

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

In the Matter of	)	
	)	
Game Show Network, LLC.	)	
Complainant	)	MB Docket No. 12-122
	)	File No. CSR-8529-P
	)	
v.	)	
	)	
Cablevision Systems Corp.,	)	
Defendant	)	

**DIRECT TESTIMONY OF JONATHAN ORSZAG**

I, Jonathan Orszag, hereby swear and affirm as follows:

**I. QUALIFICATIONS**

1. I am a Senior Managing Director and member of the Executive Committee of Compass Lexecon, LLC, an economic consulting firm. My services have been retained by a variety of public-sector entities and private-sector firms ranging from small businesses to Fortune 500 companies. These engagements have involved a wide array of matters, from entertainment and telecommunications issues to issues affecting the sports and retail industries. I have provided testimony to administrative agencies, the U.S. Congress, U.S. courts, the European Court of First Instance, and other domestic and foreign regulatory bodies on a range of issues, including competition policy, industry structure, and fiscal policy.

2. Previously, I served as the Assistant to the U.S. Secretary of Commerce and Director of the Office of Policy and Strategic Planning and as an Economic Policy Advisor



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on President Clinton’s National Economic Council. For my work at the White House, I was presented the Corporation for Enterprise Development’s 1999 leadership award for “forging innovative public policies to expand economic opportunity in America.”

3. I am a Fellow at the University of Southern California’s Center for Communication Law & Policy and a Senior Fellow at the Center for American Progress, a policy-oriented think tank based in Washington, DC. I received a M.Sc. from Oxford University, which I attended as a Marshall Scholar. I graduated *summa cum laude* in economics from Princeton University, was elected to Phi Beta Kappa, and was named to the *USA Today* All-USA College Academic Team. In 2004, I was named by the *Global Competition Review* as one of “the world’s 40 brightest young antitrust lawyers and economists” in its “40 under 40” survey. In 2006, the *Global Competition Review* named me as one of the world’s “Best Young Competition Economists.” Since 2007, I have been listed among the foremost competition economists in the world by *Who’s Who Legal*.

4. I have been active in applied analysis of issues affecting the Multichannel Video Programming Distributor (“MVPD”) sector. While I served in the federal government, I worked on a number of policy issues involving the MVPD sector, including the implementation of the Satellite Home Viewer Improvement Act of 1999, which permitted Direct Broadcast Satellite (“DBS”) providers, such as EchoStar and DIRECTV, to offer subscribers local broadcast stations.<sup>1</sup>

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<sup>1</sup> See, e.g., [www.fcc.gov/mb/shva/shvia.pdf](http://www.fcc.gov/mb/shva/shvia.pdf) (downloaded on February 1, 2010). All references to “CV Exh. \_\_\_” are to exhibits on Cablevision’s Exhibit List. These materials, and all other materials relied upon, are also listed at Attachment A to this testimony.

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5. Since leaving government, I have served as a consultant to a number of major MVPDs (*e.g.*, DIRECTV, Comcast, Cablevision, and EchoStar) and programming providers (*e.g.*, Discovery, College Sports Television). I have worked on a number of mergers and/or acquisitions in the MVPD space, including the Comcast-Time Warner-Adelphia transaction; the proposed EchoStar-DIRECTV merger; the News Corp-DIRECTV merger; and other merger matters.

6. I have also submitted testimony to the Federal Communications Commission (“Commission”) and regulators throughout the world regarding mergers and regulatory matters affecting the MVPD sector. For example, I submitted testimony to the FCC regarding EchoStar’s acquisition of certain assets of Rainbow DBS; assessing potential regulations regarding a la carte and themed tier programming; regarding bundled programming deals; regarding the NFL Network’s claims that Comcast discriminated against the NFL Network in its carriage decisions; regarding the Mid-Atlantic Sports Network’s (“MASN”) claims that Comcast discriminated against MASN in its carriage decisions; regarding the Tennis Channel’s claims that Comcast discriminated against the Tennis Channel in its carriage decisions; assessing the exclusive contract prohibition between vertically integrated cable operators and programmers; and regarding distant network royalty fees. I also testified before this Court in the *NFL Enterprises v. Comcast*, *MASN v. Comcast*, and *Tennis Channel v. Comcast* proceedings. For these engagements, I analyzed the nature of competition between TV networks and MVPDs, I interviewed executives, I reviewed contracts and other confidential company documents, and I analyzed data on advertising revenues; affiliate fees; network carriage; programming genres, costs, and expenditures; subscriber surveys; and financial statements.

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7. My full *curriculum vitae*, including prior testimony, is set forth in CV Exh. 205. The hourly rate charged by Compass Lexecon for my work on this matter is \$895 per hour, and I have a financial interest in the overall profitability of the firm. I have no financial interest in the outcome of this case.

**II. THE ASSIGNMENT**

8. I have been asked by counsel for Cablevision Systems Corporation (“Cablevision”) to assess, from an economic perspective, certain claims made by Game Show Network, LLC (“GSN”) regarding Cablevision’s carriage of GSN. Specifically, GSN claims that Cablevision discriminates against it by carrying GSN on Cablevision’s iO Sports and Entertainment Pak (“S&E Tier”).<sup>2</sup> I have also been asked by counsel for Cablevision to respond to opinions offered by Dr. Hal Singer and Mr. Timothy Brooks.<sup>3</sup>

9. In 1993, the Commission adopted regulations (as directed by Section 616 of the Communications Act of 1934, as amended) which state that:

“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.”<sup>4</sup>

I understand that the analysis of whether Cablevision’s carriage of GSN amounts to

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<sup>2</sup> Program Carriage Complaint, Before the Federal Communications Commission, *In the Matter of The Game Show Network, LLC. v. Cablevision Systems Corporation* File No. CSR-8529-P, October 11, 2011 (“Carriage Complaint”).

<sup>3</sup> Expert Report of Hal J. Singer, Before the Federal Communications Commission, *In the Matter of The Game Show Network, LLC. v. Cablevision Systems Corporation* File No. CSR-8529-P, November 19, 2012 (“Singer Report”). Declaration of Timothy Brooks, Before the Federal Communications Commission, *In the Matter of The Game Show Network, LLC. v. Cablevision Systems Corporation* File No. CSR-8529-P, November 19, 2012 (“Brooks Report”).

<sup>4</sup> See 47 C.F.R. § 76.1301(c).

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discrimination on the basis of affiliation, in part, entails analyzing whether GSN and Cablevision’s affiliated networks are “similarly situated.” As an economist, I interpret the “similarly situated” criterion as a test of whether the networks compete in a significant way for viewers, advertising, or programming content.<sup>5</sup>

10. I also understand that under the Commission’s regulations, pursuant to Section 616, to establish that Cablevision has committed a program carriage violation, GSN must demonstrate that:

- (a) Cablevision’s distribution of GSN discriminated “on the basis of affiliation ... in the selection, terms, or conditions for carriage of video programming;” and
- (b) The effect of Cablevision’s distribution of GSN was to “unreasonably restrain the ability” of GSN “to compete fairly.”<sup>6</sup>

Thus, my analysis focuses on (i) whether GSN and Cablevision’s affiliated programming networks – WE tv and Wedding Central – compete in a significant way for viewers, advertising, or programming content, (ii) whether Cablevision’s decision to carry GSN on the S&E Tier amounted to discrimination on the basis of affiliation, and (iii) whether Cablevision’s carriage of GSN on the S&E Tier had the effect of restraining unreasonably GSN’s ability to compete fairly.

11. For the purposes of my analysis, I am going to treat WE tv and Wedding Central as Cablevision affiliates. Cablevision spun off WE tv and Wedding Central to AMC

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<sup>5</sup> If the networks did not compete in a significant way for viewers, advertisers, or programming content, Cablevision would not have an incentive to engage in discrimination. *See infra*, ¶ 33. In its *Tennis Channel, Inc., v. Comcast Cable Communications, L.L.C.* decision, the Commission considered four factors in assessing whether networks are similarly situated: (1) Similar Sports Programming; (2) Demographics; (3) Advertisers; and (4) Ratings. (*Tennis Channel, Inc. v. Comcast Cable Communications, L.L.C., Memorandum Opinion & Order*, Docket No. 10-204, File No. CSR-8258-P, FCC, (Jul. 24, 2012) ¶¶ 51-55.) These factors are entirely consistent with an assessment of the degree of competition between networks.

<sup>6</sup> *Tennis Channel, Inc. v. Comcast Cable Communications, L.L.C., Memorandum Opinion & Order*, Docket No. 10-204, File No. CSR-8258-P, FCC (Jul. 24, 2012) ¶ 4.

Networks, Inc. (“AMC Networks”) in July 2011.<sup>7</sup> Wedding Central also ceased operating as a network in July 2011.<sup>8</sup> However, Cablevision owned both WE tv and Wedding Central prior to July 2011, and specifically in the first quarter of 2011, when Cablevision retired GSN and put it on the S&E Tier.<sup>9</sup>

### **III. SUMMARY OF CONCLUSIONS**

12. Based on my analysis of relevant materials and based on my experience analyzing the pay television industry, I have concluded that (i) GSN is not “similarly situated” to WE tv or Wedding Central, because there was no significant competition between the Cablevision-affiliated networks and GSN for viewers, advertisers, or programming content prior to Cablevision’s retiring of GSN; (ii) because WE tv and Wedding Central did not compete with GSN for viewers, advertisers, or programming content in a significant way, Cablevision did not have an incentive, at the time of GSN’s retiring, to discriminate against GSN on the basis of affiliation in the carriage of the network; (iii) Cablevision’s decision to distribute GSN on the S&E Tier was consistent with rational business conduct, unmotivated by Cablevision’s affiliation with WE tv and Wedding Central; and (iv) Cablevision’s distribution of GSN on the S&E Tier did not “unreasonably restrain the ability” of GSN to compete for viewers, advertisers, or programming content.

13. I briefly summarize the theoretical and empirical evidence for these conclusions here, and discuss them in more detail in the remainder of my testimony.

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<sup>7</sup> See <http://investors.amcnetworks.com/releasedetail.cfm?ReleaseID=588762> (accessed December 13, 2012).

<sup>8</sup> See [www.multichannel.com/content/amc-networks-divorces-wedding-central](http://www.multichannel.com/content/amc-networks-divorces-wedding-central) (accessed December 12, 2012).

<sup>9</sup> Given the Commission’s ownership attribution rules, I understand and will assume that WE tv is still considered an affiliate of Cablevision, even though AMC Networks is now a separate, publicly traded corporate entity.

GSN Is Not “Similarly Situated” to WE tv or Wedding Central: They Do Not Compete Significantly For Viewers, Advertisers, or Programming Content

14. The bulk of my testimony addresses whether there is significant competition between Cablevision’s affiliated networks and GSN for viewers, advertising, or programming. Based on my analysis of network viewership data, advertiser spending on the networks, and the limited record regarding pitches made to the networks, I conclude that there is no significant competition between GSN and WE tv or Wedding Central for viewers, advertisers, or programming.

15. In the first part of my analysis, I examine competition for viewers between the Cablevision-affiliated networks and GSN. I conclude that WE tv and Wedding Central did not face significant competition for viewers from GSN. From an economic perspective, two networks compete significantly for viewers if a significant number of viewers see them as substitutes. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The re-tiering of GSN increased Cablevision’s subscribers’ viewership of WE tv and Wedding Central by insignificant amounts—on average, about one second per day per household. The fact that Cablevision subscribers did not significantly increase their viewership of WE tv or Wedding Central post-re-tiering demonstrates an absence of significant competition for viewers between WE tv and GSN or between Wedding Central and GSN.

16. My analysis of STB data also shows that Cablevision viewers switched between watching WE tv and GSN or between watching Wedding Central and GSN at a

relatively low rate. GSN ranked [REDACTED] out of 87 channels among viewers switching away from WE tv, and [REDACTED] out of 87 channels among viewers switching away from Wedding Central. [REDACTED]

[REDACTED] WE tv and Wedding Central ranked [REDACTED] and [REDACTED] out of 87 networks among viewers switching from GSN. The switching rates between GSN and WE tv were also [REDACTED] compared to the switching rate between benchmark networks that I identified because of their similarity. For example, the switching rate between [REDACTED] and [REDACTED] was almost [REDACTED] times [REDACTED] than the switching rate between WE tv and GSN. [REDACTED]

17. I also analyze potential competition for viewers between WE tv and GSN (and also between Wedding Central and GSN) by examining viewer audience overlap between these networks. Viewer overlap data is an imperfect metric for analyzing competition for viewers because viewers may watch two networks without considering them substitutes. But no significant viewer audience overlap between networks indicates that the networks appeal to distinct groups of viewers and thus indicates an absence of significant competition for viewers between networks. My analysis of Cablevision’s STB data and Nielsen data shows that there is very little viewer audience overlap between WE tv and GSN or between Wedding Central and GSN. [REDACTED]

[REDACTED]

18. My analysis of the Nielsen audience duplication reports likewise indicates a relatively low degree of viewer audience overlap between WE tv and GSN.<sup>11</sup> The reports show that a relatively small percentage of WE tv viewers also watch GSN, and that a relatively small percentage of GSN viewers also watch WE tv. The Nielsen audience duplication reports for the fourth quarter of 2010, the last full quarter prior to GSN’s retiring, indicate that GSN ranked [REDACTED] out of 96 networks in audience overlap with WE tv viewers.<sup>12</sup> Similarly, the fourth quarter of 2010 Nielsen duplication reports show that WE tv ranked [REDACTED] out of 96 networks in audience overlap with GSN viewers.<sup>13</sup> GSN experts Dr. Singer and Mr. Brooks argue that WE tv and GSN have a relatively high degree of viewer audience overlap based on the “both duplication” measure of viewer audience overlap provided by Nielsen audience duplication reports. Both duplication for a pair of networks is the percentage of viewers who watch both networks as a share of viewers who watch *either* network. As I explain in my testimony below, both duplication is an extremely poor indicator of viewer audience overlap for the purpose of assessment of competition for viewers between networks and is likely to yield false positive

[REDACTED]

<sup>11</sup> Nielsen audience duplication reports did not track Wedding Central.

<sup>12</sup> Based on the persons 18+ demographic.

<sup>13</sup> Also based on the persons 18+ demographic.

results. For example, the both duplication measure indicates a relatively high degree of viewer audience overlap between GSN and [REDACTED], despite the fact that the two networks carry different programming content and have quite dissimilar viewer demographics.

19. In sum, my analysis of the STB and Nielsen data demonstrates conclusively an absence of any significant competition for viewers between WE tv and GSN or between Wedding Central and GSN.

20. In the second part of my analysis of competition, I analyze competition for advertisers between WE tv and GSN. From an economic perspective, two networks compete significantly for advertisers if a significant number of advertisers consider the networks as substitutes. Significant competition for advertisers between WE tv and GSN implies that reducing the supply of GSN advertising would increase the demand for WE tv advertising and that WE tv's advertising rates would face pricing constraints from GSN. If WE tv faced significant competition for advertisers from GSN, WE tv may benefit from relaxing GSN's competitive constraint and Cablevision may therefore have an incentive to discriminate against GSN in the carriage of the network. Based on my analysis of viewer demographic data considered by advertisers, WE tv and GSN's advertising rates, viewer overlap data, and the net spending by advertisers on GSN and WE tv, I conclude that WE tv did not face any significant competition for advertisers from GSN.

21. Companies that wish to reach certain demographics with advertising messages may consider two networks as substitutes for advertising if the networks have similar viewer demographics. My analysis of the viewer demographic data from Nielsen shows that WE tv and GSN are significantly dissimilar in their viewer demographics. The Nielsen data indicate that GSN viewers have a much higher median age [REDACTED] than WE tv viewers [REDACTED]. In the

fourth quarter of 2010, only about [REDACTED] percent of WE tv’s viewership were adults over the age of 65, while more than [REDACTED] percent of GSN’s viewership were this demographic.<sup>14</sup>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] On these

demographic measures and others, WE tv and GSN rank very differently among the 95 cable networks for which Nielsen demographic data are available.

22. To examine how WE tv and GSN differ along multiple dimensions of demographics, I calculate an aggregate measure of distance between WE tv’s and GSN’s demographics using a method proposed by statistician P.C. Mahalanobis in 1936 (“Mahalanobis distance”). Dr. Singer performs a similar calculation in his expert report. I calculate the Mahalanobis distance between network pairs using 10 different viewer demographic measures, including viewer median age, female share of viewership, median viewer income, and others. My calculations of the Mahalanobis distance reveal that there were [REDACTED] cable networks that were closer to WE tv in viewer demographics than GSN was, and [REDACTED] networks that were closer to GSN than WE tv was. Dr. Singer’s calculations of the Mahalanobis distance are

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<sup>14</sup> Total Day ratings for persons 18 and older.

<sup>15</sup> Total Day ratings for persons 18 and older.

<sup>16</sup> Total Day ratings.

unreliable because they exclude key viewer demographics, such as viewer age and commit other methodological errors. My conclusions concerning significant differences in WE tv's and GSN's viewer demographics are consistent with my conclusions concerning their minimal audience overlap and absence of significant competition for viewers. Because WE tv and GSN offer advertisers largely distinct sets of viewers with very different demographic profiles, advertisers are unlikely to consider WE tv and GSN to be substitutes for one another.

23. Data on actual advertising expenditures on GSN and WE tv are consistent with an absence of significant competition for advertisers between the two networks. Data from SNL Kagan indicate that WE tv's advertising rates, based on the price per viewer, were [REDACTED] [REDACTED] than GSN's during 2010. [REDACTED]

[REDACTED] The large disparity in advertising rates between WE tv and GSN, before GSN's retiering, further indicates a significant difference in how advertisers view (and viewed) the two networks.

24. In his report, Dr. Singer concludes that the overlap in the set of advertisers that advertise on both WE tv and GSN indicates that advertisers view WE tv and GSN as substitutes. Dr. Singer shows that most of WE tv's top 40 advertisers between July 2010 and July 2011 also advertised on GSN. But Dr. Singer's advertiser overlap analysis is deeply flawed in a number of key respects. First, Dr. Singer ignores the fact that most large advertisers advertise on virtually all the national cable networks so that an overlap in advertisers between two networks is not particularly meaningful in terms of identifying networks that compete with each other for advertisers. Second, Dr. Singer assumes erroneously that the mere fact that a company advertises on both WE tv and GSN implies that the company must view the two networks as substitutes. For example, an advertiser may decide to advertise on WE tv to reach



discriminate against GSN. Under standard economic theory, Cablevision could only plausibly have an incentive to discriminate against GSN if Cablevision's affiliated networks faced significant pricing constraints from GSN. WE tv and Wedding Central would have only faced pricing constraints from GSN if they faced significant competition for viewers, advertising, or programming from GSN, and no more than a few other networks. My analysis shows that WE tv and Wedding Central did not face significant competition from GSN and that there were numerous networks that were closer competitors to WE tv and Wedding Central than was GSN. Any competitive constraint provided by GSN was negligible at the time of GSN's retiering. Moreover, even if WE tv and Wedding Central significantly competed with GSN (and they do not), the effect of the retiering on GSN's ability to compete was too minimal to have had any effect on WE tv and Wedding Central. Thus, my economic analyses show that Cablevision would not have reasonably expected its affiliated networks to reap any benefits from GSN's retiering, and GSN's retiering was not likely motivated by such benefits.

Cablevision's Decision to Retier GSN Is Consistent With Sound Business Judgment

28. I also conclude, based on my review of the economic evidence, that Cablevision's decision to retier GSN is consistent with sound business judgment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29.

[REDACTED]

30. Dr. Singer claims that carriage of GSN by other MVPDs provides evidence of discrimination by Cablevision in carriage of GSN. While it is important to consider carriage decisions by other MVPDs, this evidence must be evaluated in its proper context. Absence of significant competition for viewers, advertisers, and programming between GSN and either WE tv or Wedding Central makes the carriage decisions of other MVPDs less relevant in the assessment of Cablevision’s carriage of GSN. In addition, the decisions of other MVPDs must be evaluated in light of the fact that Cablevision’s subscriber base is much more concentrated in one DMA (New York) than other MVPDs. [REDACTED]

[REDACTED]

[REDACTED] It is, therefore, reasonable for Cablevision to conclude that the benefits of broad

carriage of GSN do not outweigh the costs of such carriage.

Cablevision's Decision to Retire GSN Did Not Restrain GSN's Ability to Compete Fairly

31. My final conclusion is that Cablevision's retiring of GSN has had no significant effect on GSN's ability to compete for viewers, advertisers, and carriage rights. GSN's loss of [REDACTED] subscribers is [REDACTED] percent of its [REDACTED] million total U.S. subscribers. GSN's experts do not provide any reliable evidence that this modest loss has restrained GSN's ability to compete. In fact, Dr. Singer's testimony here contradicts his statements in prior cases, where he testified that a network has to be foreclosed from 20 percent of the market to be a victim of presumptively anticompetitive behavior, and that a network with 40 million subscribers has surpassed the minimum number necessary to compete nationally.

32. Dr. Singer also claims GSN lost significant advertising revenue as a result of the retiring [REDACTED]

[REDACTED] but he lacks any credible basis for making such

claims.

**IV. FROM AN ECONOMIC PERSPECTIVE, GSN IS NOT “SIMILARLY SITUATED” TO WE tv OR WEDDING CENTRAL: THEY DO NOT COMPETE SIGNIFICANTLY FOR VIEWERS, ADVERTISERS, AND PROGRAMMING CONTENT**

33. Under standard economic theory, Cablevision could only plausibly have an incentive to discriminate against GSN in favor of its affiliated networks, WE tv and Wedding Central, if the prices charged by the affiliated networks were effectively constrained by GSN.<sup>18</sup> If the prices charged by Cablevision’s affiliated networks were not significantly constrained by GSN, WE tv and Wedding Central could not have obtained any benefits from GSN’s retiering by Cablevision or from any alleged reduction in GSN’s ability to compete.<sup>19</sup> The prices charged by WE tv and Wedding Central may be effectively constrained by GSN only if WE tv and Wedding Central faced significant competition for viewers, advertisers, or programming content from GSN. Thus, significant competition between GSN and Cablevision’s affiliated networks WE tv and Wedding Central is a critical precondition for discriminatory conduct. Absent significant competition, Cablevision would not have any *incentive* to discriminate against GSN in the carriage of the network.<sup>20</sup>

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<sup>18</sup> Dennis Carlton, "A General Analysis of Exclusionary Conduct and Refusal to Deal--Why Aspen and Kodak Are Misguided," *Antitrust Law Journal* 68, pp. 659-683, 2001; and Michael Whinston, "Tying, Foreclosure, and Exclusion," *American Economic Review* 80, pp. 837-859, 1990.

<sup>19</sup> I should note that if the prices charged by WE tv and Wedding Central are effectively constrained by many cable networks other than GSN, there would be no significant benefit to Cablevision’s affiliated networks from any reduction in GSN’s ability to compete, and, therefore, Cablevision would not have any incentive to discriminate against GSN in its carriage of the network.

<sup>20</sup> I use the term significant competition to distinguish from insignificant competition between cable networks. For example, there may be one viewer who is deciding whether to watch WE tv or GSN so that the two networks are competing for the viewership of that individual. However, competition between WE tv and GSN for just one viewer would be too insignificant to affect the networks’ incentives in conducting business. Conversely, if the networks were competing for a relatively large (or significant) number of viewers, the competition between the networks would have the potential to affect the networks’ business conduct.

34. My analysis demonstrates an absence of significant competition between WE tv and GSN and also between Wedding Central and GSN. Moreover, as I discuss below, Dr. Singer and Mr. Brooks provide no credible evidence that WE tv or Wedding Central faced significant competition for viewers, advertisers, or programming content from GSN.

**A. There Is No Significant Competition for Viewers between GSN and WE tv or between GSN and Wedding Central**

35. Two networks compete significantly for viewers if a significant number of viewers see the networks as substitutes or, alternatively, if reducing the availability of one network increases significantly the demand for the other network.

