

**Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.**

**In the Matter of**

**Distribution of the  
2004 and 2005 Cable Royalty Funds**

**Docket No. 2007-3 CRB CD 2004-2005**

**CANADIAN CLAIMANT GROUP'S LIST OF ADMITTED DIRECT CASE EXHIBITS  
FOR 2004-05 CABLE ROYALTY DISTRIBUTION PROCEEDING**

<b>Exhibit No.</b>	<b>Description</b>	<b>Modifications During the Hearing</b>
CDN-1	Janice de Freitas WDT	None
CDN-2	Alison Smith WDT	None
CDN-3	Joan Fisher WDT	None
CDN-4-A	Dr. Debra J. Ringold WDT (Ringold Report)	None
CDN-4-B	Longitudinal Study of Value of Canadian Programming	None

# WRITTEN DIRECT TESTIMONY OF

## JANICE DE FREITAS

(CBC - RIGHTS ADMINISTRATION)

2004—2005 Cable Royalty Distribution Proceeding  
Docket No. 2007-03 CRB CD 2004-2005

### 1. Introduction

I am Manager of Rights Administration for the Canadian Broadcasting Corporation/Radio-Canada (CBC/Radio-Canada) at the Head Office in Ottawa. I have worked for the CBC since 1980. For the last 15 years, I have served as Chairman of the Canadian Claimants Group (CCG). Before assuming my current position, I spent nine years in CBC's television program distribution department eventually managing the Educational Sales unit. Those responsibilities called for me to be familiar with the English television network's programming, and rights administration.

CBC/Radio-Canada is Canada's national public broadcaster, and one of its largest and most important cultural institutions. It was created by an Act of Parliament in 1936, beginning with Radio. Bilingual television services were launched in 1952. CBC/Radio-Canada is licensed and regulated by the Canadian Radio-television and Telecommunications Commission (CRTC)<sup>1</sup>. CBC/Radio-Canada employs approximately 9,930 Canadians in 27 regional offices across the country. CBC programming is provided on multiple platforms: television (both traditional over-the-air and cable networks), radio, the Internet, satellite radio, digital audio and a recording label. Through this array of activities, CBC/Radio-Canada delivers content in English, French, and eight aboriginal languages. In addition to this, programming is available in seven other languages including Spanish, Russian and Mandarin on both Radio Canada International, and Web-based *www.rciviva.ca*, a radio service for recent and aspiring immigrants to Canada.

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<sup>1</sup> The CRTC is an independent authority in charge of regulating and supervising Canadian broadcasting and telecommunications, equivalent to the FCC.

CBC/Radio-Canada's conventional broadcast stations are located in Canadian cities across the nation, many in near proximity to the United States. Due to this, CBC and other Canadian television stations are long-established components of both the over-the-air and cable television markets along the U.S.-Canada border. The CBC has been a participant in these cable royalty proceedings since their very inception and is the founding member of the Canadian Claimants Group. The CBC, through its Rights Administration Department, continues to head the Canadian Claimants Group. One of my primary responsibilities for the last 18 years has been supervision and administration of responsibilities related to the U.S. cable retransmission claims of Canadians. Most recently this has included preparing this direct case.

Today, I am appearing in several capacities:

- As Chairman of the CCG, I am here to provide an overview of our claim, to introduce our other witnesses, and to provide background information on the eclectic group of producers, distributors and broadcasters who are members of the Group.
- As an employee of the CBC/Radio-Canada I will provide some background information and generally describe CBC/Radio-Canada's conventional television networks and the programming they broadcast because most of the Canadian distant signals retransmitted in the US are CBC/Radio-Canada English or French stations.
- Finally, I will sponsor cable carriage and royalty data that we have obtained from Cable Data Corporation that reflects the increase in carriage and royalties paid by Form 3 cable systems for the distant retransmission of Canadian television stations.

## **2. Overview of Our Claim**

The Phase I claim of the Canadian Claimants Group encompasses the programming shown on all distant Canadian television signals, excluding that claimed by U.S. groups. The members of the CCG all have programming that was carried on Canadian signals retransmitted in the U.S. by Form 3 cable systems during 2004 through 2005. The Canadian signals retransmitted in these

years are listed below in Table 1 along with their network affiliations and their language of broadcast:

**Table 1**  
**Canadian Signals Carried by Form 3 Systems**  
**on a Distant Basis in 2004 through 2005**

<b>Signal</b>	<b>Affiliation</b>	<b>Language</b>
CBAFT	CBC	French
CBAT	CBC	English
CBET	CBC	English
CBFT	CBC	French
CBLT	CBC	English
CBMT	CBC	English
CBOT	CBC	English
CBUT	CBC	English
CBWT	CBC	English
CFCF	CTV	English
CFTO	CTV	English
CHCH	CANWEST GLOBAL	English
CHLT	TVA	French
CIII	CANWEST GLOBAL	English
CIMT	TVA	French
CISA	CANWEST GLOBAL	English
CJOH	CTV	English
CKRT	CBC	French
CKSH	CBC	French
CKWS	CBC	English
CKY	CTV	English

It is important to note that Canadian signals may only be retransmitted within the compulsory zone, a specific geographic region of the United States. This is illustrated on page one of **Exhibit CDN-1-A**. The remaining four pages of Exhibit CDN-1-A are maps that illustrate where these distant Canadian signals were retransmitted in the United States. These maps show each Canadian station that was retransmitted by a Form 3 cable system during 2004

and 2005, identifying the state(s) in which they were retransmitted as reported on the systems' Statements of Account.

### **3. Our Witnesses**

In preparing this direct case, we have once again focused on demonstrating the relative value to cable operators of the different types of programming broadcast on Canadian distant signals. We conducted two annual surveys of cable operators who carried distant Canadian signals in 2004 and 2005. Professor Debra Ringold will present the results of those studies, which remain consistent with past results. The U.S. cable operators that carry distant Canadian signals attribute nearly 60% of the value of the Canadian signals to the Canadian programming on those stations and the remainder to the programming claimed by Joint Sports and Program Suppliers.

To provide first hand exposure to Canadian television we will present two witnesses who represent different genres of programs, Alison Smith and Joan Fisher. Alison Smith is a CBC news correspondent currently based in Washington, D.C. She is a professional journalist who has worked with CBC for over 30 years and served in numerous capacities. She is appearing to provide an overview of the CBC's network news operations. Joan Fisher is Legal Counsel for Decode, one of our CCG program suppliers. Decode is an innovative, sought after producer of live action and animation series for many age ranges, from preschoolers to teens. Their productions have been successful at home in Canada and around the world.

### **4. Our Members**

I am sponsoring information I collected that identifies and describes members of the Canadian Claimants Group. Attached to my testimony as **Exhibit CDN-1-B** are lists of the Canadian Claimant Group members for 2004 and 2005. **Exhibit CDN-1-C** provides an alphabetical collection of profiles describing each member. The Canadian Claimants Group is comprised of the CBC, private Canadian broadcasters, and affiliated broadcast stations as well as Canadian film and television producers and distributors.

Our members have had considerable success licensing their programming in the U.S. and elsewhere. This is an indication that Canadian programming is valued and popular in the United States and internationally

**Exhibit CDN-1-D** is an informal sample of the numerous Canadian properties licensed to U.S. television services by some of our members. I gathered this data to illustrate the demand for Canadian programming in the U.S. cable and broadcast marketplaces. The exhibit shows a broad range of clients in the U.S. It is evident from the list that cable networks are significant clients for Canadian producers. We believe this is important evidence of the appeal of Canadian television programming to U.S. cable operators, since they are the relevant marketplace for both cable network programming and distant signal programming.

Our members also supplied information about awards they received for their programs and sample descriptive brochures.<sup>2</sup> **Exhibit CDN-1- E** reports on some of the awards won by Canadian Claimants. Additional award information is included with the testimony of our other witnesses.

## 5. **The Canadian Broadcasting Corporation/Radio-Canada**

As I noted in the introductory paragraphs of this testimony, I would like to provide some background and general information about the Canadian call-signs that are most often retransmitted as distant signals in the United States. They are CBC/Radio-Canada's English and French network stations, referred to as CBC Television and Télévision de Radio-Canada respectively. Back in the 1930s the CBC was created largely in response to concerns that Canadian culture would be drowned by the flood of American broadcasts if a Canadian service was not established. Our mandate, as laid out in Canada's 1991 Broadcasting Act, states that:

[T]he Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;

[T]he programming provided by the Corporation should:

- i. be predominantly and distinctively Canadian,

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<sup>2</sup> For this proceeding, we have omitted our usual collection of promotional material (program descriptions) received from our members.

- ii. reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,
- iii. actively contribute to the flow and exchange of cultural expression,
- iv. be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,
- v. strive to be of equivalent quality in English and French,
- vi. contribute to shared national consciousness and identity,
- vii. be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and
- viii. reflect the multicultural and multiracial nature of Canada.

**A. CBC Television (English Language)**

In 2004 through 2005, the English network consisted of 27 stations, from coast to coast. Fifteen of these stations were owned and operated by CBC and 12 were affiliates. Affiliates are privately owned stations that carry a requisite number of hours of CBC Television programming. Page one of **Exhibit CDN-1-F** is a list of CBC Television Network Owned and Operated and Affiliated Stations. Before we moved to a 24-hour broadcast day in October 2006, daily broadcast hours varied across locations. CBC Television broadcasts seven days a week, typically from 6:00 a.m. to 1:00 or 2:00 am. Special events such as live Olympics coverage sometimes extended the broadcast day considerably. Together, CBC Television stations and affiliates reach 99% of the Canadian population.

CBC Television programs are made in Canada or acquired from other countries. **Exhibit CDN-1-G** contains CBC Television broadcast schedules for the 2003/2004, 2004/2005 and 2005/2006 television seasons. We have “shaded” some blocks on the grids to indicate when some or the entire time slot contains a program claimed by an American group. The schedules illustrate

that few of our programs are American. As a general rule, a large majority of the programming on CBC Television signals falls within the claim of the Canadian Claimants Group.

CBC Television's broadcasting services were conceived with the need to be distinct from American services and are by mandate, predominantly and distinctively Canadian. A direct consequence of this is a schedule that consistently offers American viewers a unique programming alternative. This includes:

- Original and distinctive dramas and comedies that CBC produces, co-produces, develops or licenses.
- Sports programs not ordinarily available on conventional television in the United States, such as amateur international sport competitions (these often involve American athletes), soccer, curling, show jumping and Canadian football.
- Hockey, tennis, golf, baseball games and events that don't feature American teams. (CBC sports broadcasts generally include not only the event, but also popular commentary segments such as Hockey Night in Canada's Coaches' Corner featuring Don Cherry and Ron McLean.)
- Canadian children's programming that is commercial-free and non-violent.
- Featured prime-time broadcasts of a diverse offering of arts and cultural programming, such as ballet, operas, and theatrical performances, not generally seen on U.S. commercial television.
- News and current affairs programs reporting on Canada and the world from a Canadian perspective. Not only is the perspective novel, it is beneficial in that it informs Americans of events in Canada that are of interest to many, particularly those living along the Canadian border. (Correspondent Alison Smith will present separate testimony on CBC's extensive and experienced news programming service.)
- Multiple long-running, award-winning documentary series as well as featured long-form in-depth documentaries.



Something else to note is that 100% of the CBC Television network is closed-captioned and an ever-increasing number of programs are broadcast with “described video.”<sup>3</sup>

In the two years covered by these proceedings there were numerous special programming events. These included the broadcast of:

- High quality contemporary drama and entertainment found nowhere else in North America, such as *H2O*, *Sex Traffic*, *North of 60: Distant Drumming*, and *This is Wonderland*.
- *Making the Cut*, a truly Canadian prime time reality series about hockey players hoping to win actual tryouts for NHL teams, & *The Greatest Canadian*, a series that asked viewers to nominate the person they thought deserved that title, then featured the top ten in a series that was a mix of debate, documentary, and reality show.
- Almost 300 hours coverage of the 2004 Olympic Games in Athens, Greece, plus the Paralympics. CBC’s Olympic coverage is popular with American viewers who like “live event” coverage, and a focus on sporting event over commentary. CBC Television has received four IOC Golden Rings awards for broadcasting excellence, most recently for our equestrian coverage in Beijing.
- From *the fifth estate*, award winners – *Tsunami: Untold Stories* and *War Without Borders* and from *The Nature of Things - Passion & Fury: The Emotional Brain*.
- The perennially popular *Coronation Street*.
- Many major news events (these will be addressed in the testimony of Alison Smith).

