property of World Wrestling Entertainment, Inc. and its subsidiaries. All other trademarks, logos and copyrights are the property of their respective owners. © 2009 World Wrestling Entertainment, Inc. All Rights Reserved. Ultimate Fighting Championship and UFC® are registered trademarks owned by Zuffa, LLC. © 2009 Zuffa, LLC. All rights reserved. Card subject to change. SC030988



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Comcast Reports Third Quarter 2009 Results

- Consolidated Revenue Increased 3.0%
- Consolidated Operating Cash Flow Increased 2.7%
- Consolidated Operating Income Increased 2.4%
- Earnings per Share of \$0.33 Increased 26.9%
- Free Cash Flow Increased 19.8% to \$1.1 Billion
- Repurchased 16.1 Million Common Shares for \$250 Million

PHILADELPHIA, Nov 04, 2009 (BUSINESS WIRE) -- Comcast Corporation (NASDAQ:CMCSA, CMCSK) today reported results for the quarter ended September 30, 2009.

Brian L. Roberts, Chairman and Chief Executive Officer of Comcast Corporation, said, "The strength and resilience of our businesses combined with our continued emphasis on expenses and prudent capital management helped us achieve healthy operating and financial results in the third quarter. We continued to execute well, maintaining our focus on balancing revenue, cash flow and customer growth while at the same time investing in attractive businesses like Comcast Business Services. We also made real progress on initiatives like Wideband and All-Digital that strengthen our competitive position now and in the future. Our goal is to deliver the best consumer experience in the marketplace and we remain focused on driving meaningful innovation in all of our products and services."

Consolidated Financial Results

Revenue increased 3.0% in the third quarter of 2009 to \$8.8 billion, while **Operating Cash Flow** increased 2.7% to \$3.3 billion and **Operating Income** increased 2.4% to \$1.7 billion. This growth was due to solid results at all our operating segments.

For the nine months ended September 30, 2009, revenue increased 4.3% to \$26.6 billion, Operating Cash Flow increased 5.6% to \$10.3 billion, and Operating Income increased 8.5% to \$5.4 billion, all compared to the same time period in 2008.

(\$ in millions)

	3 rd Quarter			Year to Date		
	2008	2009	Growth	2008	2009	Growth
Revenue						
Cable	\$8,131	\$8,356	2.8%	\$24,147	\$25,181	4.3%
Programming	347	383	10.3%	1,076	1,128	4.8%
Corporate & Other	71	63	(10.7%)	268	266	(0.8%)
Total Consolidated Revenue	\$8,549	\$8,802	3.0%	\$25,491	\$26,575	4.3%
Operating Cash Flow (OCF)						
Cable	\$3,251	\$3,314	2.0%	\$ 9,755	\$10,221	4.8%
Programming	105	118	12.5%	307	343	11.9%
Corporate & Other	(119)	(106)	10.0%	(300)	(259)	13.4%
Total Consolidated OCF	\$3,237	\$3,326	2.7%	\$ 9,762	\$10,305	5.6%

For additional detail on revenue and operating expenses, customer metrics, and capital expenditures, please refer to the trending schedules on Comcast's Investor Relations website at www.cmcsa.com or www.cmcsk.com.

Earnings per Share (EPS) for the quarter ended September 30, 2009 was \$0.33, an increase of 26.9% compared to the \$0.26 reported in the third quarter of 2008. Third quarter 2009 EPS includes the recognition of income tax benefits of \$251 million or \$0.09 per share, partially offset by \$113 million or \$0.04 per share in one-time financing expenses. Third quarter

2008 EPS included income tax benefits of \$80 million or \$0.03 per share. Except for these items, third quarter 2009 EPS would have grown 21.7% over the comparable 2008 period.

Earnings per Share for the nine months ended September 30, 2009 was \$0.93, an increase of 29.2% compared to \$0.72 reported in the prior year. Our 2009 EPS includes favorable settlements and the recognition of income tax benefits of \$436 million or \$0.16 per share, partially offset by \$113 million or \$0.04 per share in one-time financing expenses. Our 2008 EPS included a gain related to the January 2008 dissolution of the Insight Midwest partnership of \$144 million or \$0.05 per share and income tax benefits of \$80 million or \$0.03 per share. Except for these items, year-to-date EPS would have grown 26.6% over the comparable period in 2008.

Capital Expenditures in the third quarter declined 6.1% from the prior year to \$1.2 billion, or 13.9% of total revenue, reflecting a decreased level of capital intensity at our Cable segment. For the nine months ended September 30, 2009, capital expenditures decreased 13.1% to \$3.5 billion, or 13.2% of total revenue.

Free Cash Flow (FCF) (excluding any impact from the Economic Stimulus packages) of \$1.1 billion in the third quarter of 2009 increased 19.8% compared to \$928 million in the third quarter of 2008, reflecting growth in Consolidated Operating Cash Flow and lower capital expenditures. Free Cash Flow for the nine months ended September 30, 2009 totaled \$3.6 billion, a 30.6% increase as compared to \$2.8 billion in the same time period in 2008.

(\$ in millions)	3 rd Quarter			Year to Date		
	2008	2009	Growth	2008	2009	Gr
Net Cash Provided by Operating Activities	\$ 2,445	\$ 2,612	6.8%	\$ 7,373	\$ 7,725	
Capital Expenditures	(1,306)	(1,227)	(6.1%)	(4,037)	(3,508)	(1)
Cash Paid for Capitalized Software and Intangibles	(131)	(142)	8.4%	(376)	(383)	
Adjustments for Payment of Tax on Nonoperating Items	88	(84)	NM	316	66	
FCF (Including Economic Stimulus Packages)	\$ 1,096	\$ 1,159	5.7%	\$ 3,276	\$ 3,900	1
Impact from Economic Stimulus Packages	(168)	(47)	NM	(483)	(252)	
Free Cash Flow	\$ 928	\$ 1,112	19.8%	\$ 2,793	\$ 3,648	3

Note: The definition of Free Cash Flow remains unchanged and specifically excludes any impact from the 2008 or 2009 Economic Stimulus packages.

Cable Segment Results

Revenue from the Cable segment increased 2.8% to \$8.4 billion for the third quarter of 2009 as compared to \$8.1 billion in the third quarter of 2008. This increase reflects continued growth in high-speed Internet (HSI), Comcast Digital Voice (CDV) and Comcast Business Services, partially offset by lower advertising revenue. The monthly average total revenue per video customer increased 5.6% to \$116.91 from \$110.67 in the third quarter of 2008, reflecting an increasing number of customers taking multiple products and a higher contribution from Comcast Business Services.

For the nine months ended September 30, 2009, revenue from the Cable segment increased 4.3% to \$25.2 billion compared to \$24.1 billion in 2008.

Operating Cash Flow from the Cable segment grew 2.0% to \$3.3 billion in the third quarter of 2009 compared to the same period last year. Operating Cash Flow margin was 39.7%, a slight decrease from the 40.0% achieved in the third quarter of 2008. These results reflect increases in video programming, customer service and marketing expenses, partially offset by improved operating efficiencies in Comcast Digital Voice and High-Speed Internet.

For the nine months ended September 30, 2009, Operating Cash Flow from the Cable segment increased 4.8% to \$10.2 billion compared to \$9.8 billion in 2008. Year-to-date Operating Cash Flow margin was 40.6%, a slight increase from the 40.4% reported in the first nine months of 2008.