36. A direct test of whether GSN and WE tv or GSN and Wedding Central competed for viewers may be performed by analyzing the effect of Cablevision's repositioning (or retiering) GSN from the expanded basic tier to the S&E Tier in February 2011 on the viewership of WE tv and Wedding Central by Cablevision's subscribers. [REDACTED]

[REDACTED] Under this test, there would be evidence of competition between GSN and WE tv (or Wedding Central) if Cablevision's repositioning of GSN onto the S&E Tier significantly increased WE tv's (or Wedding Central's) viewership. My analysis shows that Cablevision's retiering of GSN did not have a significant effect on WE tv's and Wedding Central's viewership.

37. I perform a number of other economic analyses to corroborate the results of such a direct test of competition between the networks. In particular, I analyze viewers' switching rates between networks. The switching rates provide an alternative measure of competition for viewers. I also examine viewer audience overlap between networks. Viewer audience overlap can provide additional insight into the state of competition for viewers. Both

the network switching and viewer audience overlap analyses are consistent with the results of the direct test of competition for viewers. [REDACTED]

Set-Top Box Data Provide a Reliable Basis for the Analysis of Network Competition

38. [REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED]

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<sup>21</sup> [REDACTED] As of year-end 2010, Cablevision had 3.0 million video subscribers in the New York Metropolitan service area and 3.3 million subscribers overall. *See* Cablevision Systems Corp NY 10-K, filed February 11, 2011, Part I.1.

<sup>22</sup> [REDACTED]

40.

[REDACTED]

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<sup>23</sup> [REDACTED]

<sup>24</sup> [REDACTED]

Table 1. STB Data Basic Statistics

		[REDACTED]		[REDACTED]		[REDACTED]	
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							

		[REDACTED]		[REDACTED]		[REDACTED]	
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							
[REDACTED]							

[REDACTED]

41. [REDACTED]

[REDACTED]

[REDACTED]

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25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

[REDACTED]

[REDACTED]

42. GSN expert Timothy Brooks has raised questions about the reliability of STB data.<sup>28</sup> In CV Exh. 232, Appendix A, I present an analysis that tests the reliability of Cablevision’s STB data.<sup>29</sup> Overall, my conclusion is that the STB data are reliable for the purposes of my analysis. I also demonstrate in Appendix A that the STB data are consistent with Nielsen ratings data, which GSN’s own experts rely on. The consistency between the STB and Nielsen ratings data further demonstrates the reliability of the STB data. Moreover, the principal conclusions of my analysis of the STB data are corroborated by analyses of other data, including Nielsen ratings data.<sup>30</sup>

43. I now address the specific assertions made by Mr. Brooks about STB data. Mr. Brooks raises questions about whether STB data can identify instances of actual viewership with complete certainty (e.g., he notes that just because the set-top box is tuned to a particular channel, it does not mean that anyone is watching the channel). Mr. Brooks asserts that STB data “reflects *tuning*, not *viewing*.”<sup>31</sup> Mr. Brooks points out that STBs may remain turned on even after the TV set is turned off, which would indicate tuning into a network even though no

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<sup>28</sup> Brooks Report ¶¶ 48 – 64.

<sup>29</sup> All of the appendices to my testimony are contained in CV Exh. 232 (Appendices to Jonathan Orszag’s Written Testimony).

<sup>30</sup> [REDACTED]

<sup>31</sup> Brooks Report ¶ 49, emphasis in original.

one is watching.<sup>32</sup> He also points out that STB data may not capture delayed viewing such as viewing a program via a Digital Video Recorder (“DVR”).<sup>33</sup> But Mr. Brooks’s criticisms of the STB data are irrelevant for the analysis I conduct herein. Mr. Brooks’s comments suggest a fundamental misunderstanding of how STB data are used in my analysis. No viewership data collection process, including the one used by Nielsen, is error free. The relevant question is not whether STB data measure viewership perfectly, but rather whether STB data are reliable for the analysis of network competition. Based on my analysis, the answer to that question is an unambiguous “yes.”

44. [REDACTED]

[REDACTED]

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> [REDACTED]

45. [REDACTED]

[REDACTED] In fact, a study conducted by Mr. Brooks himself finds that the use of STB data is pervasive among MVPDs, which suggests that industry participants consider the STB data reliable to use in the ordinary course of business.<sup>36</sup>

46. Mr. Brooks also claims that the reliability of the STB data is undermined by the lack of uniformity across the industry in how the data are obtained and processed. Again, Mr. Brooks appears to misunderstand my analysis of STB data. [REDACTED]

[REDACTED] Thus, Mr. Brooks's criticisms of lack of uniformity of STB data are misguided.

47. [REDACTED]

<sup>35</sup>

<sup>36</sup> Tim Brooks, Stu Gray, & Jim Dennison, *The State of Set-Top Box Viewing Data as of December 2009*, February 24, 2010.

[REDACTED]

[REDACTED] If there were significant competition for viewers between GSN and WE tv, the retiering of GSN would have caused a significant increase in the viewership of WE tv (and likewise for competition between GSN and Wedding Central). Thus, a *direct test* of competition for viewership is a test of whether the retiering of GSN has resulted in a significant increase of either WE tv’s or Wedding Central’s viewership. My application of the direct test demonstrates that there was no significant increase in WE tv’s or Wedding Central’s viewership as a result GSN’s retiering. Therefore, I find that there was no significant competition for viewers between GSN and WE tv or between GSN and Wedding Central prior to retiering of GSN.

48. I provide a technical description of the direct test in CV Exh. 232, Appendix B. [REDACTED]

[REDACTED]

49.

[REDACTED]

[REDACTED] The effect of GSN's retiering on WE tv's and Wedding Central's viewership is so small that it cannot be reliably distinguished from zero (or no effect) based on standard analysis of statistical significance.

50. The effect of GSN's retiering on WE tv's and Wedding Central's viewership is also small relative to the viewership retiering effects for other networks. [REDACTED]

[REDACTED]

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<sup>37</sup>

[REDACTED]

[REDACTED]

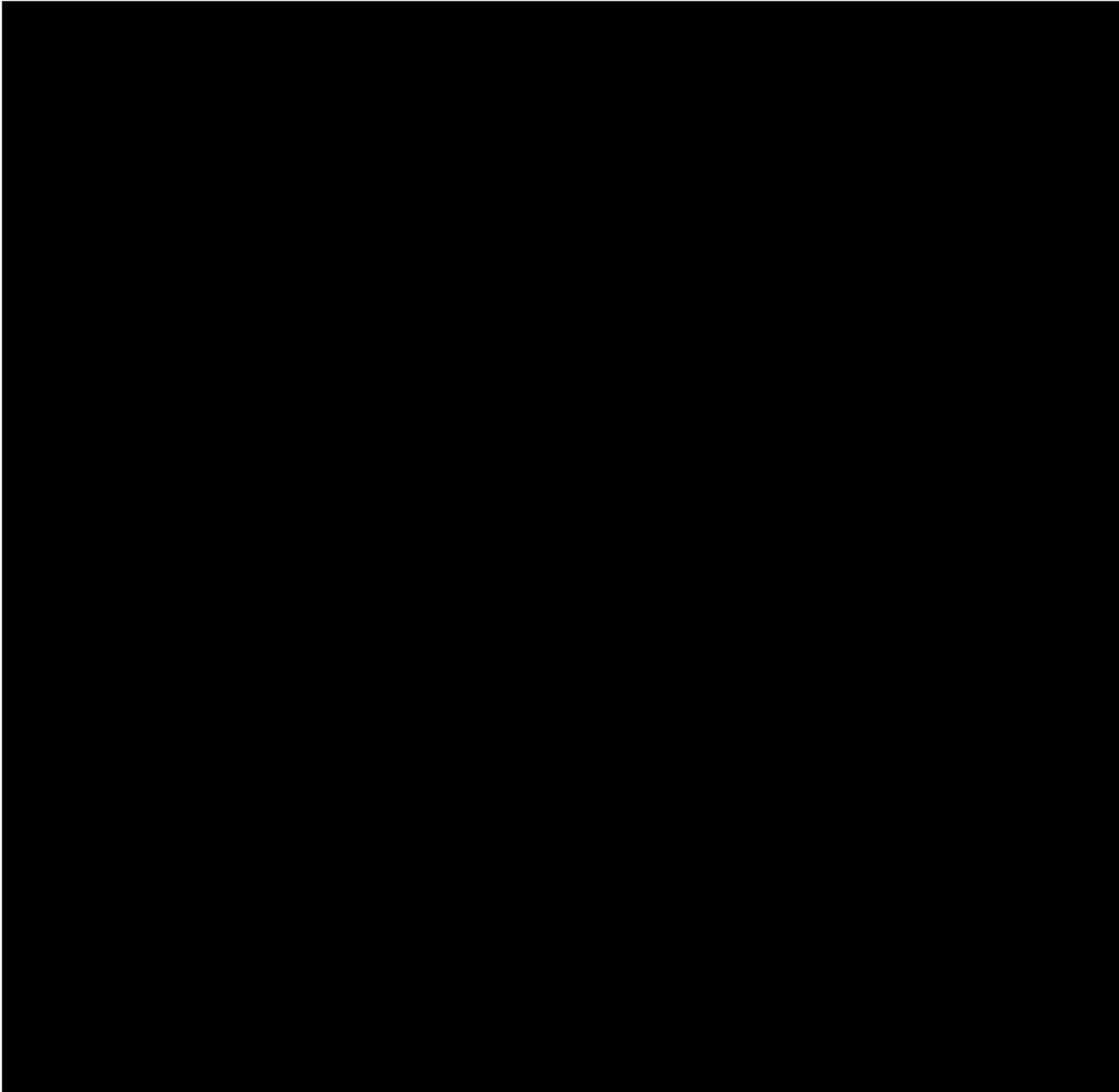
51. [REDACTED]

[REDACTED]

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<sup>38</sup> The network listed as “Nickelodeon” in Table 2 represents a combination of Nickelodeon and Nick at Nite that share the same channel. Likewise, the network listed as “Cartoon” in Table 2 represents a combination of Cartoon Network and Adult Swim that also share the same channel. Thus, Nickelodeon and Cartoon entries in Table 2 stand for the channels that carry Nickelodeon/Nick at Nite and Cartoon Network/Adult Swim. [REDACTED]

Table 2. GSN Retiering Viewership Effect



52. [REDACTED] In sum, my analysis of GSN, WE tv, and Wedding Channel viewership in April 2010 and April 2011 demonstrates that the retiering of GSN had no significant effect on subscribers' demand for WE tv and Wedding Channel. [REDACTED]

[REDACTED]

[REDACTED]

53. The direct test results are consistent with the Nielsen ratings data for the April 2010 and 2011 periods. Table 3 below shows the WE tv and GSN Nielsen household total day ratings for two groups of households: (1) all television households in the New York DMA; and (2) only Cablevision New York DMA subscriber households.<sup>39</sup> Table 3 shows the Nielsen ratings for both the April 2010 and April 2011 periods. Consistent with Cablevision's retiering of GSN in February 2011, GSN's total day household rating fell by about [REDACTED] percent between April 2010 and 2011 among Cablevision New York DMA subscribers. Across all New York DMA television households, GSN's total day household rating [REDACTED] by about [REDACTED] percent between April 2010 and April 2011.<sup>40</sup> Over the same period, WE tv's total day household rating [REDACTED] by about [REDACTED] percent among Cablevision New York DMA subscribers, but [REDACTED] slightly among all of New York DMA television households. The [REDACTED] in WE tv's total day household rating over the April 2010 - April 2011 period does not support the hypothesis that GSN's retiering significantly increased WE tv's viewership among Cablevision's New York DMA subscribers. Therefore, the Nielsen ratings data support the results of the direct test of competition for viewership between WE tv and GSN. [REDACTED]

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<sup>39</sup> Ratings data for Wedding Central were not available.

<sup>40</sup> [REDACTED]



[REDACTED]

[REDACTED]

55.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

56.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>42</sup>

[REDACTED]

<sup>43</sup> The list of networks in Table 4 includes the networks from Table 2 as well as GSN.

[REDACTED]

57. [REDACTED]

[REDACTED]

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<sup>44</sup> Some may argue that the relatively low switching rate between WE tv and GSN is largely driven by the positions of WE tv and GSN in Cablevision’s channel lineup rather than by the lack of competition between the networks for viewers’ eyeballs. Although channel position, or so-called neighborhooding, likely affects viewership of networks, the switching rates nonetheless provide a relevant measure of competition for viewers among networks. For example,

[REDACTED]

My switching rate analysis measures the level of pre-retiering competition among networks, while taking all the factors that affect preferences and viewing habits as a given. The focus of the analysis is to assess retiering incentives given the pre-retiering level of competition among networks – no matter what factors are responsible for pre-retiering viewing habits and competition. Channel positioning is just one such factor. Others include network promotions, appeal of programming, and viewer demographics.

[REDACTED]

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45 [REDACTED]  
4 [REDACTED]

Table 4. From WE tv Switching Rates

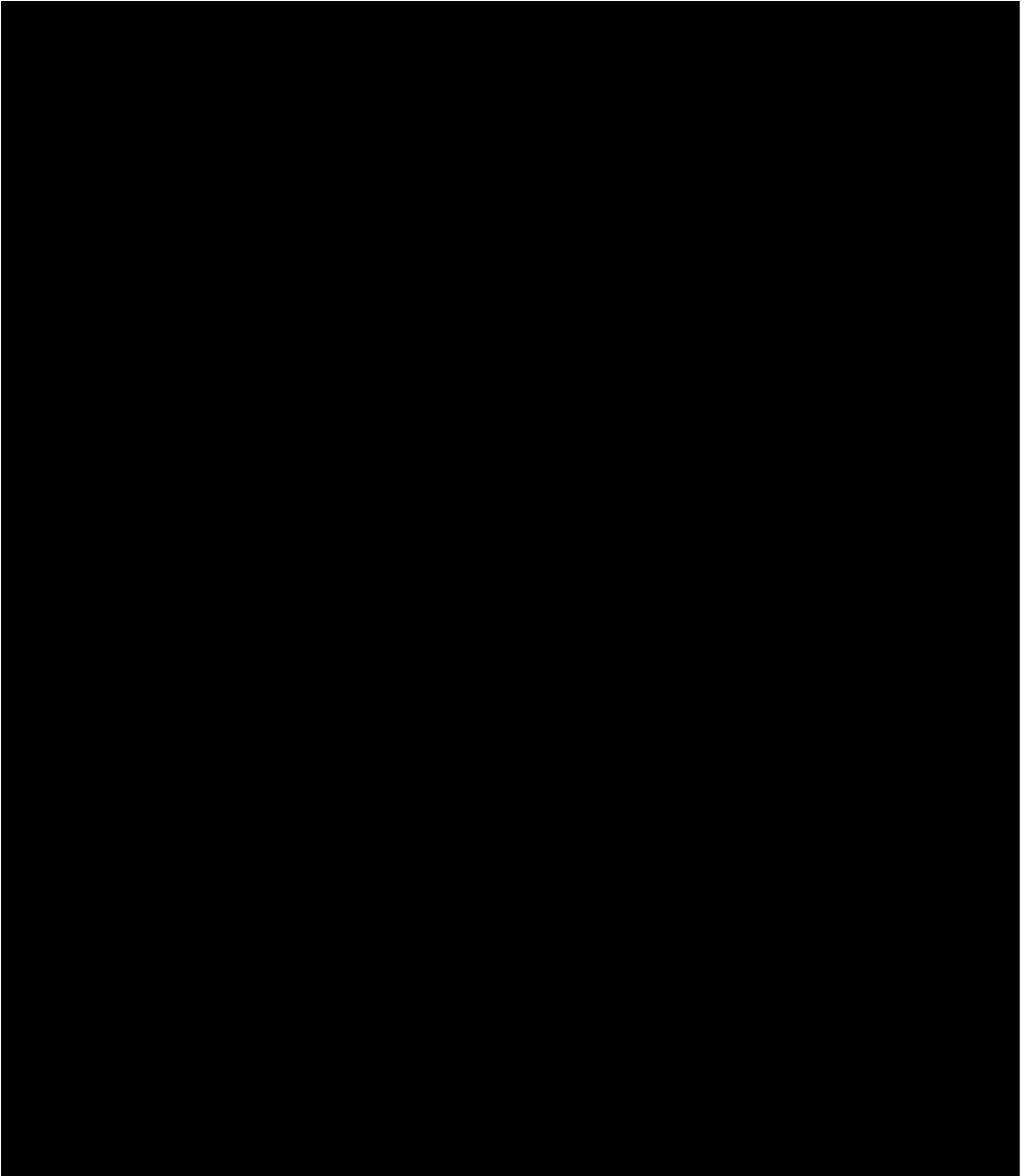
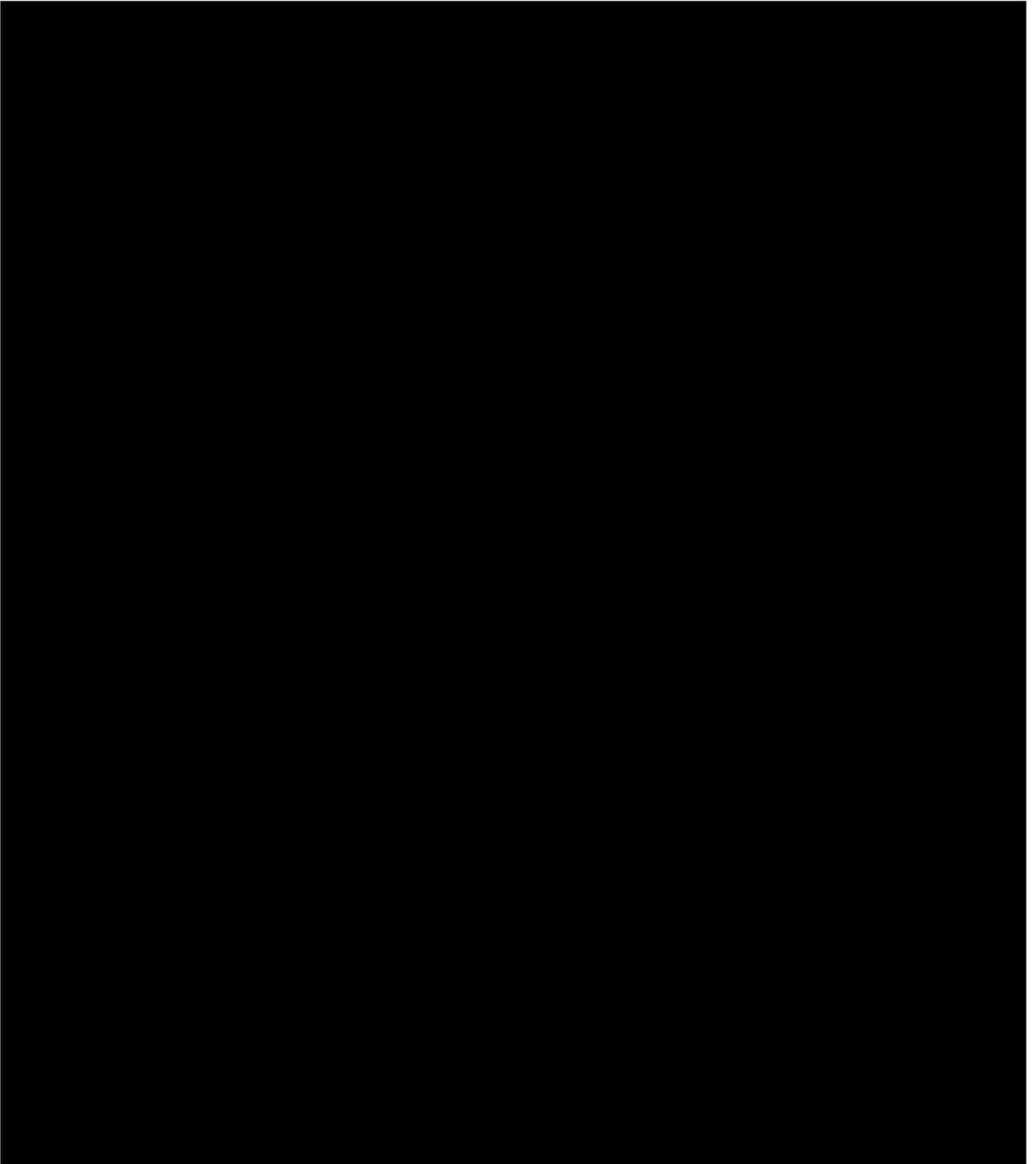


Table 5. To WE tv Switching Rates



58.

[REDACTED]

59.

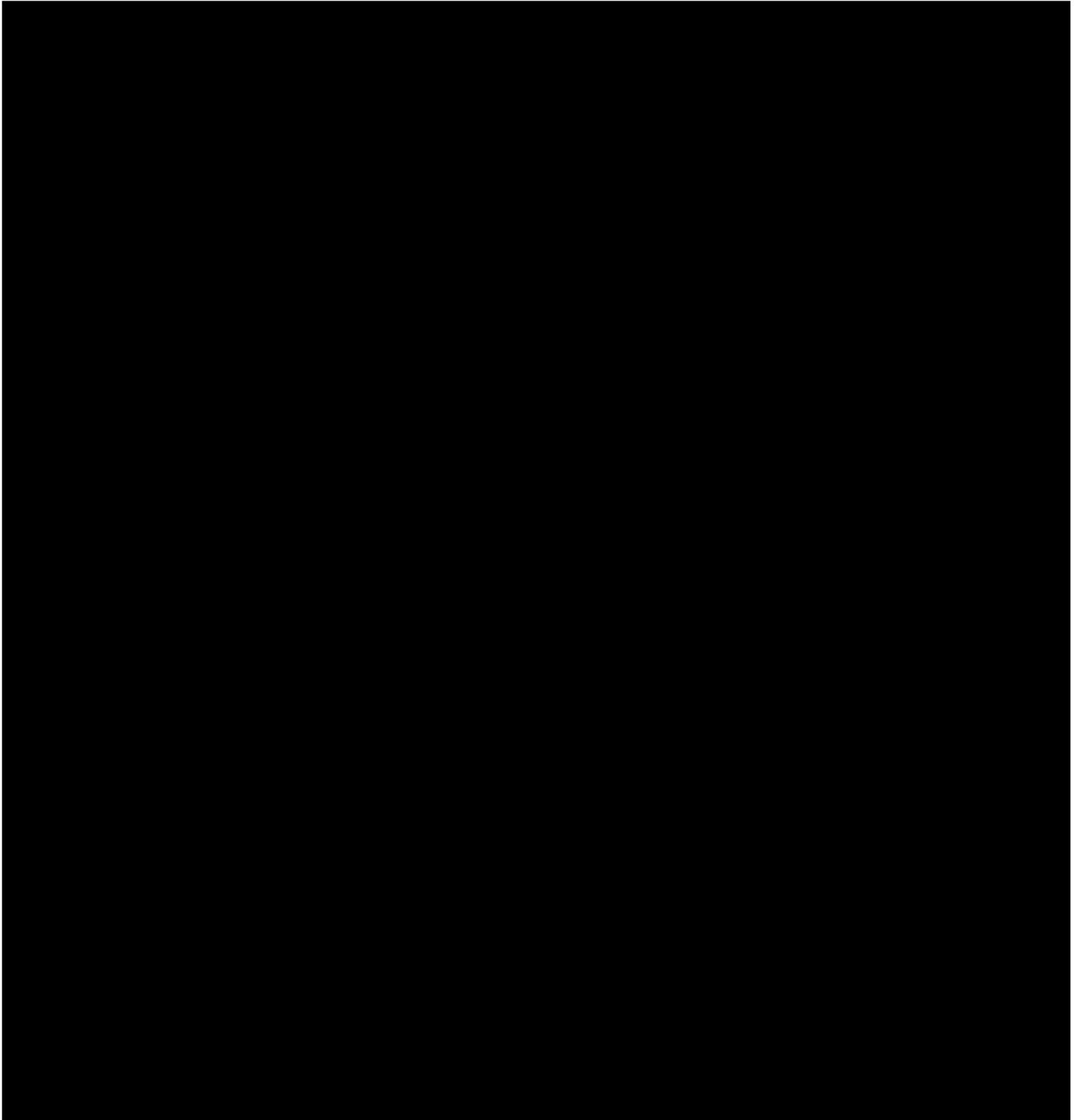
[REDACTED]

46 [REDACTED]

47 [REDACTED]

48 [REDACTED]

Table 6. From Wedding Central Switching Rates



60.