Some awards won by programs broadcast on CBC Television are listed in **Exhibit CDN-1-H**.

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<sup>3</sup> Described video (also known as descriptive audio) is intended to make television accessible to blind or vision-impaired audiences. Through this process relevant action scenes and on-screen text (such as credits) in video programming is described and read by a narrator.

I also have a video (DVD) that was produced to launch CBC Television's "new" season for 2004-2005. This is available as **Exhibit CDN-1-I**, with an accompanying log of the programs featured on it. The video provides a glimpse of the programs that were retransmitted in 2004 and 2005. (I would like to alert you to the fact that there is a very brief sequence with vintage nudity and some adult references.)

## **B. La Télévision de Radio-Canada (French Network)**

La Télévision de Radio-Canada is our French Television Network ("Radio-Canada"). In 2004 and 2005 it was composed of eight owned and operated stations and five affiliated stations located across the nation. The principal network station is CBF7, located in Montreal. The network operates entirely in French. Affiliate relationships for French TV are similar in commitment to the English structure. Page two of Exhibit CDN-1-F is a list of the owned and operated and affiliated stations Radio-Canada.

Radio-Canada operates under the same mandate as CBC Television. It broadcasts an equally wide spectrum of programming, some it produces and others it acquires from our many Quebec based claimant members. There is of course the added distinction, and benefit for French speaking Americans, that the programs are created as original French-language productions.

In fact, the retransmission of French-language Canadian programming corresponds with the geographic regions containing higher percentages of French and French-Canadian ancestry Americans. **Exhibit CDN-1-J** is made up of two maps that were generated on the U.S. Census Bureau web site and are based on information from the 2000 Census. Entitled "Percent of Persons of French (except Basque) Ancestry: 2000" and "Percent of Persons of French Canadian Ancestry: 2000," they display the concentration of persons by state in the United States who are of French or French Canadian ancestry. These maps demonstrate that high concentrations of these populations are found in the New England states where all the distant retransmission of French-language Canadian signals occurs (this is apparent by comparing the ancestry maps with the retransmission maps in Exhibit CDN-1-A.)

In the span of time covered by these proceedings there were numerous special programming events. These included the broadcast of:

- *La Grande Ourse*, and its sequel *L'héritière de Grande Ourse* new primetime fantasy melodramas situated in Quebec that created an impressive fan base.
- *Tout le monde en parle*, an often controversial prime time talk show.
- The second and third seasons of the family comedy *L'auberge du chien noir* a popular show which is still running in 2008-2009.
- *Benjamin*, *Mona le Vampire*, and *Galidor* - programs for children and youth.
- *Adrenaline*, Radio-Canada's award winning weekly program covering professional and amateur sports.
- 223 hours coverage of the Olympic Games in Athens, Greece.

Some awards won by Radio-Canada are listed in **Exhibit CDN-1-K**. Attached as **Exhibit CDN-1-L**, you will find Radio-Canada's French television network broadcast schedules for the 2003/2004, 2004/2005 and 2005/2006 television seasons. Again, the "shaded" blocks indicate where programming is attributable to an American claimant.

## **6. Distant Carriage of Canadian Signals by U.S. Cable Systems**

The next set of exhibits in my testimony is based on data obtained from Cable Data Corporation (CDC). The data on these exhibits are traditionally referred to as "carriage data" because they are based on the carriage of broadcast signals on a distant basis by U.S. cable systems. CDC compiles its database from the information provided by cable systems when they file their semi-annual Statements of Account with the Copyright Office. The CCG and other claimant groups have relied on this data for distribution proceedings for many years. CDC allocates royalties to particular signals using the information provided in the Statements of Accounts.

Our carriage data exhibits focus only on data from Statements of Accounts filed by "Form 3" cable systems which are the largest cable systems

in the U.S. Traditionally, in these proceedings, the Copyright Royalty Tribunal and Copyright Arbitration Royalty Panels focused only on information about Form 3 cable systems. Form 3 royalties make up the majority of all royalties paid. According to CDC data, in 2004 and 2005 Form 3 systems paid about 97% of all cable royalties paid by U.S. cable systems. Form 3 systems also are the only systems that report carriage information with enough detail to allow a determination of which types of signals and programming are responsible for generating the royalties. We continue this approach so that current carriage and royalty data can be compared to prior years to demonstrate changed circumstances.

It should be noted that during the years at issue in these proceedings there was a change in the royalty structure. As shown on the website of the Copyright Office, effective with the 2005-2 accounting period, the amount of semi-annual gross receipts necessary to qualify as a Form 3 system rose from \$379,600 to \$527,600. At the same time, the royalty rates for the base rate fee and the minimum fee were increased.

The data that are presented in these exhibits generally cover 1998 through 2005. As we file this testimony, there is no decision on the 2000-2003 cable royalty distribution proceeding. Consequently, we continue to use the 1998 and 1999 data to establish the foundation from which we show changed circumstances. In some cases, where it is necessary to take a longer term view, we present data going back further. As a general rule, the data for the years 1999 and earlier are based on CDC data presented by the CCG in the 1998 - 1999 Cable Royalty Distribution Proceeding (Docket No. 2001-8 CARP CD 98-99). The data for the years 2000 through 2003 are the same data that was presented in the 2000-2003 Cable Royalty Distribution Proceeding (Docket No. 2008-2 CRB CD 2000-2003) and received from Cable Data Corporation in the fall and winter of 2008-2009. The data for 2004-2005 are from Cable Data Corporation and were obtained in the spring of 2009. Unless otherwise noted, all data in these exhibits is based on the carriage of signals on a distant basis.

#### **A. Royalties Paid for the Carriage of Canadian Distant Signals**

CDC data show that cable systems have paid more in royalties for Canadian signals in 2004-2005 than in 1998 and 1999. In fact, the amount of royalties paid for Canadian signals grew at a greater rate than the combined growth rate for all other signal types during the same period. That said, total

Canadian distant royalties in 2004 and 2005 are a little less than they were at the high point of 2003.

**Exhibit CDN-1-M** presents the royalties information for 1998 through 2005. The first four pages of Exhibit CDN-1-M show royalty fees derived from the retransmission of distant signals by U.S. cable systems. There is a table for all royalties and one for each of the three types of fees: base, 3.75% and Syndicated Exclusivity royalties (Syndex). Syndex data is shown in this exhibit simply for the sake of completeness. The CCG does not claim any right to receive a share of Syndex funds.

The tables on the first four pages of this exhibit show the royalties paid each accounting period for Canadian signals and for the combined total for all other types of signals (Educational, Network, Independent, Low Power, and Mexican). They are broken into two sections. At the top are the fees for each accounting period in the last and current proceedings. Included are the averages for the four accounting periods of last proceeding. On the right side, the tables show the percentage change for each accounting period from the average for the last proceeding. Below that are the same data presented on an annual basis (determined by adding the numbers for the two accounting periods in each year). In this and other exhibits, we chose to show relative change of Canadian signal data and relative change of data for all other signal types combined to illustrate that though both generally grew from the time of the 1998-1999 Distribution Proceeding, the growth for Canadian signals has been greater.

These pages are followed by three pages of graphs that show the relative growth since the 1998-1999 Proceeding in distant total, base and 3.75% royalties paid for Canadian signals compared to all other signals types. The percentages are the same as those shown on the tables. The charts illustrate that fees paid for Canadian signals grew at a substantially greater rate than fees paid for all other signals.

**Exhibit CDN-1-N** is a seven page exhibit that again shows the total distant, base and 3.75% fees, this time broken out by the four primary signal types: Independent, Network, Educational, and Canadian. We do not break out Mexican and Low Power Signals, which combined contribute from 0.14% to 1.5% of total royalties in each accounting period from 1998 to 2005.

The first four pages are tables that show the amount of royalties by signal type and then below, a table showing the relative percentage of the total

for each signal type. There is a table for all royalties and one for each of the three types of fees: base, 3.75% and Syndex royalties. The last three pages of this exhibit are graphs that visually display the relative change per signal type for total, base and 3.75% fees.

**Exhibit CDN-1-O** looks at certain aspects of the minimum fees paid by cable operators. Form 3 cable systems are required to pay a minimum fee (equal to the cost of retransmitting a distant signal as the first full Distant Signal Equivalent (DSE) on the base royalty fee payment scale).<sup>4</sup> If the system carries no distant signals or less than one full DSE of distant signals, the system pays the minimum fee. Specifically, the exhibit addresses the amount of minimum fees paid by systems with no distant carriage at all (sometimes called “zero DSE systems”). (This exhibit is not intended to track or document all minimum fees, such as those paid by systems carrying more than zero but less than one DSE of distant signals.)

This exhibit shows that starting in 1998-1 there was a sudden and dramatic increase in the number of systems carrying no distant signals but paying the minimum fees. Comparing the period covered by the 1990-1992 Distribution Proceeding to the 1998-1999 Distribution Proceeding, there was a very pronounced change in the payment of these fees while in contrast there was relatively minor change from the period covered by the 1998-1999 Distribution Proceeding to the current period.

**Exhibit CDN-1-P** is a one-page summary of the amount of distant royalties paid per year for Canadian signals in 1998 through 2005 for base and 3.75% fees. The tables also show the fees paid for Canadian signals as a percentage of fees paid for all distant signals. This is calculated by dividing royalties paid for Canadian signals by the royalties paid for all distant signals. Table 2, *infra.*, shows that the percentages of base and 3.75% Royalties paid for Canadian signals increased meaningfully since the 1998-1999 Proceeding.

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<sup>4</sup> Form 1 and Form 2 systems do not pay this minimum fee.

**Table 2**  
**Canadian Signal Royalties as a Percentage of**  
**All Distant Signal Royalties**

Year	Base Royalties	3.75% Royalties
1998	3.31027%	0.25372%
1999	3.64297%	0.62980%
2000	3.84417%	0.58308%
2001	4.06297%	2.07669%
2002	4.80822%	3.36590%
2003	4.73598%	4.17951%
2004	4.15345%	3.50111%
2005	4.36346%	3.22989%

**Exhibit CDN-1-Q**, entitled “Total Distant Royalties Paid by Form 3 Systems for Canadians Signals,” shows the sum of total distant royalties paid for Canadian distant signals during the years 2004 and 2005, broken out by call sign. The exhibit also shows how those royalties compare as a proportion of all distant royalties paid for Canadian signals. Notably, the first four signals of the 21 on the list account for about 77% of all royalties paid for Canadian signals.<sup>5</sup>

**B. Subscriber Instances and Instances of Carriage**

Another way to examine growth in the carriage of Canadian signals is to look at “Subscriber Instances” and “Instances of Carriage.” Subscriber Instances measure the number of cable system subscribers who have access to a distant signal. In contrast, “Instances of Carriage” are the number of times a signal or signal type is carried by a cable system on a distant basis. The number of Instances of Carriage tells nothing about the size of each cable system. Thus, whether a cable system has 2000 subscribers or 2,000,000 subscribers, the system would count as one Instance of Carriage. As cable systems merge and consolidate, the number of Instances of Carriage for signals on those systems may decrease without decreasing the total number of Subscriber Instances.

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<sup>5</sup> The royalty numbers in this exhibit need one qualification: the sum of these numbers differ from the sum of those reported in Exhibit CDN-1-M by approximately \$31,000 because of the way in which Cable Data Corporation reports the royalties in its database. This does not meaningfully affect the relative share of all royalties paid for each Canadian signal during 2004 and 2005.