Customers². As of September 30, 2009, Comcast's video, high-speed Internet and voice customers totaled 46.8 million, an increase of 3.4% compared to the third quarter of 2008.

(in thousands)

	Customers		Net Adds
3Q08	3Q09	Growth	3Q09

Video Customers	24,415	23,759	(2.7%)	(132)
High-Speed Internet Customers	14,745	15,684	6.4%	361
Voice Customers	6,133	7,379	20.3%	375
Combined Video, HSI and Voice Customers	45,294	46,821	3.4%	604
Digital Video Customers	16,758	18,005	7.4%	463
Total Revenue Generating Units	62,051	64,826	4.5%	1,067

Programming Segment Results

The Programming segment reported third quarter 2009 revenue of \$383 million, a 10.3% increase from 2008, reflecting higher affiliate and advertising revenue. Operating Cash Flow increased 12.5% to \$118 million in the third quarter of 2009, reflecting the impact of timing of certain marketing and programming expenses which are expected to be incurred in the fourth quarter.

For the nine months ended September 30, 2009, the Programming segment revenue increased 4.8% to \$1.1 billion compared to the same time period in 2008. Operating Cash Flow increased to \$343million, an increase of 11.9% from the same period last year.

Corporate and Other

Corporate and Other includes corporate overhead, Comcast Interactive Media (CIM), Comcast-Spectacor, and other operations and eliminations between Comcast's businesses. For the quarter ended September 30, 2009, Corporate and Other reported a 10.7% decrease in revenue to \$63 million, driven by an increase in corporate eliminations. The Operating Cash Flow loss for the third quarter of 2009 was \$106 million compared to a loss of \$119million in the third quarter of 2008.

For the nine months ended September 30, 2009, Corporate and Other revenue reported a 0.8% decrease in revenue to \$266 million from the \$268 million reported in the first nine months of 2008. The Operating Cash Flow loss was \$259 million compared to a loss of \$300 million in the same time period in 2008.

Share Repurchase

In the third quarter of 2009, Comcast repurchased 16.1 million of its common shares for \$250 million. Year-to-date, Comcast has repurchased 31.6 million of its common shares for \$465 million. As of September 30, 2009, Comcast had approximately \$3.6 billion of availability remaining under its share repurchase authorization, and may repurchase stock from time to time subject to market conditions.

Dividend

During the first ten months of 2009, Comcast paid four cash dividends totaling \$761 million. Comcast paid quarterly cash dividends of \$180 million on January 28, 2009, \$195 million on April 29, 2009, \$194 million on July 29, 2009 and \$193 million on October 28, 2009.

Notes:

- 2 Customer data is presented on a pro forma basis. Pro forma customer data includes 7,000 video customers acquired through an acquisition in November 2008. The impact of this acquisition on segment operating results was not material.

Minor differences may exist due to rounding.

Conference Call Information

Comcast Corporation will host a conference call with the financial community today, November 4, 2009 at 8:30 a.m. Eastern Time (ET). The conference call will be broadcast live on Comcast's Investor Relations website at www.cmcsa.com or www.cmcsk.com. Those parties interested in participating via telephone should dial (800) 263-8495 with the conference ID number 31876445. A replay of the call will be available on the Investor Relations website starting at 12:30 p.m. Eastern Time (ET) on Wednesday, November 4, 2009 and will be available until Monday, November 9, 2009 at midnight Eastern Time (ET). To access the rebroadcast, please dial (800) 642-1687 and enter conference ID number 31876445. To automatically receive Comcast financial news by email, please visit www.cmcsa.com or www.cmcsk.com and subscribe to email alerts.

Caution Concerning Forward-Looking Statements

This press release contains forward-looking statements. Readers are cautioned that such forward-looking statements involve risks and uncertainties that could cause actual events or our actual results to differ materially from those expressed in any such forward-looking statements. Readers are directed to Comcast's periodic and other reports filed with the Securities and Exchange Commission (SEC) for a description of such risks and uncertainties. We undertake no obligation to update any forward-looking statements.

Non-GAAP Financial Measures

In this discussion, we sometimes refer to financial measures that are not presented according to generally accepted accounting principles in the U.S. (GAAP). Certain of these measures are considered "non-GAAP financial measures" under the SEC regulations; those rules require the supplemental explanations and reconciliations that are in Comcast's Form 8-K (Quarterly Earnings Release) furnished to the SEC. All percentages are calculated on whole numbers. Minor differences may exist due to rounding.

About Comcast Corporation

Comcast Corporation (Nasdaq:CMCSA, CMCSK) (www.comcast.com) is the nation's leading provider of entertainment, information and communication products and services. With 23.8 million video customers, 15.7 million high-speed Internet customers, and 7.4 million Comcast Digital Voice customers, Comcast is principally involved in the development, management and operation of cable systems and in the delivery of programming content.

Comcast's content networks and investments include E! Entertainment Television, Style Network, Golf Channel, VERSUS, G4, PBS KIDS Sprout, TV One, ten sports networks operated by Comcast Sports Group and Comcast Interactive Media, which develops and operates Comcast's Internet businesses, including Comcast.net (www.comcast.net). Comcast also has a majority ownership in Comcast-Spectacor, whose major holdings include the Philadelphia Flyers NHL hockey team, the Philadelphia 76ers NBA basketball team and two large multipurpose arenas in Philadelphia.

Comcast Corporation

TABLE 1

Condensed Consolidated Statement of Operations (Unaudited)

(in millions, except per share data)	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2008	2009	2008	2009
Revenue	\$8,549	\$8,802	\$25,491	\$26,575

Public Version

Operating expenses	3,345	3,490	10,040	10,600
Selling, general and administrative expenses	1,967	1,986	5,689	5,670
	5,312	5,476	15,729	16,270
Operating cash flow	3,237	3,326	9,762	10,305
Depreciation expense	1,332	1,362	4,093	4,148
Amortization expense	235	253	694	760
	1,567	1,615	4,787	4,908
Operating income	1,670	1,711	4,975	5,397
Other income (expense)				
Interest expense	(601)	(707)	(1,840)	(1,828)
Investment income (loss), net	74	148	83	218
Equity in net income (losses) of affiliates, net	3	(17)	(36)	(44)
Other income (expense)	11	2	295	13
	(513)	(574)	(1,498)	(1,641)
Income before income taxes	1,157	1,137	3,477	3,756
Income tax expense	(401)	(203)	(1,364)	(1,088)
Net income from consolidated operations	756	934	2,113	2,668
Net (income) loss attributable to noncontrolling interests	15	10	22	15
Net income attributable to Comcast Corporation	\$ 771	\$ 944	\$ 2,135	\$ 2,683
Diluted earnings per common share attributable to Comcast Corporation stockholders	\$ 0.26	\$ 0.33	\$ 0.72	\$ 0.93
Dividends declared per common share attributable to Comcast Corporation stockholders	\$ 0.06	\$ 0.07	\$ 0.19	\$ 0.20
Diluted weighted-average number of common shares	2,920	2,877	2,973	2,890

Comcast Corporation

TABLE 2

Condensed Consolidated Balance Sheet (Unaudited)