[REDACTED]

61.

[REDACTED]

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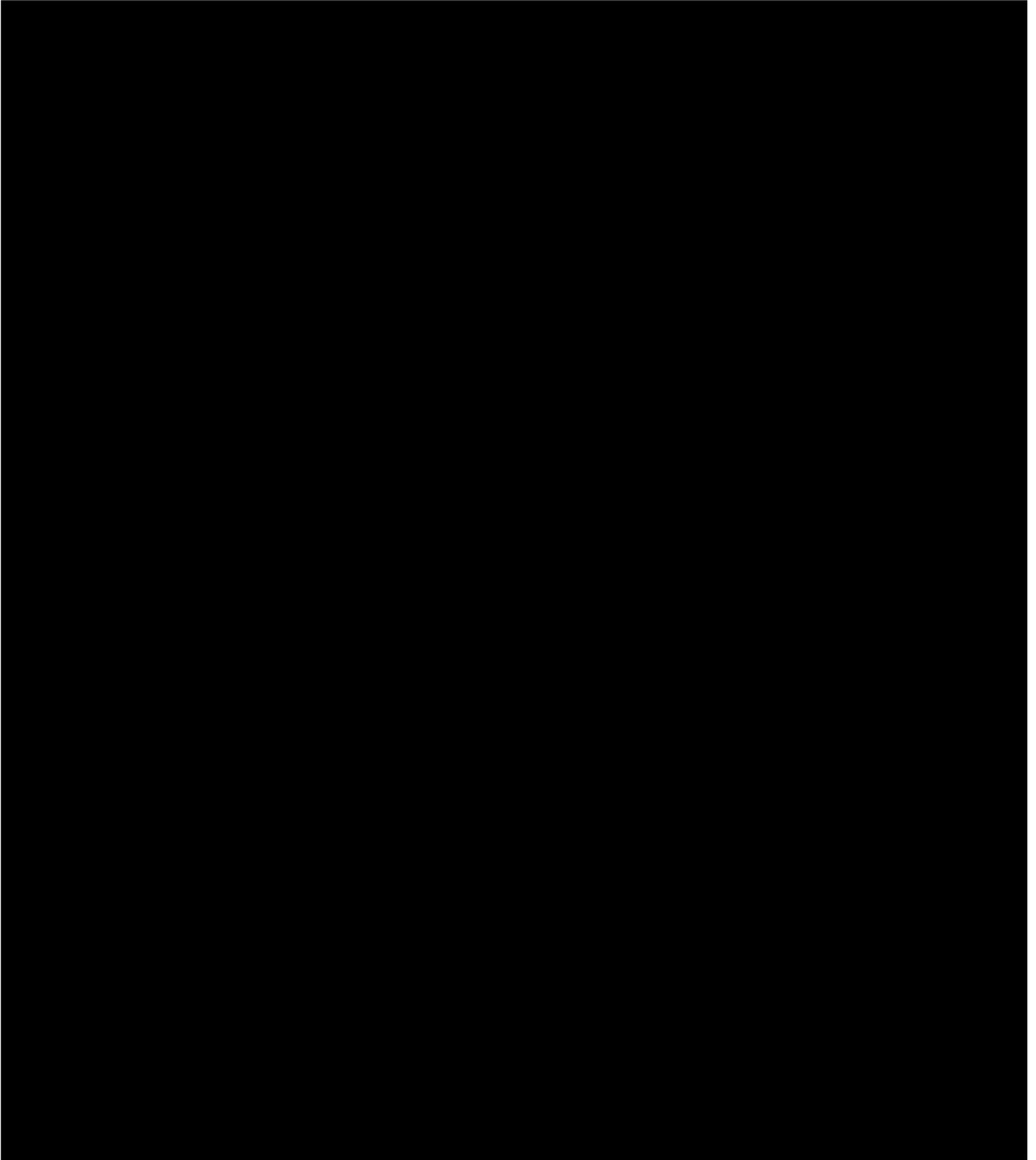
<sup>49</sup> [REDACTED]

<sup>50</sup> The list of networks in Table 7 includes the national networks and consists of the same networks as those in Table 2.

[REDACTED]

[REDACTED]

**Table 7. From GSN Switching Rates**



62.

[REDACTED]

63.

[REDACTED]

64.

[REDACTED]

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<sup>51</sup> Out of the top 10 networks in Table 2, seven are among the top 10 networks in Table 7. Likewise, out of the top 10 networks in Table 7, seven are among the top 10 networks in Table 2.

[REDACTED]

65. Thus, it appears that WE tv and GSN viewers as well as Wedding Central and GSN viewers are quite *dissimilar* in terms of their viewing patterns. These results indicate that not only was there an absence of significant competition for viewership between WE tv and GSN or between Wedding Central and GSN, but that there was also relatively little overlap between the networks with which WE tv and GSN (or Wedding Central and GSN) competed with for viewership. Such differences between the WE tv and GSN switching rates and likewise between the Wedding Central and GSN switching rates suggest that there was a relatively low degree of viewer audience overlap between WE tv and GSN or between Wedding Central and GSN.

66. Additional perspective on the GSN – WE tv (and GSN – Wedding Central) switching rates may be gained by comparing these switching rates to benchmark switching rates between networks that appear to carry similar programming. [REDACTED]

[REDACTED]

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<sup>52</sup> [REDACTED]

<sup>53</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The results in

Tables C1 – C10 show that the switching rates between WE tv and GSN are dwarfed by the switching rates between networks that carry apparently similar programming and appear to

compete with each other for viewers. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

67. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

54 [REDACTED]

[REDACTED]

68.

[REDACTED]

[REDACTED]

[REDACTED]

69. [REDACTED]

Limited Degree of Viewer Audience Overlap between GSN and WE tv/Wedding Central Suggests an Absence of Significant Competition for Viewers between the Networks

70. Additional information about the state of competition for viewership between networks may be gleaned by examining viewer audience overlap between networks. Viewer audience overlap measures the degree to which viewers of one network watch the other – potentially competing – network. It is important to point out that although viewer audience overlap measures may provide some insight into potential competition for viewers between

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<sup>55</sup> [REDACTED]

networks, such measures are not dispositive. If viewers of network A never watch network B and vice versa, such a lack of viewer audience overlap suggests that there may be relatively little competition for viewership between the two networks. However, if there were a significant population of viewers that spent considerable amount of time watching both networks A and B, one should not conclude on this basis alone that there is significant competition for viewership between these networks. The fact that viewers watch both networks A and B does not mean that viewers are *choosing* between watching the networks or even consider watching network A as a substitute for watching network B, and vice versa. Indeed, the fact that viewers watch both networks indicates that they do not need to choose between the networks but can watch both.

71. An example can show this: I watch The Daily Show with Jon Stewart and I watch Homeland (when there are new episodes). Does this mean that these shows compete for my business (i.e., my eyeballs)? No. I do not view the shows as substitutes. I will watch both shows. If I could not see The Daily Show with Jon Stewart (because I am working on this report, for example), it would not make me more likely to watch Homeland.<sup>56</sup> Likewise, watching some programs on GSN does not necessarily preclude the viewer from watching programs on WE tv, and viewer overlaps or similarities in the viewer demographics between GSN and WE tv (if such existed) do not necessarily imply competition between the networks for viewers as a matter of economic logic.<sup>57</sup> Competition for viewers must be demonstrated empirically by considering the substitution patterns between networks. My direct test and

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<sup>56</sup> This is in contrast to competition among airlines that provide service between Los Angeles and Washington, D.C. When I travel between Los Angeles and Washington, D.C., I choose one airline among the available options. Thus, I view the airlines that provide services between Los Angeles and Washington, D.C. as substitutes.

<sup>57</sup> That is, viewer audience overlap and similarity in programming content may be consistent with competition for viewers, but need not imply such competition.

switching rate analyses that I present above address this very question. Thus, the analysis of viewer audience overlap analysis is at most a way to gain additional insight into the behavior of viewers of GSN, WE tv, Wedding Central, but it is by no means an appropriate measure of the intensity of competition between the networks.

72. One source of information about viewer audience overlap comes from the Nielsen audience duplication reports. The Nielsen audience duplication reports measure the percentage of viewers of one network who also watch another network during a given quarter (or some other time period). The Nielsen audience duplication reports measure viewer audience overlap between networks from the perspective of viewers of a particular network. I examine viewer audience duplication reports from the perspective of WE tv. I analyze for each network the percentage of WE tv viewers that watch the networks.<sup>58</sup> My analysis of the Nielsen WE tv audience duplication report data for the fourth quarter of 2010 (the last full quarter prior to Cablevision's rebranding of GSN) shows that GSN ranks low on the list of networks watched by WE tv viewers.<sup>59</sup> Tables 8 and 9 below list networks in order of the percentage of WE tv viewers who viewed the networks in the fourth quarter of 2010.<sup>60</sup> Table 8 lists network viewership by *people* at least 18 years of age and Table 9 lists network viewership by *women* ages 25 to 54.

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<sup>58</sup> Analyzing viewer audience overlaps from the perspective of WE tv viewers show which networks *may* be competing with WE tv for viewers.

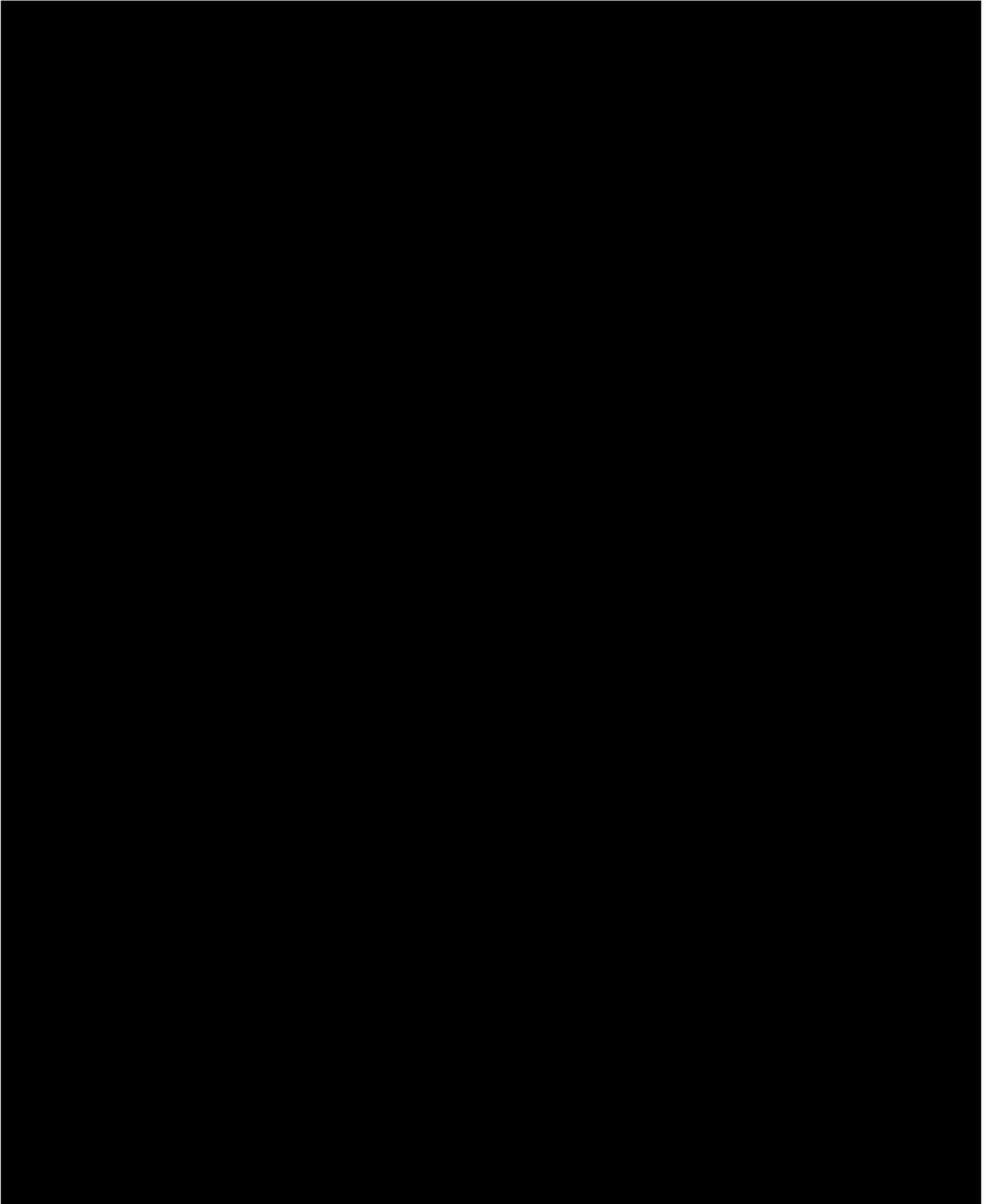
<sup>59</sup> I analyze the Nielsen audience duplication reports for total day viewership.

<sup>60</sup> The audience duplication report data in Tables 8 and 9 consider a person to be a viewer of a network if the person watched the network for at least six minutes in the period under consideration – one quarter in case of Tables 8 and 9.

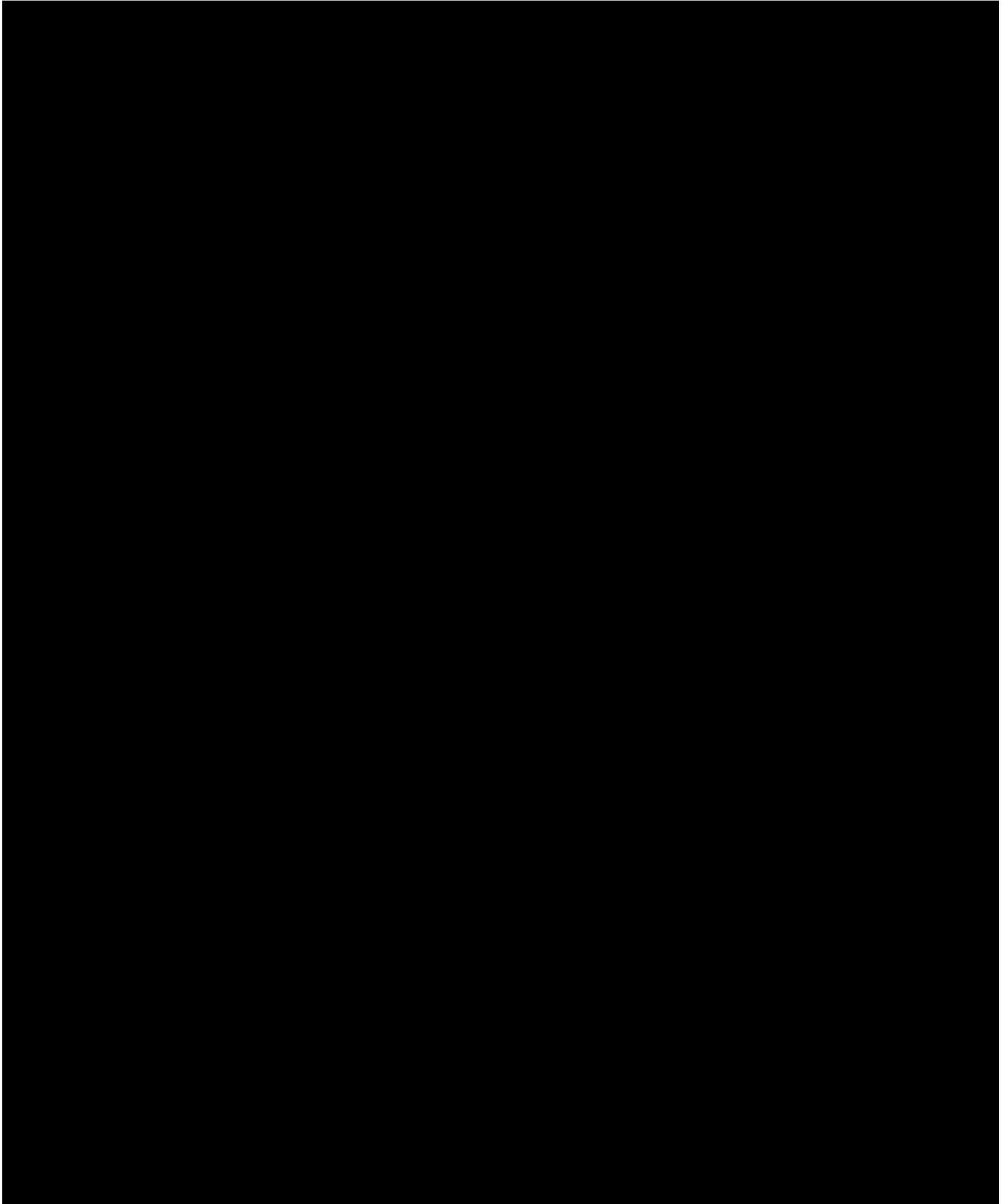
**REDACTED – FOR PUBLIC INSPECTION**

73. Tables 8 and 9 show that in the fourth quarter of 2010, GSN ranked [REDACTED] among the networks watched by WE tv viewers both for all those 18 and older and for women ages 25 to 54. According to the Nielsen WE tv audience duplication report data, in the fourth quarter of 2010, [REDACTED] percent of WE tv viewers who were 18 years of age or older watched GSN *at any time during the quarter* and [REDACTED] percent of WE tv women viewers (ages 25 to 54) watched GSN *at any time during the quarter*. Therefore, my analysis of the WE tv Nielsen audience duplication reports indicates a relatively low degree of overlap between GSN and WE tv viewer audiences. [REDACTED]

**Table 8. WE tv viewership by persons at least 18 years of age**



**Table 9. WE tv viewership by women age 25-54**



74. ■ The Nielsen audience duplication reports that I analyze are limited in a number of ways. The reports only include cable networks and exclude broadcast networks. The inclusion of broadcast networks in the audience duplication analysis would only lower GSN's rank among networks watched by WE tv viewers. Moreover, the Nielsen audience duplication report data should be viewed with caution because these reports apply a relatively low threshold for what constitutes viewership of a network. The Nielsen audience duplication reports that I analyze consider viewers as having watched a network if the viewer watched that network for at least six minutes during the period examined by the report.<sup>61</sup> The fourth quarter 2010 Nielsen audience duplication reports that I analyze in Tables 8 and 9 deem a viewer a WE tv – GSN overlap viewer if the viewer watched at least six minutes of WE tv and at least six minutes of GSN over the entire quarter. Considering that the Nielsen audience duplication reports apply a low threshold for network or program “viewership,” applying a higher threshold for defining network viewership would reduce the magnitudes of viewer audience overlap in terms of the number of overlap viewers.<sup>62</sup> It should be noted that Dr. Singer analyzes some Nielsen audience duplication data that actually use a *one minute* viewership qualifier (where a person is considered to be a viewer of a network if the person watched the network for at least one minute over the entire quarter).<sup>63</sup>

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<sup>61</sup> Six minutes of viewing time is a common qualifier for defining program or network viewership. See, e.g., [www.allbusiness.com/glossaries/nielsen-rating/4964672-1.html#ixzz1gADV506j](http://www.allbusiness.com/glossaries/nielsen-rating/4964672-1.html#ixzz1gADV506j) (downloaded on December 10, 2012).

<sup>62</sup> Applying a higher threshold for defining network viewership would also reduce the number of network “viewers” so that the overall effect of the higher threshold on the duplication percentages is unclear.

<sup>63</sup> The fourth quarter of 2010 Nielsen audience duplication data reported by Dr. Singer for total day viewership and the persons ages 18 or higher demographic are based on the one minute viewership qualifier. (See GSN\_CVC\_00153511.)

75. Nonetheless, the results of my analysis show that GSN ranks low relative to other networks in terms of the percentage of WE tv “viewers” that have “watched” other networks. That is, my analysis shows that out of the population of individuals who watch WE tv, a relatively small percentage also watch GSN.

76. [REDACTED]

77. I analyze viewer audience overlap between WE tv and GSN (and between Wedding Central and GSN) using the April 2010 STB data. Tables 10, 11 and 12 show (based on the STB data) network viewership shares for households that have watched WE tv, Wedding Central, and GSN for at least one hour in April 2010, respectively.<sup>64</sup> The lists of networks in these tables comprise the national networks that include both cable and broadcast networks. Table 10 ranks networks according to the average household viewership share in April 2010 for households that have watched WE tv for at least one hour in April 2010.<sup>65</sup> The results of this analysis do not change significantly if I apply alternative time thresholds for defining network

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<sup>64</sup> Tables 10, 11, and 12 provide an important perspective on competition facing WE tv, Wedding Central, and GSN. These tables show which networks were obtaining the most viewership among WE tv, Wedding Central, and GSN viewing households. Therefore, the more popular networks tend to have higher ranks in these tables.

<sup>65</sup> [REDACTED]

viewership.<sup>66</sup> GSN ranks [REDACTED] among the networks in Table 10. Table 10 shows that GSN accounted for only about [REDACTED] percent share of total viewership among households that watched WE tv for at least one hour in April 2010. Table 11 ranks networks according to the average household viewership share in April 2010 for households that have watched Wedding Central for at least one hour in April 2010.<sup>67</sup> GSN ranks [REDACTED] among the networks in Table 11. Table 11 shows that GSN accounted for only about [REDACTED] percent share of total viewership among households that watched Wedding Central for at least one hour in April 2010. Table 12 ranks networks according to the average household viewership share in April 2010 for households that have watched GSN for at least one hour in April 2010.<sup>68</sup> WE tv and Wedding Central rank [REDACTED] and [REDACTED] among the networks in Table 12. Table 12 shows that WE tv and Wedding Central accounted for only about [REDACTED] and [REDACTED] percent share, respectively, of total viewership among households that watched GSN for at least one hour in April 2010.

78. Tables 13, 14, and 15 show an alternative measure of viewer audience overlap between networks. Table 13 shows, for each national network, the network viewership share that is accounted for by households that watched WE tv for at least an hour in April 2010. I refer to this share as WE tv viewers' share of network viewership. WE tv viewers' share of

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<sup>66</sup> If I apply a 30-minute threshold for defining a network viewing household, then GSN would rank [REDACTED] among WE tv viewing households and [REDACTED] among Wedding Central viewing households; WE tv would rank [REDACTED] and Wedding Central would rank [REDACTED] among GSN viewing households. If I apply a two-hour threshold for defining a network viewing household, then GSN would rank [REDACTED] among WE tv viewing households and [REDACTED] among Wedding Central viewing households; WE tv would rank [REDACTED] and Wedding Central would rank [REDACTED] among GSN viewing households.

<sup>67</sup> [REDACTED]

<sup>68</sup> [REDACTED]

network viewership provides a useful alternative measure of viewer audience overlap between WE tv and other networks because more popular networks do not necessarily have higher ranks under this measure. Table 13 ranks networks by WE tv viewers' share of network viewership. The top ranked network in Table 13 is Wedding Central. Households that watched at least one hour of WE tv in April 2010 accounted for [REDACTED] percent of Wedding Central's viewership in the same month. GSN ranks [REDACTED] among the networks in Table 13. WE tv viewers' share of GSN viewership was only [REDACTED] in April 2010.

79. Table 14 shows Wedding Central viewers' share of network viewership for each national network.<sup>69</sup> The top ranked network in terms of Wedding Central viewers' share of network viewership was [REDACTED]: Wedding Central viewers' share of [REDACTED] viewership was [REDACTED] percent. GSN ranked [REDACTED] among the national networks in terms of Wedding Central viewers' share of viewership. Wedding Central viewers' share of GSN viewership was only [REDACTED] percent.

