

November 19, 2012

## **Declaration of Timothy Brooks**

### **I. INTRODUCTION**

1. I have been retained by Game Show Network, LLC to analyze data pertaining to its cable network, GSN, and competing networks affiliated with Cablevision Systems Corporation, namely WE tv and Wedding Central, as well as certain other networks.

2. Based on the data I have examined, I conclude that GSN is similar in audience appeal to WE tv, that GSN was a significant competitor to WE tv for audience, advertising and programming, both in the New York market and nationally, prior to its being repositioned by Cablevision to a narrowly penetrated tier, and that WE tv benefited following the removal of its competitor from wide distribution on its systems. These conclusions are based on national and New York-area Nielsen ratings and demographic data, including data specific to the Cablevision coverage area, as well as on data obtained from other independent third-party measurement services, including Beta Research and Gfk MRI. The data indicate that GSN and WE tv both appeal strongly to women, that GSN and WE tv are very competitive in terms of their performance in standard Nielsen demographic categories (based on gender and age), and that their audiences are similar attitudinally. Cablevision also gave more favorable distribution to Wedding Central, a new network it owned which appears to have attracted little audience and which was discontinued after less than two years.

3. Based on my analysis, I also conclude that GSN has been harmed by Cablevision's negative repositioning of GSN to the sports tier--a little-seen tier that is ill-suited for GSN--in terms of reduced audience levels, lack of exposure to important New York advertising professionals, and therefore reduced revenue.<sup>1</sup>

### **II. QUALIFICATIONS**

4. 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, served as Senior Vice President/Media Research Director at

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<sup>1</sup> I have reviewed certain materials produced by Cablevision as part of this case to form the basis of my conclusions. However, my understanding is that Cablevision completed its production only recently, and I have not had access to all the documents from Cablevision's production for a sufficient time to review them all by the date of this report. I reserve the right to alter and supplement my conclusions based on review of additional documents.

NW Ayer advertising agency, and held several research positions at NBC-TV, the NBC Stations Division, and Westinghouse Broadcasting.

5. I have taken a leading role in industry associations, serving as chairman of the board of the Media Rating Council, which audits and accredits measurement services including The Nielsen Company, serving as chairman of the board of the Advertising Research Foundation, which furthers the common research needs of media companies and advertisers, acting as a founding member of the Council for Research Excellence, and in leadership roles on boards and committees of other industry associations. I continue to serve on a number of research-related industry committees. I have been honored with awards from several of these organizations, including a Lifetime Achievement Award (ARF, 2008) and an award for 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. I have written several award winning books, including a standard reference book on television history, and am often quoted in the press on research and programming matters. Recently I have served as an expert witness on media research and related issues, including providing testimony in *The Tennis Channel, Inc. v. Comcast Cable Communications, LLC* (2011). My full *curriculum vitae* is attached.

### **III. ANALYSIS OF WHETHER GSN IS SIMILARLY SITUATED WITH CABLEVISION-OWNED WE tv AND WEDDING CENTRAL**

#### **A. Description of Programming on Networks Analyzed**

6. I was asked to compare GSN with the Cablevision-affiliated WE tv and Wedding Central networks, as well as with several other networks that are within GSN's competitive frame and are carried widely by Cablevision.<sup>2</sup> The following is a description of the programming of GSN, WE tv, and Wedding Central. A fuller description of their audiences and discussion of program genres will appear later.

7. GSN was launched in 1994 as "Game Show Network." In 2004 the network shortened its identification to "GSN," in line with a move to broaden its programming to a wider range of women's entertainment. Its programming consists primarily of competition-based shows of various types, along with other reality-based programs, that, as discussed in additional detail below, appeal to an audience that is predominantly female. Currently GSN features games in four broad categories, commonly known in the industry as:

(1) "Relationship games," which focus on the contestants' relationships. These include "dating games," sexually charged games involving couples. GSN examples: *Baggage*, *The Newlywed Game*, *Love Triangle*. Each of the shows within GSN's "Love

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<sup>2</sup> Wedding Central appears to have been quite similar to WE tv and GSN in terms of programming and target audience. However that network was not included in most of the Nielsen and other sources I consulted.

Block” of programming falls within this category. Another type of relationship game emphasizes families working together on challenges. GSN example: *Family Feud*.

(2) “Celebrity games,” in which celebrities playing either alone or alongside ordinary people are a major part of the appeal. GSN examples: *Match Game*, *\$25,000 Pyramid*.

(3) “Big money games,” often guessing games where a principal appeal is the potentially large prize and the focus is on money. GSN examples: *Deal or No Deal*, *1 Vs. 100*.

(4) “Quiz games,” in which the main appeal is the game itself, and the contestant relies on factual knowledge and strategy. GSN examples: *Card Sharks*, *Lingo*, *Chain Reaction*.

8. There is variety in the appearance of GSN shows. Many of the hosts are celebrities (Sherri Shepherd, Wendy Williams, Jerry Springer, Alfonso Ribeiro). In addition GSN carries series that are not traditional “games.” Over the years, GSN has programmed more than 150 different series ranging from competition reality shows such as *The Amazing Race* and, most recently, *Dancing With The Stars*, to reality shows focusing on celebrities (*Carnie Wilson: Unstapled*) and weddings (*Vegas Weddings Unveiled*).<sup>3</sup> It has also aired documentaries and, recently, a Drew Carey improvisational comedy show. The common theme is that the majority of GSN’s programming is competition-based with a predominant focus on women. Given this focus on the female audience, it is not surprising that a number of core GSN programs overlap thematically with programming seen on other women’s networks, including WE tv, and would fit easily into their lineups. For example, *Love Triangle* and *Baggage* are essentially real-life talk/relationship shows rather than traditional game shows.

9. WE tv was launched in 1997 as Romance Classics, dedicated to romantic movies and miniseries. In 2001 it was reformatted to include a broader range of women’s programming and relaunched as WE: Women’s Entertainment. In 2006 its name was shortened to WE tv. Like GSN, WE tv targets women by airing a range of women-oriented programming. Its limited original programming consists primarily of documentary-style reality-based shows such as *Bridezillas*, *My Fair Wedding*, *The Cupcake Girls*, *Downsized*, and *Braxton Family Values*. Many of these touch upon the same themes as GSN’s relationship games -- dating, romance, and family dynamics. As on GSN, celebrities have been featured on some WE tv series, among them Toni Braxton, gospel duo Mary Mary, Joan Rivers, Shannen Doherty, and comedian Sinbad. The remainder of the schedule is filled with sitcom and drama reruns and a few movies. WE tv has also aired some competition shows similar to those on GSN, including *Weight Loss Challenge*, *Style By Jury*, and *Skating’s Next Star*.

10. In 2009, WE tv spun off a second women’s-oriented network called Wedding Central, whose schedule consisted of reruns of wedding-themed programs that had originally aired on WE tv. Cablevision gave Wedding Central preferential treatment via

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<sup>3</sup> [REDACTED]

wide distribution on its iO digital cable service<sup>4</sup> but it achieved little carriage from other distributors. [REDACTED]

[REDACTED] The network was shut down in 2011.

11. I also considered GSN, WE tv, and Wedding Central within the context of other women-targeted networks that are within those networks' competitive frame and which are widely carried by Cablevision, including Bravo, E! Entertainment, Hallmark Channel, Lifetime, Oxygen and OWN.<sup>6</sup> The following are brief descriptions of those networks' programming.

#### Women's Networks: Programming<sup>7</sup>

Bravo: Female-oriented documentary-style reality shows, including *Kathy Griffin: My Life on the D-List*, *The Real Housewives*, *Millionaire Matchmaker*, *The Rachel Zoe Project*, and an occasional movie. A significant portion of Bravo's schedule has been dedicated to competition-based shows such as *Top Chef*. Much of its success in the mid 2000s is attributed to the phenomenally popular competition show *Project Runway*, which Bravo aired from 2004 to 2008.

E! Entertainment: Primarily celebrity-oriented reality shows, including *Keeping Up with the Kardashians*, *Kendra*, *Chelsea Lately*, and *Fashion Police*, plus some female-oriented reruns (e.g. *Sex and the City*) and movies.

Hallmark Channel: Family-oriented reruns (*Golden Girls*, *Frasier*, *I Love Lucy*, *Little House on the Prairie*, *The Waltons*), family-friendly original and theatrical movies.

Lifetime: General entertainment for women, including original drama and comedy (*Army Wives*, *Drop Dead Diva*, *Sherri*, *Rita Rocks*), as well as documentary and competition-based reality programs (*Project Runway*, *Dance Moms*). It also features reruns (*Reba*, *Will & Grace*, *Desperate Housewives*, *Grey's Anatomy*) and original and theatrical movies, many dealing with women's issues. In the 1990s, Lifetime had a very successful afternoon game show block, and during my tenure at the network (2000-2007), we had many discussions about restoring traditional game shows to Lifetime's schedule.

Oxygen: The edgiest of the women's networks. Among its signature series are *Bad Girls Club* (all-catfights-all-the-time), *Love Games: Bad Girls Need Love Too* (game

<sup>4</sup> Thomas Ulmstead, "AMC Networks Divorces Wedding Central," *Multichannel News*, 8 July 2011. Available at [http://www.multichannel.com/article/327866Cablevision\\_Launches\\_Wedding\\_Central\\_Channel.php](http://www.multichannel.com/article/327866Cablevision_Launches_Wedding_Central_Channel.php). Accessed 11 September 2011.