(in millions)	December 31, 2008	September 30, 2009
ASSETS		
Current Assets		
Cash and cash equivalents	\$ 1,195	\$ 862
Investments	59	56
Accounts receivable, net	1,626	1,639
Other current assets	836	849
Total current assets	<u>3,716</u>	<u>3,406</u>
Investments	4,783	5,699
Property and equipment, net	24,444	23,605
Franchise rights	59,449	59,442
Goodwill	14,889	14,934
Other intangible assets, net	4,558	4,209
Other noncurrent assets, net	<u>1,178</u>	<u>1,168</u>
	<u>\$ 113,017</u>	<u>\$ 112,463</u>
LIABILITIES AND EQUITY		
Current Liabilities		
Accounts payable and accrued expenses related to trade creditors	\$ 3,393	\$ 3,133
Accrued expenses and other current liabilities	3,268	3,005
Current portion of long-term debt	<u>2,278</u>	<u>954</u>
Total current liabilities	<u>8,939</u>	<u>7,092</u>

Long-term debt, less current portion	30,178	28,493
Deferred income taxes	26,982	27,566
Other noncurrent liabilities	6,171	6,763
Redeemable noncontrolling interests	171	168
Equity		
Comcast Corporation stockholders' equity	40,450	42,311
Noncontrolling interests	126	70
Total Equity	<u>40,576</u>	<u>42,381</u>
	<u>\$ 113,017</u>	<u>\$ 112,463</u>

Comcast Corporation

TABLE 3

Consolidated Statement of Cash Flows (Unaudited)

(in millions)

Nine Months Ended
September 30,

2008 2009

OPERATING ACTIVITIES

Net income from consolidated operations	\$ 2,113	\$ 2,668
Adjustments to reconcile net income from consolidated operations to net cash provided by operating activities:		
Depreciation	4,093	4,148
Amortization	694	760
Share-based compensation	195	192
Noncash interest expense (income), net	164	125
Equity in net (income) losses of affiliates, net	36	44
(Gains) losses on investments and noncash other (income) expense, net	(287)	(146)
Deferred income taxes	609	572
Changes in operating assets and liabilities, net of effects of acquisitions and divestitures:		
Change in accounts receivable, net	4	(11)
Change in accounts payable and accrued expenses related to trade creditors	(21)	(73)

Change in other operating assets and liabilities	(227)	(554)
Net cash provided by operating activities	7,373	7,725
FINANCING ACTIVITIES		
Proceeds from borrowings	3,513	1,843
Repurchases and repayments of debt	(1,143)	(4,709)
Repurchases of common stock	(2,800)	(438)
Dividends paid	(367)	(568)
Issuances of common stock	53	1
Other	(148)	(186)
Net cash provided by (used in) financing activities	(892)	(4,057)
INVESTING ACTIVITIES		
Capital expenditures	(4,037)	(3,508)
Cash paid for software and other intangible assets	(376)	(383)
Acquisitions, net of cash acquired	(700)	(36)
Proceeds from sales of investments	452	31
Purchases of investments	(67)	(142)
Other	(2)	37
Net cash provided by (used in) investing activities	(4,730)	(4,001)
Increase (decrease) in cash and cash equivalents	1,751	(333)
Cash and cash equivalents, beginning of period	963	1,195
Cash and cash equivalents, end of period	\$ 2,714	\$ 862

SOURCE: Comcast Corporation

Comcast Corporation

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or

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UNITED STATES TENNIS ASSOCIATION

PRESS RELEASE

No. 199-2009

U.S. TENNIS PARTICIPATION TOPS 30 MILLION PEOPLE FOR THE FIRST TIME IN MORE THAN 25 YEARS

2009 USTA/Tennis Industry Association (TIA) Study Shows Growth In All Age Groups and Ethnicities

Participation up 12% vs. 2008 and 25% since 2003

WHITE PLAINS, N.Y., November 17, 2009 – The USTA and TIA announced today that tennis participation in the United States topped 30 million players for the first time in more than two decades. The annual survey of 6,000 Americans showed that tennis participation grew in all age groups under the age of 50 and within all ethnicities. With 30.1 million people hitting the courts, tennis participation has grown 12% over 2008 and climbed 25% since 2003. The survey is conducted annually by the Taylor Research Group on behalf of the Tennis Industry Association (TIA) and the USTA.

New players comprised 7.1 million of the total, and the majority of tennis players consider themselves “regular players” (14.8 million). Though 15 of the 17 USTA sections were affected by record rainfall in the spring, total play occasions surpassed 560 million for only the second time in more than 20 years. The greatest percentage growth in participation was in players 12-17 which grew from 15.7% of the total participants in 2008 to 20.5% of the participants in 2009.

“The USTA continues to work closely with the entire tennis industry to grow our game, and we are extremely gratified that our collective efforts have generated such strong growth,” said Lucy S. Garvin, USTA President and Chairman of the Board. “We continue to strive to make tennis easier to learn and more fun to play, and this commitment has led to millions of more Americans playing the game. I am proud of our network of sections, states/districts, and community programs who have worked so hard to increase participation.”

“Over the past several years, we’ve strived to make the game more accessible, particularly at parks and schools across the country,” said Kurt Kamperman, Chief Executive, Community Tennis, USTA. “Combine this with the health benefits of tennis, and you get surging interest in the sport.”

“The TIA (industry) and the USTA have been focused on growing participation since the mid 90s and this is the result of a consistent and sustained effort that is now paying dividends,” said TIA President Jon Muir. “Our ongoing challenge is to continue to build our frequent player base, the economic lifeline for the sport.”

The TIA/USTA survey results include:

- Total participation broke the 30 million mark in 2009 (a 12% increase to 30.1 million, against 26.9 million in 2008).
- New players reached 7.1 million (up 19.5% from 5.9 million in 2008).
- Regular Players, those playing 4 to 20 times per year, increased 26% to 14.8 million players in 2009.

-2-

- Participation in 2009 is up in every major ethnic group, but especially among African Americans (+19%) and Hispanics (+32%)
- Age groups comprising the greatest percentage of players are:
 - 12-17 years at 20.5% of the total (more than 6 million players)
 - 18-24 years at 18.4% of the total (more than 5.5 million players)
 - 6-11 years at 16.25% of the total (4.9 million players)
- Tennis is doing a better job at retention with continuing players up 6.3% to 16 million
- Former players rejoining to the game is up for the third year in a row, with nearly 7 million coming back to tennis

The TIA/USTA results compare favorably to other recent research released from industry organizations over the past 12 months. In the 2009 Sports and Fitness Participation Report conducted by the Sporting Goods Manufacturers Association (SGMA), results showed tennis was the only traditional sport to enjoy growth in grassroots participation.

#

About the USTA

The USTA is the national governing body for the sport of tennis in the U.S. and the leader in promoting and developing the growth of tennis at every level -- from local communities to the highest level of the professional game. A not-for-profit organization with 730,000 members, it invests 100% of its proceeds in growing the game. It owns and operates the US Open, the highest attended annual sporting event in the world, and launched the Olympus US Open Series linking 10 summer tournaments to the US Open. In addition, it owns the 94 Pro Circuit events throughout the U.S., is a minority owner and promotional partner of World TeamTennis, and selects the teams for the Davis Cup, Fed Cup, Olympic and Paralympic Games. The USTA philanthropic entity, USTA Serves, provides grants and scholarships and through tennis, helps underserved youth and people with disabilities to improve academics, build character and strive for excellence. For more information on the USTA, log on to usta.com.