**Exhibit CDN-1-R**, entitled “Distant Subscriber Instances” presents the number of cable television subscribers receiving signals retransmitted on a distant basis by U.S. cable systems. It is important to note that the number of subscribers presented in this table is cumulative. For example, if a cable system has 10,000 subscribers and carries one Canadian and four independent signals on a distant basis in a given accounting period, CDC allocates 10,000 subscribers to Canadian signals for that period and 40,000 to independent signals. While the result is that the total number of Subscriber Instances reported by CDC exceeds the number of people who actually subscribe, the Subscriber Instances as reported by CDC are an accurate depiction of the number of people who can see a particular distant signal in the U.S. and, in the aggregate, present a reasonable basis for comparing the relative reach of each signal type.

Page 1 of this exhibit shows that the relative reach of Canadian signals, as measured by the number of Subscriber Instances, has grown at a rate that exceeds the growth of other signal types.

Page 2 shows Distant Subscriber Instances broken out by individual signal types.

**Exhibit CDN-1-S**, entitled “Distant Instances of Carriage” presents a table showing the number of times Canadian signals and all other signals were retransmitted on a distant basis by U.S. cable systems during each accounting period beginning in 1998. Page 1 compares all Canadian signals to all other signals and page 2 breaks out the information by individual signal types. As can be seen, Canadian signals make up a very small portion of all Instances of Carriage. In fact, Canadian signals consistently make up only about 1.8% of all Instances of Carriage in 2004 and 2005, even though by 2005, those signals were responsible for over four percent of the total royalties.

**Exhibit CDN-1-T** is a set of charts examining the change in growth of Canadian signal carriage by combining information about Subscriber Instances and Instances of Carriage. These charts show that as the absolute number of Instances of Carriage have fallen for Canadian distant signals (i.e., slightly fewer signals are being retransmitted now than in the 1998-1999 Proceeding) the number of people with access to Canadian signals, as measured by Subscriber Instances, has increased. This increase is not just the result of growth in the overall cable market nor simply the result of merger. The charts show that the



growth is greater for Canadian signals than that experienced by other signals types in the same period.

Page 1 of the exhibit compares Instances of Carriage over a 23 year period to the number of Subscriber Instances per Instance of Carriage. The graph on the left, for Canadian signals, shows that while the number of Instances of Carriage decreased over time, the number of Subscriber Instances per Instance of Carriage increased. In contrast, the graph on the right, for all other distant signals, shows that while Instances of Carriage have come down dramatically, the number of Subscriber Instances per Instance of Carriage have changed very modestly in that time, decreasing somewhat in the current period.

Page 2 of the exhibit compares Instances of Carriage to total distant subscriber instances over the same 23 year period. The chart on the left, for “Canadian Signals,” shows that even as the Instances of Carriage have decreased, the total number of Subscriber Instances on cable systems that carry Canadian distant signals has increased. The graph on the right, for all other distant signals shows that historically the change in Subscriber Instances for non-Canadian distant signals closely tracks the number of Instances of Carriage for those distant signals.

Both exhibits show that the reach of Canadian distant signals grew disproportionately to the movement of all other distant signals.

### **C. Fees per Instance of Carriage and per Subscriber Instance**

Another way to look at the changed circumstances is to compare the amount of fees paid per Subscriber Instance and per Instance of Carriage for Canadian signals and for all other signal types. In both cases, growth since 1998-1999 has been greater for Canadian signals than for other signal types.

**Exhibit CDN-1-U**, entitled “Relative Change in Total Royalties Paid per Subscriber Instance” is made up of tables and a graph showing the relative change in total distant fees per Subscriber Instance since the 1998-1999 Proceeding for Canadian signals and all other signals. The total distant fees paid per Subscriber Instance can be determined by dividing the fees paid for the signal type each year by the number of Subscriber Instances for that year. This chart shows the relative change in those numbers by year since the last proceeding.

The chart illustrates that while royalties paid per Subscriber Instance have grown for all signals since the last proceeding, they have grown greater for the Canadian signals than for the other signal types.

**Exhibit CDN-1-V**, entitled “Relative Change in Total Royalties Paid per Instance of Carriage” is made up of tables and a graph showing the relative change in total fees per Instance of Carriage since the 1998-1999 Proceeding for Canadian signals and all other signals. This chart shows a relative comparison of the change in what cable system operators pay for each Instance of Carriage.

The chart shows that while the royalties paid per Instance of Carriage have grown for all signals since the last proceeding, they have grown greater for the Canadian signals than for all other signal types.

## **7. Conclusion**

The quality, quantity, breadth and depth of Canadian programming enriches the lives of Americans living along the Canadian border. They are entertained and informed with a perspective that is decidedly different from that found on American broadcast and cable television programming. They have access to a schedule of programs that they cannot see elsewhere. In fact, CBC/Radio-Canada programming is specifically mandated to be different from that seen on American stations. To American cable system operators, the carriage of Canadian distant signals is an easy way to bring diversity to the channel lineup, enhancing the cable operators’ ability to attract and retain subscribers.

In 2004 and 2005 Canadian distant signal carriage as measured by royalties and subscribers shows sustained demand for the programming on these signals by cable operators, particularly when compared to the royalties and subscribers attributable to the Canadian distant signals in 1998-1999. In 2004-2005, Form 3 cable operators carried a total of about 980 different distant signals each accounting period (and some cable operators’ chose to carry no distant signals at all). Given the broad array of choices, the decision of selective cable operators to carry Canadian signals on a distant basis is a clear indication that those cable operators value the programming. There can be no serious question that the value of Canadian programming is equal to at least what was paid for the carriage of Canadian signals.

# THE CANADIAN RETRANSMISSION ZONE

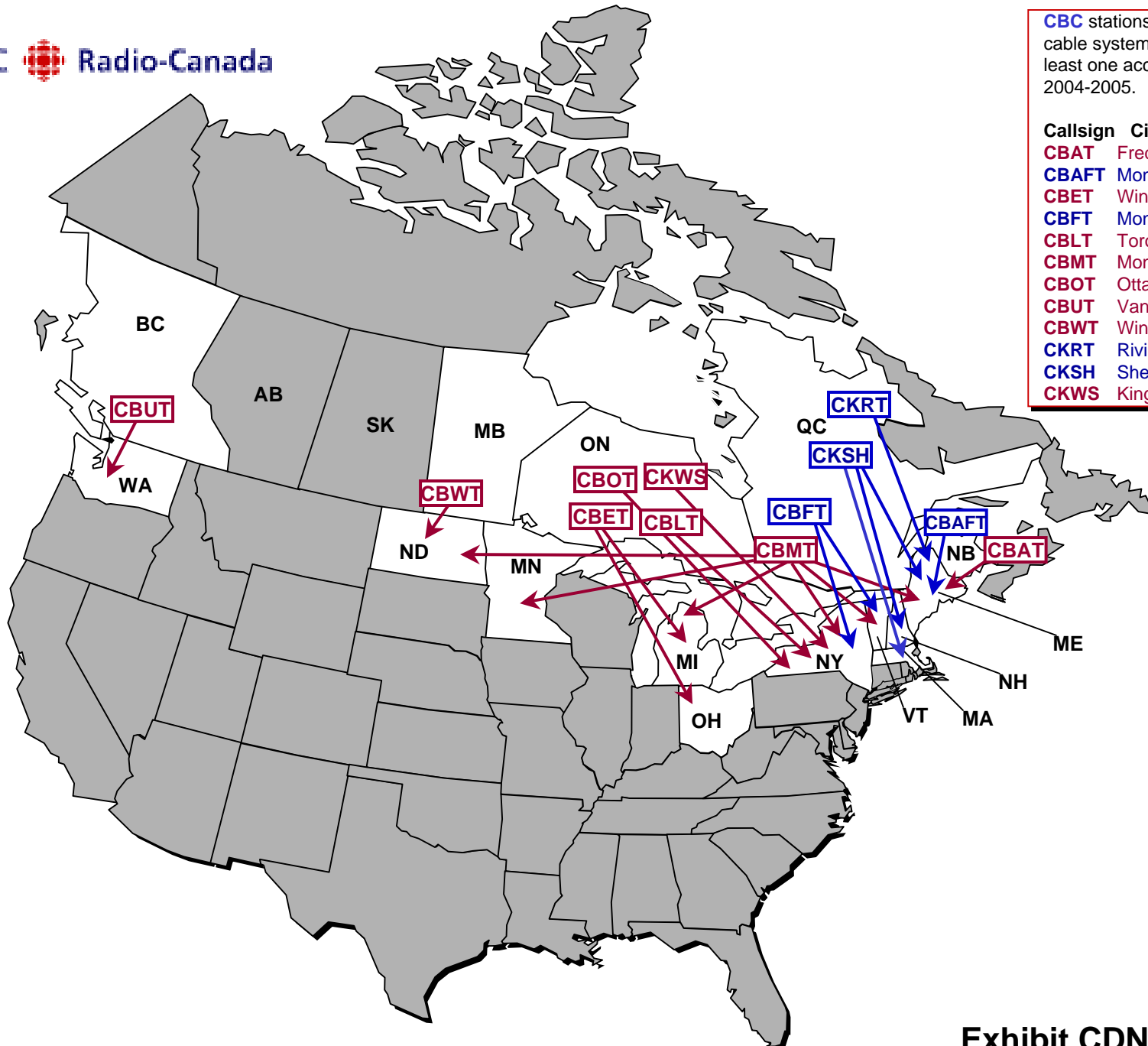
The Copyright Act allows the retransmission of Canadian signals by U.S. cable systems in the northern U.S. and defines the area in the United States within which cable systems may **not** retransmit Canadian broadcast stations.

“The secondary transmission to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by an appropriate governmental authority of Canada or Mexico is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 509, if (A) with respect to Canadian signals, the community of the cable system is located more than 150 miles from the United States-Canadian border and is also located south of the forty-second parallel of latitude”...17 U.S.C. 111(c)(4)(A)



CBC stations retransmitted by Form 3 cable systems as distant signals in at least one accounting period during 2004-2005.

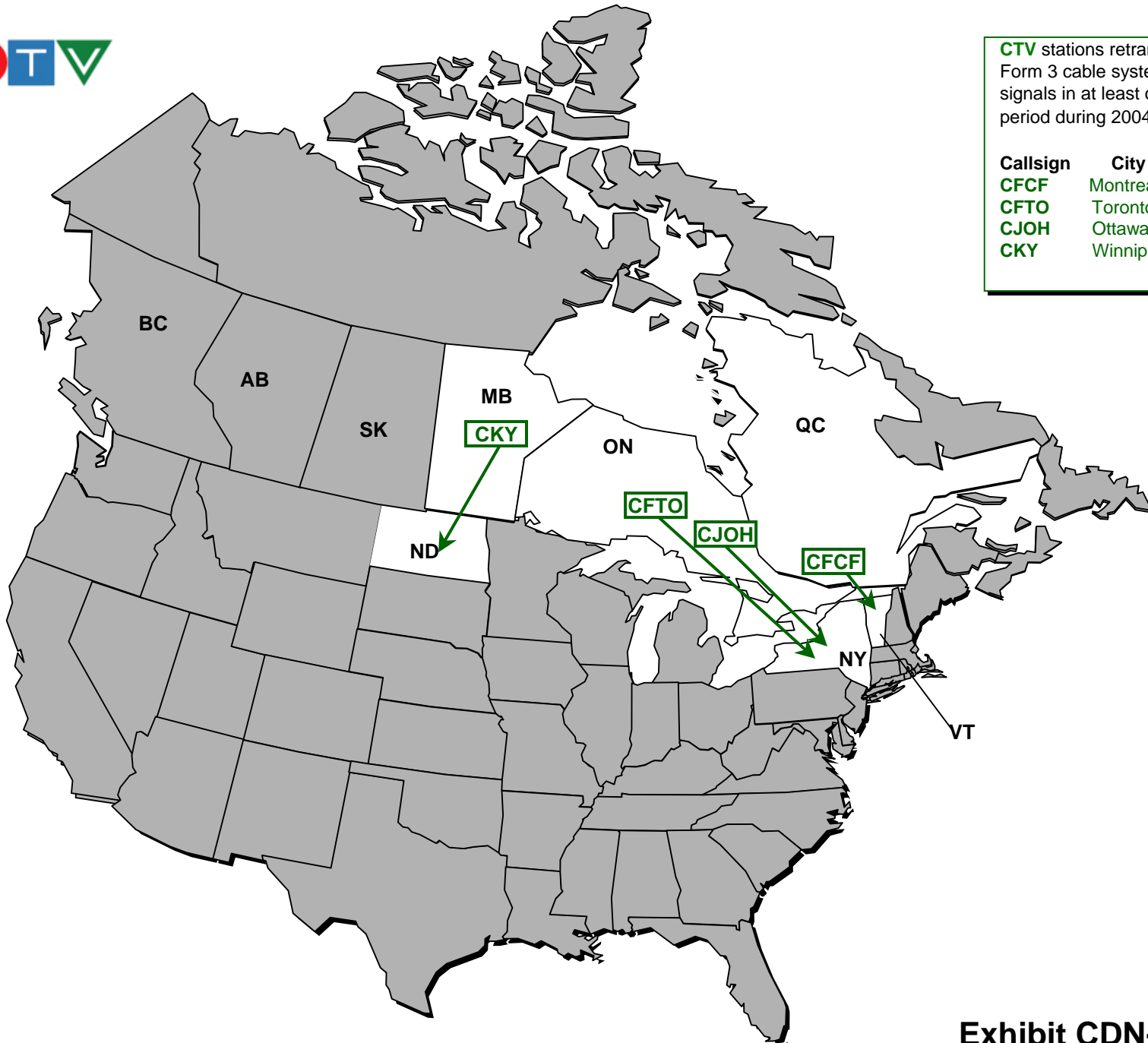
Callsign	City	Language
CBAT	Fredericton	English
CBAFT	Moncton	French
CBET	Windsor	English
CBFT	Montreal	French
CBLT	Toronto	English
CBMT	Montreal	English
CBOT	Ottawa	English
CBUT	Vancouver	English
CBWT	Winnipeg	English
CKRT	Rivière-du-loup	French
CKSH	Sherbrooke	French
CKWS	Kingston	English