<sup>5</sup> [REDACTED]

<sup>6</sup> Other female-skewed networks with which GSN and WE tv might be considered competitive include Style, Lifetime Movie Network, HGTV, TLC, and Food Network.

<sup>7</sup> Tim Brooks and Earle Marsh, *The Complete Directory to Prime Time Network and Cable TV Shows, 1946-Present*, Ninth Edition (New York: Ballantine Books, 2007), individual network entries; and [www.tvguide.com](http://www.tvguide.com) (accessed 25 September 2011).

show spin off of *Bad Girls Club*), and *Snapped* (women who killed men). It features reality, competition, and documentary programs (*Hair Battle Spectacular*, *Tori & Dean*, *Dance Your Ass Off*) along with female-oriented theatrical movies and reruns. Since being purchased by NBC, Oxygen has also aired reruns from its parent company (*The Sing-Off*, *Law & Order*).

OWN: Oprah Winfrey's recently launched network has focused on documentary programming emphasizing self-improvement and spirituality for women. Among its series have been *Oprah Behind the Scenes*, *The Judds*, *Dr. Phil*, *Gayle King*, *Turning Point*, *Ask Oprah's All Stars*, and *Celine Dion*. It also airs a few female-oriented theatrical movies.

## B. Comparison of GSN and WE tv Audiences

12. In order to analyze the audience of GSN, WE tv and the other specified networks, I first requested that GSN provide me with data from The Nielsen Company. Reliable audience data is in my view critically important to evaluate both the overall audience strength and the demographic skew of a network. This is a widely accepted premise in the television industry. Indeed, virtually all presentations to advertisers and to MVPDs with which I was involved during my 40 years in the industry included such data, generally from The Nielsen Company. [REDACTED]

13. Nielsen is the industry standard for measurement of television audiences in the United States. It is audited and accredited by the Media Rating Council (MRC), an independent industry body consisting of buyers and sellers who use audience data. As a former chairman of the MRC, I am quite familiar with Nielsen procedures and believe its measurements to be impartial and accurate. Whether or not one shares that belief, it is clear that Nielsen is the dominant entity conducting television audience measurement in the U.S. and its data are the basic currency of trade in the television advertising marketplace.

14. Nielsen data in the form I required are available only to subscribing companies via specially installed computer access systems. I therefore specified to GSN research personnel exactly what raw data I wanted accessed, and in what form. I received from them the data as produced by the access systems (e.g. the Galaxy and Arianna systems), in spreadsheet form. I conducted the additional analysis and calculations to prepare this report and the tables included herein.

15. The Nielsen national ratings cited are coverage area ratings, the number of homes that tuned to each network during an average minute as a percentage of homes that receive the network (i.e., the network's "coverage area"). This is an accepted method of comparison for cable networks with different distribution and is widely used for national Nielsen comparisons. Published New York market ratings are based on cable coverage

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<sup>8</sup> See e.g. [REDACTED]

area, since Nielsen does not provide network-level coverage ratings on a local market basis. Cable coverage area ratings reflect the number of homes tuned to a network as a percentage of all wired cable homes in the market, whether or not the home receives the network as part of its MVPD service. In addition, in order to evaluate proprietary set-top-box data that Cablevision introduced before the Media Bureau, I asked GSN to provide me with Nielsen data, which is statistically more reliable than set-top box data, specifically limited to Cablevision's coverage area (or "footprint").

16. In addition to Nielsen ratings, I used third-party data from Beta Research and Gfk MRI to shed additional light on the relative popularity of the television networks in question. Beta Research is the leading provider of syndicated data measuring viewer attitudes toward cable networks. MRI is another widely used syndicated service that reports, among other things, the broader attitudes of different networks' audiences. I also accessed certain publicly available information from the Internet and other sources.<sup>9</sup>

17. My analysis of actual viewing audiences begins with national Nielsen data, then drills down to available local data.<sup>10</sup> National Nielsen data (which is not available for all cable networks, but is available for GSN and WE tv) provides a valuable "big picture." The large size of the national Nielsen sample ( [REDACTED] ) allows a more stable and in-depth analysis of audience demographics and a more accurate measure of the direction of ratings change and network potential than is possible with the smaller samples on which DMA ratings are based.<sup>11</sup> In this case, [REDACTED]

[REDACTED]. Also, importantly, national Nielsen data rather than local data is used by advertisers to determine whether to buy time on national networks such as GSN and WE tv.

18. Next I looked at Nielsen ratings for GSN and its competitors in the New York market, which is Cablevision's "home" market, as well as Nielsen ratings limited specifically to Cablevision's coverage area (or "footprint"). These localized Nielsen ratings provide a more objective and reliable measurement of GSN's popularity relative to WE tv and other cable networks than does the set-top box data cited by Cablevision.

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<sup>9</sup> I also considered audience income data, which is available in different forms from Nielsen and MRI. Income is generally a factor only for upscale advertisers seeking networks that have high average income viewers. Such advertisers often use specialized services such as the Mendelsohn Survey of Affluent Homes to evaluate these networks. Income is not in my experience a factor generally used by advertisers in making purchases on other networks. According to the Nielsen and MRI data neither GSN nor WE tv is an upscale network.

<sup>10</sup> *Game Show Network, LLC v. Cablevision Systems Corp.*, Declaration of Timothy Brooks, October 10, 2011. §§III.2.a, i [hereinafter *Brooks Decl.*].

<sup>11</sup> A national vs. local analysis was valuable, for example, in establishing that [REDACTED] *Brooks decl.* §§ III.3.b,

c.  
<sup>12</sup> *Brooks decl.* §III.2.1. ([REDACTED]).

(1) Nielsen National Ratings

19. [Redacted]

Total Audience Summary<sup>13</sup>

|             | Total Day<br>HH CVG Rating |    | Total Day<br>Persons 2+ CVG Rating |    |
|-------------|----------------------------|----|------------------------------------|----|
|             | GSN                        | WE | GSN                                | WE |
| <u>2009</u> | [Redacted]                 |    |                                    |    |
| Q1          |                            |    |                                    |    |
| Q2          |                            |    |                                    |    |
| Q3          |                            |    |                                    |    |
| Q4          |                            |    |                                    |    |
| Year        |                            |    |                                    |    |
| <u>2010</u> |                            |    |                                    |    |
| Q1          |                            |    |                                    |    |
| Q2          |                            |    |                                    |    |
| Q3          |                            |    |                                    |    |
| Q4          |                            |    |                                    |    |
| Year        |                            |    |                                    |    |
| <u>2011</u> |                            |    |                                    |    |
| Q1          |                            |    |                                    |    |
| Q2          |                            |    |                                    |    |
| Y-T-D       |                            |    |                                    |    |

20. [Redacted]

<sup>13</sup> [Redacted]

<sup>14</sup> [Redacted]

2010 Total Day CVG Rating<sup>15</sup>  
(Ranked on HH ratings)

| Overall Rank | Network | HH | Persons 2+ |
|--------------|---------|----|------------|
| [REDACTED]   |         |    |            |

21. Another important way to compare networks is to examine their demographics. This is what advertisers look at. [REDACTED]

[REDACTED]

2010 Total Day Audience Composition<sup>16</sup>

|              | Adults<br>(% of P2+) | Women<br>(% of adults) |
|--------------|----------------------|------------------------|
| GSN          | [REDACTED]           |                        |
| WE           | [REDACTED]           |                        |
| Bravo        | [REDACTED]           |                        |
| E!           | [REDACTED]           |                        |
| Hallmark     | [REDACTED]           |                        |
| Lifetime     | [REDACTED]           |                        |
| Oxygen       | [REDACTED]           |                        |
| All Networks | [REDACTED]           |                        |

22. It is well understood in the business that there are female-targeted networks, male-targeted networks, and general audience networks. I have had personal experience in this regard, having among other things been head of research for Lifetime for eight years. While no network is viewed 100% by a female or male audience, ad buyers nonetheless view networks as female or male-targeted and buy advertising inventory on that basis. For example, [REDACTED]

[REDACTED]

<sup>15</sup> [REDACTED]  
<sup>16</sup> [REDACTED]

[REDACTED]

23. Advertisers look at demographic information, such as age, on the basis of standard Nielsen demographic categories. The four key categories for women's networks are women 25-54, persons 25-54, women 18-49 and persons 18-49. [REDACTED]

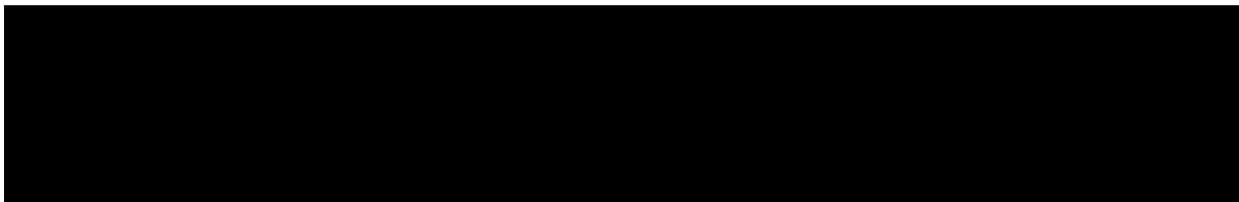
[REDACTED]

GSN Advertising Sales Revenue (2010)



24. [REDACTED]

Total Day Ratings<sup>19</sup>



25. [REDACTED]

26. [REDACTED] Actual time purchases made by advertisers are made on the basis of delivery in thousands (or its equivalent,

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<sup>17</sup> [REDACTED]

<sup>18</sup> [REDACTED]

<sup>19</sup> [REDACTED]

total U.S. ratings<sup>20</sup>). Any small deficiencies in delivery can be accommodated by having a network provide an advertiser with somewhat more individual spots than its competitor, to make up any difference over the course of a full commercial schedule. Advertisers buy gross rating points (GRPs) for a desired demographic, so a network that has slightly lower ratings in a particular demographic can easily remain competitive by simply providing more spots in order to deliver the desired GRPs in that demographic.<sup>21</sup> This is extremely common in the industry. In terms of the environment in which the advertisements would appear, [REDACTED].