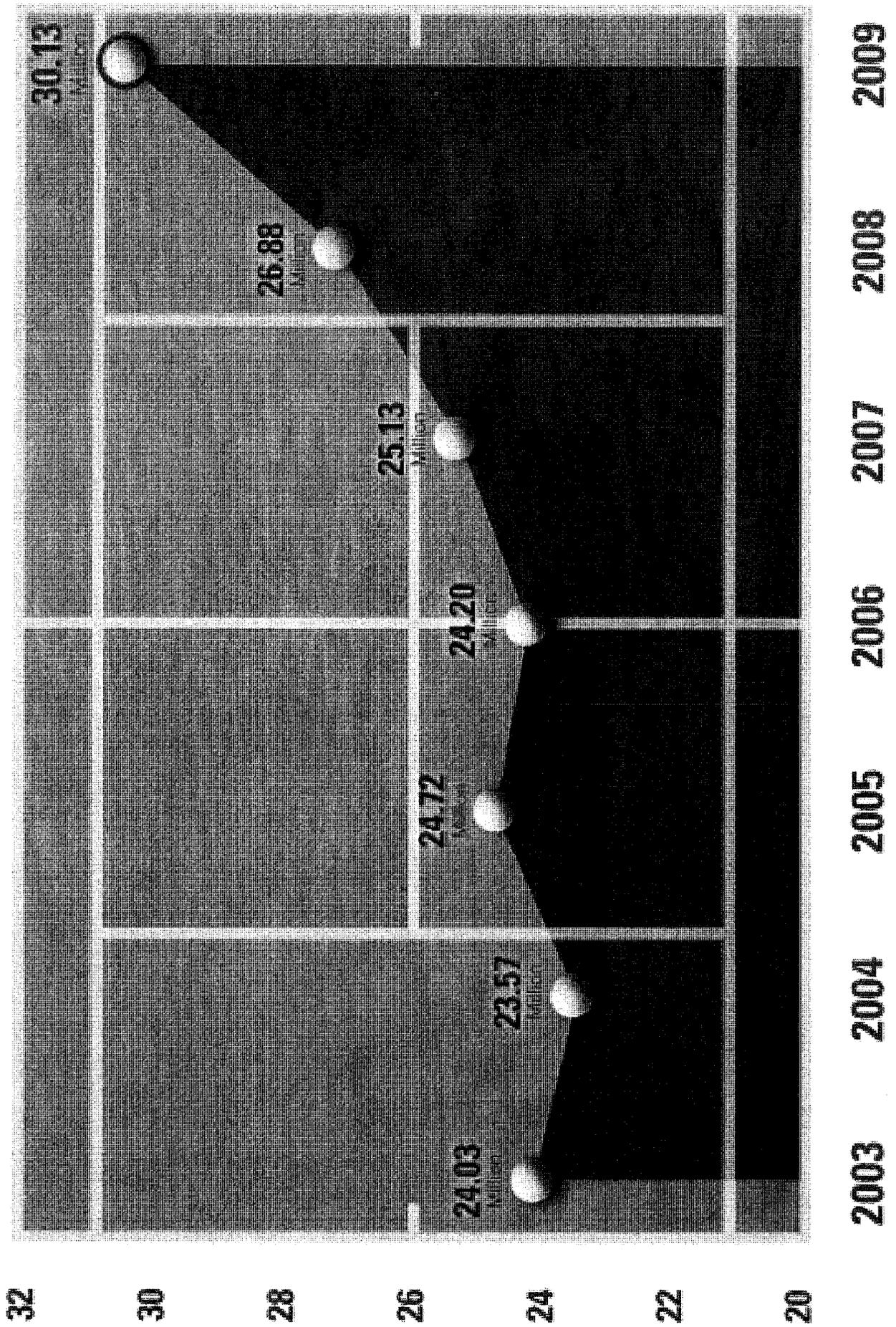
About the TIA

The Tennis Industry Association, the not-for-profit trade association for tennis, is THE unifying force in the tennis industry bringing together competitive companies to work collectively to promote and grow the sport. The TIA works closely with the USTA and industry partners to develop and implement initiatives to increase tennis participation. Core TIA activities include Participation Research, Consumer and Trade Research and the Growing Tennis System. For more information, please visit TennisIndustry.org or GrowingTennis.com.

For more information, contact:

Tim Curry, Director, Corporate Communications, USTA – (914) 696-7077; curry@usta.com
Jolyn de Boer, Executive Director, TIA – (843) 686-3036 ext. 222; jolyn@tennisindustry.org

Total Tennis Participation



This chart measures the total participation in tennis by gender in the United States. Participation is defined as the Total Membership Count as Administered forward of last year in this chart.

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COMCAST CORP

FORM 8-K (Current report filing)

Filed 12/04/09 for the Period Ending 12/03/09

CIK	0001166691
Symbol	CMCSA
SIC Code	4841 - Cable and Other Pay Television Services
Industry	Broadcasting & Cable TV
Sector	Services
Fiscal Year	12/31

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of Navy, LLC, a Delaware limited liability company (the "Company"), is made as of [_____], 201_, by and among [_____], [_____], [_____] (each, an "Initial Comcast Member" and collectively, the "Initial Comcast Members"), Navy Holdings, Inc., a Delaware corporation (the "Initial GE Member" or "HoldCo"), each other Person who at any time becomes a Member in accordance with the terms of this Agreement and the Act, and Comcast Corporation, a Pennsylvania corporation ("Comcast"), and General Electric Company, a New York corporation ("GE").

RECITALS

WHEREAS, the Company was formed on November 12, 2009, by the filing of a Certificate of Formation (as amended or otherwise modified from time to time, the "Certificate of Formation") with the Secretary of State of the State of Delaware and the adoption of that certain Limited Liability Company Agreement of the Company dated as of December 1, 2009 by Navy Holdings, Inc., as the initial sole member of the Company (the "Original LLC Agreement");

WHEREAS, pursuant to a Master Agreement dated as of December 3, 2009 (as amended or otherwise modified from time to time, the "Master Agreement") by and among GE, NBC Universal, Inc., a Delaware corporation ("NBCU"), Comcast and the Company, Comcast and GE agreed to contribute (or cause to be contributed) certain assets and liabilities to the Company;

WHEREAS, pursuant to the Master Agreement, in consideration of their respective contributions, the parties thereto agreed that the Company would issue Membership Interests in the Company to the Initial Comcast Members and the Initial GE Member;

WHEREAS, pursuant to the Master Agreement, the parties thereto agreed that immediately after the contributions referred to above are made, the Initial Comcast Members would purchase from the Initial GE Member a number of Membership Interests such that, upon the consummation of such purchase, the Comcast Members' aggregate Percentage Interests would equal 51% and GE's Percentage Interest would equal 49%; and

WHEREAS, concurrently with the execution and delivery of this Agreement, the Closing contemplated by the Master Agreement has been consummated.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 . *Defined Terms.* (a) In this Agreement, except where the context otherwise requires:

“ **Act** ” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, *et seq.* , as amended from time to time.