**CTV** stations retransmitted by Form 3 cable systems as distant signals in at least one accounting period during 2004-2005.

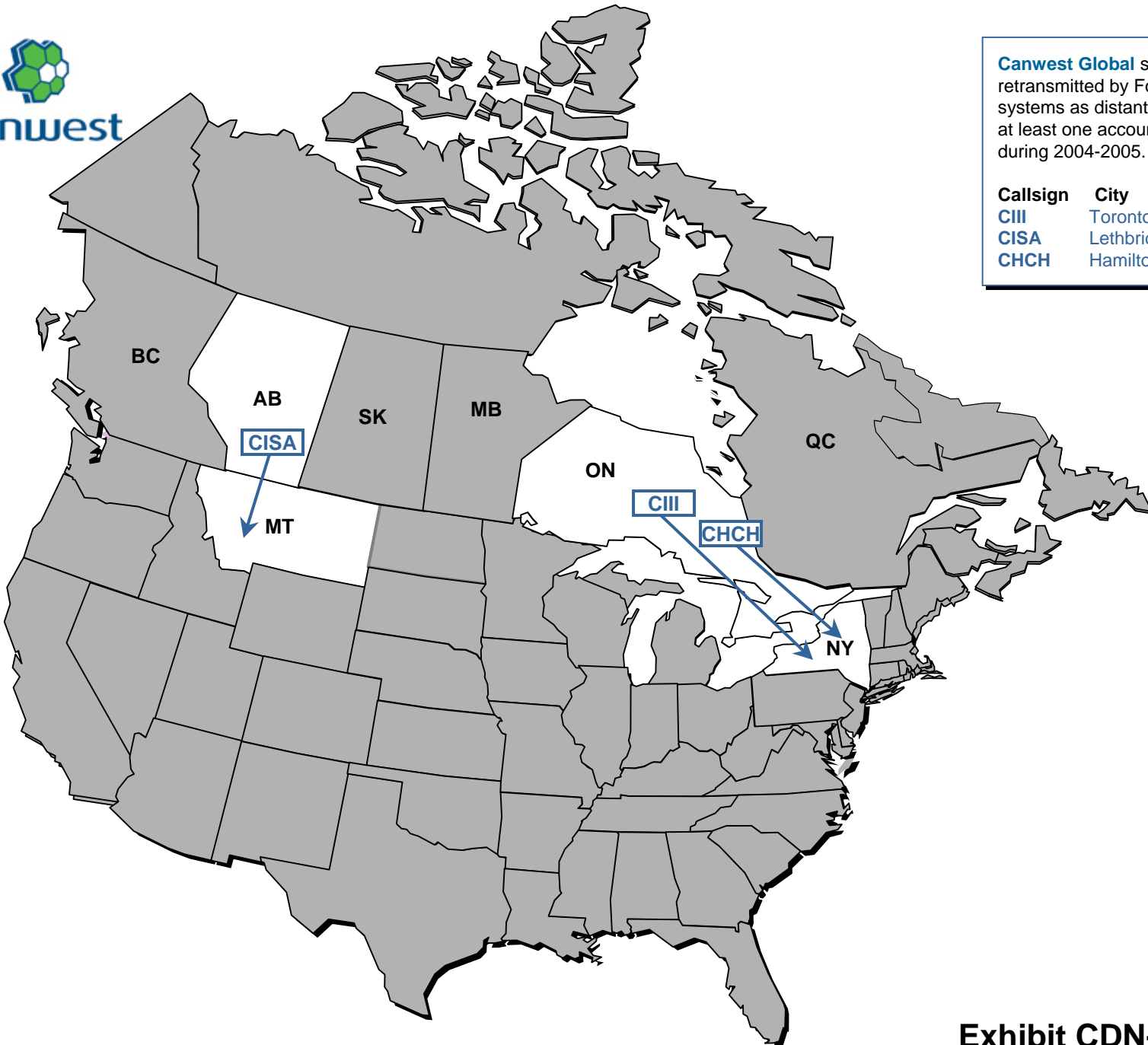
Callsign	City	Language
<b>CFCF</b>	Montreal	English
<b>CFTO</b>	Toronto	English
<b>CJOH</b>	Ottawa	English
<b>CKY</b>	Winnipeg	English





**Canwest Global** stations retransmitted by Form 3 cable systems as distant signals in at least one accounting period during 2004-2005.

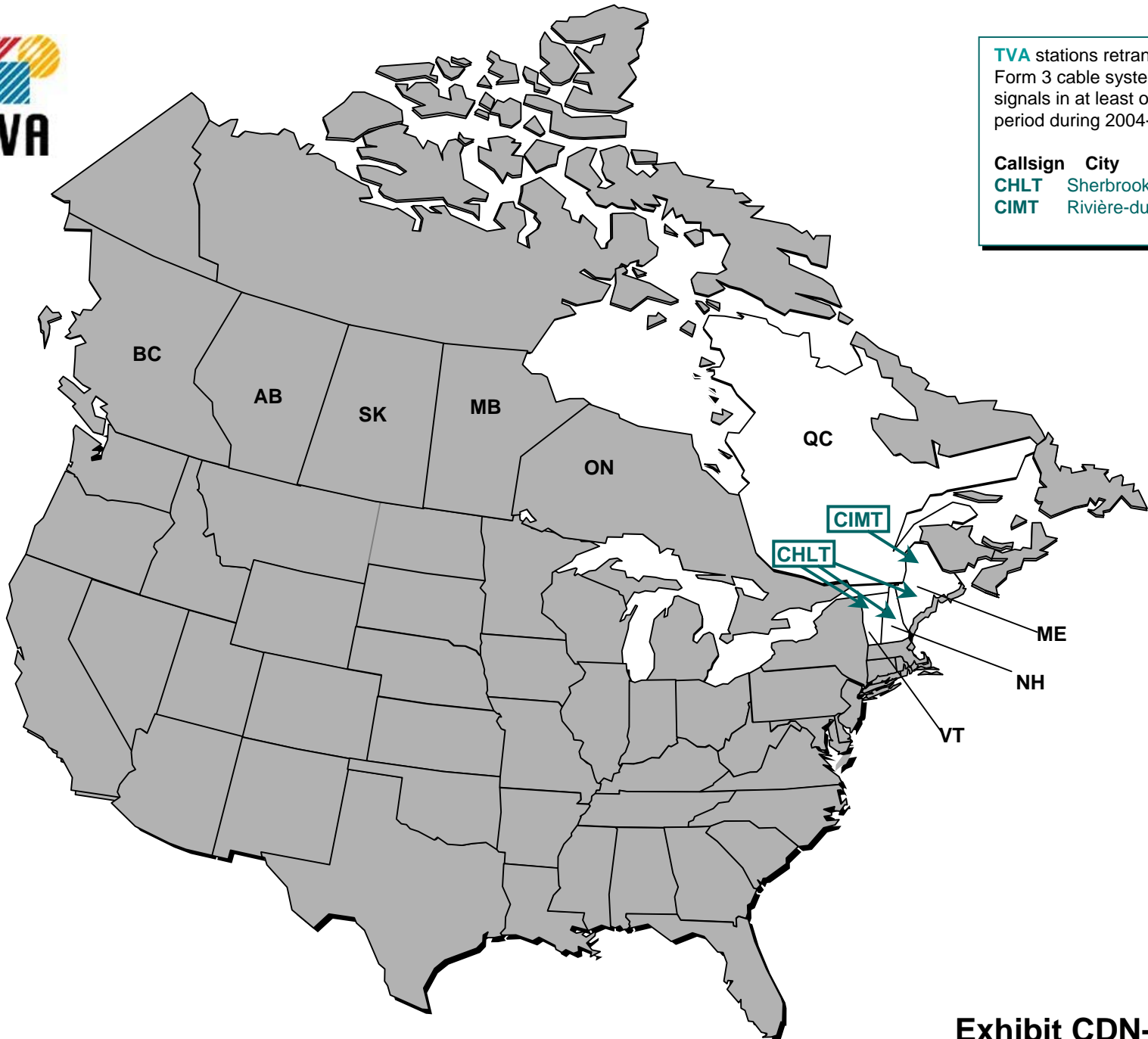
Callsign	City	Language
<b>CIII</b>	Toronto	English
<b>CISA</b>	Lethbridge	English
<b>CHCH</b>	Hamilton	English





TVA stations retransmitted by Form 3 cable systems as distant signals in at least one accounting period during 2004-2005.

Callsign	City	Language
CHLT	Sherbrooke	French
CIMT	Rivière-du-loup	French





## 2004 Canadian Claimants Group Members

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1. Air Farce Productions Incorporated
2. Alcina Pictures Limited
3. Anaid Productions Incorporated
4. Breakthrough Entertainment Incorporated
5. Canadian Broadcasting Corporation (CBC)
6. Canadian Feature Film Productions (o/a The Feature Film Project)
7. Canwest Global Broadcasting Incorporated (CIII/CIHF/CJNT/ CICT/CHCH/ CITV/CKRD/CKND/CISA/ CHBC/CHEK/CHAN/CKMI/CFSK/CFRE)
8. Carol Reynolds Productions Incorporated
9. CCI Entertainment Limited, Cambium Film & Video Productions Limited, Catalyst Entertainment Incorporated, CCI Releasing Incorporated, Cambium Releasing Incorporated, Catalyst Distribution Incorporated
10. Cineflix Incorporated, Forum 5 Incorporated
11. CinéGroupe Corporation, CinéGroupe Animation, CinéGroupe Distribution, Animation JP Incorporated
12. Cinémaginaire Incorporated
13. CineNova Productions Incorporated
14. Cirque du Soleil Images Incorporated
15. CKWS Television
16. Communications Claude Héroux Plus Incorporated
17. Cookie Jar Entertainment Incorporated
18. Cooper Rock Pictures Incorporated
19. Crescent Entertainment Limited, Marine Life Productions Limited, Warrior Productions Limited, Nightman Productions Incorporated, Crow Productions Incorporated, Monkey House Productions Limited
20. Crossroads Christian Communications Incorporated
21. CTV Television Incorporated (CFTO/CJOH/CICC(CIEW)/CFCF/CIVT/CKY)
22. Decode Entertainment Incorporated, Decode/Blobheads Productions Incorporated, Decode /Save-Ums Productions Incorporated, Hoobs Productions Incorporated, Angela Productions Incorporated, Decode/BTC Productions Incorporated
23. Docutainment Plus Productions Incorporated
24. Ego Film Arts
25. Ellis Entertainment Corporation
26. Epitome Distribution Incorporated, P.W.T. Distribution Incorporated
27. Filmline International (1999) Incorporated
28. Filmoption International
29. Films Zingaro Incorporated, Amérimage-Spectra Incorporated, Sogestalt Télévision Incorporated, Sogestalt TV Québec, Productions Bleu Blanc Rouge Incorporated, L'Equipe Spectra Incorporated