27. [REDACTED]

28. It is important to base this type of analysis on *shared* viewing, not all viewing. Shared viewing is the percent of combined audience of two networks that watches both. [REDACTED]

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<sup>20</sup> Total U.S. ratings are calculated on the basis of audience delivered divided by the total U.S. population in that demographic.

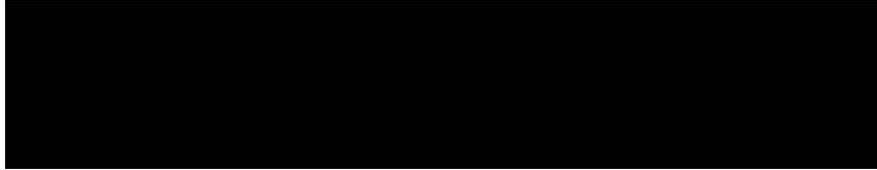
<sup>21</sup> Gross ratings points (GRP) is the mathematical total of the ratings of the individual spots in a commercial schedule. Thus if a network averaged a .10 rating among Women 18-49 and an advertiser bought ten Women 18-49 GRPs, the network could deliver that by offering a schedule consisting of 100 announcements. A competing network that averaged a .09 rating among Women 18-49 could deliver the same ten GRPs by offering a schedule of 111 announcements. In fact, since ratings fluctuate over time, the first network might have to deliver more than 100 announcements if its Women 18-49 rating slipped below .10 at the time the schedule actually ran (this is called “make-goods”, and is extremely common in the business).

<sup>22</sup> *Game Show Network, LLC v. Cablevision Systems Corp.*, Expert Report of Jonathan Orszag, December 12, 2011, §III.A. ¶¶33-37 [hereinafter *Orszag Report*].

Top Networks With Which GSN Shares Audience (Persons 18+)<sup>23</sup>

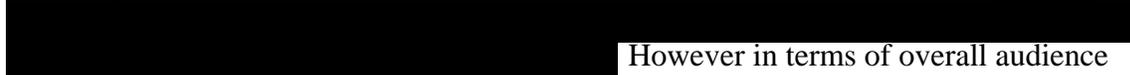
Minimum one minute shared

% Shared Audience



29. It was well understood at every network I ever worked for that if your viewers are spending a significant portion of their TV time watching a competing channel, then they are being constantly exposed to (and lured by) the promotional announcements, new shows, contests, etc. of that other channel. That channel is clearly more of a competitor to you than are channels seldom watched by *your* viewers.<sup>24</sup> In the television business, shared viewing very much denotes competition.

30. Another Cablevision-owned network that was given preferential treatment, Wedding Central, was also aimed at the same adult female audience as GSN.



However in terms of overall audience acceptance, Wedding Central clearly did not perform well based on the fact that it was closed down less than two years after it was introduced and never carried on any other major MVPD besides Cablevision.

31. While Nielsen demographic data is not available for Wedding Central, the network's programming consisted of reruns from WE tv. The series that were rerun attracted a strongly adult and female-oriented audience when they aired on WE tv. Thus it is apparent that Wedding Central was also intended to appeal to an adult and female-oriented audience.

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<sup>23</sup> [Redacted footnote text]

As a corollary to this, it is also well understood that in most cases the most effective way to build your audience is to increase the amount of viewing of your network by current viewers, not to try to lure in new viewers who have previously rejected you. This means reducing the amount of time your current viewers spend viewing other channels, i.e. your competitors.

Wedding Central Programs  
(Audience composition when these series aired on WE)<sup>25</sup>

|                             | Adults<br>(% of P2+) | Women<br>(% of adults) |
|-----------------------------|----------------------|------------------------|
| Amazing Wedding Cakes       |                      |                        |
| Bridezillas                 |                      |                        |
| Girl Meets Gown             |                      |                        |
| My Big Fat Fabulous Wedding |                      |                        |
| Rich Bride Poor Bride       |                      |                        |
| Average (five series)       |                      |                        |
| WE Total Day Average        |                      |                        |

(2) Nielsen New York Market Ratings

32. [REDACTED]

33. As a further complication, local ratings are not reported on the basis of network coverage area, but rather are based on the entire cable universe. This results in ratings for less widely distributed networks being understated relative to those for more widely distributed networks. This is because when ratings are based on the entire cable universe, the numerator (number of homes viewing) will be larger for the more widely distributed network simply because it is available in more homes and has more opportunities to reach viewers.

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25 [REDACTED]  
26 [REDACTED]

[REDACTED]

34. With these limitations in mind, I looked at the Nielsen ratings for GSN and its competitors in the New York market, which is Cablevision’s “home” market and where it repositioned GSN to a narrowly distributed tier. Even prior to its tiering GSN faced two major disadvantages on Cablevision systems compared to WE tv. First, Cablevision carried WE tv on channel 42, near some of the top rated networks on cable (TNT, USA, TBS) and also near several high rated women’s-oriented networks (Bravo, Lifetime). This high-traffic neighborhood gave WE tv excellent exposure to potential women viewers. In contrast, GSN was placed on channel 88, in the midst of a cluster of premium movie channels which by their nature generate much less traffic (subscribers have to pay extra to view them) and were less compatible [REDACTED]

[REDACTED] A second advantage enjoyed by WE tv was the presumably heavy promotion given it by Cablevision, which even had available to it local commercial spots on GSN itself. Cablevision, like all MVPDs, can use the local spots it is given within networks it carries for any purpose, either to sell to advertisers or to use for its own promotional purposes. GSN could presumably not advertise on WE tv on Cablevision, however. Likewise, whereas Cablevision was able to give its affiliated networks substantial promotion, it appears to have offered very little, if any, to GSN. It is my understanding is that Cablevision has not conducted any significant promotion of GSN in recent years, notwithstanding the fact that other distributors have done so.

[REDACTED]

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<sup>28</sup> *Game Show Network, LLC v. Cablevision Systems Corp.*, Declaration of Michael Egan, December 12, 2011, §V.B.1. ¶87 [hereinafter *Egan Decl.*].

<sup>29</sup> [REDACTED]

Total Day Households: New York DMA<sup>30</sup>

|      | GSN        |      | WE tv |      |
|------|------------|------|-------|------|
|      | Rtg        | (00) | Rtg   | (00) |
| 2010 | [REDACTED] |      |       |      |

Total Day Women 18+: New York DMA<sup>31</sup>

|      | GSN        |      | WE tv |      |
|------|------------|------|-------|------|
|      | Rtg        | (00) | Rtg   | (00) |
| 2009 | [REDACTED] |      |       |      |
| 2010 | [REDACTED] |      |       |      |

35. Local operators sometimes assert that audience preferences in their market are “different,” [REDACTED]

[REDACTED]

2010 Total Day Households: Top Ten Markets<sup>32</sup>

|                 | GSN        |      | WE  |      |
|-----------------|------------|------|-----|------|
|                 | Rtg        | (00) | Rtg | (00) |
| 1 New York      | [REDACTED] |      |     |      |
| 2 Los Angeles   | [REDACTED] |      |     |      |
| 3 Chicago       | [REDACTED] |      |     |      |
| 4 Philadelphia  | [REDACTED] |      |     |      |
| 5 Dallas        | [REDACTED] |      |     |      |
| 6 San Francisco | [REDACTED] |      |     |      |
| 7 Boston        | [REDACTED] |      |     |      |
| 8 Atlanta       | [REDACTED] |      |     |      |
| 9 Washington DC | [REDACTED] |      |     |      |
| 10 Houston      | [REDACTED] |      |     |      |
| 10 Market Avg   | [REDACTED] |      |     |      |

<sup>30</sup> [REDACTED]

<sup>31</sup> [REDACTED]

<sup>32</sup> [REDACTED]



Total Day Households: New York DMA<sup>35</sup>

|        | <u>WE</u>       | <u>Bravo</u>    | <u>E!</u>       | <u>Hallmark</u> |
|--------|-----------------|-----------------|-----------------|-----------------|
|        | <u>Rtg</u> (00) | <u>Rtg</u> (00) | <u>Rtg</u> (00) | <u>Rtg</u> (00) |
| 2Q10   | [REDACTED]      |                 |                 |                 |
| 2Q11   | [REDACTED]      |                 |                 |                 |
| Change | [REDACTED]      |                 |                 |                 |

|        | <u>Oxygen</u>   | <u>Lifetime</u> |
|--------|-----------------|-----------------|
|        | <u>Rtg</u> (00) | <u>Rtg</u> (00) |
| 2Q10   | [REDACTED]      |                 |
| 2Q11   | [REDACTED]      |                 |
| Change | [REDACTED]      |                 |

39. [REDACTED]