“ **Affiliate** ” means, with respect to any specified Person, any other Person that, at the time of determination, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such specified Person. Unless otherwise specifically stated, the term “Affiliate” does not include: (x) the Company or any of its Subsidiaries when used with respect to Comcast, GE or HoldCo or any of their respective Subsidiaries and (y) Comcast, GE or any of their respective Subsidiaries when used with respect to the Company or any of its Subsidiaries. “ **Affiliated** ” and “ **Affiliation** ” shall have correlative meanings.

“ **Agreed Adjustments** ” shall have the meaning, and be prepared in accordance with the provisions, set forth in Exhibit F.

“ **Agreement** ” means this Amended and Restated Limited Liability Company Agreement, as it may be amended or otherwise modified from time to time in accordance with Section 13.02.

“ **Annual Tax Distribution Amount** ” means, with respect to a Tax Year, an amount equal to the product of (x) the aggregate amount of net taxable income and gain allocated to the Members pursuant to Section 8.01(d)(i) in respect of such Tax Year, *reduced by* the amount of any deductions of Comcast during such Tax Year as a result of any tax basis adjustments pursuant to Section 743(b) of the Code attributable to the transaction set forth in Section 2.04 of the Master Agreement and (y) the Applicable Tax Rate. For the avoidance of doubt, the Annual Tax Distribution Amount shall be calculated without regard to any allocations pursuant to Sections 8.01(d)(ii) and 8.01(d)(iii) in connection with the disposition of an asset.

“ **Applicable Accounting Method** ” means the applicable accounting method by which GE is required, in accordance with GAAP, to account for its

Company a written notice signed by an officer of Comcast stating that, as of the date of such notice, Comcast has pending or in process a material transaction (including a financing transaction or a material acquisition (whether such acquisition occurs by way of stock purchase or exchange, asset purchase or exchange, merger, consolidation or similar transaction) by Comcast or any of its Subsidiaries of the business or a line of business of a Person that is not an Affiliate of Comcast), the disclosure of which would, in the good faith judgment of Comcast's board of directors, materially and adversely affect Comcast, the period commencing on the date on which such notice is given and ending on the earlier of (A) the date that is 60 days after the date on which such notice was given and (B) the date on which the material transaction that necessitated such notice is abandoned or publicly disclosed.

"**Comcast De Minimis Business**" means an equity interest in any Person engaged in the video programming network business that is acquired by Comcast or any of its Subsidiaries (other than Comcast or any of its Subsidiaries) as consideration for commitments made in a distribution agreement by Comcast's multichannel video distribution business; *provided* that the total amount of Comcast and such Subsidiaries' equity interests in any such Person shall not exceed 25%.

"**Comcast Member**" means any Initial Comcast Member as of the Closing and, thereafter, any of Comcast or any of its direct or indirect wholly-owned Subsidiaries that then is a Member.

"**Comcast Permitted Business**" means: (I) (i) the multichannel video distribution business (*e.g.* , the principal business now conducted by Comcast's Cable Division), by any distribution method (cable, satellite, wireless, etc.) or technology (analog, digital, etc.) and to any type of end-user equipment (television, computer, phone, etc.); (ii) Internet access service (*i.e.* , the principal Internet business now conducted by Comcast's Cable Division) and Internet portal service (*e.g.* , the principal business now conducted by Comcast's Comcast Interactive Media Division through comcast.net), including applications and services provided or offered in conjunction therewith (*e.g.* , email, cross-platform services, games, computer security, photo and file storage, etc.), by any distribution method (cable, satellite, wireless, etc.) and to any type of end-user equipment (television, computer, phone, etc.); (iii) Internet businesses primarily focused on: (A) the aggregation, packaging and distribution of content (*e.g.* , the principal business now conducted by Comcast's Comcast Interactive Media Division now known as fancast.com and the provision of authenticated programming), for Comcast or others, including content downloading; (B) the sale of goods or services through an Internet interface, including games (*e.g.* , amazon.com; recroom.com; etc.); and (C) applications (*e.g.* , maps, concierge services, social networking, etc. (including the business of Plaxo, Inc.)); (iv) webhosting and other Internet infrastructure services; (v) voice and data services,

by any distribution method (cable, satellite, wireless, etc.) and to any type of end-user equipment (television, computer, phone, etc.); (vi) home and business security services; (vii) the operation and management of sports teams and event venues; (viii) the food services business; (ix) the ticketing business to events other than movies, by any distribution method (online or physical); (x) the production of advertising and the sale of advertising time (including targeted/addressable and interactive advertising) for Comcast and others (provided that this shall not include National Advertising), including through Canoe Ventures, LLC ("Canoe") and National Cable Communications LLC ("NCC"); (xi) the provision of content formatting, transmission and distribution services for video content and advertising for Comcast and others (e.g., the business of thePlatform, Inc. and National Digital Television Center, LLC (i.e., the Comcast Media Center)); (xii) the provision of technical services, software, databases and other technology (for Comcast or others) related to the businesses referred to above, including hardware and software development and licensing (e.g., authentication and other security services) and cross-platform services (e.g., comcast.net's iPhone application); (xiii) (A) the production and distribution of public access, leased access and local origination programming and other programming required under the terms of any cable television franchise agreement, (B) the production, licensing and distribution of video-on-demand programming (e.g., Select on Demand) and (C) the ownership and operation of locally programmed cable channels (e.g., Comcast Entertainment Television, Comcast Hometown Network, CN100 and C2), in each case for carriage on Comcast's and other multichannel video distributors' systems (other than locally programmed cable channels for areas served by NBC network broadcast television stations owned by the Company (other than KNTV and WMAQ)); (xiv) any business or activity reasonably ancillary to any of the foregoing; and (xv) any business or activity that represents an evolution over time of any of the business referred to above; provided that neither clause (I)(xiv) nor (I)(xv) shall include the ownership of any interest in, or the operation or management of, any Company Principal Business; (II) the ownership of the following interests: (A) Big Ten Network, LLC - 4.99% [profit participation]; (B) Canoe - 48.5%; (C) Current Media, LLC - 10%; (D) Digital Entertainment Content Ecosystem (DECE), LLC - membership interest; (E) Driver TV LLC - 6.5%; (F) MGM Holdings, Inc. - 20%; (G) NHL Network US, L.P. - 15.6%; (H) Music Choice - 12.4%; (I) Pittsburgh Cable News Channel LLC - 30%; and (J) The MLB Network, LLC - 8.34%; (III) the ownership and operation of the following interests/businesses: (A) AutoMallUSA.com, L.L.C. - 100%; (B) Comcast Digital, LLC - 100%; (C) In Demand L.L.C. - 53.9%; (D) NCC - 60%; (E) National Digital Television Center, LLC and its subsidiaries - 100%; (F) Plaxo, Inc. - 100%; (G) thePlatform, Inc. and its subsidiary - 97%; and (H) Vehix, Inc. - 100%; (IV) any changes in the ownership of the entities listed in clauses (II)(A), (C), (E), (G), (H) and (J), provided no such interest shall exceed 25%; (V) any increase in the ownership of the entities listed in clauses (II)(B) and (I) and (III)(C), (D) and (G); (VI) the ownership and operation of any assets

acquired in accordance with Section 6.22; (VII) any Comcast De Minimis Business; (VIII) acting as an affiliate of MyNetwork TV in the Ft. Myers/Naples, Florida area; (IX) the ownership and operation of websites relating to Comcast Corporation (e.g., comcast.com, cmcsk.com and cmcsa.com); and (X) ownership of the following investments of Comcast Interactive Capital, L.P. (Comcast's internal venture capital arm); provided that the amount of any such investment shall not exceed 25%: Jingle Networks, JiWire, Oberon Media and SB Nation.