**Exhibit CDN-1-B**





## 2004 Canadian Claimants Group Members

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30. Fireworks Distributing Corporation, Fireworks Media Incorporated, Fireworks Entertainment Incorporated
31. Force Four Entertainment Incorporated, Force Four Productions Limited
32. Galafilm Incorporated, Galafilm Productions (I) Incorporated, Galafilm Productions (III) Incorporated, Galafilm Productions (IV) Incorporated, Galafilm Productions (V) Incorporated, Galafilm Productions (VI) Incorporated, Galafilm Productions (VII) Incorporated, Galafilm Productions (VIII) Incorporated, Galafilm Productions (IX) Incorporated, Galafilm Productions (X) Incorporated, Galafilm Productions (XI) Incorporated, Galafilm Productions (2000) Incorporated
33. IMX Communications Incorporated, Imagex Limited
34. Infinity Films Entertainment Group Limited, Bog Productions Incorporated, Bog Production (1999) Limited, Precipice Productions Limited, Zachor Productions Limited, KKBL No. 293 Ventures Limited, Nutshell Productions Limited, Duty Productions Limited, Guinea Pig Productions Limited, Comedic Productions Limited, Race Productions Limited
35. Insight Production Company Limited
36. Just for Laughs TV Incorporated/Juste pour rire TV Incorporated
37. Kinémage International Incorporated
38. King Motion Picture Corporation
39. Knight Enterprises
40. Maple Pictures Corporation
41. Media Headquarters Film & Television Incorporated
42. Minds Eye Holdings Incorporated
43. Motion Picture Distribution LP
44. Muse Entertainment Enterprises Incorporated
45. National Film Board of Canada
46. Nelvana Limited
47. Norflicks Productions Limited, Eternity Incorporated, Seapower Productions Incorporated
48. Novem Productions Incorporated, Novem Television Incorporated, Novem Réalité Incorporated
49. Omni Film Productions Limited, Water Street Pictures Limited
50. Ontario Educational Communications Authority
51. Peace Arch Entertainment Group Incorporated
52. Portfolio Entertainment Incorporated
53. Productions Avanti Ciné Vidéo Incorporated, Filiales de Productions Avanti Ciné Vidéo Incorporated, 9067-2775 Québec Incorporated, 9067-2825 Québec Incorporated, 9067-2841 Québec Incorporated, 9067-2858 Québec Incorporated, 9067-2866 Québec Incorporated
54. Productions Pixcom Incorporated
55. Productions Vendôme II Incorporated



## 2004 Canadian Claimants Group Members

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56. Productions Vidéofilms Ltée, Les Productions Le Pollock Incorporated, Vidéofilms (Chartrand et Simonne) Incorporated, Vidéofilms (Jean Duceppe) Incorporated
57. Protocol Entertainment Incorporated
58. Radical Sheep Productions Incorporated
59. Raincoast Storylines Limited
60. Rhombus International Incorporated
61. S & S Productions Incorporated
62. Shaftesbury Films Incorporated, Camilla Films Incorporated, Shaftesbury Swann Films Incorporated, Prairie Doves Incorporated, External Affairs Limited, Shaftesbury Mysteries Incorporated, Shaftesbury Mysteries II Incorporated, Shaftesbury Mysteries III Incorporated, Shaftesbury Mysteries IV Incorporated, Shaftesbury Mysteries V Incorporated, Shaftesbury Mysteries VI Incorporated, Shaftesbury Kids I Incorporated, Shaftesbury Kids II Incorporated, Shaftesbury Kids III Incorporated, Shaftesbury Kids V Incorporated, Shaftesbury CanLit I Incorporated, Shaftesbury CanLit II Incorporated, Shaftesbury Stories I Incorporated, Shaftesbury Stories II Incorporated, Two Two Incorporated, Sleep Well Productions Incorporated, Shaftesbury LLHP Incorporated, Shaftesbury Regensis I Incorporated
63. Soapbox/Stranger Productions Incorporated, Molly's Reach II Productions Incorporated
64. Sound Venture Productions Limited
65. Sphère Média Incorporated, Sphère Média 2004 Incorporated, Sphère Média 2003 Incorporated, Sphère Média 2002 Incorporated, Sphère Média 2001 Incorporated, Productions Charlotte Incorporated
66. Studio B Entertainment Incorporated
67. Sullivan Entertainment International Incorporated
68. Summerhill Entertainment Incorporated, Summerhill Sports Incorporated, Summerhill Productions Incorporated, Summerhill Lifestyle Incorporated
69. Thunder Bay Television (CKPR/CHFD-TV)
70. TQS Incorporated, Les Productions Point-Final Incorporated, Les Productions Point-Final II Incorporated
71. TVA Films, a division of TVA Group
72. TVA Group Incorporated
73. Vivaclis Incorporated
74. WestWind Pictures Limited
75. Zone 3 Incorporated



## 2005 Canadian Claimants Group Members

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1. ACPAV (Association coopérative de productions audio-visuelles) Corporation  
ACPAV Incorporated (Corporation de développement et de production ACPAV Incorporated)
2. Air Farce Productions Incorporated
3. Alcina Pictures Limited
4. Anaid Productions Incorporated
5. Breakthrough Entertainment Incorporated
6. Canadian Broadcasting Corporation (CBC)
7. Canadian Feature Film Productions (o/a The Feature Film Project)
8. Canwest Media Works Incorporated (CIII/CIHF/CJNT/CICT/CHCA/CHCH/CITV/CKRD/CKND/ CISA/CHBC/CHEK/CHAN/CKMI/CFSK/CFRE)
9. Carol Reynolds Productions Incorporated
10. CCI Entertainment Limited, Cambium Film & Video Productions Limited, Catalyst Entertainment Incorporated, CCI Releasing Incorporated, Cambium Releasing Incorporated, Catalyst Distribution Incorporated
11. CHUM Television International
12. Cineflix Incorporated, Forum 5 Incorporated
13. CinéGroupe Corporation, CinéGroupe Animation, CinéGroupe Distribution, Animation JP Incorporated
14. CineNova Productions Incorporated
15. Cine Roman Incorporated
16. Cirque du Soleil Images Incorporated
17. CKWS Television
18. Cookie Jar Entertainment Incorporated
19. Cooper Rock Pictures Incorporated
20. Crescent Entertainment Limited, Marine Life Productions Limited, Warrior Productions Limited, Nightman Productions Incorporated, Crow Productions Incorporated, Monkey House Productions Limited
21. Crossroads Christian Communications Incorporated
22. CTV Television Incorporated (CFTO/CJOH/CICC(CIEW)/CFCF/CIVT/CKY)
23. Decode Entertainment Incorporated, Decode/Blobheads Production Incorporated, Decode /Save-Ums Production Incorporated, Hoobs Production Incorporated, Angela Production Incorporated, Decode/BTC Production Incorporated
24. Ego Film Arts
25. Ellis Entertainment Corporation
26. Epitome Distribution Incorporated, P.W.T. Distribution Incorporated
27. Filmline International (1999) Incorporated
28. Filmoption International
29. Films Zingaro Incorporated, Amérimage-Spectra Incorporated, Sogestalt Télévision Incorporated, Sogestalt TV Québec, Productions Bleu Blanc Rouge Incorporated, L'Equipe Spectra Incorporated
30. Force Four Entertainment Incorporated, Force Four Productions Limited



## 2005 Canadian Claimants Group Members

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31. Galafilm Incorporated, Galafilm Productions (I) Incorporated, Galafilm Productions (III) Incorporated, Galafilm Productions (IV) Incorporated, Galafilm Productions (V) Incorporated, Galafilm Productions (VI) Incorporated, Galafilm Productions (VII) Incorporated, Galafilm Productions (VIII) Incorporated, Galafilm Productions (IX) Incorporated, Galafilm Productions (X) Incorporated, Galafilm Productions (XI) Incorporated, Galafilm Productions (2000) Incorporated
32. IMX Communications Incorporated, Imagex Limited
33. Insight Production Company Limited
34. Just for Laughs TV Incorporated/Juste pour rire TV Incorporated
35. Kinémage International Incorporated
36. King Motion Picture Corporation
37. Maple Pictures Corporation
38. Media Headquarters Film & Television Incorporated
39. Minds Eye Holdings Incorporated
40. Motion Picture Distribution LP
41. Muse Entertainment Enterprises Incorporated
42. National Film Board of Canada
43. Nelvana Limited
44. Norflicks Productions Limited, Eternity Incorporated, Seapower Productions Incorporated
45. Novem Productions Incorporated, Novem Television Incorporated, Novem Réalité Incorporated
46. Omni Film Productions Limited, Water Street Pictures Limited
47. Ontario Educational Communications Authority
48. Paradigm Pictures Corporation, Demi-Monde Productions Limited, Cherry Pepper Productions Limited
49. Productions Avanti Ciné Vidéo Incorporated, Filiales de Productions Avanti Ciné Vidéo Incorporated, 9067-2775 Québec Incorporated, 9067-2825 Québec Incorporated, 9067-2841 Québec Incorporated, 9067-2858 Québec Incorporated, 9067-2866 Québec Incorporated
50. Productions Pixcom Incorporated
51. Productions Point de Mire Incorporated
52. Productions Vendôme II Incorporated
53. Productions Vidéofilms Ltée, Les Productions Le Pollock Incorporated, Vidéofilms (Chartrand et Simonne) Incorporated, Vidéofilms (Jean Duceppe) Incorporated
54. Radical Sheep Productions Incorporated
55. Raincoast Storylines Limited
56. Rhombus International Incorporated
57. S & S Productions Incorporated



## 2005 Canadian Claimants Group Members

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58. Shaftesbury Films Incorporated, Camilla Films Incorporated, Shaftesbury Swann Films Incorporated, Prairie Doves Incorporated, External Affairs Limited, Shaftesbury Mysteries Incorporated, Shaftesbury Mysteries II Incorporated, Shaftesbury Mysteries III Incorporated, Shaftesbury Mysteries IV Incorporated, Shaftesbury Mysteries V Incorporated, Shaftesbury Mysteries VI Incorporated, Shaftesbury Kids I Incorporated, Shaftesbury Kids II Incorporated, Shaftesbury Kids III Incorporated, Shaftesbury Kids V Incorporated, Shaftesbury CanLit I Incorporated, Shaftesbury CanLit II Incorporated, Shaftesbury Stories I Incorporated, Shaftesbury Stories II Incorporated, Two Two Incorporated, Sleep Well Production Incorporated, Shaftesbury LLHP Incorporated, Shaftesbury Regensis I Incorporated
59. Sound Venture Productions Limited
60. Sphère Média Incorporated, Sphère Média 2004 Incorporated, Sphère Média 2003 Incorporated, Sphère Média 2002 Incorporated, Sphère Média 2001 Incorporated, Productions Charlotte Incorporated
61. Studio B Entertainment Incorporated
62. Sullivan Entertainment International Incorporated
63. Summerhill Entertainment Incorporated, Summerhill Sports Incorporated, Summerhill Productions Incorporated, Summerhill Lifestyle Incorporated
64. TQS Incorporated, Les Productions Point-Final Incorporated, Les Productions Point-Final II Incorporated
65. TVA Group Incorporated
66. Vivaclis Incorporated
67. WestWind Pictures Limited
68. Zone 3 Incorporated



## CANADIAN CLAIMANT PROFILES

2004 – 2005

### ACPAV

Founded in 1971, ACPAV has launched over 40 feature films and more than 50 television documentaries and series. The team is made up of three producers with more than 20 years of experience.