Total Day Demographics: New York DMA<sup>36</sup>

GSN

|        |            |
|--------|------------|
| 2Q10   | [REDACTED] |
| 2Q11   | [REDACTED] |
| Change | [REDACTED] |

40. [REDACTED]

WE tv

|        |            |
|--------|------------|
| 2Q10   | [REDACTED] |
| 2Q11   | [REDACTED] |
| Change | [REDACTED] |

<sup>35</sup> [REDACTED]  
<sup>36</sup> *Id.*

41. [Redacted]

Bravo

2Q10  
2Q11  
Change

[Redacted]

E! Entertainment

2Q10  
2Q11  
Change

[Redacted]

Hallmark

2Q10  
2Q11  
Change

[Redacted]

Oxygen

2Q10  
2Q11  
Change

[Redacted]

Lifetime

2Q10  
2Q11  
Change

[Redacted]

42. [Redacted]

Total Day Households: National Ratings<sup>37</sup>

|          | <u>2Q10</u> | <u>2Q11</u> | <u>Change</u> |
|----------|-------------|-------------|---------------|
| WE       | [REDACTED]  |             |               |
| Bravo    |             |             |               |
| E!       |             |             |               |
| Hallmark |             |             |               |
| Oxygen   |             |             |               |
| Lifetime |             |             |               |

43. [REDACTED]

**(4) Nielsen Ratings Within Cablevision Households**

44. [REDACTED]

Total Day Ratings 2Q2010: Cablevision Households Nationwide<sup>39</sup>

|             | GSN        | WE tv |
|-------------|------------|-------|
| Women 18+   | [REDACTED] |       |
| Women 18-49 |            |       |
| Women 25-54 |            |       |

45. [REDACTED]

<sup>37</sup> [REDACTED]

<sup>38</sup> *Egan Decl.* §V.B.2. ¶¶92-96; *Orszag Report* §III.A. ¶¶15-21.

<sup>39</sup> [REDACTED]

[REDACTED]

Total Day Ratings 2Q2010: Cablevision Households in New York<sup>40</sup>

|             | GSN        | WE tv      |
|-------------|------------|------------|
| Women 18+   | [REDACTED] | [REDACTED] |
| Women 18-49 | [REDACTED] | [REDACTED] |
| Women 25-54 | [REDACTED] | [REDACTED] |

46. [REDACTED]

Total Day Ratings 2Q2010: Cablevision Households in New York<sup>42</sup>  
(ranked on women 18+)

|                  | W18+       | W18-49     | W25-54     |
|------------------|------------|------------|------------|
| Bravo            | [REDACTED] | [REDACTED] | [REDACTED] |
| Lifetime         | [REDACTED] | [REDACTED] | [REDACTED] |
| GSN              | [REDACTED] | [REDACTED] | [REDACTED] |
| WE               | [REDACTED] | [REDACTED] | [REDACTED] |
| E!               | [REDACTED] | [REDACTED] | [REDACTED] |
| Hallmark         | [REDACTED] | [REDACTED] | [REDACTED] |
| Discovery Health | [REDACTED] | [REDACTED] | [REDACTED] |
| Oxygen           | [REDACTED] | [REDACTED] | [REDACTED] |

47. [REDACTED], and all of the foregoing data was readily available to it. The data, which is based on an independent, vetted and accredited source, stands in sharp contrast to the unvetted, unaccredited set-top box data on which Cablevision says it relied in making its decision. That data will be discussed in the next section.

<sup>40</sup> [REDACTED]

<sup>41</sup> OWN took over the distribution of Discovery Health at the beginning of 2011. [REDACTED]

<sup>42</sup> [REDACTED]

## (5) Problems With Cablevision Proprietary Set-top Box Data

### (a) General Problems with Set-top Box Data

48. Mr. Egan and Mr. Orszag each spend a considerable amount of time presenting selected data from an internal Cablevision set-top box (“STB”) reporting system called ABN (“Audience By Network”), which I and most researchers have never heard of--because it is proprietary and has not been shared with or vetted by anyone in the broader industry. As I pointed out in an earlier declaration,<sup>43</sup> issued when Cablevision first cited such data, set-top box data does hold promise as part of a larger measurement system, but is unreliable in its raw form due to a host of well-known methodological problems. Basically, set-top boxes were not designed to gather viewing data and retrofitting them to do so has proven problematic.

49. STB data is not accredited as a media measurement tool by the Media Rating Council (the “MRC”), and it is not currently used as currency in buying or selling national television time. STB data has been widely discussed within the industry, and multiple problems with it have been identified and are well-understood by those in the industry. The following is a non-exclusive list of some of the serious issues that have been identified with the use of STB data for audience measurement purposes:

a. There is no way that STB data can identify who--if anyone--in a household is watching. It reflects *tuning*, not *viewing*. Among other things, this means that STB data cannot provide reliable information about viewer overlap since it cannot distinguish who within a household is watching which programs.

b. Many STBs remain turned on even when the TV set is turned off, returning false readings of tuning.

c. Most STBs cannot detect delayed viewing, especially if the DVR or VCR is an external unit.

d. There is virtually no uniformity in terms of data obtained or processing rules.<sup>44</sup>

e. Different STBs--even those deployed by the same MVPD--may be configured differently, returning different types of data (or no data at all). Therefore, it has proven very difficult to aggregate data over a large footprint. STBs, it should be remembered, were not designed as audience measurement devices.

f. STBs typically identify only the channel tuned, not the programming or program source, and are therefore subject to erroneous readings if a network is relocated to a different channel on any individual head-end or is part of a more complex feed pattern such as a “mosaic” channel.

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<sup>43</sup> *Game Show Network, LLC v. Cablevision Systems Corp.*, Supplemental Declaration of Timothy Brooks, November 14, 2011, §I.

<sup>44</sup> Processing rules are the rules by which raw data is accepted or discarded, and by which ratings and other metrics are calculated. Small changes in these rules can have a considerable and potentially differential effect on the reported performance of individual networks, and they are a primary focus of the auditors of the Media Rating Council when a measurement service applies for accreditation.

g. Information about whether an STB belongs to a residential or commercial entity is often unknown and unreported, and this can differentially affect networks. Also often unknown is important information about households, such as whether they are seasonal (*e.g.* a summer home).

50. These are the general problems that are inherent in the use of STB data. In addition to these general problems, there may be additional issues that raise questions about the reliability of a particular MVPDs STB data. Nielsen addresses these problems in its sample-based measurement system. It has said that it is willing to incorporate STB data into its national measurement system, but ONLY once it meets the rigorous research standards required of reliable measurement and accreditation by the MRC.

51. Compounding the methodological concerns is the extreme secrecy with which Cablevision has historically shrouded this STB data. Cablevision has refused to share its data, or even disclose its procedures for processing the data, with neutral associations of research professionals who wished to examine it, such as the Council for Research Excellence. It refused even when offered Non-Disclosure Agreements.<sup>45</sup> The data has not been vetted by any third party, and is not accredited by the Media Rating Council (as are Nielsen and virtually all research services that are used as “currency” in the television industry). Now Cablevision wishes to introduce carefully selected excerpts from this secret system to “prove” its points in a legal proceeding. But it does not disclose the entire data set, making it impossible to evaluate Cablevision’s analyses or even confirm that the data excerpted by Cablevision was representative of the broader patterns it purported to measure.

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<sup>45</sup> Most MVPDs, including Cablevision, have refused to allow third-party analysis or verification of this questionable data, despite many requests to do so. As a member of several industry committees, I have participated in such requests. In 2009, I conducted (together with two other senior researchers) an extensive study on behalf of the Council for Research Excellence. (Tim Brooks, Stu Gray, & Jim Dennison, *The State of Set-Top Box Viewing Data as of December 2009*, 24 Feb. 2010. Available at [http://researchexcellence.com/STBFINALREPORT\\_3\\_5\\_10.pdf](http://researchexcellence.com/STBFINALREPORT_3_5_10.pdf)). Cablevision refused to cooperate with the study. Some other companies did however, and, in that report, STB data was characterized as “the ‘Wild West’ of research.” *Id.* at 2.

<sup>46</sup> *Orszag Report* §III.A. ¶22 fn.13.

[REDACTED]

53. In summary, unvetted “black box” data is simply not accepted in the world of professional television research. I urge that it be viewed with strong skepticism here, at least until Cablevision is willing to submit its secret procedures to generally accepted third-party verification (e.g. the MRC). Pending more information on exactly what internal data Cablevision is referring to and how it has been processed, it cannot, in my opinion, be viewed as reliable in this case.

**(b) Problems with Set-top Box Reach Analysis**

54. Besides the lack of credibility of the underlying data, the way in which it is used here is questionable from a research perspective. First, there appears to be a basic misunderstanding of what STB data represents. Both Mr. Egan and Mr. Orszag (and indeed Cablevision itself) consistently use the misleading terms “watching” and “viewing,” but of course with STB data there is no way to know if anyone is actually viewing. This is set *tuning* data. The distinction can have significant implications as we shall see.

55. Putting aside concerns about the reliability of STB data,<sup>48</sup> Mr. Egan uses the set-top box data to conduct a reach analysis of GSN versus WE tv.<sup>49</sup> Household reach (or “cumulative households”) is the percentage of different households that tuned to a given channel for a specified minimum number of minutes over a specified period of time. For example if the minimum number of minutes is set at one minute, and the time span is one month, then reach would be the percentage of different households that tuned to the channel for at least one minute during that month. Reach is not a particularly useful measure of the popularity of a channel. It can vary widely depending on the parameters set. Accumulating reach over a very long period of time (e.g. a year, as is the case here) is virtually meaningless. If the period is long enough, and the bar set low enough, every channel is most likely tuned to at some point.