80. Table 15 shows GSN viewers' share of network viewership for each national network.<sup>70</sup> The top ranked network in terms of GSN viewers' share of network viewership was [REDACTED]: GSN viewers' share of [REDACTED] viewership was [REDACTED] percent. WE tv and Wedding Central ranked [REDACTED] and [REDACTED], respectively, among the national networks in terms of GSN viewers' share of viewership. GSN viewers' shares of WE tv and Wedding Central viewership were [REDACTED] and [REDACTED] percent, respectively.

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<sup>69</sup> I define Wedding Central viewers' share of network viewership as the percentage of network viewership that was accounted for by households that watched Wedding Central for at least an hour in April 2010.

<sup>70</sup> I define GSN viewers' share of network viewership as the percentage of network viewership that was accounted for by households that watched GSN for at least an hour in April 2010.

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81. To assess the magnitudes of the WE tv, Wedding Central, and GSN viewers' shares of network viewership, I calculate comparable measures for pairs of networks that offer apparently similar types of programming. These network pairs include: CNN – Fox News, MTV – VH1, Nickelodeon – Disney, ESPN – ESPN2, and TNT – USA. Tables D1 through D10 in CV Exh. 232, Appendix D show the network viewership shares accounted for by the viewers of these networks. Some highlights of the results include the following.<sup>71</sup>

- MSNBC and Fox News ranked [REDACTED] and [REDACTED] in terms of CNN viewers' share of network viewership: CNN viewers accounted for [REDACTED] percent of MSNBC viewership and [REDACTED] percent of Fox News viewership in April 2010.
- CNBC and CNN ranked [REDACTED] and [REDACTED] in terms of Fox News viewers' share of network viewership: Fox News viewers accounted for [REDACTED] percent of CNBC viewership and [REDACTED] percent of CNN viewership in April 2010.
- VH1 ranked [REDACTED] in terms of MTV viewers' share of network viewership: MTV viewers accounted for [REDACTED] percent of VH1 viewership in April 2010.
- BET and MTV ranked [REDACTED] and [REDACTED] in terms of VH1 viewers' share of network viewership: VH1 viewers accounted for [REDACTED] percent of BET viewership and [REDACTED] percent of MTV viewership in April 2010.
- Teen Nick and Disney ranked [REDACTED] and [REDACTED] in terms of Nickelodeon viewers' share of network viewership: Nickelodeon viewers accounted for [REDACTED] percent of Teen Nick viewership and [REDACTED] percent of Disney viewership in April 2010.

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<sup>71</sup> A network viewer is defined as a household that watched a network for at least one hour in April 2010.

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- Teen Nick and Nickelodeon ranked [REDACTED] and [REDACTED] in terms of Disney viewers' share of network viewership: Disney viewers accounted for [REDACTED] percent of Teen Nick viewership and [REDACTED] percent of Nickelodeon viewership in April 2010.
- ESPNNews and ESPN2 ranked [REDACTED] and [REDACTED] in terms of ESPN viewers' share of network viewership: ESPN viewers accounted for [REDACTED] percent of ESPNNews viewership and [REDACTED] percent of ESPN2 viewership in April 2010.
- ESPNNews and ESPN ranked [REDACTED] and [REDACTED] in terms of ESPN2 viewers' share of network viewership: ESPN2 viewers accounted for [REDACTED] percent of ESPNNews viewership and [REDACTED] percent of ESPN viewership in April 2010.
- NBA TV and USA ranked [REDACTED] and [REDACTED] in terms of TNT viewers' share of network viewership: TNT viewers accounted for [REDACTED] percent of NBA TV viewership and [REDACTED] percent of USA viewership in April 2010.<sup>72</sup>
- Sleuth and TNT ranked [REDACTED] and [REDACTED] in terms of USA viewers' share of network viewership: USA viewers accounted for [REDACTED] percent of Sleuth viewership and [REDACTED] percent of TNT viewership in April 2010.

These results are in stark contrast to the WE tv – GSN and Wedding Central – GSN viewer audience overlaps.

- GSN ranked [REDACTED] in terms of WE tv viewers' share of network viewership: WE tv viewers accounted for [REDACTED] percent of GSN's viewership in April 2010. WE tv

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<sup>72</sup> TNT and NBA TV both carried live NBA games and related content.

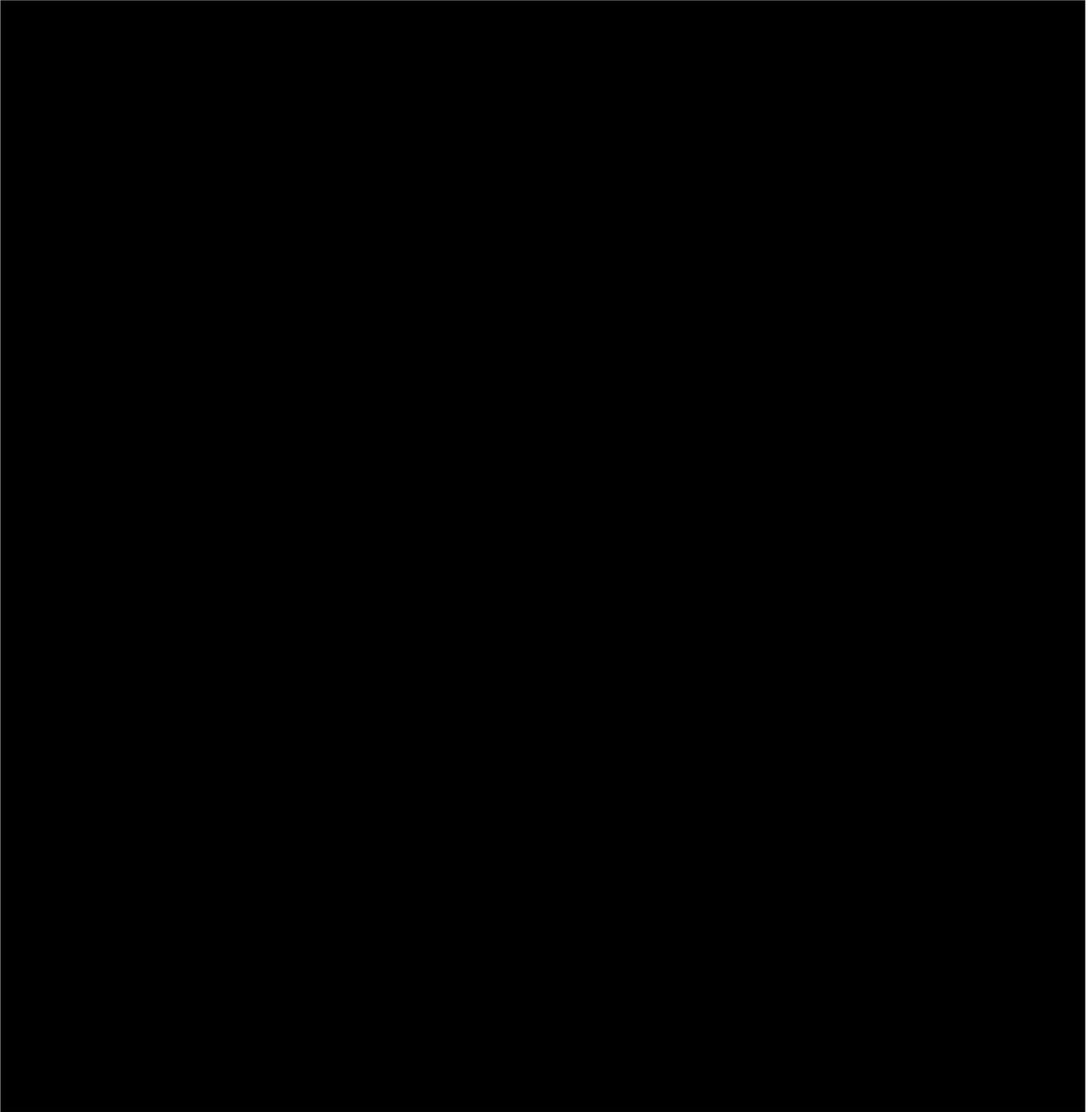
ranked [REDACTED] in terms of GSN viewers' share of network viewership: GSN viewers accounted for [REDACTED] percent of WE tv's viewership in April 2010.

- GSN ranked [REDACTED] in terms of Wedding Central viewers' share of network viewership: Wedding Central viewers accounted for [REDACTED] percent of GSN's viewership in April 2010. Wedding Central tv ranked [REDACTED] in terms of GSN viewers' share of network viewership: GSN viewers accounted for [REDACTED] percent of Wedding Central's viewership in April 2010.

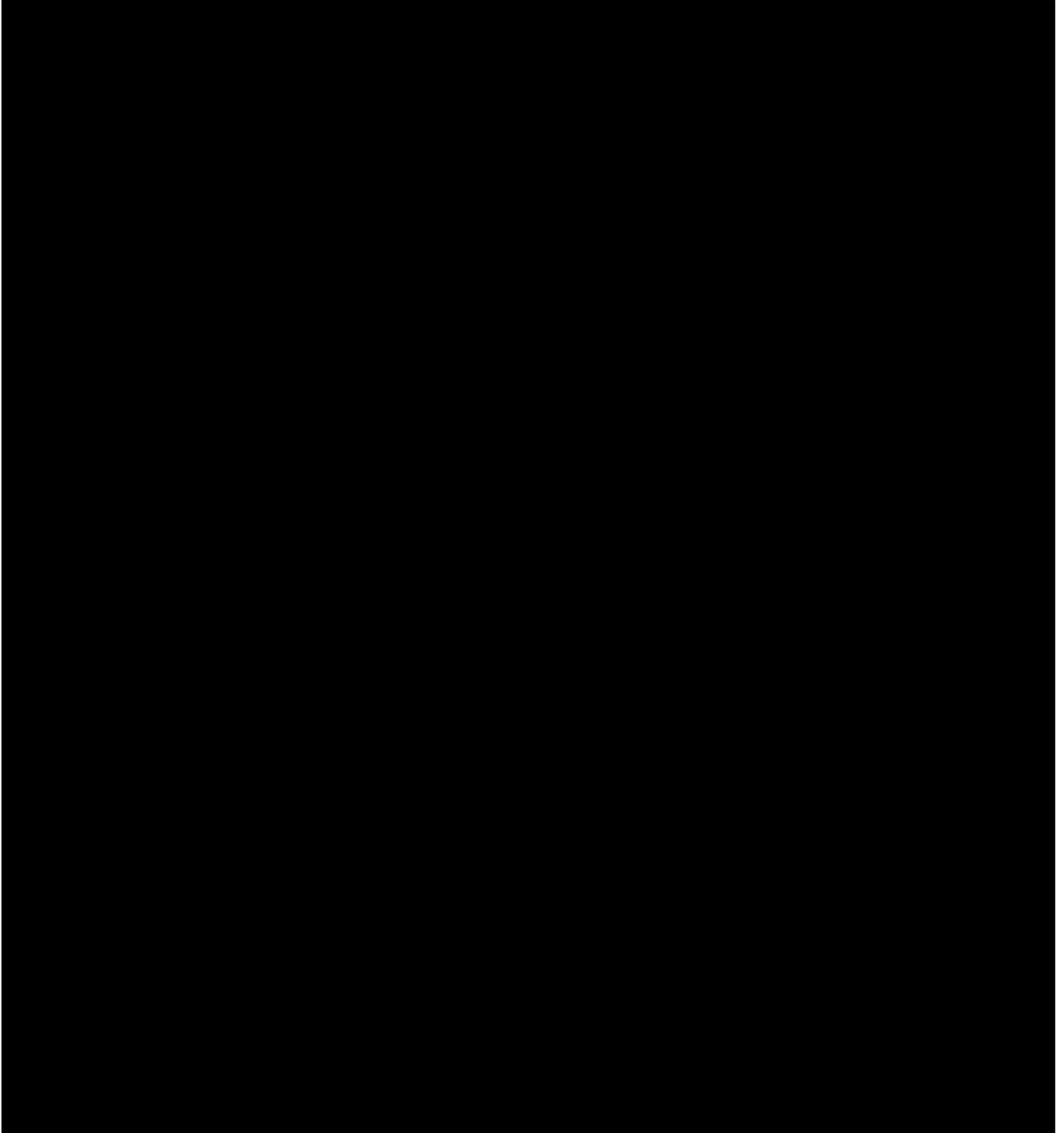
82. As my analysis demonstrates, the viewer audience overlap measures between WE tv and GSN are very small relative to the viewer audience overlap measures between benchmark networks that show similar types of programming. Viewer overlap measures between Wedding Central and GSN are likewise very small. Based on the foregoing discussion, I find that there was relatively little viewer audience overlap between WE tv and GSN (and also relatively little viewer audience overlap between Wedding Central and GSN) prior to GSN's retiering. Therefore, the viewer audience overlap analysis further supports my finding of no significant competition for viewership between WE tv and GSN (and between Wedding Central and GSN) prior to GSN's retiering.

[REDACTED]

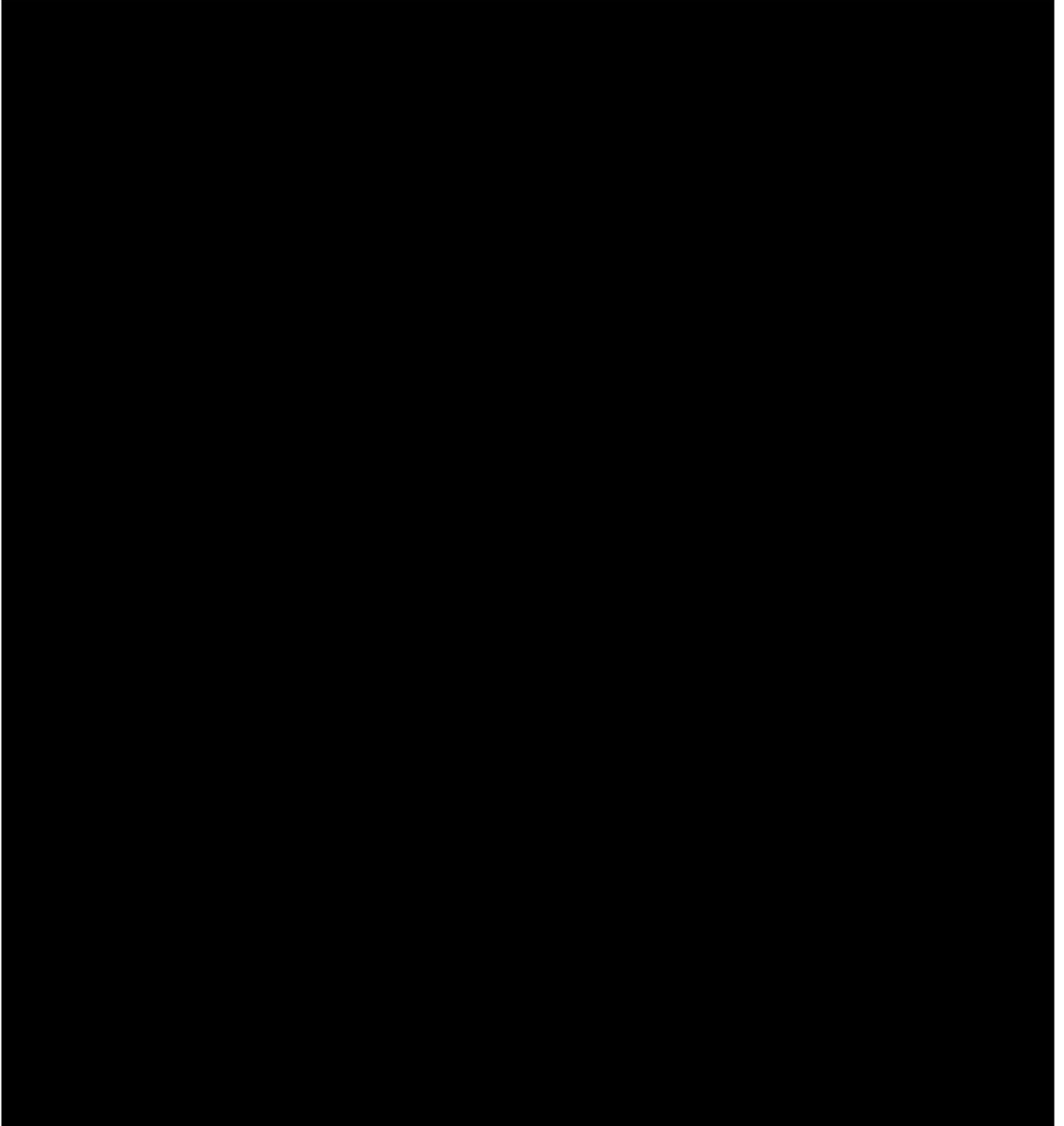
**Table 10. Network Viewership Share by WE tv Household Viewership**



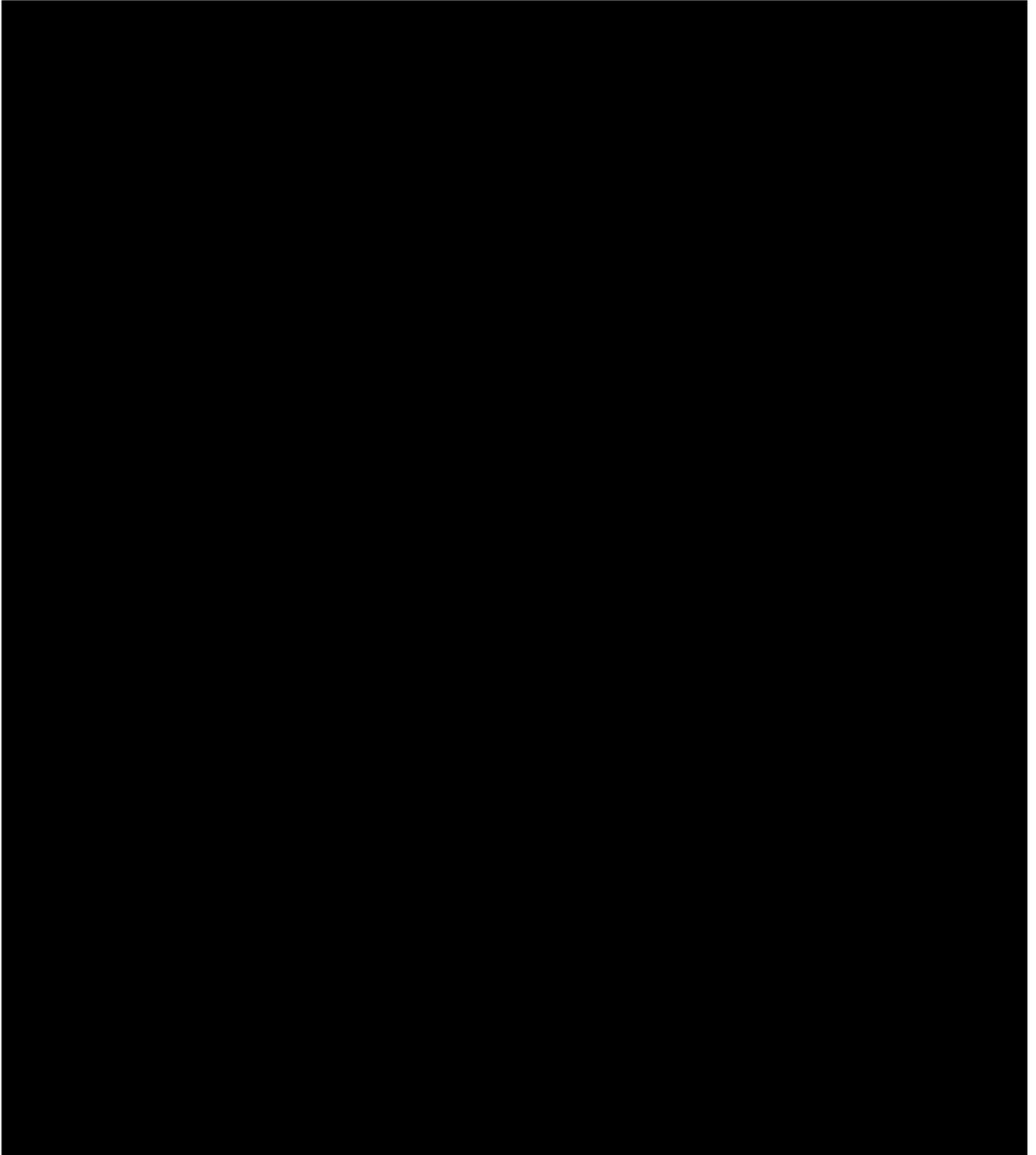
**Table 11. Network Viewership Share by Wedding Central Household Viewership**



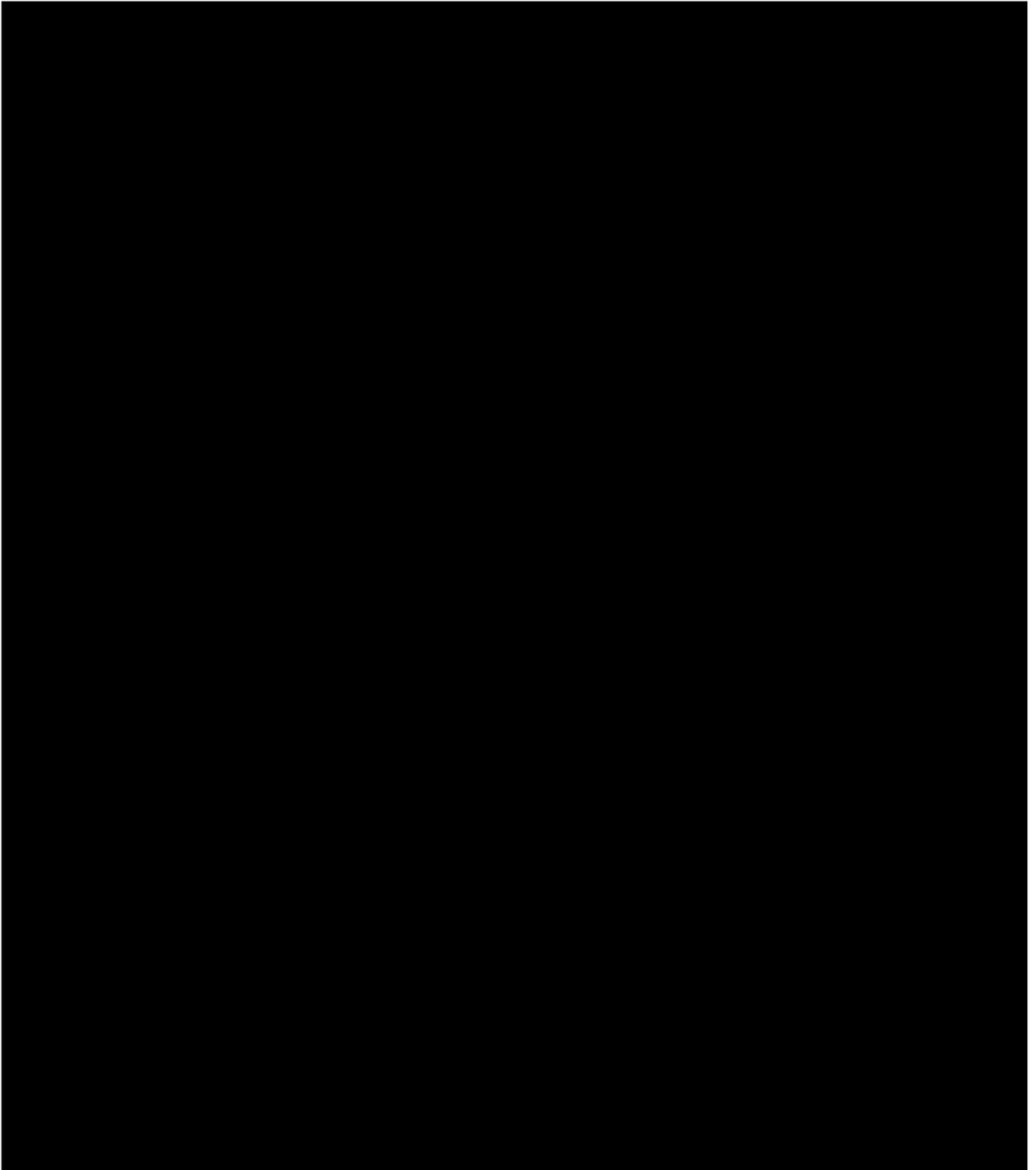
**Table 12. Network Viewership Share by GSN Household Viewership**