"Comcast Transfer Date" means the earlier to occur of (x) the date of the closing of the First HoldCo Redemption Right, if exercised, and (y) the fourth anniversary of the Closing Date; provided that if, as of the fourth anniversary of the Closing Date, the First HoldCo Redemption Right has been exercised but not consummated, the "Comcast Transfer Date" shall be the earlier of (i) the date of the closing of the First HoldCo Redemption Right and (ii) the date on which the First HoldCo Redemption Right is abandoned because any required Governmental Approvals cannot be obtained or for any other reason.

"Commission" means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

"Company Auditors" means the independent certified public accountants of the Company, as may be engaged by the Company from time to time.

"Company Group" means the Company, each Subsidiary of the Company immediately after the Closing and each other Person that is controlled directly or indirectly by the Company immediately after the Closing.

"Company Principal Businesses" means: (i) the National Broadcast Network business; (ii) the local broadcast television business, including locally programmed cable channels for areas serviced by NBC network television stations owned or operated by the Company (other than KNTV and WMAQ); (iii) the theme park and resort businesses; (iv) the video programming network business (including RSNs) (e.g., USA, E!, etc.) (it being the parties' intention that this clause (iv) include reference to a non-linear network (such as FEARnet) which is intended to operate as a stand-alone programming network with a business plan to operate at a profit predicated principally on obtaining distribution from multichannel video distribution providers including Comcast and others, but not include video-on-demand programming (such as Select on Demand) which is intended to operate principally as part of Comcast's and/or others' multichannel video business); (v) the production, sale and distribution of television programming (e.g., the principal business now conducted by NBCU's Universal Media Studios and Universal Cable Productions and the related business of licensing or distributing television programming); (vi) the production, sale and distribution of filmed entertainment (i.e., motion pictures) (it being the parties' intention that the use of the terms "production, sale and distribution" in clauses

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Ken Solomon
Chairman & CEO

December 10, 2009

VIA ELECTRONIC MAIL AND FEDEX

Mr. Stephen Burke, President
Comcast Cable Communications, LLC
One Comcast Center
Philadelphia, PA 19103

Dear Steve:

I am writing regarding Comcast's unexplained rejection in June 2009 of our request that it reposition Tennis Channel's network service from its narrowly-penetrated premium Sports and Entertainment Package to a significantly more broadly-distributed programming tier on its systems.

During the protracted discussions leading up to that decision, we provided you with what we believe to be incontrovertible evidence that Tennis Channel's programming and ratings performance now warrant far broader carriage than the highly limited carriage our network receives. Indeed, we demonstrated that on key criteria Tennis Channel's performance matches or exceeds that of Comcast's two most visible and widely-penetrated affiliated sports networks, the Golf Channel and Versus. Tennis Channel competes across the country with these two services for audiences and advertising revenue.

Despite our demonstration, Comcast refused to expand Tennis Channel's carriage beyond the limited-distribution sports tier and continues to carry the Golf Channel and Versus on an analog basic tier that is available without additional charge to an audience that is between nine and ten times larger. The conclusion that Comcast has made this decision because it does not have an ownership stake in Tennis Channel is inescapable; you do not relegate any service in which you have a financial interest to the sports tier. Indeed, since our discussions in May and June, Comcast placed, or announced plans to place, other sports networks in which it has a financial interest—the MLB Network, NBA TV, the NHL Network, and the now-defunct U.S. Olympic Network—on broadly penetrated tiers, even though none of these networks offers Tennis Channel's superior ratings performance, comprehensive 52-week event coverage or programming quality. Simply put, Comcast has left Tennis Channel isolated on a premium tier where it is unable to expand its audience base or to compete for ratings and advertising against Comcast-affiliated networks that are, at best, equivalent performers.

Mr. Stephen Burke, President
December 10, 2009
Page 2

There is no question that Comcast is aware of the adverse consequences of confining a sports service such as Tennis Channel to that narrowly penetrated tier. In recent testimony, you confirmed your own understanding that sports tier carriage would “reduce [a sports] network’s number of subscribers” relative to the subscribers it would have on a broad tier, which “would adversely affect the [network’s] license revenue” and otherwise undermine the network’s ability to compete. The President of the Comcast Programming Group, Jeff Shell, acknowledged that “if you’re an ad-supported network” like Tennis Channel, “the sports tier that Comcast has . . . is not [a] viable [option].” Given these facts and your own concession that Comcast treats affiliated networks “like siblings as opposed to strangers”—that is, gives them more favorable consideration—it is not surprising that Comcast moved all networks in which it has an interest off of this tier. There is simply no question that improved carriage of Tennis Channel on Comcast systems would improve it as a competitor to Comcast affiliated services. And there is no doubt that Comcast’s placement decisions are based on that judgment.

Our negotiations for improved carriage demonstrate Comcast’s intention to discriminate against Tennis Channel and in favor of services in which it has an interest. After I made presentations this spring to you and then Matt Bond, Comcast’s Executive Vice President for Content Acquisition, about Tennis Channel’s dramatic expansion, ratings successes and value to Comcast, Matt indicated that Comcast would not reposition Tennis Channel unless Tennis Channel offered a meaningful financial “incentive”—a step he also said he believed would be economically impossible for us. When we surprised Comcast by meeting this demand—
—Matt rejected our proposal out of hand, without even a counter-offer or an explanation, making the pretextual nature of the “incentive” request particularly obvious. In fact, Tennis Channel was already far less expensive than comparable sports services on Comcast; we believe our response to the request made the value proposition Tennis Channel was offering virtually unparalleled among Comcast programming services.

This treatment of Tennis Channel violates Section 616 of the Communications Act of 1934, as amended, and the Federal Communications Commission’s program carriage rules, 47 C.F.R. § 76.1301(c). It is a patent discrimination against Tennis Channel that is simply the result of the fact that Comcast has no economic interest in it, and it reflects a refusal to put Tennis Channel in a position where it can function as a healthy competitor for audiences and advertising against Comcast-affiliated services.

The Commission’s rules permit Tennis Channel to file a complaint against Comcast under Section 616 on or after ten days from the date of this letter. That complaint will seek an order compelling Comcast to carry Tennis Channel on terms that are comparable to the terms on which it carries its affiliated sports networks. As I believe you know, however, we have valued our relationship with Comcast and believe that, particularly given our low rates, the quality of our content, and our ratings performance, Tennis Channel represents an excellent value for Comcast and its subscribers. It should be in our mutual interest to resolve this carriage matter. We would much prefer to resolve it amicably, but in the absence of a concrete offer within the

Mr. Stephen Burke, President

December 10, 2009

Page 3

next ten days that demonstrates that Comcast intends to achieve a negotiated resolution of our dispute, we will take the necessary steps to protect our franchise and future by asking the Commission to resolve the matter formally.