56. In addition, simply being positioned next to popular channels can drive up reach due to “drive-by tuning,” and in fact WE tv appears to have benefited from exactly that phenomenon due to its preferential channel placement. As noted previously, Cablevision carries WE tv on Channel 42, in the midst of a high traffic channel neighborhood that includes some of the [REDACTED] networks on cable (TNT, USA, TBS) and also near several [REDACTED] women’s oriented networks (Lifetime, Bravo). Despite this advantage, during a sample week for which Cablevision provided data during the discovery process, [REDACTED]

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<sup>47</sup> For example, if a STB cannot adequately detect when the STB remains on but the set is turned off, then a network that people typically watch right before bedtime may get false credit for tuning late into the night or even all night long. [REDACTED]

*See supra* n. 40.

<sup>49</sup> *Egan Decl.* §V.B.2. ¶¶93-95.



Cablevision Set-Top Box Tuning Data: Cumulative Households<sup>50</sup>

| Channel |              | Cumulative Households (Rank) |               |
|---------|--------------|------------------------------|---------------|
| No.     | Network      | Nov 2009                     | Feb-June 2010 |
| 37      | TNT          | [Redacted]                   | [Redacted]    |
| 38      | USA          | [Redacted]                   | [Redacted]    |
| 39      | TBS          | [Redacted]                   | [Redacted]    |
| 40      | FX           | [Redacted]                   | [Redacted]    |
| 41      | Spike        | [Redacted]                   | [Redacted]    |
| 42      | WE tv        | [Redacted]                   | [Redacted]    |
| 43      | AMC          | [Redacted]                   | [Redacted]    |
| 44      | Bravo        | [Redacted]                   | [Redacted]    |
| 45      | Lifetime     | [Redacted]                   | [Redacted]    |
| -----   |              |                              |               |
| 85      | Cinemax      | [Redacted]                   | [Redacted]    |
| 86      | The Movie Ch | [Redacted]                   | [Redacted]    |
| 87      | (empty)      | [Redacted]                   | [Redacted]    |
| 88      | GSN          | [Redacted]                   | [Redacted]    |
| 89      | (empty)      | [Redacted]                   | [Redacted]    |
| 90      | Showtime Too | [Redacted]                   | [Redacted]    |
| 91      | Flix         | [Redacted]                   | [Redacted]    |

57. Experienced researchers always evaluate data such as this in context. In this case Cablevision’s own data demonstrates that [Redacted]

[Redacted] Based on this data, it is reasonable to assume that had GSN been given channel placement and marketing comparable to that of WE tv it would have performed at least as well as the Cablevision-owned network, and possibly better.

58. In any event, quantity of tuning is potentially a more useful metric than cumulative households. [Redacted]

[Redacted]

<sup>50</sup> [Redacted]

Cablevision Set-Top Box Tuning Data: Week of November 2, 2009<sup>51</sup>

|       | Cumulative Households | Hours Tuned | Hours/ Household |
|-------|-----------------------|-------------|------------------|
| GSN   |                       |             |                  |
| WE tv |                       |             |                  |

59. A similar relationship is seen in the data for February-June 2010. In fact during this period Cablevision households tuned for more total hours to GSN than they did to WE tv.

Cablevision Set-Top Box Tuning Data: February-June 2010<sup>52</sup>

|       | Unique Households | Hours Tuned | Hours/ Household |
|-------|-------------------|-------------|------------------|
| GSN   |                   |             |                  |
| WE tv |                   |             |                  |

60. [REDACTED] This is despite the fact that loyalty of viewers is in my experience an important consideration for MVPDs, whose number one goal is subscriber loyalty. One of Cablevision’s own expert witnesses has acknowledged the important of subscriber loyalty.<sup>54</sup>

**(c) Problems With Set-top Box Duplication Analysis**

61. [REDACTED]

<sup>51</sup> [REDACTED]  
<sup>52</sup> [REDACTED]

As will be discussed later, Mr. Orszag (but not Mr. Egan) acknowledges the importance of loyalty to a network when an MVPD is considering the value to it of carrying that network. See *Orszag Report* § IV ¶¶72-73.

<sup>55</sup> *Orszag Report* §III.A. ¶34 & table 1.

[REDACTED]

62. [REDACTED]

63. [REDACTED]

64. There are also other methodological problems with Mr. Orszag's analyses. [REDACTED]

**C. Viewer Attitudes Toward GSN and WE tv**

65. Viewer satisfaction with networks is another key measure considered by distributors since it reflects subscribers' presumed willingness to remain subscribers and potentially buy enhanced services. One dramatic indication of Cablevision subscriber attitudes toward GSN is found in subscriber reaction when it was removed from wide

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<sup>56</sup> *Id.* §III.B. ¶43 & table 4.

<sup>57</sup> *Id.* §III.A. at table 1.

availability. [REDACTED]

[REDACTED] In addition, virtually all distributors conduct private surveys measuring subscriber satisfaction. I requested and was provided with the best known and most widely used impartial, third-party survey of cable subscriber satisfaction, which is conducted annually by the Beta Research Corp. The Beta Basic Cable Subscriber Study has been used throughout the industry for many years as an impartial “benchmark” on viewer attitudes.<sup>59</sup> [REDACTED]

66. Both GSN and WE tv are included in the Beta Basic Cable Subscriber Study, which gives us a good picture of how much viewers value these two networks. Among the five principal measures provided by Beta, [REDACTED]

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<sup>58</sup> [REDACTED]

I was involved in carriage negotiations with MVPDs (from the network side) for nearly twenty years. In those negotiations, MVPDs sometimes dismissed the value of impartial, third-party data (including Nielsen and Beta Research) that a network might bring to the table. This is a negotiating tactic. I strongly suggest considering what MVPDs do, not what they say, when it comes to judging what they consider important in carriage decisions. Networks that do well in Beta are almost always given carriage, irrespective of other factors. Examples are [REDACTED] and [REDACTED], which have historically ranked higher in Beta “liking” scores than in ratings, and are relatively expensive, but based on my experience in the industry are considered “must carries” because of intense viewer interest.

<sup>60</sup> See e.g. [REDACTED]

Beta Viewer Satisfaction Measures<sup>61</sup>  
 (Among viewers of each network)

|  | <u>2010</u> | <u>2009</u> | <u>2008</u> | <u>3 Yr Avg</u> |
|--|-------------|-------------|-------------|-----------------|
| Perceived Value of Network ( $\pm$ \$0.15)             |             |             |             |                 |
| GSN  | [REDACTED]  |             |             |                 |
| WE   | [REDACTED]  |             |             |                 |
| Average Satisfaction Score on 1-5 Scale                |             |             |             |                 |
| GSN  | [REDACTED]  |             |             |                 |
| WE   | [REDACTED]  |             |             |                 |
| Very Satisfied with Network ( $\pm$ 5%)                |             |             |             |                 |
| GSN  | [REDACTED]  |             |             |                 |
| WE   | [REDACTED]  |             |             |                 |
| Network Programming Quality Is High ( $\pm$ 5%)        |             |             |             |                 |
| GSN  | [REDACTED]  |             |             |                 |
| WE   | [REDACTED]  |             |             |                 |
| Network is Important to Enjoyment of Cable ( $\pm$ 5%) |             |             |             |                 |
| GSN  | [REDACTED]  |             |             |                 |
| WE   | [REDACTED]  |             |             |                 |

67. Beta also includes reported viewing over the past 12 months, and GSN and WE tv [REDACTED].

Beta: Viewed Network in Last 12 Months ( $\pm$  3%)<sup>62</sup>

|     | <u>2010</u> | <u>2009</u> | <u>2008</u> | <u>3 Yr Avg</u> |
|-----|-------------|-------------|-------------|-----------------|
| GSN | [REDACTED]  |             |             |                 |
| WE  | [REDACTED]  |             |             |                 |

68. I also looked at a separate Beta Brand Identity Study in which respondents indicate how well they believe various adjectives describe a network. [REDACTED] The data is contained in Appendix No. 1.