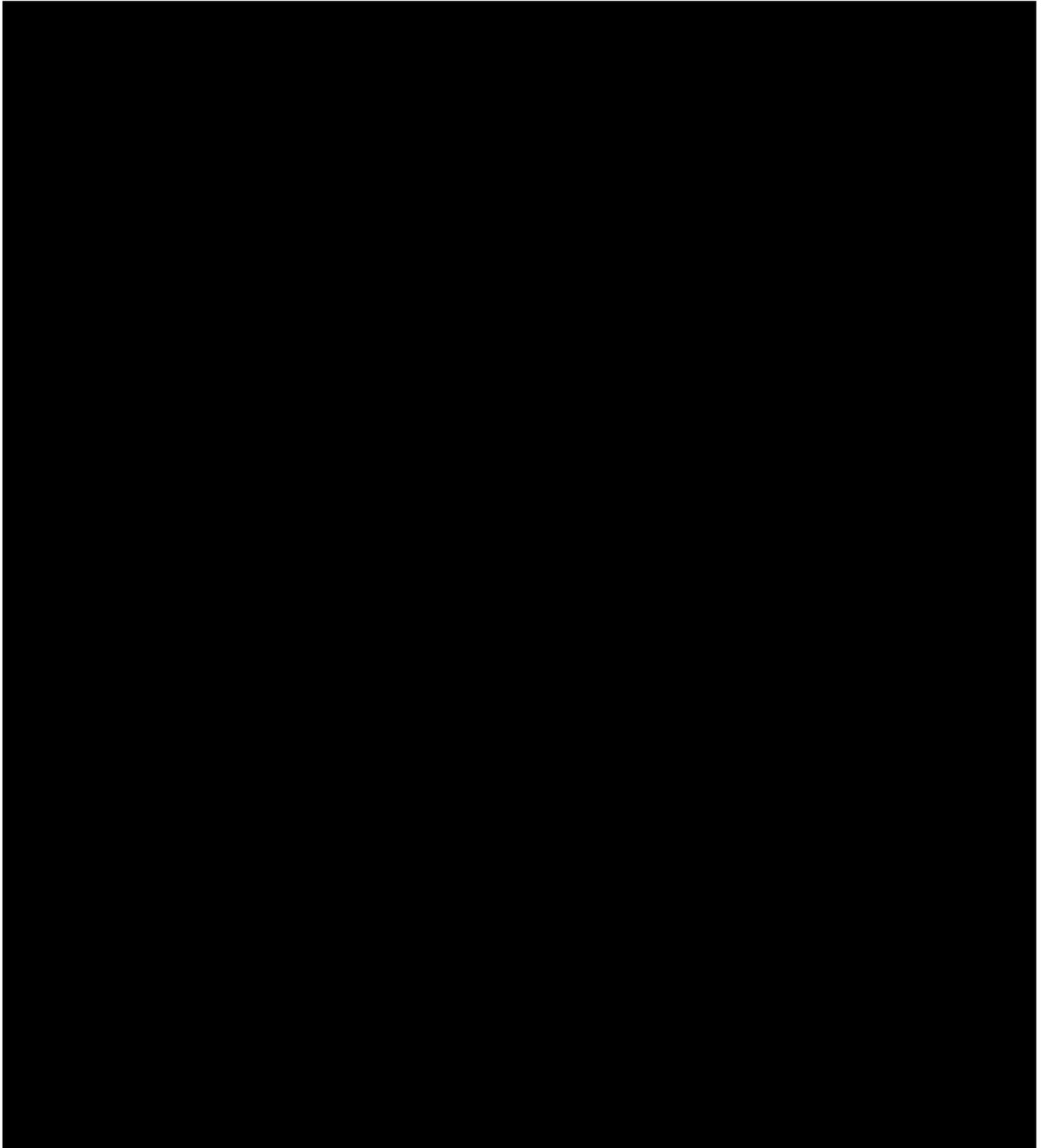
**Table 13. WE tv Viewer Network Share (April 2010)**



**Table 14. Wedding Central Viewer Network Share (April 2010)**



**Table 15. GSN Viewer Network Share (April 2010)**



■

Cablevision and GSN Documents Do Not Indicate Significant Competition Between GSN and WE tv/Wedding Central

83. My review of documents from GSN and Cablevision indicates no significant competition between either WE tv and GSN or between Wedding Central and GSN.

[REDACTED]

84. [REDACTED]

<sup>73</sup> [REDACTED]

<sup>74</sup> For example, see GSN\_CVC\_00002998-3009, at 3002, 3006.

<sup>75</sup> GSN\_CVC\_00016867-91, at 71.

[REDACTED]

Dr. Singer Offers No Reliable Evidence of Competition for Viewers Between GSN and WE tv/Wedding Central

85. Dr. Singer claims that his analysis indicates that WE tv and GSN are “similarly situated from the perspective of consumers.”<sup>78</sup> Dr. Singer argues that viewers perceive WE tv and GSN as “similarly situated” because GSN carries a significant amount of “relationship-based programming.”<sup>79</sup> There are three major problems with this argument.

- *First*, determining whether or not a given program can be considered “relationship-based programming” is not economic analysis. Indeed, I am not aware what particular

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<sup>76</sup> See [REDACTED]

<sup>77</sup> [REDACTED]

<sup>78</sup> Singer Report ¶ 29.

<sup>79</sup> Singer Report ¶¶ 29-31.

economic expertise Dr. Singer is bringing to bear on his classification that certain programs are “relationship-based.”<sup>80</sup>

- *Second*, Dr. Singer has no basis for reaching any conclusions about what the viewers “perceive.” Dr. Singer does not present any evidence that sheds light on how viewers *perceive* WE tv and GSN. He presents no survey results or viewer testimonials about whether viewers perceive programming on WE tv to be similar to programming on GSN.<sup>81</sup>
- *Third*, even assuming that GSN and WE tv both carry what some viewers perceive as “relationship-based programming,” the viewers may not consider the programs on GSN and WE tv to be close alternatives or economic substitutes. Dr. Singer’s discussion of “relationship-based programming” actually has nothing to say about whether viewers consider the programs on GSN and WE tv to be economic substitutes.

86. Dr. Singer also argues that viewer audience overlap between GSN and WE tv suggests that viewers “perceive GSN and WE tv as competitive alternatives.”<sup>82</sup> As I explain above, this argument is a fallacy. Just because some viewers watch two different networks does not mean that the viewers consider the two networks to be close alternatives. For example, the [REDACTED] and [REDACTED] both have a high share of male

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<sup>80</sup> I understand that Cablevision’s programming expert, Michael Egan, refutes Dr. Singer’s characterization of the programming of GSN and WE tv as similar.

<sup>81</sup> I understand that Cablevision’s survey expert, Hal Poret, has conducted a survey that confirms that viewers familiar with GSN and WE tv view the two as carrying different types of programming content.

<sup>82</sup> Singer Report ¶ 32.

viewership.<sup>83</sup> But the fact that the two networks skew male in their viewership and may have some overlapping viewer audience does not in any way imply that the viewers consider watching the [REDACTED] to be a close substitute to watching [REDACTED]. Therefore, Dr. Singer's viewer audience overlap analysis does not in fact show that viewers consider WE tv and GSN to be close alternatives.<sup>84</sup>

87. Moreover, Dr. Singer's analysis of viewer audience overlap is flawed. Dr. Singer's viewer audience overlap analysis uses the Nielsen audience duplication reports for the fourth quarter of 2010.<sup>85</sup> In reaching his conclusion that there is a relatively high degree of viewer audience overlap between WE tv and GSN, Dr. Singer relies on a particular measure of viewer audience overlap referred to as "both duplication."<sup>86</sup> [REDACTED]

[REDACTED]

[REDACTED]<sup>87</sup> There is no compelling reason why the both duplication measure would be at all relevant to assessing the degree of competition between networks. Both duplication does not measure the percentage of WE tv viewers who also watch GSN; nor does it measure the percentage of GSN viewers who also watch WE tv. Both duplication between WE tv and GSN does not measure the competition

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<sup>83</sup> See CV Exh. 232, Appendix E.

<sup>84</sup> It is worth noting that Dr. Singer explains that "a reasonable approximation" for assessing whether WE tv and GSN are "economic substitutes" is "an analysis of where GSN viewers turn after watching GSN." (Singer Report ¶ 32.) However, Dr. Singer does not perform such an analysis. In fact, this is the question addressed by my switching analysis that I discuss above. Dr. Singer's highly flawed viewer overlap analysis does not assess "where GSN viewers turn after watching GSN."

<sup>85</sup> I examine the same data in my viewer audience overlap analysis.

<sup>86</sup> Dr. Singer examines "both duplication" measures for total day and prime-time viewership. (Singer Report ¶¶ 33-34.)

<sup>87</sup> Singer Report ¶ 33.

for viewers that WE tv faces from GSN.<sup>88</sup> There does not seem to be a clear intuition for what both duplication measures. Dr. Singer does not provide a clear explanation for why both duplication is an appropriate measure of viewer audience overlap for assessing competition between networks.

88. Dr. Singer finds that in the fourth quarter of 2010 for persons 18 or older the GSN - WE tv both duplication percentages were [REDACTED] percent for total day and [REDACTED] percent for prime-time.<sup>89</sup> These numbers indicate, based on Dr. Singer's data, that WE tv ranked [REDACTED] in terms of total day both duplication with GSN and [REDACTED] in terms of prime time both duplication with GSN (for people 18 years and older in the fourth quarter of 2010). However, alternative measures of viewer audience overlap provide additional perspective and show that there is relatively small viewer audience overlap between WE tv and GSN. My analysis of the Nielsen audience duplication reports for Q4 2010 (total day viewing) yields the following results.<sup>90</sup>

- GSN's primary duplication rank from the perspective of WE tv (i.e., the percentage of WE tv viewers who also watched GSN in the fourth quarter of 2010):
  - [REDACTED] out of 96 for the persons 18+ demographic.

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<sup>88</sup> If one assumes, *arguendo*, that the WE tv – GSN overlap or “duplication” viewers represent the set of viewers for which WE tv and GSN are competing, the relevant measure of competition facing WE tv from GSN is the overlap viewers' share of total WE tv viewers. “Both duplication” provides a completely different measure and is an inaccurate gauge of competition facing WE tv.

<sup>89</sup> Singer Report ¶ 33.

<sup>90</sup> [REDACTED]

**REDACTED – FOR PUBLIC INSPECTION**

- [REDACTED] **out of 96** for the female 18+ demographic.
- [REDACTED] **out of 96** for the persons 25-54 demographic.
- [REDACTED] **out of 96** for the female 25-54 demographic.
- GSN's secondary duplication rank from the perspective of WE tv (i.e., the percentage of the other (secondary) network's viewers who also watched WE tv in the fourth quarter of 2010):
  - [REDACTED] **out of 96** for the persons 18+ demographic.
  - [REDACTED] **out of 96** for the female 18+ demographic.
  - [REDACTED] **out of 96** for the persons 25-54 demographic.
  - [REDACTED] **out of 96** for the female 25-54 demographic.
- GSN's both duplication rank from the perspective of WE tv:
  - [REDACTED] **out of 96** for the persons 18+ demographic.
  - [REDACTED] **out of 96** for the female 18+ demographic.
  - [REDACTED] **out of 96** for the persons 25-54 demographic.
  - [REDACTED] **out of 96** for the female 25-54 demographic.
- WE tv's primary duplication rank from the perspective of GSN (i.e., the percentage of GSN viewers who also watched WE tv in the fourth quarter of 2010):
  - [REDACTED] **out of 96** for the persons 18+ demographic.
  - [REDACTED] **out of 96** for the female 18+ demographic.
  - [REDACTED] **out of 96** for the persons 25-54 demographic.
  - [REDACTED] **out of 96** for the female 25-54 demographic.
- WE tv's secondary duplication rank from the perspective of GSN (i.e., the percentage of the other (secondary) network's viewers who also watched GSN in the fourth quarter of 2010):
  - [REDACTED] **out of 96** for the persons 18+ demographic.
  - [REDACTED] **out of 96** for the female 18+ demographic.
  - [REDACTED] **out of 96** for the persons 25-54 demographic.
  - [REDACTED] **out of 96** for the female 25-54 demographic.
- WE tv's both duplication rank from the perspective of GSN:
  - [REDACTED] **out of 96** for the persons 18+ demographic.

- [REDACTED] out of 96 for the female 18+ demographic.
- [REDACTED] out of 96 for the persons 25-54 demographic.
- [REDACTED] out of 96 for the female 25-54 demographic.

89.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

90.

[REDACTED]

[REDACTED]

Further, as I discuss earlier, the Nielsen duplication report data should be viewed with caution because these reports apply a relatively low threshold for what constitutes viewership of a

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<sup>91</sup> [REDACTED]

<sup>92</sup> The same critique applies to the viewer audience duplication analysis presented by Mr. Brooks in his report.

network. As I already noted above, the Nielsen duplication reports that I analyze consider viewers as having watched a network if the viewer watched that network for at least six minutes during the period examined by the report. Thus, the Nielsen duplication reports provide a very weak measure of viewer audience overlap. [REDACTED]

[REDACTED]

[REDACTED]

91. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

92. Dr. Singer also examines viewer audience overlap for seven GSN programs: *Baggage*, *The Newlywed Game*, *Love Triangle*, *Deal or No Deal*, *Family Feud*, *Match Game*, and *Catch 21*.<sup>94</sup> Dr. Singer’s analysis of the viewer audience overlap for the seven GSN programs suffers an additional methodological flaw (besides those already identified above) in that Dr. Singer limits his audience duplication analysis to only 16 networks. That is, Dr. Singer examines viewer audience duplication between the seven GSN programs and only 16

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<sup>93</sup> [REDACTED]

<sup>94</sup> Singer Report ¶ 33.

other networks (and only 15 for his analysis of 2010 data).<sup>95</sup> In contrast, Dr. Singer’s analysis of overall GSN viewer audience duplication examined 85 networks besides GSN.<sup>96</sup> Thus, Dr. Singer excludes dozens of networks from his analysis of viewer overlap with these seven programs. WE tv’s duplication rank with respect to these programs would likely be lower if all the networks were included. Furthermore, Dr. Singer’s audience duplication analysis of the seven GSN programs considers viewership over a two-quarter period (in contrast to the one quarter period for his analysis of overall GSN viewership). Examining viewer audience duplication over a two-quarter period further weakens the standard for what constitutes viewership overlap.<sup>97</sup> Finally, confining the analysis of viewer audience overlap to a subset of programs shown on a network (rather than analyzing the networks’ overall viewership) may yield a biased assessment of the network’s audience and further diminishes the value of an already weak test of competition for viewers between networks.

93. In sum, Dr. Singer’s viewership overlap analysis is unreliable and by no means indicates that WE tv and GSN competed for viewers in any significant way.

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<sup>95</sup> Singer Report ¶ 37.

<sup>96</sup> Singer Report ¶ 33.

<sup>97</sup> I understand that the Nielsen duplication report data that Dr. Singer uses in his analysis of the seven GSN programs count instances of viewer “duplication” (or overlap) where a viewer watched a GSN program for at least six minutes over a six-month period and watched another networks for at least six minutes over the same six-month period. Such a test is an extremely low standard for what constitutes viewership overlap.

**B. There Is No Significant Competition for Advertisers between GSN and WE tv<sup>98</sup>**

94. If GSN and WE tv competed significantly for advertisers, advertisers would view the two networks as substitutes and reducing the supply of advertising on GSN would increase the demand for advertising on WE tv. Such significant competition between WE tv and GSN for advertisers would also likely be reflected in WE tv's advertising rates, which would be significantly constrained by GSN's advertising rates, and vice versa. The degree to which WE tv's advertising rates face a pricing constraint from GSN may be relevant to assessing Cablevision's incentives to discriminate against GSN. If WE tv's advertising faced a significant pricing constraint from GSN, then restraining GSN's ability to provide advertising services may benefit WE tv by enabling WE tv to charge higher advertising rates. For this reason, I analyze competition for advertisers between WE tv and GSN from the perspective of constraints facing WE tv's advertising prices.<sup>99</sup> The analyses I present show an absence of any significant competition for advertisers between WE tv and GSN, from an economic perspective. Below, I describe my analyses and the foundations for my conclusion regarding competition for advertisers between WE tv and GSN.

Significant Differences in Viewer Demographics Between WE tv and GSN Are Inconsistent with Significant Competition for Advertisers Between the Two Networks

95. A key feature of competition between networks for advertisers is the degree to which networks have similar viewer demographics. Companies that look to reach a

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<sup>98</sup> As neither Dr. Singer nor Mr. Brooks presents any evidence of competition for advertising customers between GSN and Wedding Central, I focus my discussion in this section on WE tv and GSN.

<sup>99</sup> Nonetheless, I reach similar conclusions if I analyze competition for advertising from the perspective of constraints facing GSN's advertising pricing.

certain audience demographic are likely to view networks with very similar viewer demographics as close substitutes for their advertising expenditures. Likewise, such advertisers are likely to view networks with dissimilar viewer demographics as not particularly close substitutes. The degree to which advertisers view networks as substitutes for advertising expenditures is an indicator of competition for advertisers between the networks. My analysis shows WE tv and GSN are quite dissimilar in their viewer demographics. The significant differences in viewer demographics between WE tv and GSN suggest that advertisers are unlikely to view the two networks as close substitutes for advertising expenditures. Consequently, the differences in viewer demographics indicate an absence of significant competition for advertisers between WE tv and GSN.

96. I analyze network viewer demographics using the Nielsen full-day national network market breaks data for the fourth quarter of 2010 (the last full quarter prior to GSN's retiering).<sup>100</sup> The Nielsen dataset breaks down the viewership of national cable networks by viewer demographics, such as age, gender, occupation type, education level, race, labor force participation, type of residence, and residence location. I use this dataset to calculate, for each demographic group and network, the percentage of the network's total viewership that the demographic group represents. I analyze these statistics to measure the differences in networks' viewer demographics.

97. Table 16 below compares the viewer demographics statistics for WE tv and GSN. The analysis only considers viewership by persons who are at least 18 years old. Table 16 indicates that in the fourth quarter of 2010 there were significant differences in viewer

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<sup>100</sup> Nielsen Total Day Marketbreaks 4Q 2010 (9/10/2010 – 12/26/2010, Live+SD, all cable networks) (“TDMarketbreaks\_4QTR10\_All\_Cable.xls”).

demographics between WE tv and GSN. [REDACTED]

[REDACTED]

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<sup>101</sup> [REDACTED]

<sup>102</sup> I measure the female viewership share as the female viewers' share of total network viewership.

<sup>103</sup> [REDACTED]

98.

[REDACTED]

99.

[REDACTED]

100.

[REDACTED]

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104 [REDACTED]

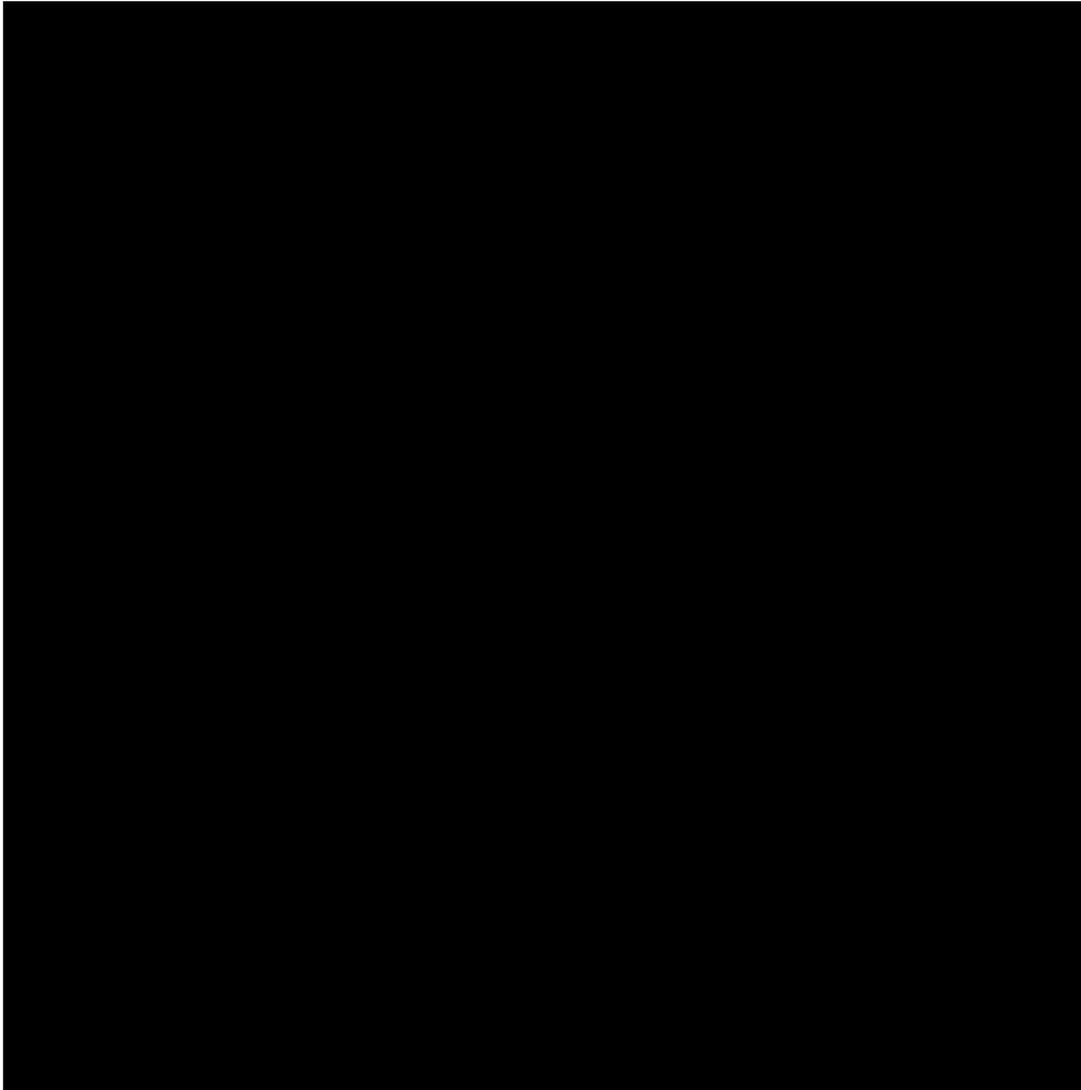
[REDACTED]

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105 [REDACTED]

106 [REDACTED]

**Table 16. Viewer Demographics Q4 2010: WE tv, GSN (Total Day)\***



101.

[REDACTED]

These differences in viewer demographics between WE tv and GSN highlighted by my analysis indicate that these two networks appeal to different viewer audiences and thus different advertisers.