Sincerely,



Ken Solomon

Chairman and Chief Executive Officer

cc: Madison Bond, Executive Vice President, Content Acquisition
Kathryn A. Zachem, Senior Vice President, Regulatory Affairs (via e-mail and hand
delivery)
Comcast Cable Communications, LLC
Arthur R. Block, Senior Vice President, General Counsel, and Secretary
Comcast Corporation
Stephen A. Weiswasser (via e-mail)
Covington & Burling LLP

Rumbaugh, Katherine

From: Rumbaugh, Katherine on behalf of Sherman, Robert
Sent: Thursday, December 10, 2009 5:06 PM
To: 'Steve_Burke@comcast.com'
Cc: 'Art_Block@comcast.com'; 'Matt_Bond@comcast.com'; 'Kathy_Zachem@comcast.com'; Weiswasser, Stephen
Subject: Tennis Channel

Attachments: Burke Letter 12-10-09.PDF

Attached is a letter pursuant to the rules of the Federal Communications Commission from Ken Solomon, Chairman and CEO of The Tennis Channel, Inc.

Regards,

Robert M. Sherman | **COVINGTON & BURLING LLP**
1201 Pennsylvania Ave., N.W. | Washington, D.C. 20004-2401
Tel: (202) 662-5115 | Fax: (202) 778-5115
rsherman@cov.com | www.cov.com/rsherman



Burke Letter
12-10-09.PDF (205..)



Rumbaugh, Katherine

From: Rumbaugh, Katherine on behalf of Sherman, Robert
Sent: Thursday, December 10, 2009 5:10 PM
Cc: 'Matt_Bond@cable.comcast.com'
Subject: Tennis Channel

Attachments: Burke Letter 12-10-09.PDF

Attached is a letter pursuant to the rules of the Federal Communications Commission from Ken Solomon, Chairman and CEO of The Tennis Channel, Inc.

Regards,

Robert M. Sherman | **COVINGTON & BURLING LLP**
1201 Pennsylvania Ave., N.W. | Washington, D.C. 20004-2401
Tel: (202) 662-5115 | Fax: (202) 778-5115
rsherman@cov.com | www.cov.com/rsherman



Burke Letter
12-10-09.PDF (201..



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Tracking no.: 986621165211

E-mail notifications

Delivered



Delivered
Signed for by: M.MCNICHOLAS

Shipment Dates

Ship date [?] Dec 10, 2009
Delivery date [?] Dec 11, 2009 10:27 AM

Destination

Philadelphia, PA
[Signature Proof of Delivery](#) [?]

Shipment Facts [Help](#)

Service type	Priority Overnight	Delivered to	Receptionist/Front Desk
Weight	1.0 lbs/0.5 kg	Reference	032490.00101 08928

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Date/Time	Activity	Location	Details
Dec 11, 2009 10:27 AM	Delivered	Philadelphia, PA	
Dec 11, 2009 8:13 AM	On FedEx vehicle for delivery	PHILADELPHIA, PA	
Dec 11, 2009 7:10 AM	At local FedEx facility	PHILADELPHIA, PA	
Dec 11, 2009 5:26 AM	At dest sort facility	PHILADELPHIA, PA	
Dec 11, 2009 5:17 AM	Departed FedEx location	NEWARK, NJ	
Dec 10, 2009 11:59 PM	Arrived at FedEx location	NEWARK, NJ	
Dec 10, 2009 10:10 PM	Left FedEx origin facility	WASHINGTON, DC	
Dec 10, 2009 8:09 PM	Shipment information sent to FedEx		
Dec 10, 2009 8:00 PM	Picked up	WASHINGTON, DC	



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- Notifications

Tracking no.: 986621165222

[E-mail notifications](#)

Delivered

Initiated Picked up In transit Delivered

Delivered

Signed for by: M.MCNICHOLAS

Shipment Dates

Ship date Dec 10, 2009
 Delivery date Dec 11, 2009 10:27 AM

Destination

Philadelphia, PA
[Signature Proof of Delivery](#)

Shipment Facts

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Service type	Priority Overnight - Direct Signature Required	Delivered to Reference	Receptionist/Front Desk 032490.00101 08928
Weight	1.0 lbs/0.5 kg		

Shipment Travel History

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Date/Time	Activity	Location	Details
Dec 11, 2009 10:27 AM	Delivered	Philadelphia, PA	
Dec 11, 2009 8:12 AM	On FedEx vehicle for delivery	PHILADELPHIA, PA	
Dec 11, 2009 7:10 AM	At local FedEx facility	PHILADELPHIA, PA	
Dec 11, 2009 5:26 AM	At dest sort facility	PHILADELPHIA, PA	
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Dec 10, 2009 8:00 PM	Picked up	WASHINGTON, DC	



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Tracking no.: 986621165233

E-mail notifications

Delivered



Delivered
Signed for by: M.MCNICHOLAS

Shipment Dates

Ship date [?] Dec 10, 2009
Delivery date [?] Dec 11, 2009 10:27 AM

Destination

Philadelphia, PA
[Signature Proof of Delivery](#) [?]

Shipment Facts [Help](#)

Service type	Priority Overnight	Delivered to	Receptionist/Front Desk
Weight	1.0 lbs/0.5 kg	Reference	032490.00101 08928

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Select time zone:

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Dec 11, 2009 5:17 AM	Departed FedEx location	NEWARK, NJ	
Dec 10, 2009 11:59 PM	Arrived at FedEx location	NEWARK, NJ	
Dec 10, 2009 9:44 PM	Left FedEx origin facility	WASHINGTON, DC	
Dec 10, 2009 8:09 PM	Shipment information sent to FedEx		
Dec 10, 2009 8:00 PM	Picked up	WASHINGTON, DC	

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Channel Lineup

Location: COMCAST OF WASHINGTON, DC

Print

Last updated: January 2010

On Demand

1	On Demand
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Standard Service

6	ABC Family
7	VERSUS
8	ESPN2
9	ESPN
10	Comcast SportsNet
11	Golf Channel
34	The Weather Channel
35	CNN Headline News
36	CNN
37	Fox News
38	MSNBC
39	CNBC
40	Travel Channel
41	The Discovery Channel
42	MASN
43	The Learning Channel
44	Animal Planet
45	Cartoon Network
46	Disney Channel
47	Nickelodeon
48	TV Land
50	History Channel
51	A&E
52	Hallmark
54	Lifetime
55	HGTV
56	Food Network

57	Oxygen
59	E!
60	Bravo
61	Sci-Fi
62	TNT
63	FX
64	truTV
65	USA
66	TBS
67	Spike TV
68	Comedy Central
69	GSN
70	G4
72	VH1
73	MTV
74	BET
75	TV One

Limited Basic Service

4	C-SPAN
5	MASN 2 / CSAPN 2
12	WZDC-64 (Telemundo)
13	City Cable 13
14	WFDC-14 (Univision)
15	WMDO-47 (Telefutura)
16	City Cable 16
17	Discovery Health
18	WGN
20	WDCA-20 (MY)
22	MPT-22 (PBS)
23	WDCW-50 (CW)
24	WRC-4 (NBC)
25	WTTG-5 (FOX)
26	WETA-26 (PBS)
27	WJLA-7 (ABC)
28	News Channel 8
29	WUSA-9 (CBS)
30	QVC
31	HSN
32	WHUT-32 (PBS)
33	WPXW-66 (ion)
76	TV Guide