<sup>61</sup> [REDACTED]

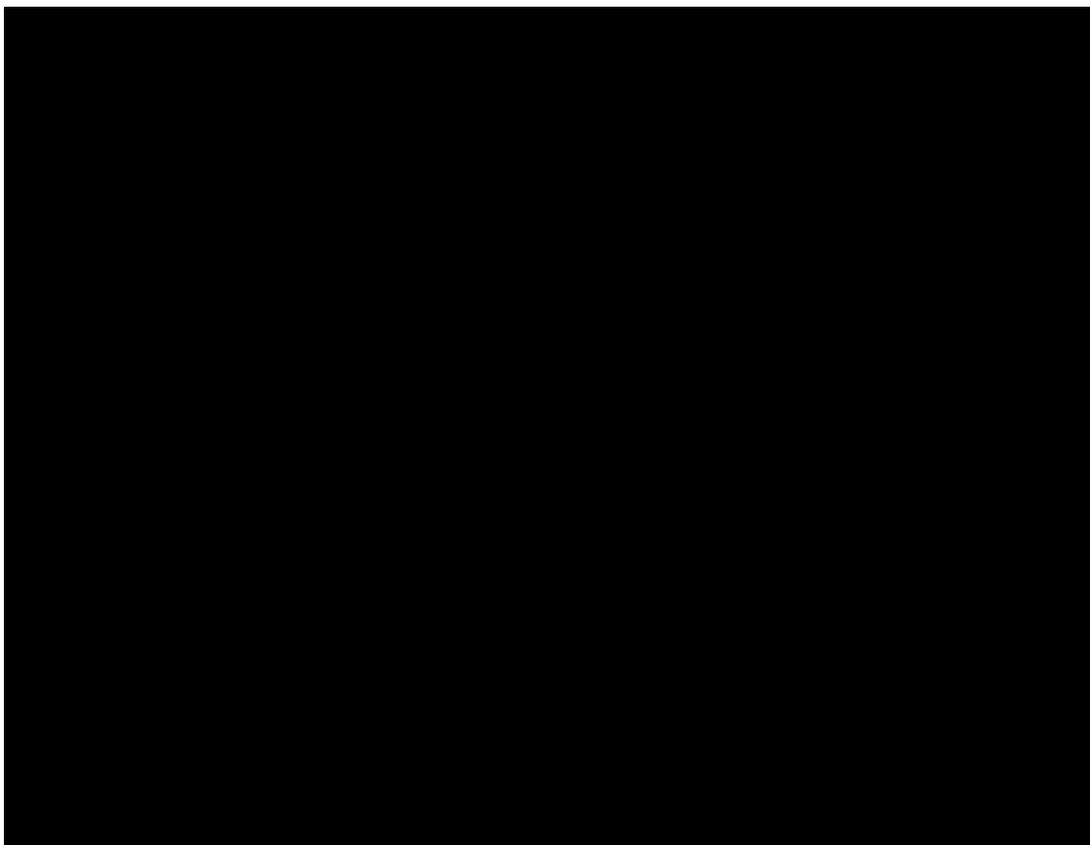
<sup>62</sup> *Id.*

69. Finally, I also examined attitudinal data provided by the widely used MRI service to compare the audiences of GSN and WE tv. The MRI data shows how similar or dissimilar GSN and WE tv viewers are in terms of their general attitudes toward programming, advertising, and television. The data is read as follows. “Vert%” indicates the percent of each network’s viewers who agree with the statement. “Index” indicates how much this score is above (or below) the same score for all respondents. Thus for the first statement (“people ask me for advice”), [REDACTED] indicates that GSN viewers are [REDACTED] above average, and [REDACTED] indicates that WE tv viewers are [REDACTED] above average on this measure.

70. [REDACTED]

2010 MRI Attitudinal Data<sup>63</sup>

All GSN WE tv

A large rectangular area of the page is completely redacted with a solid black box, obscuring the data table that would follow the column headers.

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<sup>63</sup> [REDACTED]



#### D. Target Audience

71. One element suggested in FCC guidelines for determining network similarity is “target audience.” In my experience the target audience of a network is best defined by the demographic orientation of the programming it purchases and airs, and the audience that is attracted to that programming. Here, it is clear that

Game shows and wedding shows both appeal primarily to women.

72. While it might be necessary to rely on subjective judgments of target audience for networks that do not receive ratings sufficient to measure viewing they need not be used where independent, quantitative measures of audience exist. To cite one example of why slogans and promotional verbiage may not be the best way to judge the “target” of a network, Lifetime Television is the iconic women’s network and for many years, it used the slogan “television for women.” It dropped that slogan in 2005 in favor of the tagline “Connect. Play. Share.” Does this mean that it no longer targeted women, because the tagline no longer explicitly said so? Because it did not refer to another demographic such as men or children, does that mean it did not “target” them either? No. Lifetime continued to make programming and other decisions with the goal of attracting women viewers. The absence of an express reference to a target demographic has questionable value when used as evidence that Lifetime does not target the female demographic, especially in light of overwhelming objective evidence that women comprise Lifetime’s target audience. (I was the head of research for Lifetime during this period, and our research efforts were focused exclusively on women.)

73. Similarly, the fact that GSN schedules a type of programming that appeals predominantly to women, attracts a predominantly ( ) female audience, and sells women demographics to advertisers--and has done so for its entire history--in itself provides sufficient evidence that it “targets” the women’s audience.

74. While these are the key factors and themselves sufficient in evaluating whether GSN “targets” a women’s audience, it is worth noting that GSN’s performance with women is consistent with the widespread understanding in the industry that game shows are generally targeted at women. During the 1960s, ‘70s and ‘80s, game shows were mainstays of the broadcast network daytime lineups, a female-oriented daypart.<sup>64</sup> During the 1990s the Lifetime cable network (“Television for Women”), as well as USA

<sup>64</sup> David Schwartz, Steve Ryan, and Fred Wostbrock, *The Encyclopedia of TV Game Shows* (New York: Zoetrope, 1987), 549-563; second edition (New York, Facts on File, 1995), xx-xxv.

Network, carried daytime blocks of game shows.<sup>65</sup> I was in charge of testing game shows for NBC in the 1980s and for USA Network in the 1990s, and our target audience was always women. I supervised hundreds of focus groups, dial tests, and surveys during that period and our game show studies focused on women. This is because our goal was to strengthen the appeal of such shows among women audiences. Game show producers often cast couples, relatives or even whole families as contestants and/or featured female-oriented prizes, such as household goods, because they perceived that those elements would appeal to women. The notion that game shows cater primarily to women also is noted in the literature.<sup>66</sup>

### E. Program Genres on GSN and WE tv

75. The subject of program genres is complex, and often misunderstood. I have had an unusual amount of experience analyzing and categorizing television programming, both as part of my employment at several networks and, beginning in 1979, with the publication of my book *The Complete Directory to Prime Time Network and Cable TV Shows*. This book is extensively used by the industry and by the public (it is now in its ninth edition, with more than 500,000 copies in print), and it is widely acknowledged as the leading resource of its type.<sup>67</sup> For the past 33 years my co-author and I have assigned genre designations to more than 6,500 series described in this book, and as a result we have had to develop a categorization schema that was both understood and accepted by the industry and the public at large. The following comments are based on that extensive experience.

76. Almost all genres overlap with other genres. “Science fiction” and “adventure” programming are closely related, as I learned while conducting research for the Sci-Fi Channel.<sup>68</sup> Comedies often include dramatic elements, and vice versa, leading to hybrid forms such as “dramadies.” The usefulness of genre labels depends to some extent on how long they have been around, and how precise and well understood they are. Some long-established genres such as “situation comedy” and “sports” are relatively well defined, however “reality” is a recent label that has been applied to, and overlaps with, a multitude of programming types. Unlike more well-established labels, it is not a distinct “genre” of programming, and is probably the least well-defined label in television. As

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<sup>65</sup> I worked at both of these networks and personally analyzed these schedules.

<sup>66</sup> Edd Applegate, *Journalism in the United States: Concepts and Issues* (Scarecrow Press, 2011), 90 (“This is certainly one reason for there being so many programs that cater to women. During the day, for instance, networks broadcast network- or syndicate-created or -packaged game shows, talk shows, and soap operas”). Anne Cooper-Chenn, *Games in the Global Village: A 50-Nation Study of Entertainment Television* (Bowling Green State University Popular Press, 1994), 18 (“Game Shows (mind sports) function for female viewers in much the same way that TV athletic contests function for males”). Morris B. Holbrook, *Daytime Television Game Shows and the Celebration of Merchandise: The Price Is Right* (Bowling Green State University Popular Press, 1993), 84 (“The target audience for the audience on daytime soaps and game shows is assumed to consist largely of women”).

<sup>67</sup> Tim Brooks and Earle Marsh, *The Complete Directory to Prime Time Network and Cable TV Shows, 1946-Present* (New York: Ballantine Books, 1st Edition 1979, 9th Edition 2007).

<sup>68</sup> Indeed, some of our test subjects affirmatively rejected “science fiction,” but then embraced genre films such as *Star Wars* and *ET*, calling them simply “good movies.”

pointed out in my Declaration, the types of programming with which it overlaps include similarly unscripted game shows and dating shows, both staples of GSN.

77. The term “reality show” was rarely used by either the industry or the public before the year 2000, when the press adopted it to describe the breakout series *Survivor*, *Big Brother*, and others. Indeed, the vanguard of this new wave of programming was the quiz show *Who Wants to Be A Millionaire* in the late summer of 1999, which reminded networks of the value of audience participation (anyone could get on the show by calling in and taking some tests) and of showing ordinary people on the screen.<sup>69</sup> During the next few years unscripted reality programs were closely intermixed on the prime time schedule with game shows (almost exclusively, unscripted) like *Greed*, *Twenty-One*, *The Weakest Link*, and *Elimidate*. Since that time “reality” has been applied, inconsistently, to an extremely wide range of programming having little in common other than that the programs in some sense reflect “real life” and/or involve “real people.”

78. Faced with this inconsistency, in *The Complete Directory* we found it necessary to qualify the term, when used at all, by the better understood program type to which it is attached, e.g. “Reality/Competition,” “Romance/Reality,” “Reality/Adventure,” etc. “Reality” was rarely used alone used to describe a program.