102. Another useful way to examine networks' viewer demographics is by depicting networks in a scatter plot that shows two demographic attributes at the same time. I present such scatter plots in Figures E20 through E29 in CV Exh. 232, Appendix E. [REDACTED]

[REDACTED] <sup>107</sup>

103. The distances between networks depicted in the two-dimensional scatter plots can be extended to multiple dimensions of viewer demographic attributes. That is, one can calculate distances between networks in viewer demographics based on multiple viewer demographic attributes. I calculate such distances between networks' viewer demographics by applying the method used by Dr. Singer in his report to make similar calculations.<sup>108</sup> This method uses the Mahalanobis distance to calculate the differences between networks' viewer demographics for any given set of viewer demographic attributes. I calculate the Mahalanobis distance between networks based on the following ten viewer demographic attributes: (1) viewer median age; (2) female share of viewership; (3) median viewer income; (4) viewer household home ownership share; (5) viewer head of household white collar occupation share; (6) viewer head of household not in labor force share; (7) viewer head of household with at least four years of college share; (8) share of viewers who reside in counties of size A; (9) share of viewership by viewer households with at least three people; and (10) viewer head of household white share. I chose these attributes to cover a wide range of viewer demographic statistics that may be applied

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<sup>107</sup> [REDACTED]

<sup>108</sup> Singer Report ¶¶ 43- 45.

to cable networks.<sup>109</sup> Tables 17 and 18 below show the Mahalanobis distances for viewer demographics from WE tv and GSN, respectively. [REDACTED]

[REDACTED]

104. [REDACTED]

[REDACTED]

110 [REDACTED]

[REDACTED]

<sup>109</sup> The results of my analysis do not significantly change when I calculate distances for alternative sets of viewer demographic attributes.

<sup>110</sup> [REDACTED]

105. My analysis also shows that benchmark network pairs are relatively close to each other in terms of the Mahalanobis distance (based on the same 10 viewer demographic attributes), as one would expect:

- The Mahalanobis distance between CNN and Fox News was [REDACTED]. CNN ranked [REDACTED] in distance from Fox News, and Fox News ranked [REDACTED] in distance from CNN.
- The Mahalanobis distance between VH1 and MTV was [REDACTED]. VH1 ranked [REDACTED] in distance from MTV, and MTV ranked [REDACTED] in distance from VH1.
- The Mahalanobis distance between Nickelodeon and Disney was [REDACTED]. Disney ranked [REDACTED] in distance from Nickelodeon, and Nickelodeon ranked [REDACTED] in distance from Disney.
- The Mahalanobis distance between ESPN and ESPN2 was [REDACTED]. ESPN2 ranked [REDACTED] in distance from ESPN, and ESPN ranked [REDACTED] in distance from ESPN2.
- The Mahalanobis distance between TNT and USA was [REDACTED]. TNT ranked [REDACTED] in distance from USA, and USA ranked [REDACTED] in distance from TNT.
- In contrast, the Mahalanobis distance between WE tv and GSN was [REDACTED]. GSN ranked [REDACTED] in distance from WE tv, and WE tv ranked [REDACTED] in distance from GSN.

106. [REDACTED]

[REDACTED]

[REDACTED] These results corroborate my overall finding of significant differences between WE tv and GSN in terms of viewer demographics. The

relatively large differences in viewer demographics between WE tv and GSN further indicate that WE tv and GSN did not likely compete for advertisers in a significant way prior to GSN's retiering.

107. Dr. Singer also calculates the Mahalanobis distance between WE tv's and GSN's viewer demographics.<sup>111</sup> Dr. Singer finds that WE tv ranked [REDACTED] in terms of viewer demographic distance from GSN.<sup>112</sup> In contrast, my analysis shows that WE tv ranked [REDACTED] in terms of distance from GSN. There are several reasons for the differences between our results. Dr. Singer considers only 38 networks out of 95 networks for which demographic data are available in the fourth quarter of 2011.<sup>113</sup> My analysis examines the demographics for all 95 networks. Many of the networks excluded from Dr. Singer's demographic distance analysis are the very networks that my analysis shows are closer to GSN in terms of viewer demographics than WE tv. Such networks include: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thus, Dr. Singer's limiting his distance analysis to the 38 networks causes WE tv and GSN to appear much closer to each other in terms of viewer demographics than they really are.

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<sup>111</sup> Singer Report ¶¶ 41 - 45.

<sup>112</sup> Singer Report ¶¶ 45.

<sup>113</sup> See "GSN\_CVC\_00154869 - HIGHLY CONFIDENTIAL.xlsx."

108. Another reason for the difference between Dr. Singer's and my viewer demographic distance results is Dr. Singer's treatment of viewer age. Dr. Singer does not consider viewer age in his distance calculations, but instead looks at a combination of head of household age and size of household. Head of household age is not the same as viewer age. As Dr. Singer himself suggests, advertisers are likely to focus on specific age/gender groups in choosing networks for their advertisements.<sup>114</sup> It is therefore puzzling why Dr. Singer would exclude viewer age from the Mahalanobis distance calculations. Moreover, Dr. Singer's analysis does not even consider head of household age as a standalone demographic attribute but instead combines it with household size. This has the effect of further reducing the effect of viewer age in the comparison of viewer demographics. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

109. Dr. Singer also excludes other relevant demographic attributes from his distance calculations. Such demographic attributes include viewer household home ownership share, median viewer income, viewer head of household not in labor force share, and the share of viewers who reside in urban (or rural) counties. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>114</sup> Singer Report ¶ 41.

110. Finally, Dr. Singer’s analysis ranks networks in terms of demographic distance from GSN rather than from WE tv. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

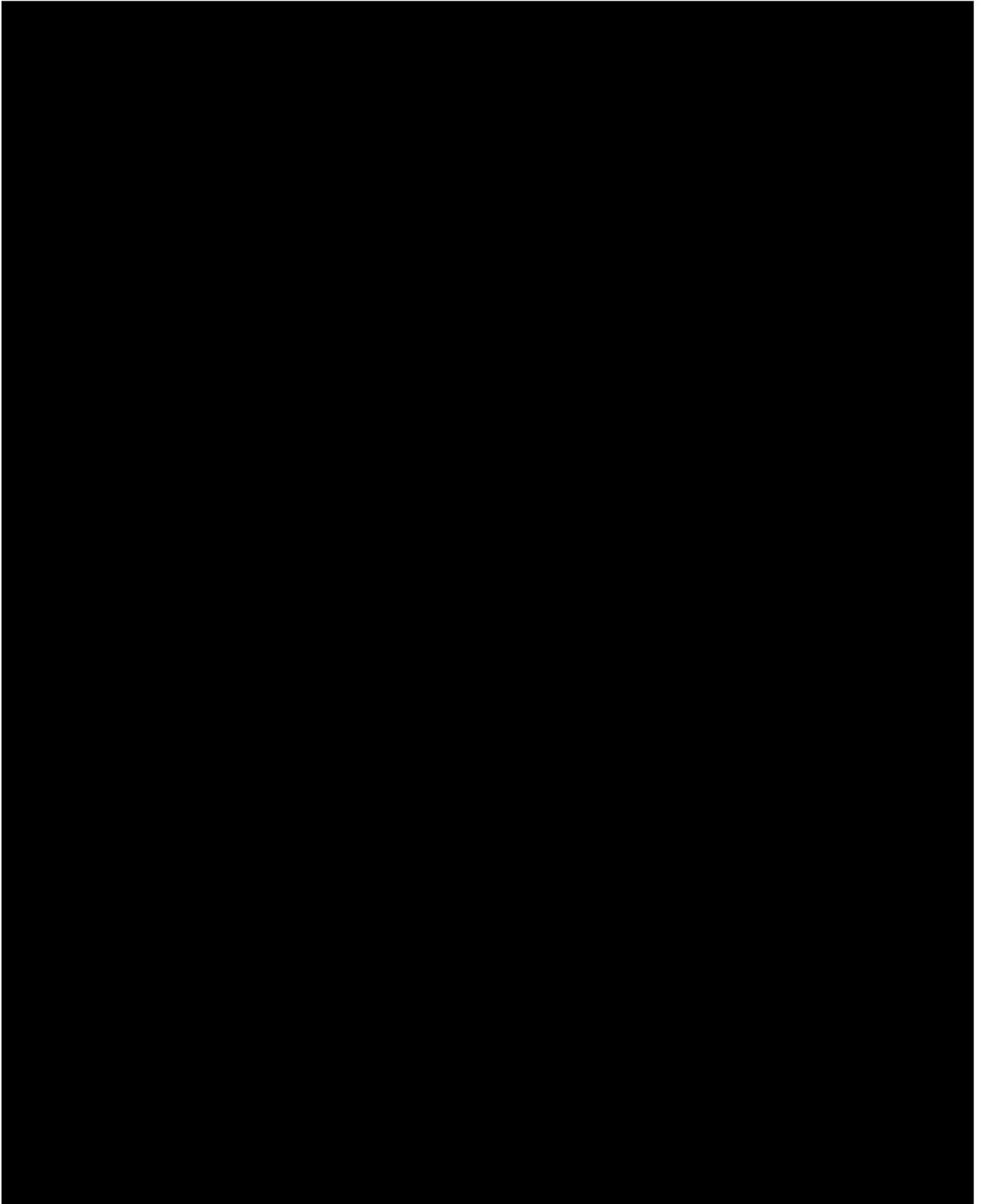
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Table 17. Viewer Demographic Mahalanobis Distance from WE tv**



**Table 18. Viewer Demographic Mahalanobis Distance from GSN**

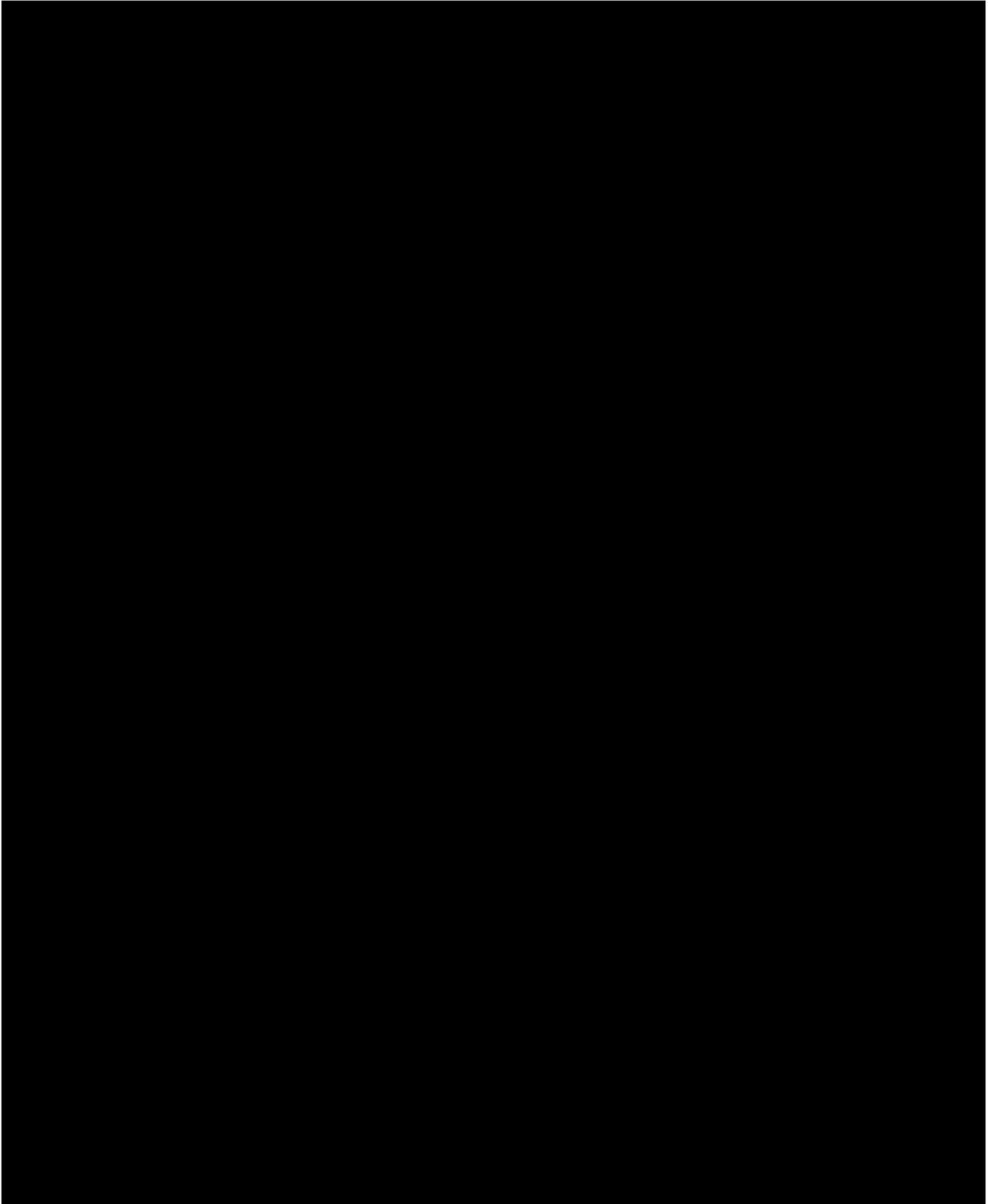






Table 19. Average CPM - Basic Cable Networks (2010)

A large, solid black rectangular redaction box covers the entire area where the table data would be located, obscuring all content from the caption down to the footer.

WE tv's Advertising Rates Constrained by Networks Other than GSN

112. Another important factor to consider in analyzing potential competition for advertisers between WE tv and GSN is whether WE tv and GSN face significant competition from other networks. If WE tv's advertising rates are already effectively constrained by networks other than GSN, GSN's presence would have an insignificant effect on the overall level of competition for advertisers facing WE tv. WE tv's advertising rates may face a significant pricing constraint from GSN if there is a sufficiently large population of advertisers who are looking to target WE tv viewers with their advertising messages *and* if there are also very few economic alternatives to reaching these viewers other than through advertising on GSN. The analysis that I present above shows that there was relatively little viewer audience overlap between WE tv and GSN. Therefore, by advertising on WE tv and GSN, advertisers largely reached different audiences.<sup>118</sup> For this reason, among others, advertisers were unlikely to have viewed advertising on GSN as a substitute for advertising on WE tv.<sup>119</sup> The absence of significant economic substitutability between WE tv and GSN advertising implies that WE tv's advertising rates were unlikely to have been constrained by GSN's advertising.<sup>120</sup>

113. The analysis I present above shows why advertising on GSN was unlikely to have been an effective substitute for reaching WE tv viewers compared with advertising

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<sup>118</sup> See *supra*, ¶¶ 70-82.

<sup>119</sup> Because of the limited viewer audience overlap between WE tv and GSN, an increase in GSN advertising rates is unlikely to increase the marginal value of advertising on WE tv. Whether or not a particular company advertises on GSN is unlikely to affect the value to that company of advertising on WE tv.

<sup>120</sup> I assume that advertisers do not generally face binding budget constraints.

directly on WE tv. [REDACTED]

[REDACTED] Thus, advertising on GSN was unlikely to have been an effective means of reaching a large share of WE tv viewers.

114. [REDACTED]

[REDACTED]<sup>122</sup>

115. Although it is useful to consider advertisers' options for reaching WE tv viewers, advertisers are likely to target a wider audience of viewers, which may include both WE tv and GSN viewers. Advertisers may consider a broad set of networks for reaching the target viewers. Such networks may include WE tv, GSN, and many other networks. [REDACTED]

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<sup>121</sup> See Table 10.

<sup>122</sup> It is also important to note that certain advertisers may also view print, radio, direct mail, online, product placement, event sponsorship, naming rights, and other media as substitutes for advertising on television. If these additional advertising options are reasonable substitutes for advertising expenditures, it is even more unlikely that GSN did, or could reasonably have, a significant effect on the prices or quantities of advertising purchased on WE tv.

[REDACTED]

[REDACTED]<sup>123</sup> WE tv's and GSN's small shares of total industry advertising suggest that GSN's advertising is unlikely to provide a significant constraint on WE tv's advertising rates. Given all of these facts, it is unlikely that WE tv and GSN competed for advertisers in any significant way prior to GSN's retiring by Cablevision.

WE tv Documents Indicate Absence of Significant Competition for Advertisers Between GSN and WE tv

116. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>124</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>125</sup> [REDACTED]

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<sup>123</sup> Source: SNL Kagan data.

<sup>124</sup> [REDACTED]

<sup>125</sup> Declaration of Carole Smith ¶ 3 (footnote omitted).

Dr. Singer’s Advertiser Overlap Analysis Offers No Reliable Evidence of Significant Competition for Advertisers Between WE tv and GSN

117. Dr. Singer also claims that his analysis demonstrates that “a significant percentage of WE tv’s largest advertising customers overlap with GSN’s advertising customers.”<sup>126</sup> [REDACTED]

[REDACTED]<sup>127</sup> [REDACTED]

[REDACTED]<sup>128</sup> Dr. Singer argues that such advertising “overlaps” imply significant competition for advertisers between WE tv and GSN. As I explain below, such advertising “overlaps” are not at all indicative of significant competition for advertising customers.

118. When two networks compete for advertisers, the advertisers view the networks as substitute suppliers of advertising services and are choosing between the networks in making their decisions about which networks to display their advertising. The fact that networks have common advertisers is not indicative of whether advertisers are choosing between the networks for their advertising messages. The WE tv–GSN overlap advertisers identified by Dr.

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<sup>126</sup> Singer Report ¶ 46.

<sup>127</sup> Singer Report ¶ 46.

<sup>128</sup> Singer Report ¶ 46.

Singer include [REDACTED]  
[REDACTED]  
[REDACTED]

These advertisers have very large advertising budgets for many different products and advertise extensively on numerous cable networks, broadcast networks, and other advertising media.<sup>129</sup>

The notion that these advertisers are choosing solely (or even primarily) between WE tv and GSN for their advertisements is simply implausible.

119. I examine companies' advertising expenditures on cable networks using the Nielsen Ad\*Views 2010 data. The Ad\*Views data track companies' purchases of advertising on individual cable networks. My analysis of companies' advertising expenditures on cable networks shows that companies generally purchase advertising across a large number of networks. Further, my analysis shows that WE tv and GSN account for very small shares of advertising expenditures, even among the largest advertisers on the two networks. Thus, the fact that companies advertise on both WE tv and GSN in no way implies that WE tv and GSN are significant competitors for advertisers.

120. My analysis of the Ad\*Views firm-level advertising data is summarized in Tables 20 and 21 below. Table 20 shows WE tv's [REDACTED] advertisers by advertising

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<sup>129</sup> [REDACTED]  
[REDACTED]

expenditure in 2010.<sup>130</sup> Consistent with Dr. Singer’s analysis, Table 20 shows that [REDACTED] of WE tv’s [REDACTED] advertisers also advertised on GSN in 2010. Out of the [REDACTED] WE tv advertisers, [REDACTED] had some advertising expenditures on GSN in 2010. However, several of the [REDACTED] “overlap” advertisers have very modest GSN advertising expenditures. For example, [REDACTED]  
[REDACTED]  
[REDACTED] In fact, out of the top 40 WE tv advertisers, only [REDACTED] spent more than [REDACTED] in advertising on GSN in 2010.

121. Table 20 also shows that companies spread their advertising dollars across many cable networks. For example, [REDACTED] 2010 advertising expenditures were [REDACTED] on WE tv, [REDACTED] on GSN, and about [REDACTED] across all the 99 cable networks in the Ad\*Views data. [REDACTED] was WE tv’s top advertiser in 2010 in terms of total advertising expenditure, but [REDACTED] purchased advertising on [REDACTED] cable networks in 2010 (out of the 99 cable networks in the Ad\*Views data). WE tv and GSN accounted for only [REDACTED] and [REDACTED] percent shares, respectively, of [REDACTED] 2010 cable network advertising expenditures.<sup>131</sup> The overall WE tv and GSN shares of cable network advertising revenue in 2010 (for the 99 networks in Ad\*Views data) were [REDACTED] and [REDACTED], respectively. Thus, the fact that [REDACTED] advertised on both WE tv and GSN in 2010 does not in any way suggest a significant level of competition between WE tv and GSN for [REDACTED]

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<sup>130</sup> The table shows advertising by parent company advertisers rather than subsidiaries to be consistent with Dr. Singer’s analysis. (Singer Report ¶ 46.) For example, Table 5 of Dr. Singer’s Report lists Berkshire Hathaway rather than its subsidiary Geico as the advertiser.

<sup>131</sup> [REDACTED]

advertising expenditures. The [REDACTED] WE tv advertisers on average purchased advertising on about [REDACTED] networks in 2010 (out of the 99 cable networks in the Ad\*Views data).<sup>132</sup> WE tv and GSN accounted for only [REDACTED] and [REDACTED] percent shares, respectively, of the 2010 cable network expenditures of the [REDACTED] WE tv advertisers in Table 20.<sup>133</sup>

122. My analysis of GSN's [REDACTED] advertisers likewise shows that companies spread their advertising dollars across many cable networks. Table 21 shows that the [REDACTED] GSN advertisers (based on the 2010 advertising expenditure) on average purchased advertising on about [REDACTED] networks in 2010 (out of the 99 cable networks in the Ad\*Views data).<sup>134</sup> GSN and WE tv also accounted for only [REDACTED] and [REDACTED] percent shares, respectively, of the 2010 cable network expenditures of the [REDACTED] GSN advertisers in Table 21.<sup>135</sup> Thus, the advertising expenditures data of both the [REDACTED] WE tv advertisers and [REDACTED] GSN advertisers provide no evidence of significant competition for advertisers between WE tv and GSN.

123. The above discussion demonstrates that Dr. Singer's reliance on advertising overlaps between networks to infer competition for advertisers is likely to lead to unreliable conclusions and numerous false positives in identifying networks that compete for advertising dollars. The likelihood of such false positives is apparent from the advertiser overlaps calculated using the 2010 Ad\*Views data and Dr. Singer's methodology. In 2010, of

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<sup>132</sup> [REDACTED]

<sup>133</sup> Based on the 99 cable networks in the Ad\*Views 2010 data.

<sup>134</sup> [REDACTED]

<sup>135</sup> Based on the 99 cable networks in the Ad\*Views 2010 data.

the [REDACTED] GSN advertisers by revenue, [REDACTED] percent (based on revenue shares) also advertised on WE tv.<sup>136</sup> However, this measure of advertiser overlap with GSN exceeded [REDACTED] percent for [REDACTED] other networks, including [REDACTED]

[REDACTED]<sup>137</sup> These networks have a wide range of programming content, popularity, and viewer demographics. Some of these networks, including [REDACTED] skew male.<sup>138</sup> [REDACTED] viewership is split evenly between men and women.<sup>139</sup> [REDACTED]

[REDACTED]<sup>140</sup> Considering the differences in viewer demographics between GSN and networks that have high shares of advertiser overlap with GSN, advertiser overlap appears to be unreliable indicator of competition for advertisers. Likewise, the 2010 WE tv [REDACTED] advertiser overlap share (based on revenue shares) was [REDACTED] percent for GSN and exceeded [REDACTED] percent for [REDACTED] other networks, including [REDACTED]

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<sup>136</sup> This measure of advertiser overlap is based on Dr. Singer's methodology, which calculates the overlap percentage based on the overlap advertisers' revenue share of the total [REDACTED] advertisers.

<sup>137</sup> [REDACTED]

<sup>138</sup> See Table E3 in CV Exh. 232, Appendix E (based on fourth quarter of 2010 ratings).

<sup>139</sup> See *id.*

<sup>140</sup> See *id.*

[REDACTED]

[REDACTED]<sup>141</sup> The wide diversity of networks that have high shares of advertiser overlap with WE tv provides a further indication of why advertiser overlap is an unreliable measure of competition for advertisers.

124. Dr. Singer also examines overlap between WE tv and GSN based on advertising expenditure on brands. Companies may own multiple brands so that a firm that advertises on both WE tv and GSN may not advertise the same brands on the two networks. Thus, brand-level advertising overlap may be lower than the firm-level advertising overlap. Dr. Singer finds that “Brands that advertise on GSN account for [REDACTED] percent of WE tv’s revenue from its [REDACTED] advertising customers.”<sup>142</sup> Based on this finding, Dr. Singer concludes that “This significant overlap at the brand level suggests that advertisers perceive that they are reaching a similar demographic on both networks.”<sup>143</sup>

125. Dr. Singer’s analysis of brand-level overlaps between WE tv and GSN is misleading. In fact, my analysis of the Ad\*Views brand-level advertising data indicates that there is relatively little overlap between top brands advertised on WE tv and GSN. I analyze the Ad\*Views brand-level advertising data for the 2010 period.<sup>144</sup> My analysis shows that there are only [REDACTED] brands that are on both the [REDACTED] WE tv and GSN list of brands, ranked by advertising expenditure on the networks during 2010. The five WE tv – GSN {{top 40}}

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<sup>141</sup> [REDACTED]

<sup>142</sup> Singer Report ¶ 47.