95	DCTV (Public Access)
96	DCTV2 (Public Access)
98	Univ. of the District of Columbia
99	DC Public Schools
100	TV Guide
104	C-SPAN 2
184	Jewelry TV
190	Leased Access
198	WQAW - Azteca America
203	WUSA 9 Radar
204	WJLA - Doug Hill's Weather Now
205	WJLA Retro TV Network
207	WRC - Sport
208	NBC Weather Plus
265	WETA Create PBS
266	WETA Family PBS
267	WETA World PBS
271	MHz Worldview
272	MHz2 NHK World TV
273	MHz3 Metro Chinese Network
274	MHz4 Russia Today
275	MHz5 BVN
276	MHz6 SABC News International
277	MHz7 France 24
278	MHz8 Nigerian TV Authority
279	MHz9 VTN
280	MHz10 Euronews
616	WQAW-LP

High Definition

210	WJLA-HD (ABC)
211	WRC-HD (NBC)
212	WUSA-HD (CBS)
213	WTTG-HD (Fox)
214	WDCW-HD (CW)
215	WDCA HD
218	AMC HD
219	WMPT-HD
220	WETA-HD (PBS)
221	FX HD
222	Fox News HD
223	A&E HD

225	HD Theater
226	Versus HD
227	Palladia
229	HGTV HD
231	Food Network HD
232	TBS HD
234	CNN HD
235	USA HD
236	Sci-Fi HD
237	History HD
239	Discovery HD
240	TLC HD
241	Animal Planet HD
244	Disney HD
245	ABC Family HD
246	NFL Network HD
247	MASN HD
249	TNT HD
250	Universal HD
251	Comcast SportsNet HD
252	ESPN HD
253	ESPN 2 HD
254	Golf HD
827	Spike HD
833	EI HD
835	Lifetime HD
840	Travel HD
859	MLB Network HD
873	Planet Green HD
874	Biography HD
878	Cartoon Network HD
879	Nickelodeon HD
895	Lifetime Movie Network HD

Digital Starter

21	The Comcast Network
49	TCM
71	CMT
103	Bloomberg
105	C-SPAN 3
115	Biography
116	History International

118	style.
119	Lifetime Movie Network
123	Oxygen
128	PBS Kids Sprout
138	AMC
146	CMT
169	TCM
180	NFL Network
283	SHOP NBC
287	Daystar
290	TBN
291	EWTN
294	The Word
295	INSP

Pay-Per-View

230	HD Special Events
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Cable Latino

178	mun2
601	Discovery en Español
602	CNN en Español
603	Fox Sports en Español
604	ESPN Deportes
605	MTV Tr3s
606	History Channel en Español
607	Toon Disney en Español
608	CineLatino
609	VeneMovies
610	Cine Mexicano
617	WAPA AMER
621	Canal 24
622	GolTV (Español)
628	SUR TV
630	TV Colombia
631	TV Chile
632	La Telenovela
635	SiTV
637	EWTN en Español

Digital Sports Packages

701 - 706	ESPN GamePlan / ESPN Full Court
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751 - 760	NBA League Pass / MLS Direct Kick
771 - 784	NHL Center Ice / MLB Extra Innings

Digital Classic

101	Weatherscan Local
102	ESPNews
106	Fox Business Network
107	Current TV
108	Fox Reality
109	National Geographic
110	The Science Channel
111	Investigation Discovery
112	The Military Channel
113	Planet Green
114	BBC America
117	WE: Women's Entertainment
120	SOAPnet
121	Do it Yourself Network
122	Fine Living
129	Nick Toons
130	Discovery Kids
131	Noggin
132	Nick2
133	The N
134	Encore WAM
135	Disney XD
139	MTV Hits
140	MTV 2
141	MTV Tr3s
142	MTV Jams
143	VH1 Classic Rock
144	VH1 Soul
145	CMT Pure Country
147	GAC
149	MoviePlex
150	Encore East
152	Encore Action (E)
154	Encore Mystery
156	Encore Love (E)
158	Encore Drama (E)
160	Encore Westerns (E)
163	Logo

164	Independent Film Channel
165	Sundance East
167	IndiePlex
168	RetroPlex
170	Flix East
174	Centric
175	Retirement Living TV
185	The Pentagon Channel
189	Gospel Music Channel
723	ESPN Classic
730	ESPNU
738	MLB Network
739	NHL Channel
749	NBA TV

High Definition

217	Science HD
224	National Geographic HD
228	HBO HD
233	Cinemax HD
238	Showtime HD
242	Speed HD
248	Starz HD
263	NFL Red Zone HD
854	CBS College Sports HD
863	NBA TV HD

Premium Channels

301	HBO (E)
302	HBO 2 East
303	HBO Signature East
304	HBO Family East
305	HBO Comedy East
306	HBO West
310	HBO Zone East
311	HBO Latino East
320	Cinemax East
321	More Max East
322	Cinemax (W)
324	Action Max East
325	Thriller Max (E)
327	WMAX East

328	@MAX (E)
329	5 Star MAX (E)
330	OuterMAX (E)
340	Showtime (E)
341	Showtime Too East
342	Showtime Showcase East
346	Showtime Beyond East
347	Showtime Extreme East
350	The Movie Channel East
352	The Movie Channel Xtra (E)
370	Starz East
371	Starz Edge (E)
372	Starz InBlack (E)
373	Starz Kids & Family (E)
374	Starz Cinema (E)
375	Starz Comedy (E)
544	Playboy

Music Choice

401 - 446	Music Choice
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Pay-Per-View

501	iN DEMAND 1
502	iN DEMAND 2
547	Spice:Xcess
549	Penthouse TV

Foreign Language - Premium

188	Africa Channel
665	TV Asia
666	Zee TV (Asian Indian)
679	RAI (Italian)
688	TV5 (French)

Sports Entertainment Package

715	Big Ten Network
717	HRTV
718	TV Games
720	Fox College Sports Atlantic
721	Fox College Sports Central
722	Fox College Sports Pacific
725	Fox Soccer Channel

726	GoTV (English)
729	Speed Channel
732	CBS College Sports
733	NFL Network
734	NFL Red Zone
735	The Tennis Channel
736	Sportsman Channel

Certain services are available separately or as part of other levels of service and not all services are available in all areas. Installation, equipment, additional outlet, change of service, programming access and other charge may apply. Subscription to Basic Service is required for any other levels of service. HDTV, ON DEMAND and DVR may not be available in all areas. Minimum subscription required to receive selected DVR, ON DEMAND and HDTV content. DVR recording time is limited. To receive HD features and benefits, an HD television (not provided), converter, remote control and other equipment is required. There may be an additional charge for selected ON DEMAND and HDTV programming. A monthly HDTV, Premium Channels, ON DEMAND, and DVR equipment may apply. Must subscribe to each premium package to receive the corresponding HD and/or VOD premium channel. Advertised channels/stations generally provide a mix of HD and non-HD programming. HD programming is limited to the programming provided to Comcast in HDTV format. A converter and remote are required to receive other levels of service. Service is subject to terms and conditions of Comcast subscriber cable agreement. Activation of service may be subject to credit approval. Deposit or pre-payment may be required. For complete details, call 1-888-COMCAST (266-2278).