### Air Farce Productions

Independent television production company producing *Royal Canadian Air Farce*, one of Canada's leading current affairs comedy series. Air Farce has existed on radio, television, books, audio recordings and stage since 1973. <http://airfarce.com/>



### Alcina Pictures

Alcina Pictures is a Toronto-based film and television production company committed to developing and producing domestic and internationally marketable commercial and arthouse pictures. Part of the Canadian independent community, Alcina prides itself on working with today's new talent and voices of both Canadian and International cinema. Alcina has developed co-production relationships with companies in Germany, France, Mexico, Ireland and the U.S. <http://www.alcinapictures.com/>



### Alliance Films Incorporated/Alliance VivaFilm Incorporated

Alliance Films (previously known as Alliance Atlantis Motion Picture Distribution Incorporated) is a leading distributor of motion pictures in Canada, with motion picture distribution operations in the United Kingdom and Spain. The company distributes filmed entertainment to theatres, on DVD, online and to television broadcasters. Alliance Films holds the Canadian distribution rights to the productions of leading independent studios. <http://alliancefilms.com/>



### Amérimage-Spectra Incorporated

Producers of the *Festival International de Jazz de Montréal* Television Programming. Over the past decade the company has carved out an enviable place for itself in international markets, and today is regarded as one of the most important Canadian television and film producers in performing arts. Amérimage Spectra is internationally recognized for its know-how and expertise in large-scale television productions. <http://www.amerimage-spectra.com/>



### Anaïd Productions

Anaïd produces award-winning, dynamic, and internationally recognized real-life and dramatic television series. <http://www.anaid.com/>





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Breakthrough Films & Television

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Breakthrough Films & Television is a major producer of popular drama, factual and lifestyle programming, as well as children's live-action and animated series. The catalogue includes animated series *Atomic Betty*, *Captain Flamingo* and *Miss BG*, drama series, *Paradise Falls*, as well as factual programs, *Design Match*, *War of the Wheels* and *Plastic Makes Perfect*. Early success stories include the popular children's series, *The Adventures of Dudley the Dragon*. <http://www.breakthroughfilms.com/>



### Canadian Broadcasting Corporation

---

The CBC is Canada's largest cultural institution. Owned by all Canadians, it is the only cultural institution and the only broadcaster offering services to all Canadians in English and in French across Canada. The CBC has a heritage as the nation's greatest supplier of Canadian cultural content. Its artists, artisans and its presence from coast to coast set standards for excellence across the entire broadcasting system. It is a Crown Corporation governed by the 1991 Broadcasting Act and subject to regulations of the Canadian Radio-television and Telecommunications Commission (CRTC). <http://www.cbc.ca/>



### Canadian Film Centre

---

CFC Feature Film Project is a comprehensive development and production-focused mentorship program for emerging Canadian feature film makers, providing 100% of the financing and mentorship needed for the successful development, production and marketing of dramatic feature films. <http://www.cfccreates.com/>



### CanWest Global Broadcasting Incorporated/Canwest Mediaworks Incorporated

---

CanWest's holdings include conventional television networks Global Television and E! The broadcast brands are complemented by 26 specialty networks. CanWest operates one of Canada's largest newspaper chains; the publications are complemented by several online properties under the canada.com network. In July 2000 the new Global Television Network was established, which comprises stations across Canada. In 2004 the CanWest MediaWorks brand was launched to integrate and unify all the diverse brands of the company. <http://www.canwestmediaworks.com/>



### Carol Reynolds Productions Incorporated

---

Independent producer of movies of the week and variety specials featuring artists such as *Céline Dion* and *Sarah McLachlin*.



## CANADIAN CLAIMANT PROFILES

2004 – 2005

### CCI Entertainment Limited

---

Formed in 2002 through the merger of Cambium Entertainment Corporation and Catalyst Entertainment Incorporated, CCI Entertainment is founded on over 30 years of experience in television production and international distribution. During this time, the Toronto-based company has set new standards for excellence, service and integrity in the Canadian entertainment arena. CCI Entertainment's mission is to create great television that entertains, engages minds and hearts; and fuels the imagination. <http://www.ccientertainment.com/>



### CHUM Limited

---

A media company based out of Toronto, Ontario, CHUM operated several independent television and radio stations, as well as specialty networks. It also supplied syndicated programming to Canadian network broadcasters. <http://www.ctvglobemedia.com/>



### Cineflix & Forum 5

---

Cineflix, a subsidiary company of Forum 5, is an international group of companies producing, acquiring and distributing innovative non-fiction television programming in the factual entertainment, factual and documentary genres for television networks worldwide. Since 2000, Cineflix has grown from a small independent Montréal based producer to one of the world's leading international production and distribution companies with offices in Montréal, Toronto, London and Dublin. <http://www.cineflix.com/>



### CinéGroupe Corporation/9151-4190 Québec Incorporated

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CinéGroupe specializes in forging alliances to finance and produce programming that captures audiences. One of the company's hallmarks is its ability to work with different partners and clients across North America and around the world. CinéGroupe boasts over 1,000 hours of award winning, world animation & live-action programming. <http://www.cinegroupe.com/>



### Cinémaginaire Incorporated

---

Cinémaginaire Incorporated is a Montreal company, which produces feature films and documentaries. It was created in 1988 – the realization of a dream for founder Denise Robert and associate Daniel Louis. Known for its talent for innovation, the company has made more than 20 feature films that have garnered international acclaim and numerous awards. These include an Academy Award in 2004 for *The Barbarian Invasions*.

### Ciné-Roman Incorporated

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Ciné-Roman Inc. was a Montreal based production company founded by the late singer-songwriter-producer Tony Roman.





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Cinenova Productions Incorporated

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Cinenova is a Stratford, Ontario based producer of documentaries for television.

### Cirque du Soleil Incorporated

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Cirque du Soleil Images, the production arm of Cirque du Soleil®, is dedicated to the creation of original and innovative content for TV, DVD and film. For each new venture, the division strives to deliver products that reflect the image, creativity and spirit of the Cirque du Soleil brand and its live shows. Holdings: Cirque du Soleil Images Incorporated, Les Films Lampo Di Vita Incorporated, Créations Musca Incorporated, Productions Conte Incorporated, Productions Conte II Incorporated, Productions Conte III Incorporated and Productions Conte IV Incorporated. <http://www.cirquedusoleil.com/>



### CKWS-TV

---

CKWS is a private affiliate of the Canadian Broadcasting Corporation television network located in Kingston, Ontario, providing coverage in Eastern Ontario. Corus Entertainment owns CKWS. <http://www.ckwstv.com/>



### Cookie Jar Entertainment

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Cookie Jar is one of the fastest growing most dynamic kids companies in the world today. It has become a leader in entertainment, creating successful, innovative, and immensely popular entertainment and educational content for kids around the world. Cookie Jar brands are valued for their entertainment, educational excellence and engaging content. Well-respected Cookie Jar products and shows like “*The Doodlebops*,” “*Hurray For Huckle!* (Busytown Mysteries),” “*Will & Dewitt*,” “*Caillou*,” “*Gerald McBoing Boing*” and “*Arthur*” allow kids to have fun and learn at the same time. <http://www.thecookiejarcompany.com/>



### Cooper Rock Pictures Incorporated

---

Cooper Rock Pictures Incorporated produces engaging and thought provoking programming for broadcasters worldwide. It specializes in creating stories that reflect a wide range of emotions and circumstance. The company successfully portrays the human-interest side of topics as diverse as sports, health and history. <http://www.cooperrock.com/>

### Crescent Entertainment

---

Crescent Entertainment is an award winning, film and television production company based in Vancouver, Canada. Since 1990, company partners Jayme Pfahl, Harold Tichenor, and Gordon Mark have been involved in over forty productions, specializing in the development and production of original feature films, television and documentaries. <http://www.crescent.ca/>





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Crossroads Christian Communications

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Crossroads Christian Communications Incorporated produces a wide variety of Christian ministry programs and carries other programs that also promote positive values and moral decency. It makes creative use of television and other media, together with other activities, which respond to the mission conscience and needs of the constituency. <http://www.crossroads.ca/>



### CTV Television Incorporated

---

CTV, Canada's largest private broadcaster offers a wide range of quality news, sports, information, and entertainment programming. CTVglobemedia Incorporated is Canada's premier multi-media company, which owns CTV Incorporated and The Globe and Mail. CTV Incorporated also owns radio stations across the country, and leading national specialty channels. <http://www.ctvglobemedia.com/>



### Decode Entertainment / Decode Enterprises (DHX Media Companies)

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Decode Entertainment is a subsidiary of DHX Media Limited, a leading international producer of television programming and interactive content with an emphasis on children, family and youth markets. Decode Enterprises, is the distribution subsidiary of DHX Media Limited. It handles programme sales for third party producers and for DHX subsidiaries DECODE Entertainment, Halifax Film and Studio B. <http://www.decode-ent.com/>



### Ego Film Arts

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Ego Film Arts is the production company of international filmmaker and award-winning director Atom Egoyan, director of celebrated films such as *The Sweet Hereafter*, *Exotica*, *Felicia's Journey* and *Sarabande*. <http://www.egofilmarts.com/>

### Ellis Entertainment Corporation

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Ellis Entertainment is a leading international television producer and distributor, with over 40 years history of supplying the global marketplace with quality entertainment and factual programming. Ellis Releasing is the distribution division and Ellis Vision is its production subsidiary. <http://www.ellisent.com/>



### Epitome Pictures Incorporated

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For the past 25 years, Epitome Pictures and related companies have produced high-quality dramatic programming that is distinctly Canadian. Epitome's catalogue includes Canada's first prime-time soap opera, *Riverdale*, as well as the youth drama *Instant Star* and the critically acclaimed *Degrassi: The Next Generation*. Epitome has been awarded multiple distinctions for its contributions to the television industry, including two International Emmy Awards, 16 Gemini Awards, and two Prix Jeunesses. <http://www.epitomepictures.com/>





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Filmline International

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Founded in 1984 and solely owned by Nicolas Clermont since the early 1990's, Filmline International soon became one of the leaders in production and co-production in Canada, producing an impressive slate of features, movies of the week, mini and TV-series. In September 1996, Filmline International became a wholly owned subsidiary of Behaviour Communications Incorporated, a Montreal-based multi-media public company.

### Filmoption International

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In business for now 30 years, Filmoption International is specialized in television distribution. An importer and exporter of programs its catalogue features titles ranging from feature films, drama series, children's fare as well as all genres of documentaries, series and one-offs. <http://www.filmoption.com/>



### Fireworks Entertainment

---

Fireworks Entertainment was founded by Jay Firestone in 1996, to produce, distribute and finance television shows and feature films. It produced a diversified range of programming, with the dominant category of production being dramatic series. Some of the company's productions include: *Nikita*, *Robocop*, *Mutant X*, and *Relic Hunter*. <http://www.contentfilm.com/>



### Force Four Entertainment Incorporated/ Force Four Productions Limited

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For over twenty years, Force Four Entertainment has been creating high quality, award-winning television in all genres, from documentary and factual entertainment to scripted dramas and comedy. It has produced more than three hundred hours of television, earning accolades on the national and international stage. These awards include the prestigious Peabody Award for "Significant and Meritorious Achievement in Broadcasting." <http://www.forcefour.com/>

### GAÉA Films Incorporated

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GAÉA, (formerly Communications Claude Heroux Plus Incorporated) is an independent production and distribution company initially known for films and television series, including *Lance et Compte*. It has diversified its production slate, producing documentaries, dramas, magazine and variety programs for domestic television services and clients around the world.



## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Galafilm Incorporated

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For over 15 years, Galafilm has been at the forefront of independent film and television production. Its catalogue boasts over 200 hours of award winning and commercially successful entertainment content that aim to educate and entertain worldwide audiences. Its diverse slate includes documentaries, youth programs, television dramas and feature films. It has been a hit with the kids since its first foray into children's programming; the award winning *Tale of Teeka*. Galafilm also produced four seasons of the Canada/UK co-production and international hit *The Worst Witch*. Current youth programs include the highly popular *15/Love*, co-produced with France's Marathon International and *Fungus the Bogeyman*, produced with production partner Indie Kids based in the UK. <http://www.galafilm.com/>



### IMX Communications Incorporated

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In 1973, Christopher Zimmer went to Halifax on a whim, and ended up staying for good. His career in television, advertising and film production had taken him to New York and LA, but he felt an instant affinity for Canada's East Coast and its lifestyle. As a result, in 1985, IMX communications emerged on the Nova Scotia film scene. From the beginning Zimmer's main goal was feature film production. He has produced several award winning films. IMX also made a successful foray into animation, completing production on *For Better or For Worse*, a 16-part series based on the award-winning comic strip by Lynn Johnston. <http://www.imxcommunications.com/>



### Infinity Films Entertainment Group Limited

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Infinity Films covers the spectrum from features and documentaries to television comedy, drama and variety, but whatever form a production may take, they are first and foremost storytellers. Infinity is a writers' company, always beginning with a singular dedication to compelling scripts then following through with the vision of outstanding directors, cinematographers, designers, and editors to produce the high-quality entertainment for which they have become renowned. <http://www.infinityfilms.ca/>



### Insight Production Company Limited

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Insight headed by John Brunton & Barbara Bowlby has become an industry leader in the creative development, financing and production of highly rated television programs in every genre. Since 1979, Insight has created thousands of hours of groundbreaking television that continue to be broadcast over major networks worldwide. Insight Productions is recognized for developing a Canadian "star system" through television programs and specials that showcase and celebrate Canadian talent. Mike Myers is an example of new talent discovered by Insight in *It's Only Rock n' Roll*. Insight produces *Canadian Idol*, Canada's home-grown version of the hugely successful international format. <http://www.insighttv.com/>





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Just For Laughs/Juste pour rire

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At Just For Laughs, they take humour seriously. The Just For Laughs Festival has become a world-renowned entertainment landmark, recognized for the quality of its content and the professionalism of its staff. Just For Laughs also produces award-winning TV shows, which have been broadcast in 140 countries and carried by 95 airlines worldwide, an unprecedented success, reaching millions of viewers across the globe. The gags series has become the number 1 comedy show in the world.

<http://www.hahaha.com/>



### King Motion Picture Corporation

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King Motion Picture Corporation is the creator and producer of the series *This Living World* and founder of This Living World Nature Trust. Its mission, by way of the television series, is to create, develop and distribute quality programs that meet the needs and expectations of its patrons, sponsors, broadcasters and viewers. King's ultimate goal is to foster and promote a respect for public awareness, appreciation and understanding of the natural world and of all living things that share its wonder. <http://www.thislivingworld.com/>

### Knight Enterprises

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Knight Enterprises is a full service, independent production company. It is a proven performer, delivering internationally successful, high quality and incredibly entertaining lifestyle programming. The company is best known for its incredibly entertaining and mouth watering food television series including - "*The Great Canadian Food Show*", "*Table d'Hote*", "*Cook Like a Chef*", "*Licence to Grill*", "*Junk Brothers*" as well as the latest project "*This Food That Wine*". Knight Worldwide Media Company is its wholly owned distribution arm. <http://knight-tv.com/>



### Maple Pictures Corporation

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Maple Pictures Corp. is a film company involved in the acquisition, production, and distribution of filmed entertainment. The company showcases a range of motion pictures, television programming, and home entertainment. Maple distributes all Lions Gate film and TV titles, as well as produces and distributes other filmed entertainment in Canada. The company was founded in 2005 and is based in Toronto, Canada.

<http://www.maplepictures.com/>



### Media Headquarters Film & Television Incorporated

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Media Headquarters produces an exciting range of high-quality television programming and films. From entertaining reality shows and vibrant dramatic programming, Media Headquarters continues to develop a global reputation for creativity, quality and popularity. <http://www.mediahq.net/>





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Microtainment Plus Production Incorporated/Docutainment Plus Production

DocuTainment, headquartered in Toronto Canada, is a full-service television and film production company focusing exclusively on factual entertainment. Its founder Garry Blye has produced over 2,000 hours of programming seen in over 80 countries. DocuTainment produces award-winning series and specials in all genres. A&E, TLC, CBC, BBC, Discovery, Discovery Health, Life Network, Canal+ and a host of other major broadcasters world-wide carry DocuTainment programming thanks to the company's widely experienced in-house team of researchers, writers, editors and producers. <http://www.microtainment.com/>

### Minds Eye Holdings Incorporated

Established in 1986, Minds Eye has created film and television product from its home base in Saskatchewan, Canada that has been internationally recognized for its superior quality. This independent production company is a full service motion picture entity; including departments of development, production and post-production, and its distribution arm Minds Eye International Incorporated. <http://www.mindseyepictures.com/>



### Muse Entertainment Enterprises

Muse is a leading independent feature film and television producer known for well-crafted, high-quality productions. Muse's most recent productions include the comedy feature *The Deal* starring William H. Macy and Meg Ryan, and the television series *Durham County*. Since its founding in 1998, Muse has produced, co-produced and provided production services on more than 100 theatrical features, TV movies, mini-series and series. Among its many award-winning productions are the mini-series *Human Trafficking* and *Answered by Fire*, the TV series *This is Wonderland* and *Tales from the Neverending Story* and the TV films *The Wind in the Willows* and *The Many Trials of One Jane Doe*. The company's head office and its Quebec production centre are based in Montreal. Muse also maintains development and production operations in Toronto, Vancouver and Los Angeles. <http://www.muse.ca/>



### Nelvana Limited

Nelvana, a Corus Entertainment company, is one of the world's leading international producers and distributors of children's animation and related consumer products. For over 30 years, it has produced over 100 major television series, specials and movies, which are available in over 150 countries around the world. The company's growing library includes over 2,300 half hour episodes. Along with creating great shows, Nelvana works with its partners to develop merchandise, publishing, music, interactive and home video products that add to children's lives. <http://www.nelvana.com/>





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Norflicks Productions Limited

Norflicks has been a successful independent Canadian television production company since its incorporation in 1985. Led by its president and founder, Richard Nielsen, Norflicks earned a reputation for creating high quality, entertaining television. Norflicks met success with feature films, comedy series, as well as war documentaries. The company also made its mark in the world of religious programming and became widely known for making programs that bring Canadian history to life. <http://www.norflicks.com/>



### Novem Communications Incorporated

Under the direction of Véronique Cloutier, Novem combines four centres of activity: television production, shows, films and publishing. Its versatility and dynamism make this independent company an important contributor within the Quebec cultural industry. <http://www.novem.biz/>



### Omni Film Productions Limited/Water Street Pictures

For 29 years Vancouver based Omni has produced quality programming with integrity and a passion for storytelling. It is one of Canada's longest established television and film production companies. Omni develops, finances and produces dramatic, factual and lifestyle series, documentaries and children's programming for the domestic and international market. Together with sister companies Water Street Pictures and Water Street Releasing, Omni Film Productions Limited is a complete film and television production and distribution entity with a steadily growing catalogue of exceptional programming. <http://www.omnifilm.com/>



### Paradigm Pictures Corporation

The film, video and multi-media production company Paradigm Pictures Corporation was founded in 1997. The principals are award-winning producers/directors/writers, Marrin Canell and Ted Remerowski. The Canadian Broadcasting Corporation's premier documentary strand Witness has commissioned a number of documentaries including *Security Threat*, a portrait of a post-September 11th society; *Diet Wars*, a look inside the multi-million dollar diet industry; *Dying to Win*, an expose of drugs in sport, which was nominated for a Monte Carlo Television Award; *Lost and Found*, a quirky look at Lost and Found departments around the world; *Quints & Quads: A New Baby Boom*, a look into the growing number of multiple births; *No Place to Hide: Big Brother* and *No Place to Hide: Little Brothers*, a prescient and controversial two part series on privacy.





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### **Peach Arch Entertainment**

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Peace Arch Entertainment produces and acquires feature films, television and home entertainment content for distribution to worldwide markets. It owns one of the largest libraries of top quality independent feature films in the world, featuring more than 2,000 classic and contemporary titles. Peach Arch Television produces and acquires, series, mini-series, movies of the week, lifestyle programming, and documentaries. <http://www.peacearch.com/>



### **Portfolio Entertainment Incorporated**

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Founded in 1991, Toronto-based Portfolio Entertainment is one of Canada's leading independent producers and distributors of bold, award-winning television programs for kids, tweens, teens and adults including the animated comedy *Carlz* that follows the day-to-day antics of a teenage slacker and his too perfect DNA double, and *RoboRoach*, a series that elevates a lowly cockroach to super hero status. Portfolio Entertainment's distribution division has gained access to some of the world's most established broadcasters as well as emerging new players offering an ambitious catalogue that consists of more than 1,300 episodes of programming. <http://www.portfolioentertainment.com/>

### **Productions Avanti Ciné Vidéo Incorporated**

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Creates and develops concepts and produces variety specials and series for broadcasters and specialty services. Avanti Ciné Vidéo obtains the rights to international productions to adapt them for the Quebec market. It has also had great success licensing concept rights to its own popular production *Un gars, une fille*. This was the first Quebecois television program to be adapted for broadcast in the United States. The company also develops films and has established partnerships with the animation company, Sardine Productions and "edutainment" creator, Kutoka Interactive.



### **Productions Pixcom/Pixcom International**

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Pixcom Productions has been active in the television production market since 1987. It is a private communications holding company based in Montreal. Pixcom produces shows and series that cover a range of genres: documentaries, public affairs, cultural magazines, variety shows, practical/how to magazines, drama series, game shows, television adaptations of theatre, and children's shows. It also offers a wide range of services in interactive production, corporate communications, national and international distribution, television engineering and technical services. <http://www.pixcom.com/>







## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Productions Point de Mire Incorporated

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Point de mire is a Montreal based producer of dramas, factual programming, quiz shows, magazines, documentaries and variety specials. PDM was founded in 1992. Its productions have aired on both public and private broadcasters.



### Productions Vendome II Incorporated

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Vendôme Télévision is a TV production company founded in 1995 by André Dubois. Best known for comedy series, it has also made successful sitcoms and a satirical mini-series. Recent productions include documentaries for public broadcasters and specialty services. Without abandoning comedy, the company is planning further diversification in drama and documentary series.



### Productions Vidéofilms Limited

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Production house created in 1972 by Robert Ménard, a producer and director with more than 15 feature films and eight television series.

### Productions Zone3 Incorporated

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Zone3 is a solidly established Quebec company whose creative ideas and skills are focused in three main areas of production: television, live entertainment and recordings. The Zone3 team is a remarkable synergy of talent and experience; in all, about 500 permanent employees and freelancers work on the company's impressive list of projects. <http://www.zone3.ca/>

### Protocol Entertainment Incorporated

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Protocol Entertainment, Incorporated originally founded in 1993 is one of Canada's most celebrated producers of popular and critically-acclaimed children's entertainment television programming. The company is recognized worldwide for producing high quality, audience and award-winning series for kids and families based on best-selling book properties. The producer of the smash hits *Goosebumps*™, *Animorphs*™, *Dear America*™ and *The Saddle Club*™ television series, Protocol Entertainment, Incorporated is based in Toronto. <http://www.protocolent.com/>



### Radical Sheep Production Incorporated

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With over 300 episodes of award-winning television and successful licensing programs, Radical Sheep has grown to be one of the most highly acclaimed children's television producers in North America. The creation of enduring characters and stories lies at the heart of Radical's success. Perhaps Radical's greatest achievement is *The Big Comfy Couch*, an award winning series for pre-schoolers. Among its credits, Radical Sheep has also executive produced four seasons of the hilarious and quirky adult comedy series *Puppets Who Kill*. <http://www.radsheep.com/>





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Raincoast Storylines Limited

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Raincoast Storylines Limited of Halfmoon Bay on British Columbia's Sunshine Coast was launched in January 1994 by Bette Thompson. The company produces (and co-produces) documentaries. Production credits include: *The 13th Mission* and *Asteroid: The Doomsday Rock*, *The Life & Times of Preston Manning*, *The Parkinson's Enigma*, *Captured Rain*, *Nellie McClung: The Sculpting of Angels*, *Stopping Traffik: The War Against the War on Drugs*, *The Gene Squad*, *Frontier to First Class: Max Ward of Wardair*, and *Mystics, Mechanics & Mindbombs*.