<sup>143</sup> Singer Report ¶ 47.

<sup>144</sup> Dr. Singer’s advertiser overlap analysis is based on the July 2010-July 2011 period. The selection of the period for the analysis does not appear to have a significant effect on the results.

overlap brands are: [REDACTED]

[REDACTED] The limited overlap of the [REDACTED] brand lists suggests that top brands advertised on WE tv have relatively little advertising on GSN, and vice-versa. My analysis shows that the median advertising expenditure by a [REDACTED] WE tv brand in 2010 was [REDACTED] in advertising purchased on WE tv and only [REDACTED] in advertising purchased on GSN. Likewise, my analysis shows that the median advertising expenditure in 2010 by a [REDACTED] GSN brand was [REDACTED] in advertising purchased on GSN and only [REDACTED] in advertising purchased on WE tv. Thus, there does not appear to be significant brand-level advertising overlap between WE tv and GSN.

126. My analysis of Ad\*Views brand-level advertising data also shows that brands spread their advertising dollars across many cable networks. [REDACTED] [REDACTED] was WE tv's top brand in 2010 in terms of total advertising expenditure. But [REDACTED] also advertised on [REDACTED] other cable networks in 2010 (out of the 99 cable networks in the Ad\*Views data), including [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] WE tv and GSN accounted for only [REDACTED] and [REDACTED] percent shares, respectively, of total 2010 cable network

advertising purchases for the [REDACTED] brand.<sup>145</sup> Thus, the fact that [REDACTED] advertising was purchased on both WE tv and GSN in 2010 does not in any way indicate a significant level of competition between WE tv and GSN for [REDACTED] advertising; indeed, it is highly unlikely to be the case that advertisers view all these networks as “reaching a similar demographic.”

127. Moreover, the [REDACTED] WE tv advertising brands had, on average, advertising purchases on about [REDACTED] cable networks in 2010 (out of the 99 cable networks in the Ad\*Views data).<sup>146</sup> WE tv and GSN accounted for only [REDACTED] and [REDACTED] percent shares, respectively, of 2010 cable network advertising purchases by WE tv’s [REDACTED] advertising brands.<sup>147</sup>

128. Dr. Singer also claims that eight brands [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] “dedicated more than 10 percent of their respective total advertising budgets on *both* WE tv and GSN in 2010.”<sup>148</sup> However, these brands appear to be insignificant purchasers of advertising on cable networks. For example, [REDACTED] purchased about [REDACTED] in advertising in 2010 across *all* cable networks. [REDACTED] had about [REDACTED] in advertising

<sup>145</sup> Based on the 99 cable networks in the Ad\*Views 2010 data.

<sup>146</sup> [REDACTED]

<sup>147</sup> Based on the 99 cable networks in the Ad\*Views 2010 data.

<sup>148</sup> Singer Report ¶ 48.

purchases in 2010 across *all* cable networks. [REDACTED] had about [REDACTED] [REDACTED] in advertising purchases in 2010 across all cable networks and spread those purchases across [REDACTED] cable networks (including [REDACTED]

[REDACTED]. Thus, the eight brands discussed by Dr. Singer do not provide evidence of significant competition for advertisers between WE tv and GSN. If anything, the brands illustrate an absence of significant competition for advertisers between WE tv and GSN.

■





**C. There Is No Significant Competition for Programming Rights Between GSN and WE tv<sup>149</sup>**

129. There may be significant competition between WE tv and GSN for programming rights if WE tv and GSN seek to acquire the same programming *and* if GSN's efforts to acquire programming rights cause WE tv to pay significantly higher prices for the programming content. If there were significant competition between WE tv and GSN for programming rights, Cablevision may have an incentive to discriminate against GSN as restraining GSN's ability to compete for programming rights may benefit WE tv.

Dr. Singer's Analysis Provides No Reliable Evidence of Significant Competition for Programming Rights Between WE tv and GSN

130. Dr. Singer claims that "WE tv has competed directly with GSN for programming rights...."<sup>150</sup> However, Dr. Singer's evidence in support of this claim in no way demonstrates significant competition between WE tv and GSN for programming rights.

- Dr. Singer states that "GSN was optioning a project from author John Gray called *Divorce Rehab* that was pitched to WE tv and to GSN."<sup>151</sup> But Dr. Singer does not offer any evidence that that WE tv and GSN actually competed for the John Gray project or that WE tv even expressed any interest in the project. [REDACTED]

[REDACTED]<sup>152</sup> Moreover, Dr. Singer's statement about *Divorce Rehab* suggests that GSN is no longer pursuing the project.

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<sup>149</sup> As neither Dr. Singer nor Mr. Brooks presents any evidence of competition for programming rights between GSN and Wedding Central, I focus my discussion in this section on WE tv and GSN.

<sup>150</sup> Singer Report ¶ 7.

<sup>151</sup> Singer Report ¶ 50 (footnote omitted, emphasis in original).

<sup>152</sup> Declaration of Didi O'Hearn ¶ 6.

- Dr. Singer claims that [REDACTED] <sup>153</sup>

However, Dr. Singer offers no evidence that any of these shows were developed by either WE tv or GSN or that either network expressed any interest in developing the shows. He also does not present any evidence of the universe of shows pitched to WE tv – the few shows apparently pitched to both WE tv and GSN may represent a tiny fraction of the overall shows pitched to WE tv.

- Another example of “competition” for the “same programming rights” between WE tv and GSN cited by Dr. Singer is that Tammy Pescatelli appeared on a program shown on WE tv and “pitched” a project to GSN.<sup>154</sup> Again, this is not an example of competition between WE tv and GSN for the same programming content.

131. The evidence presented by Dr. Singer does not demonstrate *any* competition between WE tv and GSN for programming rights and certainly demonstrates no significant competition for those rights. In any case, Dr. Singer’s examples of “competition” between GSN and WE tv for the “same programming rights” appear to be inconsequential in terms of the value of such programming rights. The notion that Cablevision decided to carry GSN on a less penetrated tier just so that it could prevent GSN from purchasing projects with Tammy Pescatelli or John Gray is utterly implausible. In the end, there is no reliable basis whatsoever offered by Dr. Singer for concluding that WE tv and GSN compete in any significant way for the same programming rights.

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<sup>153</sup> Singer Report ¶ 50.

<sup>154</sup> Singer Report ¶¶ 49-50.

**D. Cablevision Does Not Have Any Incentive To Engage in Discriminatory Carriage Conduct Against GSN**

132. Under standard economic theory, Cablevision could only plausibly have an incentive to discriminate against GSN in favor of its affiliated networks, WE tv and Wedding Central, if WE tv and Wedding Central faced significant pricing constraints by GSN. Thus, if the prices charged by WE tv or Wedding Central were not significantly constrained by GSN, WE tv or Wedding Central would obtain no benefit from reducing GSN's ability to compete. Such pricing constraints could only exist if WE tv and Wedding Central faced significant competition for viewers, advertisers, and/or programming content from GSN and no other network (or few other networks).<sup>155</sup> Therefore, if WE tv and GSN (or Wedding Central and GSN) do not (did not) significantly compete for viewers, advertisers, and/or programming content, and thus, the prices charged by WE tv and Wedding Central are not significantly constrained by GSN, WE tv and Wedding Central would obtain no benefit from Cablevision's retiering GSN, and Cablevision would have no incentive to discriminate against GSN in the carriage of the network.

133. The analysis I present above indicates that there is no significant competition between WE tv/Wedding Central and GSN for viewers, advertisers, or programming rights. Moreover, the analyses indicate that there are numerous networks that are closer competitors to WE tv than to GSN. Thus, to the extent there is any pricing constraint imposed

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<sup>155</sup> Dennis Carlton, "A General Analysis of Exclusionary Conduct and Refusal to Deal--Why Aspen and Kodak Are Misguided," *Antitrust Law Journal* 68, pp. 659-683, 2001; and Michael Whinston, "Tying, Foreclosure, and Exclusion," *American Economic Review* 80, pp. 837-859, 1990.

by GSN, the degree of that pricing constraint would be negligible relative to the pricing constraint provided by other networks.

134. Because there is no credible evidence of meaningful competition between GSN and WE tv for viewers, advertisers, and/or programming content (and likewise, because there is no evidence that GSN and Wedding Central competed in a significant way for viewers, advertisers, and/or programming content prior to Wedding Central's demise), Cablevision's affiliated networks are highly unlikely to reap any benefits from Cablevision's retying of GSN. This conclusion is validated by all of the analyses presented above. Furthermore, as I discuss below, the effect of the retying on GSN's ability to compete was too minimal to generate any significant benefits for WE tv and Wedding Central. Thus, even if WE tv and Wedding Central competed significantly against GSN for viewers, advertisers, or programming (and they did not), it is unlikely that Cablevision's decision to retye GSN was motivated by any potential benefits to Cablevision's affiliated networks.

## **V. CABLEVISION'S DECISION TO RETIER GSN IS CONSISTENT WITH SOUND BUSINESS JUDGMENT**

### GSN's Retiering Was a Reasonable Business Strategy Unrelated to GSN's Affiliation

135. Cablevision's distribution of GSN on the S&E Tier is consistent with rational business conduct based on considerations unrelated to GSN's affiliation. Sound business analysis of network carriage by an MVPD must consider both the costs and benefits of distributing the network to subscribers. Broad distribution of GSN would lead to higher

licensing costs for Cablevision.<sup>156</sup> The value to Cablevision from carrying GSN on more highly penetrated tiers is a function of a variety of factors, in particular whether the carriage can help Cablevision attract and retain subscribers. It would only be rational for Cablevision to incur the additional license fees to distribute GSN on highly penetrated tiers if the carriage generated significant net subscriber additions for Cablevision.

136. My review of Cablevision’s decision to retier GSN indicates that Cablevision’s analysis appeared to be reasonable and consistent with sound economic analysis.<sup>157</sup> Contemporaneous documents shed light on factors considered by Cablevision’s management in making the decision to retier GSN. My review of those documents indicates that a number of factors entered into the GSN retiering decision, including [REDACTED]

[REDACTED]

[REDACTED]<sup>158</sup> [REDACTED]

[REDACTED]<sup>159</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>156</sup> [REDACTED]

<sup>157</sup> For background on the Cablevision analysis, see Declaration of Thomas Montemagno ¶¶ 40-50.

<sup>158</sup> See CV-GSN 0293351.

<sup>159</sup> See, for example, CV-GSN 0294003.

137.

[REDACTED]

160

161

138.

[REDACTED]

162

163

164

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<sup>160</sup> See CV-GSN 0375808.

<sup>161</sup> See CV-GSN 0375808 and CV-GSN 0367735.

<sup>162</sup> CV-GSN 0367735.

<sup>163</sup> [REDACTED]

<sup>164</sup> See *infra*, ¶¶ 146-150.

[REDACTED]

[REDACTED] 165 [REDACTED]

[REDACTED]

[REDACTED] 166 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 167

Post-Retiring Outcomes Validate Cablevision’s Retiring Decision

139. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 168 [REDACTED]

[REDACTED]

[REDACTED]

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<sup>165</sup> [REDACTED]

<sup>166</sup> CV-GSN 0367735.

<sup>167</sup> [REDACTED]

<sup>168</sup> [REDACTED]

[REDACTED]

[REDACTED] 169 [REDACTED]

[REDACTED]

[REDACTED] 170 [REDACTED]

[REDACTED]

[REDACTED] 171 [REDACTED]

140. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 172 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

141. [REDACTED]

[REDACTED]

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169 [REDACTED]

170 [REDACTED]

171 [REDACTED]

172 [REDACTED]

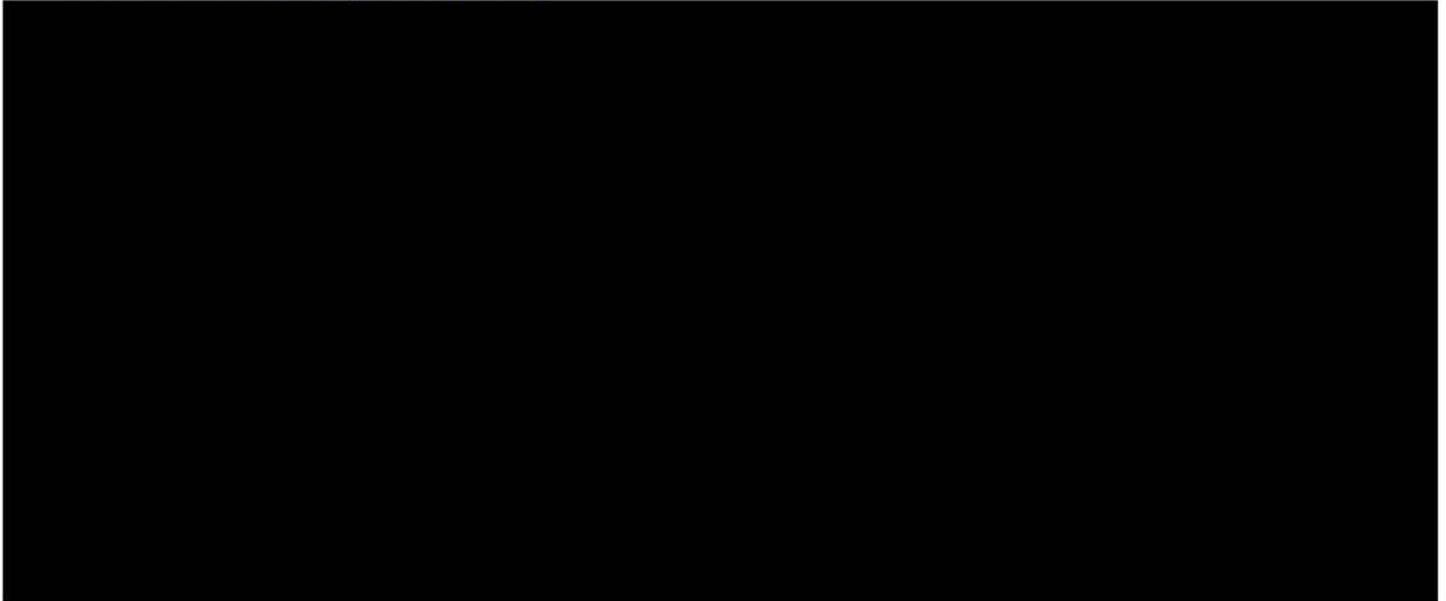
[REDACTED]

142.

[REDACTED]

[REDACTED]

Table 22. Churn Rates by GSN Viewership\*



143.



[REDACTED]

[REDACTED]

[REDACTED] 173 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table 23. GSN Share by Sports Tier Status

[REDACTED]

144.

[REDACTED]

[REDACTED]

173

[REDACTED]





households.<sup>178</sup> Thus, if a network is watched primarily by a relatively small number of high-intensity viewers of the network, the network is likely to have a relatively high viewer concentration. Conversely, if a network is watched by a relatively wide viewer audience, the viewer concentration for the network is likely relatively low. Network viewer concentration is a relevant measure for examining the most efficient way to distribute a network because network viewer concentration gauges the degree to which a network carries niche programming. Niche programming content appeals to a relatively narrow viewer audience so that networks that carry niche programming are likely to have high viewer concentration.

147. The economics of cable network distribution implies that MVPDs are likely to distribute niche programming networks on less penetrated tiers (or tiers that reach fewer viewers), all else being equal. Networks with niche programming appeal to a relatively narrow audience. Distributing networks with niche programming on highly penetrated tiers is unlikely to be economic for MVPDs. Distributing networks to more subscribers tends to be more costly for MVPDs in terms of license fees. Moreover, distributing niche programming networks on a highly penetrated tier is likely to generate relatively little value for the MVPD because the

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<sup>178</sup> My viewer concentration measure is closely related to the concept of reach. Nielsen defines reach (in media ratings) as “the unduplicated number of individuals or households exposed to an advertising medium at least once during the average week for a reported time period.” (See [www.nielsenmedia.com/glossary](http://www.nielsenmedia.com/glossary).) Thus, high viewer concentration corresponds roughly to low reach.



network would appeal to a relatively small share of the total audience on the tier. Therefore, MVPDs are likely to distribute niche programming networks on tiers that reach relatively few subscribers. There are numerous examples of this in the cable industry. For example, according to the data from SNL Kagan, in 2011, CNN had about [REDACTED] subscribers, but niche programming networks such as Blackbelt TV and TV Colombia only had about [REDACTED] and [REDACTED], respectively.<sup>179</sup> Thus, network viewer concentration, which measures the width of network programming appeal, provides useful information about whether wide distribution of a network is likely to be economical.

148. [REDACTED]

[REDACTED]

[REDACTED] 180

[REDACTED]

[REDACTED]

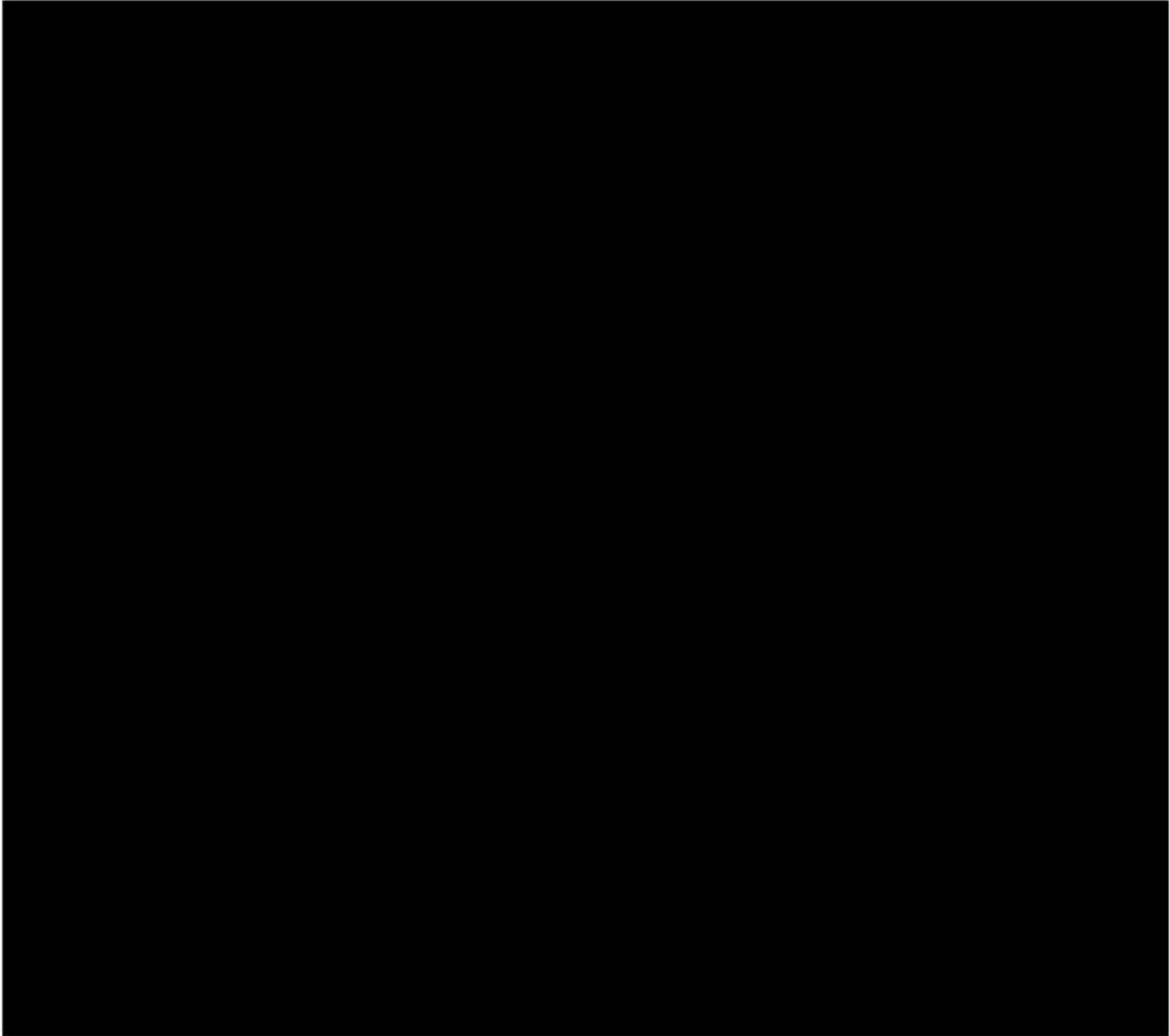
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<sup>179</sup> Blackbelt TV is dedicated to martial-arts entertainment. TV Colombia primarily carries Colombian-interest programming. (SNL Kagan) [REDACTED]

<sup>180</sup> [REDACTED]

[REDACTED] 181 [REDACTED]

Table 25. Network Viewer Concentration - April 2010



149. [REDACTED]

[REDACTED]

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181 [REDACTED]

[REDACTED]

[REDACTED] 182 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

150. GSN’s relatively high viewer concentration is indicative of relatively narrow viewership appeal. That is, relatively few households watched GSN but those that did watched GSN in high quantities. Therefore, the high degree of viewer concentration for GSN indicates that the distribution of GSN on less penetrated tiers, like the S&E tier, is consistent with economic efficiency and was a plausible business strategy for Cablevision.

Carriages of GSN by Other MVPDs Do Not Invalidate Cablevision’s Retiering Decision

151. According to the data presented by Dr. Singer, Cablevision carries GSN to a significantly smaller share of basic subscribers than do other major MVPDs, including

[REDACTED]

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182 [REDACTED]

[REDACTED]

██████████<sup>183</sup> However, I understand that Cablevision is not the only MVPD carrying WE tv on a more highly penetrated tier than GSN: Time Warner and Verizon carry WE tv on their expanded basic service tiers, but carry GSN on a less penetrated tier, and Insight Communications carries WE tv on its Digital Channel Lineup but does not appear to carry GSN at all.<sup>184</sup> I also understand that distributors such as DISH Network and Cox, in addition to Time Warner and Verizon, offer GSN on a less penetrated tier than the expanded basic service tier.<sup>185</sup> Moreover, Mediacom, an MVPD with more than one million subscribers,<sup>186</sup> ██████████

██████████<sup>187</sup> In fact, expanding Dr. Singer’s analysis of GSN’s carriage to include the top 15 MVPDs indicates that there is significant variability among MVPDs in how they carry GSN, especially among smaller MVPDs which are closer in size to Cablevision than the biggest MVPDs.<sup>188</sup>

152. If networks were similarly situated (which they are not in this case), and in cases where you do not have direct evidence about the economic effects of a retiering (which we do in this case), I have testified that the “most direct and compelling evidence” of discrimination

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<sup>183</sup> Singer Report ¶ 55.

<sup>184</sup> See Exhibit B to Opp. Of Cablevision System Corp. to Petition for Temporary Relief (submitted Nov. 2, 2011).

<sup>185</sup> *Id.*

<sup>186</sup> See <http://www.ncta.com/Stats/TopMSOs.aspx>

<sup>187</sup> See ██████████; and [mediacomtoday-lineup.com/lineup/76/altoona\\_ankeney\\_bondurant\\_carlisle\\_clive\\_des\\_m.aspx](http://mediacomtoday-lineup.com/lineup/76/altoona_ankeney_bondurant_carlisle_clive_des_m.aspx) (accessed December 13, 2012).