79. Several other books also comment on the vagueness of the term “reality.” *The Encyclopedia of TV* (1997), cited by Mr. Egan, begins its entry on reality programming by emphasizing that “Reality programming is an expansive television industry label”, and that “the corpus of programs grouped under this generic rubric is admittedly varied.” Later it adds that “‘the real’ in reality programming is a highly flexible concept.”<sup>70</sup> The updated 2004 edition of the same publication is even more specific, calling Reality Television “a label that encompasses a wide range of nonfiction formats”, including both “gamedocs” and “dating shows.”<sup>71</sup> Similarly, *Media Programming: Strategies and Practices* (2009) emphasizes that programs sometimes referred to as reality programming are in fact closely intertwined with other genres. Similar to my *Complete Directory*, it explains that by the turn of this century so-called reality shows “had resurfaced on a wave of game shows (*Who Wants to Be a Millionaire?*), which was soon overtaken by other types of reality programs (*Dancing with the Stars* and *American Idol*) and one more hit game show (*Deal or No Deal*).”<sup>72</sup>

80. Perhaps the most glaring example of the vagueness of this “genre” comes from WE tv itself. Every network that subscribes to the Nielsen rating service is required to regularly submit its program schedule and to categorize each of the programs therein

<sup>69</sup> Brooks and Marsh, 9th Edition, xx.

<sup>70</sup> Beth Seaton, “REALITY PROGRAMMING,” The Museum of Broadcast Communications. Available at <http://www.museum.tv/eotvsection.php?entrycode=realityprogr>. Accessed 18 Dec. 2011. I am using here the URL provided by Mr. Egan (*Egan Decl.* §IV.A. ¶13 fn 9), although I note that the entries found there seem to have been written in the 1990s and thus have marginal relevance to the present discussion.

<sup>71</sup> Horace Newcomb, editor, *Encyclopedia of Television* (New York: Fitzroy Dearborn, 2004), at 1900.

<sup>72</sup> Susan Tyler Eastman and Douglas A. Ferguson, *Media Programming: Strategies and Practices* (Boston MA: Thomson Wadsworth, 2009), at 6.

according to a standard list of genres provided by Nielsen.<sup>73</sup> One of the category options provided in Nielsen's standard list is "Series - Reality." [REDACTED]

81. The fallacy of relying on such an unclear and unsupportable distinction is clear not only in a review of professional sources but in public usage, as reflected in the Wikipedia entry for "Reality Television." Citing various books and MSNBC among other sources, the entry bluntly states up front that "The genre covers a wide range of television programming formats, from game show or quiz shows which resemble the frantic, Japanese variety shows produced in Japan in the 1980s and 1990s (such as *Gaki no tsukai*), to surveillance- or voyeurism-focused productions such as *Big Brother*."<sup>75</sup> Later, under subgenres, it states that "Modern game shows like *Weakest Link*, *Greed*, *Who Wants to Be a Millionaire?*, *American Gladiators*, *Dog Eat Dog* and *Deal or No Deal* also lie in a gray area...these factors, as well as these shows' rise in global popularity at the same time as the arrival of the reality craze, lead many people to group them under the reality TV umbrella as well as the traditional game show one." Similarly, it describes "Dating Shows" including *The Dating Game*, *Blind Date*, *Matchmaker*, *Room Raiders*, *Elimidate*, *Next* and *Parental Control* under reality television. Note that several of the specific shows cited (*The Dating Game*, *Deal or No Deal*, *Dog Eat Dog*, *Greed*, *Weakest Link*, *Who Wants to Be a Millionaire?*) are either running now or have run on GSN. It should also be noted that in early 2012 GSN began airing *Dancing with the Stars*, which is often called a "reality show" and which muddies any GSN/WE tv distinction even further. In summary, the public seems to consider "game shows" and "reality shows" closely related.

82. GSN's performance among women as measured by objective, third-party measurements is the best evidence of the appeal of game shows to women, but the extent to which game shows are targeted to women and skew towards a women's audience is also consistent with the widespread understanding that game shows are generally targeted at women. As noted above, during the 1960s, '70s and '80s, game shows were mainstays of the broadcast network daytime lineups, a female-oriented daypart.<sup>76</sup> During the 1990s the Lifetime cable network ("Television for Women"), as well as USA Network, carried

<sup>73</sup> The Nielsen Company, *National Reference Supplement 2011-2012*, at 4-13 to 4-16.

<sup>74</sup> *Egan Decl.* exhibit 1B.

<sup>75</sup> Wikipedia, "Reality Television." Available at [http://en.wikipedia.org/wiki/Reality\\_television](http://en.wikipedia.org/wiki/Reality_television). Accessed 17 Dec. 2011.

<sup>76</sup> See footnote 69.

daytime blocks of game shows.<sup>77</sup> And the fact that game shows cater primarily to women is noted in the literature.<sup>78</sup>

83. Program genre can indeed be a useful point of differentiation when comparing networks with well defined types of programming or programming types that clearly appeal to different audiences. However in this case, with a term as fuzzy and ill-defined as “reality,” it is not as persuasive as audience measurement data in establishing whether networks compete for viewers. More important, in my experience, is whether viewers find the programs on two networks to be sufficiently similar (or related) that they are attracted to both networks, which is the case with GSN and WE tv. By the excessive use of artificial, self-defined labels Cablevision obscures the fact that game shows as a class, both today and historically, have always appealed predominantly to women,<sup>79</sup> as has the programming on WE tv (whatever one wishes to call it).<sup>80</sup>

#### F. Implications

84. In summary, on a national total audience basis

[REDACTED]

85.

[REDACTED]

<sup>77</sup> I worked at both of these networks and personally analyzed these schedules.

<sup>78</sup> See footnote 71.

<sup>79</sup> According to the industry reference book *TV Dimensions*, the adult audience for daytime TV game shows averages 67% female, and for syndicated early fringe game shows, 60% female. (New York: Media Dynamics, 2005, 281). The percentages were the same in the edition published in 2000 (page 264), an era from which GSN draws much of its daytime schedule.

<sup>80</sup> Some of Mr. Egan’s statements regarding game shows simply do not make sense. He makes the unsupported assertion that “virtually all of the game show programs on GSN will typically be of interest to either men or women” (*Egan Decl.* §IV.B.1. ¶31). [REDACTED] Later in the same paragraph he retreats from gender characterization, saying that game shows appeal to those with an “interest in game shows,” which is circular logic.

[REDACTED]

86. [REDACTED]

87. [REDACTED]

88. The Nielsen data represents actual viewing, not household tuning, and is based on a representative sample and on accepted calculation procedures that have been audited, accredited, and accepted by the industry at large. The set-top box data produced by Cablevision reflects only household tuning, is unaudited, unaccredited, not accepted as currency in the marketplace, and only selectively revealed. For a host of reasons it is far less reliable than Nielsen data, which was readily available to Cablevision as a Nielsen client, and should be viewed with skepticism.

89. Even if one puts aside concerns about the reliability of set-top box data, however, that data shows GSN to be a much stronger performer on Cablevision systems than Cablevision asserts. Cablevision's own researchers acknowledged that WE tv benefited from favorable channel placement (channel 42) near high traffic networks.

[REDACTED] Furthermore, WE tv was placed near to some of the top female-oriented networks on cable, while GSN was surrounded by premium movie networks with which it shared little in common. Another important factor, which Cablevision researchers pointed out to Cablevision management, is the loyalty of GSN viewers; [REDACTED]

[REDACTED]. This is a measure of subscriber satisfaction that MVPDs typically find important. When all of these factors are taken into consideration it is clear that GSN and WE tv are much more closely matched in popularity *in Cablevision homes* than the few cherry-picked figures cited by Cablevision would indicate.

90. [REDACTED]

[REDACTED]

91. [REDACTED]

92. In terms of program genre, GSN primarily airs game show programs, expansively defined. WE tv claims it focuses on “reality programming,” but that term is so vague and ill-defined that even its own employees are unsure how to categorize its shows when reporting to Nielsen. Whatever its shows may be called, there is clearly a great deal of overlap in basic elements of appeal with much of the programming on GSN (real people, relationships, romantic entanglements, celebrities, etc.). That, in my opinion, is why there is such a high degree of shared audience between the two channels.

93. Based on all of the data examined, assuming they had comparable distribution GSN and WE tv should at a minimum be able to attract comparable audiences, provide comparable audience satisfaction, and generate comparable sales revenue. GSN is in fact stronger than WE tv in many metrics. I would therefore expect them to be treated at least the same when it comes to distribution. However with respect to Cablevision this is not currently the case.

#### **IV. HARM DONE**

94. Based on my analysis and my experience in the industry I believe that Cablevision has significantly harmed GSN by repositioning it from wide distribution on its New York systems to a little-seen, extra-cost sports tier. Extra-cost tiers are considered the “Siberia” of cable. Uptake is generally low; in the case of Cablevision the tier in question appears to reach [REDACTED], vs. the 2.7 million that GSN reached previously via basic distribution. Further, networks do not want to be perceived by others in the cable ecosystem, including cable and satellite operators, advertisers, and the press, as a “tiered” network. Being perceived as a “basic network” (versus a “tiered” network) is important to the long-term distribution strategies of most networks. Likewise, networks that are viewed as “tiered” rather than “basic” are not favored by advertisers.

95. In addition, positioning on a tier reduces or eliminates the opportunity for a network to benefit from casual viewers (or “surfers”). This is an important means by

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81 [REDACTED]

which networks gain viewers, by attracting viewers who happen upon the network or who tune to it for a special event or premiere. The network can then attempt to convert them to more regular viewership by that programming and/or by promotional advertisements for other shows. It is almost impossible for a network to attract new viewers in this manner on a limited-distribution extra-cost tier.