<sup>188</sup> Table 7 of Dr. Singer’s Report shows GSN’s basic subscriber penetration rates for the top 10 MVPDs, as of June 2011. GSN’s basic subscriber penetration rates as of June 2011 for MVPDs ranked 11 through 15 are: ██████████

██████████ (See GSN\_CVC\_00147140; GSN\_CVC\_00154867, and [web.archive.org/web/20111224060753/http://www.ncta.com/Stats/TopMSOs.aspx](http://web.archive.org/web/20111224060753/http://www.ncta.com/Stats/TopMSOs.aspx).)

can be found in the carriage decisions of other MVPDs.<sup>189</sup> But I have also noted in previous testimony that the carriage decisions of other MVPDs are just one criterion for assessing the reasonableness of carriage.<sup>190</sup>

153. The analysis of economic evidence on the potential carriage discrimination must be evaluated in its totality and must consider factors that account for differences in carriage of a network across MVPDs. It is reasonable for MVPDs to do their own assessment of the benefits of broad distribution of a network. It is also reasonable for MVPDs to reach different conclusions regarding the optimal carriage of a network. The fact that MVPDs reach different conclusions about the value of broad distribution of a network may be explained by the differences in the subjective assessments of the effects of network carriage on an MVPDs' ability to attract and retain subscribers, but may also be a function of the regional variations in viewership preferences by subscribers, as well as contractual obligations.

154. One factor that may explain the difference between Cablevision's carriage of GSN and that of other major MVPDs is that GSN's viewer audience tends to skew [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>189</sup> See, for example, Direct Testimony of Jonathan Orszag, *In the Matter of NFL Enterprises LLC v. Comcast Cable Communications, LLC*, MB Docket No 08-214, File No. CSR-7876-P at ¶ 7 (“Orszag NFL Testimony”).

<sup>190</sup> *Id.*, ¶ 8.

<sup>191</sup> *See supra*, ¶ 100.

Dr. Singer’s Analysis Offers No Reliable Evidence of Discrimination on the Basis of Affiliation

155. Dr. Singer claims that Cablevision’s decision to re-tier GSN lacked an “efficiency justification” based on Dr. Singer’s comparison of GSN’s and WE tv’s “price per rating point” measures.<sup>192</sup> Dr. Singer calculates the “price per rating point” measure for both networks as the ratio of the network’s average license fee per subscriber per month and average all-day Nielsen rating in 2009 (using SNL Kagan data). Based on SNL Kagan data (as reported by Dr. Singer), GSN’s 2009 average license fee per subscriber per month and average all-day Nielsen rating were [REDACTED], and WE tv’s 2009 average license fee per subscriber per month and average all-day Nielsen rating were [REDACTED].<sup>193</sup> Using these numbers, Dr. Singer calculates a “price per rating point” of [REDACTED] for GSN and [REDACTED] for WE tv.<sup>194</sup> Dr. Singer then argues that because the “price per rating point” is higher for WE tv than for GSN, Cablevision lacks the “efficiency justification” for carrying GSN on the S&E tier.

156. Dr. Singer’s “efficiency justification” analysis based on the “price per rating point” measure is deeply flawed. Ratings alone do not explain network carriage by MVPDs. For example, ratings do not capture the value of carriage to the MVPD because ratings measure only the viewership of a program, and not the *intensity* of viewership or the viewers’ loyalty to the network carrying the programming.

157. The fact that ratings do not measure the intensity of viewership also helps to explain the absence of a direct relationship between ratings and license fees for networks.

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<sup>192</sup> Singer Report at 26, ¶¶ 52-54.

<sup>193</sup> Singer Report ¶ 52.

<sup>194</sup> Singer Report, Table 6.

[REDACTED]

[REDACTED]

[REDACTED]<sup>195</sup> [REDACTED]

[REDACTED]<sup>196</sup>

158. My analysis of the SNL Kagan data (the data that Dr. Singer used for “price per rating point” measure) shows that the “price per rating point” measure is unrelated to how MVPDs carry the network. Figure 1 depicts a relationship between networks’ “price per rating point” measure and their total number of subscribers in 2010 for the networks in the SNL Kagan data that have ratings data for 2010.<sup>197</sup> The graph shows a lack of any clear relationship between the “price per rating point” measure and the number of subscribers. My analysis also confirms a lack of any statistically significant relationship between “price per rating point” measure and the number of subscribers for the networks in the SNL Kagan data. [REDACTED]

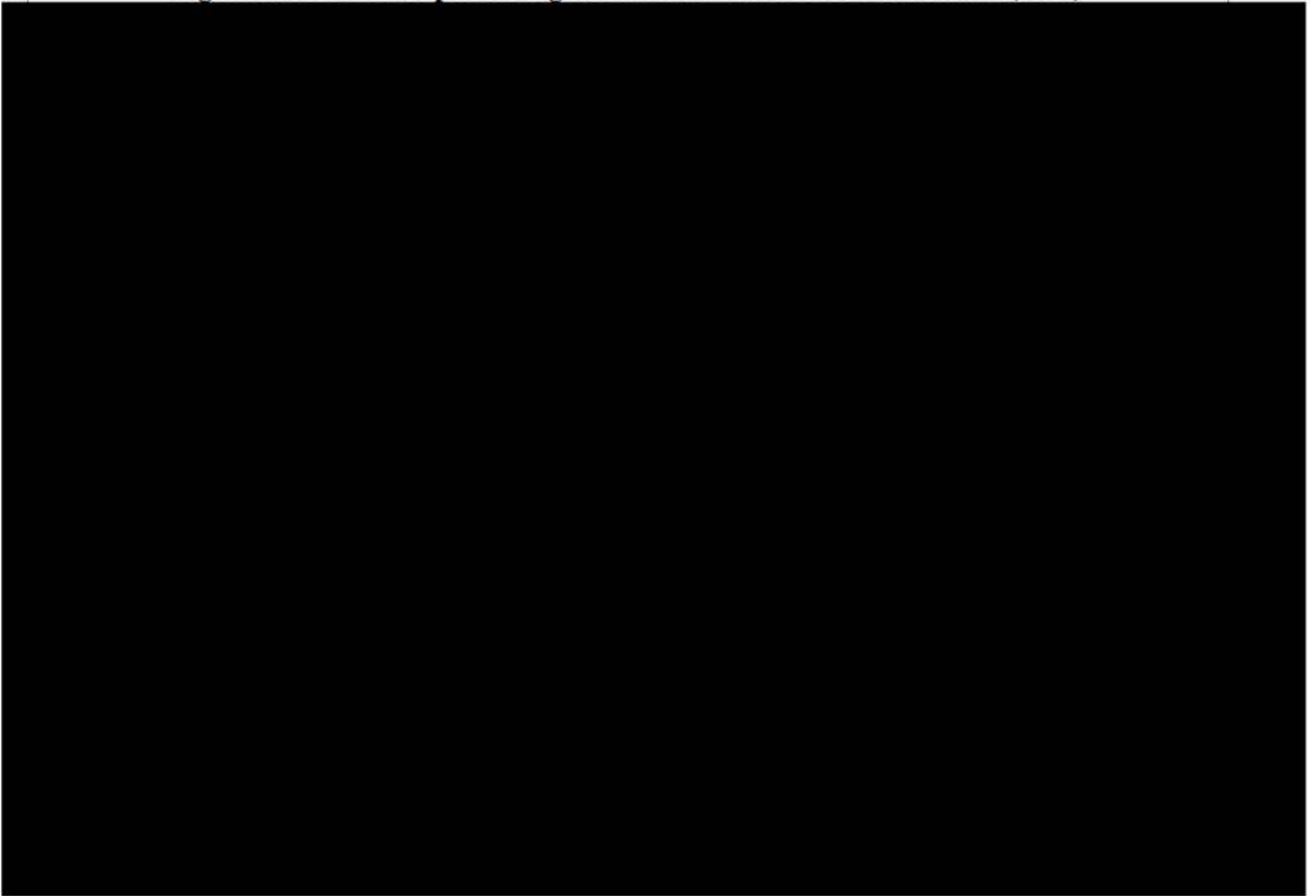
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<sup>195</sup> SNL Kagan 2011 Economics of Basic Cable.

<sup>196</sup> *Id.*

<sup>197</sup> The graph depicts WE tv as a red point and GSN as an orange point. All other networks are depicted as blue points.

**Figure 1. License Fee per Rating Point vs. TV Household Penetration (2010)**



159. Another important flaw in Dr. Singer’s analysis is that the average all-day Nielsen rating used by Dr. Singer’s “price per rating point” calculation is for a national viewer audience. As demonstrated by the data presented in Mr. Brooks’s Report, all-day Nielsen ratings were significantly lower in the New York DMA than nationwide. Thus, Dr. Singer’s calculations significantly understate GSN’s “price per rating point” measure in the New York DMA, where the vast majority of Cablevision’s subscribers are actually located.

160. In contrast to Dr. Singer’s “price per rating point” measure, programming expenditure to affiliate fee per subscriber ratio does predict the number of network subscribers. Networks with higher programming expenditure to affiliate fee per subscriber ratio tend to have

more subscribers.<sup>198</sup> Figure 2 depicts the relationship between programming expenditure to affiliate fee per subscriber ratio and the total number of subscribers for networks in 2010 based on SNL Kagan data. The x-axis of the graph is the total number of subscribers. The y-axis of the graph is the annual programming expenditure to affiliate fee per subscriber per month ratio. Figure 2 depicts 131 networks in the SNL Kagan data with at least 10 million subscribers and positive affiliate fees in 2010. The graph depicts WE tv as a red point and GSN as an orange point. All other networks are depicted as blue points. The graph shows a clear positive relationship between the two variables: higher programming expenditure to affiliate fee per subscriber ratio is associated with a higher number of subscribers. [REDACTED]

[REDACTED]

[REDACTED]

161. The positive relationship between programming expenditure to affiliate fee per subscriber ratio and total number of subscribers does not mean that MVPDs explicitly consider the programming expenditure to affiliate fee per subscriber ratio in making their carriage decisions. However, the programming expenditure to affiliate fee per subscriber ratio is a measure of the value of a network relative to its cost. Thus, to the extent that MVPDs make carriage decisions for networks based on the networks' value to subscribers (reasonably measured by programming expenditure) and the cost of carrying the network (measured by the affiliate fee per subscriber), the MVPDs' carriage decisions are linked to the programming expenditure to affiliate fee per subscriber ratio even if the MVPDs do not explicitly consider this measure in deciding how to carry a network. [REDACTED]

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<sup>198</sup> Other studies of cable networks have analyzed programming expenditures. See Austan Goolsbee, "Vertical Integration and the Market for Broadcast and Cable Television Programming," *FCC Media Ownership Study*, 2007.

**Figure 2. Programming Expenditure to Affiliate fee Per Subscriber per Month Ratio vs. Total Subscribers (2010)**



162.



163. Dr. Singer also presents a table (“for illustrative purposes”) that “compares the placement of Cablevision’s affiliated networks with the placement of GSN as of

**REDACTED – FOR PUBLIC INSPECTION**

September 2011.”<sup>199</sup> This table shows four Cablevision-affiliated networks being carried on the Family tier (Cablevision’s highly penetrated tier) and 23 Cablevision-unaffiliated networks being carried on the S&E tier. Dr. Singer’s table shows that the four Cablevision-affiliated networks carried on the Family tier are WE tv, MSG, AMC, and Fuse.<sup>200</sup> The implication of the table is Cablevision discriminates against unaffiliated networks in favor of affiliated networks. But the table is extremely misleading because it excludes all the Cablevision-unaffiliated networks carried on the Family tier. In fact out of the 69 cable networks carried on Cablevision’s Optimum Value tier (Cablevision’s lowest cost tier above Broadcast Basic), 63 are unaffiliated with Cablevision.<sup>201</sup> It is therefore not appropriate to reach a conclusion of discrimination based solely on Cablevision’s carriage of networks.

164. For the reasons I explain above, Dr. Singer lacks any valid basis for claiming that Cablevision’s decision to distribute GSN on the S&E Tier lacks an “efficiency justification” and amounts to discrimination on the basis of affiliation. Thus, there is no basis for concluding that Cablevision’s decision to retier GSN was motivated by anything but sound business judgment that does not consider any effect of carriage of GSN on Cablevision’s affiliated networks, WE tv and Wedding Central.

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<sup>199</sup> Singer Report ¶ 24 (footnote omitted).

<sup>200</sup> Singer Report Table 1.

<sup>201</sup> The Cablevision-affiliated networks carried on the Optimum Value tier include: AMC, Fuse, WE tv, MSG, MSG Plus, and MSG Varsity (Source: Optimum Value Channel lineup: [www.optimum.com/digitalcable-tv/pricing](http://www.optimum.com/digitalcable-tv/pricing))

**VI. CABLEVISION’S DECISION TO RETIER GSN HAD NO SIGNIFICANT EFFECT ON GSN’S ABILITY TO COMPETE FOR VIEWERS, ADVERTISERS, AND CARRIAGE RIGHTS**

165. Dr. Singer claims that Cablevision’s decision to carry GSN on the S&E Tier has unreasonably restrained GSN’s ability to compete fairly. This claim has no valid economic basis. [REDACTED]

[REDACTED]<sup>202</sup> According to the data cited by Dr. Singer in his Report, after Cablevision began distributing GSN on the S&E Tier, GSN still had [REDACTED]<sup>203</sup> [REDACTED]

[REDACTED] Neither Dr. Singer nor Mr. Brooks provide evidence that such a modest change in the number of GSN subscribers had a significant effect on GSN’s ability to compete for advertising customers or programming rights. They do not claim that GSN suffered any advertising price erosion as a result of the retiering of GSN (and they do not provide any evidence that would suggest that there was such advertising price erosion). [REDACTED]

[REDACTED]<sup>204</sup> [REDACTED]

[REDACTED]<sup>205</sup>

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<sup>202</sup> Singer Report ¶ 59.

<sup>203</sup> Report ¶ 27.

<sup>204</sup> [REDACTED]

<sup>205</sup> Source: SNL Kagan.

**REDACTED – FOR PUBLIC INSPECTION**

166. Dr. Singer argues that Cablevision’s decision to re-tier GSN could impair GSN’s ability to secure carriage arrangements.<sup>206</sup> Dr. Singer claims that “it is reasonable to conclude that Cablevision’s decision to limit GSN’s distribution might negatively influence the decisions of other cable operators with which GSN does business.”<sup>207</sup> Dr. Singer makes a number of arguments for why GSN’s re-tiering by Cablevision may have a negative effect on carriage of GSN by other MVPDs.<sup>208</sup> These arguments are highly speculative and lack any basis in either sound economics or facts. However, Dr. Singer’s arguments about the effect GSN’s re-tiering are irrelevant. As Dr. Singer concedes, GSN’s carriage by other MVPDs has not declined since GSN’s re-tiering. Although Dr. Singer attempts to ignore this fact by arguing that “Cablevision’s repositioning of GSN happened relatively recently” and that “unrealistic to expect the rest of the industry to change its carriage arrangements overnight,” GSN’s re-tiering occurred two years ago. In a nutshell, Dr. Singer’s view about the effects of GSN’s re-tiering is just not grounded in reality.

167. Dr. Singer and Mr. Brooks also do not offer any evidence to suggest that GSN’s ability to acquire programming rights has been weakened as a result of Cablevision’s re-tiering of GSN. The reason: Such a reduction in the number of subscribers is unlikely to have any significant effect on GSN’s ability to compete for viewers, advertisers, or programming content, especially in light of the fact that GSN is already carried by major MVPDs. According to the data from SNL Kagan, [REDACTED]

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<sup>206</sup> Singer Report ¶¶ 61 – 63.

<sup>207</sup> Singer Report ¶ 61.

<sup>208</sup> Singer Report ¶¶ 61 – 62.

[REDACTED] In comparison, the SNL Kagan data show that [REDACTED]

[REDACTED]

[REDACTED]<sup>209</sup> [REDACTED]

[REDACTED]

[REDACTED] Furthermore, GSN's

own financial statements show that [REDACTED]

[REDACTED]

[REDACTED]<sup>210</sup> Thus, any assertion that

Cablevision's retiering of GSN had a significant negative effect on GSN's financial performance

is not borne out by evidence.

168. Dr. Singer finds that GSN's retiering resulted in a loss for GSN of about

[REDACTED] million per year in license fees and [REDACTED] million per year in advertising revenue

in just the "New York-New Jersey-Connecticut area."<sup>211</sup> However, GSN's retiering does not

appear to have had a significant negative effect of GSN's overall financial performance.

[REDACTED]

[REDACTED]

[REDACTED]<sup>212</sup>

<sup>209</sup> [REDACTED] (SNL Kagan.)

<sup>210</sup> Game Show Network, LLC and Subsidiaries, Consolidated Financial Statements, December 31, 2011 and 2010. (GSN\_CVC\_00133595-616, at 597.)

<sup>211</sup> Singer Report ¶¶ 59 – 60.

<sup>212</sup> Game Show Network, LLC and Subsidiaries, Consolidated Financial Statements, December 31, 2011 and 2010. (GSN\_CVC\_00133595-616, at 598.)

169. Dr. Singer further claims that because of GSN’s retiering “GSN is restrained in its ability to compete effectively for viewers and advertisers.”<sup>213</sup> He does not provide any support for his claim regarding GSN’s “restrained” ability to compete for viewers. Regarding advertising, Dr. Singer claims that because of “a hole [in GSN’s footprint] in the coveted New York market, GSN is restrained in its ability to compete effectively for advertisers, many of which view coverage in the New York market as a prerequisite for making a network a ‘meaningful contender.’”<sup>214</sup> Dr. Singer also cites an economic article to support his assertion that “economic research has shown that gaps in a network’s coverage area have grave consequences for advertising revenues.”<sup>215</sup> However, the cited article offers no support for Dr. Singer’s “grave consequences” claim.<sup>216</sup> Dr. Singer’s claims regarding the effect of the retiering on GSN’s ability to compete for advertisers are also not supported by the evidence of actual post-retiering outcomes. As I discuss earlier, [REDACTED]

[REDACTED] <sup>217</sup> [REDACTED]

[REDACTED] <sup>218</sup>

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<sup>213</sup> Singer Report ¶ 64.

<sup>214</sup> Singer Report ¶ 65, citing the Goldhill Declaration, footnote omitted. It is worthwhile to note that Dr. Singer’s assertion is based on his understanding of Mr. Goldhill’s (President and CEO of GSN) understanding of advertisers’ perceptions of the value of advertising on GSN. This kind of evidence hardly rises to the level of economic analysis.

<sup>215</sup> Singer Report ¶ 65, footnote omitted.

<sup>216</sup> See Singer Report fn. 83. Also, see David Chen & David Waterman, *Vertical Ownership, Program Network Carriage and Tier Positioning in Cable Television: An Empirical Study*, 30(3) REVIEW OF INDUSTRIAL ORGANIZATION at 230.

<sup>217</sup> SNL Kagan.

<sup>218</sup> Game Show Network, LLC and Subsidiaries, Consolidated Financial Statements, December 31, 2011 and 2010. (GSN\_CVC\_00133595-616, at 598.

170. Dr. Singer also presents a model that predicts GSN’s future General Rate (GR) advertising revenues. Based on this model, Dr. Singer finds that [REDACTED]

[REDACTED]

[REDACTED] Dr. Singer concludes that the “impact of Cablevision’s retiering appears to have been felt beyond the New York market.”<sup>219</sup>

171. However, Dr. Singer’s conclusion about the effect of the retiering on GSN’s advertising is incorrect. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>219</sup> Singer Report ¶ 66.

<sup>220</sup> [REDACTED]

[REDACTED]

[REDACTED]<sup>221</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

172. Moreover, Dr. Singer’s previous testimony suggests that GSN’s ability to compete has not been impaired by Cablevision’s retiering. First, Dr. Singer has testified previously that a firm must be foreclosed from 20 percent of a market for an action to be “presumptively anticompetitive.”<sup>222</sup> Here, the allegation is that Cablevision’s retiering reduced the number of GSN subscribers by less than [REDACTED]. Dr. Singer has not explained why he used 20 percent as the threshold for presumptive anticompetitive conduct in the *NFL v. Comcast* case and simply assumes, without empirical evidence, that a [REDACTED] reduction in the number of GSN subscribers has the effect of restraining unreasonably GSN’s ability to compete fairly. Second, Dr. Singer’s previous testimony suggests that a network with

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<sup>221</sup> See GSN\_CVC\_00154473 and GSN\_CVC\_00134774.

<sup>222</sup> See Direct Testimony of Dr. Hal J. Singer, *In the Matter of NFL Enterprises LLC vs. Comcast Cable Communications*, MB Docket No. 08-214, File No. CSR-7876-P, April 6, 2009, fn. 68. Dr. Singer cited legal literature for this threshold; the economics literature does not support a 20-percent threshold.

more than 40 million subscribers can “compete effectively for advertisers and programmers.”<sup>223</sup> Here, GSN still has [REDACTED] million subscribers,<sup>224</sup> so presumably Dr. Singer’s past testimony would suggest that GSN can “compete effectively for advertisers and programmers.”

173. However, notwithstanding his previous testimony, Dr. Singer now claims that Cablevision’s carriage of GSN on the S&E Tier has “impaired” the ability by GSN to reach carriage agreements with other MVPDs.<sup>225</sup> In particular, Dr. Singer claims that:<sup>226</sup>

Other vertically integrated cable operators carry GSN and WE tv on highly penetrated tiers (most likely pursuant to formal or informal reciprocal carriage arrangements), and it is reasonable to conclude that Cablevision's decision to limit GSN's distribution might negatively influence the decisions of other cable operators with which GSN does business.

174. However, Dr. Singer does not offer a shred of evidence to support his claim of “reciprocal carriage arrangements” between vertically integrated cable operators.<sup>227</sup> Dr. Singer does not explain how the presence of the purported “reciprocal carriage arrangements” would lead other cable operators to reduce carriage of GSN as a result of Cablevision’s decision to distribute GSN on the S&E Tier. Dr. Singer’s logic simply makes no sense. More

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<sup>223</sup> Dr. Singer testified that, “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.” A fair reading of this statement is that Dr. Singer suggests that networks with more than 40 million subscribers are not restrained in their ability “to compete effectively for advertisers and programmers.” Declaration of Hal J. Singer, Before the Federal Communications Commission, *In the Matter of The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, Docket No. CSR-8258-P, January 4, 2010, ¶ 31.

<sup>224</sup> Singer Report ¶ 27.

<sup>225</sup> Singer Report at 33.

<sup>226</sup> Singer Report ¶ 61 (footnote omitted).

<sup>227</sup> Dr. Singer cites an unpublished paper from six years ago written by a graduate student as evidence of such arrangements. However, Dr. Singer misinterprets the paper’s findings and its relevance to this case is not at all clear.

importantly, Dr. Singer offers no evidence of a decline in the carriage of GSN by other MVPDs since Cablevision's decision to carry GSN on the S&E Tier. Dr. Singer's claim that Cablevision's decision "impaired" the ability by GSN to reach carriage agreements with other MVPDs is completely baseless.

175. Dr. Singer does not demonstrate that Cablevision's decision to carry GSN on the S&E tier had any negative effects on GSN's advertising prices or any positive effects on WE tv's advertising prices. Dr. Singer also offers no evidence that GSN is restrained unreasonably in its ability compete for viewers as a result of Cablevision's carriage of GSN on the S&E Tier. Thus, Dr. Singer's conclusion that Cablevision's carriage of GSN on the S&E Tier has "restrained" GSN's ability to compete for viewers and advertisers lacks any basis in economic analysis.

## **VII. CONCLUSION**

176. Based on my work, I conclude that, from an economic perspective, GSN is not "similarly situated" with the Cablevision-affiliated networks. The empirical evidence shows no significant competition between WE tv and GSN for viewers, advertisers, or programming content. There was, likewise, no significant competition between Wedding Central and GSN for viewers, advertisers, or programming content.

177. I also conclude that Cablevision's decision to distribute GSN on the S&E Tier was consistent with rational business conduct, unmotivated by Cablevision's affiliation with WE tv and Wedding Central. The logic is clear: WE tv and GSN do not compete for viewers, advertisers, and programming content in a significant way. Therefore, Cablevision did not, and does not, have an incentive to discriminate against GSN on the basis of affiliation in the carriage of the network.

178. Finally, I conclude that Cablevision's distribution of GSN on the S&E Tier did not restrain GSN's ability to compete for viewers, advertisers, or programming content.

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



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Jonathan Orszag

Dated: March 12, 2013