96. The Cablevision downgrade is particularly harmful because of the wholly inappropriate nature of the “Sports & Entertainment Pak” tier on which it was placed. All of the other networks on the tier are sports and/or male oriented. They include major league baseball, hockey, horse racing, golf, basketball, soccer, and wrestling channels. This will virtually guarantee that those few subscribers who buy this tier will be males looking for additional sports programming.<sup>82</sup> The full list of channels with which GSN is now placed is as follows:

Networks on Cablevision’s iO Sports & Entertainment Pak<sup>83</sup>

GSN  
 ESPN Classic (reruns)  
 ESPNU (college sports)  
 MLB Network  
 NHL Network  
 TVG Network (horseracing)  
 Fuel TV (extreme sports)  
 FCS Pacific (college sports)  
 FCS Central (college sports)  
 FCS Atlantic (college sports)  
 Outdoor Channel  
 Versus (now NBC Sports Network)  
 Go!TV (soccer)  
 Golf Channel  
 MavTV (“covers the hot-button topics guys care about”)  
 CBS College Sports  
 Big Ten Network (college sports)  
 NBA TV  
 Fox Soccer Plus  
 Sportsman Channel  
 Neo Cricket  
 Fight Now TV (wrestling, mixed martial arts, boxing)

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<sup>82</sup> MVPDs sometimes assert that they want to put a popular channel on a tier in order to drive viewers to that tier. However this only works if the popular channel so placed is appropriate to the tier; for example placing ESPN in the “Sports & Entertainment Pak” might drive subscribership to the tier. Placing GSN amid channels with which it has nothing in common will not accomplish that goal.

<sup>83</sup> “iO Sports & Entertainment Pak. “Accessed at <http://www.optimum.com/digital-cable-tv/sports/sports-pak.jsp>, 11 Oct. 2011.

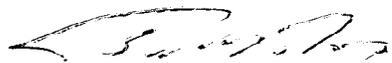
97. In the New York market the effect of the GSN downgrade has been dramatic, with declines of about [REDACTED] in households tuned and [REDACTED] in GSN's principal demographics. This is only part of the story, however. Simultaneously, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] In other words, Cablevision benefited its own WE tv network by removing a competitor from wide availability on its lineup.

98. In 2010 Cablevision's New York systems accounted for approximately 2.7 million GSN homes. The repositioning will obviously have a negative impact on the audience GSN has to sell to national advertisers. To the extent that revenue is lost, it is likely to impact the ability of the network to develop and market programming. In my experience, the first two areas that are cut when revenue is soft are marketing and program development.

99. Additionally, based on my experience the impact may be greater than simply the number of viewers lost. New York is the media capital of the U.S., the home base of many of the top advertising agencies and buying groups. Distribution in New York and its suburbs (where many executives live) is considered in the industry to be important for a network to remain familiar to and front-of-mind among those making buying decisions. Thus effectively being "blacked out" in a large portion of New York homes may have a disproportionate effect on GSN's national viability as an advertising medium.<sup>84</sup>

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is true and correct. Executed on November 19, 2012.

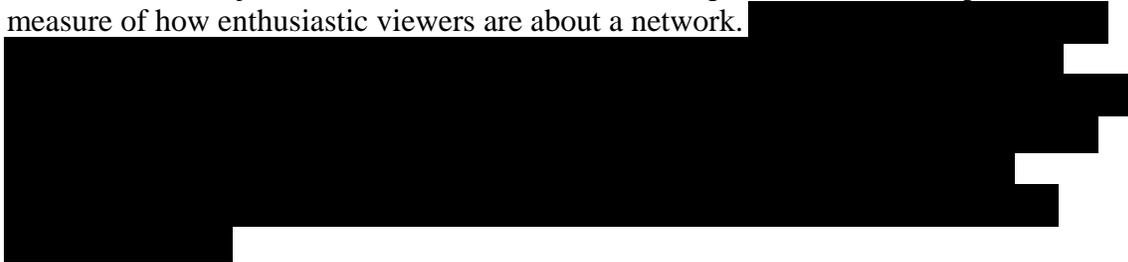


TIMOTHY BROOKS

84 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### Appendix 1

Beta issues a Brand Identity Study in which respondents indicate how well they believe various adjectives describe each network. This provides another impartial measure of how enthusiastic viewers are about a network.



Beta Viewer Network Descriptors: 2009-2011<sup>85</sup>  
(Among viewers of each network; very much describes network)

|                                       | <u>GSN</u> | <u>WE</u> |
|---------------------------------------|------------|-----------|
| One of My Favorites                   |            |           |
| Distinctive                           |            |           |
| Entertaining                          |            |           |
| Fun                                   |            |           |
| Family Oriented                       |            |           |
| Has Hosts/Personalities I Like        |            |           |
| Informative                           |            |           |
| Bold, Tries New Things                |            |           |
| High Quality                          |            |           |
| Has Many Original Programs            |            |           |
| Valuable                              |            |           |
| Inclined to Pay Attention             |            |           |
| to Commercials on This Network        |            |           |
| More Likely to Buy Product Advertised |            |           |
| on This Network                       |            |           |

<sup>85</sup>



## Appendix 2: 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 media 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 and distribution 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 with 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 and distribution 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 of this consortium of major media companies, agencies and advertisers; board of directors (2005-2007); member of the Media Consumption and Engagement Committee (2005 to 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 changing media requirements.

### **George Foster Peabody Awards**

- Board of Directors (2007 to 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). Member, research committee and special study subcommittees (2006 to date).

### **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.

### **Testimony**

- *In the Matter of Game Show Network, LLC v. Cablevision Systems Corp.*, MB Docket No. 12-122, File No. CSR-8529-P. Before the Federal Communications Commission (Expert Report, October 10, 2011; Reply Declaration, January 16, 2012).
- *VOOM HD Holdings LLC v. EchoStar Satellite LLC*, In the Supreme Court of the State of New York, County of New York (Index No. 600292/08). (Expert Report , February 1, 2010; Deposition Testimony, March 12, 2010 and September 11, 2012).
- *In the Matter of The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, MB Docket No. 10-204, File No. CSR-8258-P. Before the Federal Communications Commission (Expert Report, January 4, 2010; Supplemental Declaration, March 22, 2010; Deposition Testimony, March 7, 2011; Written Direct Testimony, April 15, 2011; Courtroom Testimony, April 26, 2011).

### 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 *A Lost 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: Cable Television 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; 9<sup>th</sup> 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.
- *Lost Sounds: Blacks and the Birth of the Recording Industry, 1890-1919*. University of Illinois Press, 2004. Widely praised, received three national awards, called by the *New York Times* "an act of cultural reclamation."
- *Survey of Reissues of U.S. Recordings*. Council on Library and Information Resources and Library of Congress, 2005. Cited in government copyright-related proceedings.
- *The Complete Directory to Prime Time TV Stars*. Ballantine Books, 1987.
- *Little Wonder Records and Bubble Books* (co-author). Mainspring Press, 2011.
- 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 to 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.

11-18-12

### Appendix 3: Materials Relied Upon

#### Publicly Available Materials

AMC Networks Divorces Wedding Central Multichannel News July 8, 2011. Available at <http://www.multichannel.com/content/amc-networks-divorces-wedding-central>

Anne Cooper-Chenn, *Games in the Global Village: A 50-Nation Study of Entertainment Television* (Bowling Green State University Popular Press, 1994)

Beth Seaton, “REALITY PROGRAMMING,” The Museum of Broadcast Communications. Available at <http://www.museum.tv/eotvsection.php?entrycode=realityprogr>.

David Schwartz, Steve Ryan, and Fred Wostbrock, *The Encyclopedia of TV Game Shows* (New York: Zoetrope, 1987), 549-563; second edition (New York, Facts on File, 1995)

Edd Applegate, *Journalism in the United States: Concepts and Issues* (Scarecrow Press, 2011)

Horace Newcomb, editor, *Encyclopedia of Television* (New York: Fitzroy Dearborn, 2004)

Morris B. Holbrook, *Daytime Television Game Shows and the Celebration of Merchandise: The Price Is Right* (Bowling Green State University Popular Press, 1993)

“iO Sports & Entertainment Pak. “Available at <http://www.optimum.com/digital-cable-tv/sports/sports-pak.jsp>

Susan Tyler Eastman and Douglas A. Ferguson, *Media Programming: Strategies and Practices* (Boston MA: Thomson Wadsworth, 2009)

*Television Game Shows and the Celebration of Merchandise: The Price Is Right* (Bowling Green State University Popular Press, 1993)

Tim Brooks and Earle Marsh, *Complete Directory to Primetime Network TV Shows*, First Edition (New York: Ballantine Books, 1979)

Tim Brooks and Earle Marsh, *The Complete Directory to Prime Time Network and Cable TV Shows, 1946-Present*, Ninth Edition (New York: Ballantine Books, 2007)



**Reports Previously Submitted In This Proceeding**

Declaration of Timothy Brooks, filed on behalf of GSN, Oct. 10 2011

Declaration of Michael Egan, filed on behalf of GSN, December 12, 2011

Expert Report of Jonathan Orszag, filed on behalf of GSN, December 12, 2011

Supplemental Declaration of Timothy Brooks, filed on behalf of GSN, November 14, 2011

**Additional Data**

[REDACTED]

The Nielsen Company, *National Reference Supplement 2011-2012*