### Rhombus Media Incorporated

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Rhombus Media was formed in 1979 by Barbara Willis Sweete, Niv Fichman and Larry Weinstein. The trio have since produced, co-produced and directed close to two hundred films and television specials including: *The Red Violin*, *Beethoven's Hair*, *Elizabeth Rex*, *Thirty-two Short Films about Glenn Gould* and "Yo Yo Ma" inspired by Bach. <http://www.rhombusmedia.com/>



### S&S Productions Incorporated

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In its third decade, S&S Productions Incorporated develops, produces and distributes well recognized, high-quality programming for Canadian and international audiences. The company produced 15 seasons of the internationally acclaimed comedy series *The Red Green Show*, and other comedy programs. S&S is also an experienced producer of factual entertainment with programs like *Balance Television for Living Well*, *Anything I Can Do*, *The Gardener's Journal*, and *Street Eats*. It has recently expanded into animation with *Sons of Butcher*. Additionally it has produced feature films. <http://www.ssp.ca/>



### Shaftesbury Films Incorporated

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Founded in 1987, Shaftesbury Films has established a reputation as one of Canada's leading producers of high quality film and television programming. In 2001, The Shaftesbury Sales Company was formed and has built a strong reputation in international markets. In 2008, Shaftesbury established a Digital Media division, Smokebomb Entertainment for the development of original multiplatform digital content. <http://www.shaftesbury.ca/>





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Soapbox Productions

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Soapbox Productions was formed in January 1990 from a partnership of Pat Ferns and Nick Orchard. Both brought to Soapbox an extensive background in drama and TV series production. Nick Orchard acquired sole ownership of the company in 1993. The company has expanded significantly in the last few years and diversified its output, branching from drama to comedy, documentary, music, children's and reality series., and recent productions include "O.Com; Cybersex Addiction" for the CBC's Passionate Eye, two "New Beachcombers" MOWs for the CBC, "Shakin' All Over", a 3-part history of Canadian rock for CBC, two seasons of "Head's Up!" a children's series for TVO, a 3-hour history of the comedy group Second City for CBC and "On Screen", six documentaries for CHUM/Bravo.  
<http://www.soapboxproductions.ca/>



### Sound Venture Productions

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Originally formed in 1980, Sound Venture Productions started as one of the first radio commercial and audio production companies in Ottawa. With a reputation for innovation and creativity, Sound Venture was honoured with prestigious awards from around the world, proving that high quality production was possible in the Ottawa region.  
<http://www.soundventure.com/>



### Sphère Média Incorporated

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Headquartered in the Montreal area. Sphère Média Plus is a major player on the television landscape, with over 350 viewing hours produced and broadcast during prime time. Seeking ever-higher standards of excellence, and motivated by the desire to surpass its previous achievements in the production field, Sphère Média Plus specializes in the creation of dramatic TV series. <http://www.spheremedia.ca/>



### Studio B Productions Incorporated

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In 1988, Chris Bartleman and Blair Peters formed Studio B, starting with animated shorts, Sesame Streets shorts, layout and storyboard work. In 2000, they launched the original series "What About" in Canada and Germany. In 2001, Studio B was voted one of KidScreen's "Kids Entertainment Elite". Named one of the 10 most innovative and creative studios in the world by Television Business International Magazine.  
<http://www.studiobproductions.com/>





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### Sullivan Entertainment Group Incorporated

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Sullivan and its subsidiaries develop, produce and distribute high-quality series, mini-series and movies for television and international release. A large degree of Sullivan's library is family-oriented, but it also owns and controls a wide array of films in numerous genres. The company is one of the leading producers of exportable Canadian television programming, with more than 20 years of successful operations. Sullivan's library consists of 600 half-hour equivalents of programming. <http://www.sullivanmovies.com/>



### Summerhill Entertainment Incorporated

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Summerhill is a Toronto based full service production company, which has been producing high-quality programming such as documentaries, series, feature films, specials and more, for global and domestic markets for over 25 years.



### The National Film Board of Canada

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Canada's public film producer and distributor, The National Film Board of Canada (NFB) provides the country and world with a unique perspective. For over 65 years, it has been breaking ground in socially engaged documentary, auteur animation, alternative drama and more. Along the way, it has crafted over 12,000 productions and received more than 5000 awards, including 12 Oscars®. The NFB has played a key role in virtually every major advancement in documentary filmmaking. It was there at the start of the cinéma vérité revolution, at the birth of giant-screen IMAX format as well as computer animation. Now it is working to redefine filmmaking in the cross-platform universe – while continuing to give its creators the resources and support to fully develop their visions. <http://www.nfb.ca/>



### The Ontario Educational Communications Authority

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TV Ontario (TVO), founded in 1970 as Ontario's educational television broadcaster, has grown to receive international acclaim. It is appreciated worldwide as a producer-distributor of superb programming for both general broadcast and in-school use. Valued the world over, TVO programs have won more than 800 international awards for programming excellence. <http://www.tvo.org/>



### Thunder Bay Electronics Limited

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Thunder Bay Electronics operates CKPR-TV, a CBC affiliate TV station and CHFD-TV, a CTV affiliate, in Thunder Bay, Ontario. CKPR-TV was launched in 1954 and CHFD in 1972. The company is 100% locally owned and operated.





## CANADIAN CLAIMANT PROFILES

2004 – 2005

### TQS

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“The black sheep of television” is a Canadian French-language privately-owned television network. It launched in 1986, with network-owned stations and affiliates existing throughout Quebec. It can also be received in other parts of Canada by satellite or cable. The network is currently owned and operated by Remstar Corporation. <http://www.tqs.ca/>

### TVA Group Incorporated

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TVA, founded in 1960 under the name Corporation Télé-Métropole incorporated, is an integrated communications company with operations in broadcasting, the production of audiovisual content, magazine publishing, editing and the merchandising of various products. TVA is the largest private-sector producer and broadcaster of French-language entertainment, news and public affairs programming in North America. <http://tva.canoe.ca/>



### Vivavision Incorporated

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Vivavision Incorporated (formerly Vivaclac Incorporated) is a Canadian company that produces quality television and film programming primarily for children and families. A highly accomplished force within the Quebec market since 1989, Vivavision is growing, becoming among the leading national producers within their specialized markets, and expanding into new world-markets through co-productions with international partners. <http://www.vivavision.ca/>



### WestWind Pictures Limited

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Westwind Pictures is an independent television production company with programs airing in over 80 countries around the world. The company is currently involved in scripted television series, documentaries, lifestyle programming and feature films. Its diverse product line reflects a commitment to produce imaginative, entertaining, and insightful programming. WestWind Pictures' flagship show, *Little Mosque on the Prairie*, features the antics of a small Muslim community in the fictional prairie town of Mercy. The series takes an unabashedly comedic look at the congregation of a rural mosque and their attempt to live in harmony with each other, and with the often skeptical, even downright suspicious residents of their little town. <http://home.westwindpictures.com/>



**CANADIAN CLAIM GROUP MEMBERS SELECTION OF PROPERTIES  
LICENSED TO U.S. TV SERVICES WITHIN THE YEARS 2004-2005**

Tripping The Rift - season 1			

**CANADIAN CLAIM GROUP MEMBERS SELECTION OF PROPERTIES  
LICENSED TO U.S. TV SERVICES WITHIN THE YEARS 2004-2005**

Bela Broadcasting LLC			

**CANADIAN CLAIM GROUP MEMBERS SELECTION OF PROPERTIES  
LICENSED TO U.S. TV SERVICES WITHIN THE YEARS 2004-2005**

Exhibit A: Secrets of Forensic Science			



**CANADIAN CLAIM GROUP MEMBERS SELECTION OF PROPERTIES  
LICENSED TO U.S. TV SERVICES WITHIN THE YEARS 2004-2005**

Muse Entertainment			

**CANADIAN CLAIM GROUP MEMBERS SELECTION OF PROPERTIES  
LICENSED TO U.S. TV SERVICES WITHIN THE YEARS 2004-2005**

Disney Channel USA			

CANADIAN CLAIM GROUP MEMBERS SELECTION OF PROPERTIES  
LICENSED TO U.S. TV SERVICES WITHIN THE YEARS 2004-2005

History Bites			



## Canadian Claimant Members 2004-2006 International Awards

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### 2006 Awards

#### **Air Farce Productions**

##### **Roger Abbott and Don Ferguson**

Canadian Comedy Awards

*The Chairman Award*

#### **Muse Entertainment**

##### **This is Wonderland**

Monte-Carlo Television Festival

*Nominee - Drama Series*

#### **Omni Film Productions Limited**

##### **Make Some Noise**

*The Silver Chris*

##### **Activism Is Everywhere (Make Some Noise)**

The Japan Prize

*Youth Education Award*

### 2005 Awards

#### **Alcina Pictures**

##### **Kardia**

Hamptons International Film Festival

*Winner of the Alfred P. Sloan Film Prize in Science and Technology*

October 2005

#### **Canadian Feature Film Production**

##### **The Dark Hours**

Dead By Dawn Film Festival (Scotland)

*Audience Award - Best Feature*

Phoenix International Horror & Sci Fi Film Festival

*Best Horror Feature, Best Director, Best Screenplay, Best Actor*

Fangoria Chainsaw Awards

*Nominated for Best Film "Best for Less"*



## Canadian Claimant Members 2004-2006 International Awards

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### **2005 Awards** (continued)

#### **Ellis Entertainment Corporation**

##### **The Baby Human 2: To Belong**

Columbus International Film and Video Festival

*The Chris Award*

##### **The Baby Human, Series 2**

Worldfest-Houston International Film Festival

*Platinum Remi - Science and Research*

##### **The Baby Human, Series 2**

TVfest, The Chicago International Television Competition

*Gold Plaque - Documentary: Science/Nature*

##### **The Baby Human, Series 2**

New York Festivals: TV Programming and Promotion

*Bronze Medal Award - Science and Technology*

##### **Divine Restoration**

Columbus International Film and Video Festival

*Bronze Plaque*

##### **Day of the Groundhog**

Worldfest-Houston International Film Festival

*Platinum Remi - Nature and Wildlife*

##### **Craftiest Animals: Raccoons**

TVfest, The Chicago International Television Competition

*Gold Plaque - Documentary: Science/Nature*

#### **Galafilm Incorporated**

##### **Hunt For Justice: The Louise Arbour Story**

Orinda Film Festival

*Winner - Best TV Movie*

*Winner - Audience Award-Overall Favorite*

*Winner - Audience Award-Favorite Feature*

##### **In Search Of Sleep**

53rd Columbus International Film & Video Festival

*Honorable Mention for Physical Health: Narrative or fictional docu-drama concerning physical health or medicine topics*



## Canadian Claimant Members 2004-2006 International Awards

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### 2005 Awards (continued)

#### **Galafilm Incorporated**

##### Fungus The Bogeyman

Pact Indie Award

*Winner - Best Children's*

British Academy Children's Film & Television Awards

*Winner - Best Children's*

##### The Blue Butterfly

Young Artist Awards

*Nominated for Best International Feature Film*

*Nominated - Best Performance in an International Feature Film*

*(Leading Young Performance)*

#### **Infinity Films**

##### Race of the Century: Ben Johnson, Drugs and the Quest for Gold

New York Festivals International Film and Video Awards

*Gold Medal - documentary category billed as recognizing "The World's Best Work."*

January 2005

#### **Insight Productions**

##### Hatching, Matching & Dispatching

Chris Awards

*Honorable Mention Certificate - Short Subject Comedy*

##### Falcon Beach

Hugo Awards

*Certificate of Merit - Feature Length Telefilm - Drama*

#### **Media Headquarters**

##### The Four Seasons Mosaic

Columbus International Film & Video Festival

*Winner - Chris Award*

#### **Nelvana Limited**

##### Rolie Polie Olie

National Television Academy's 32nd Annual Creative Craft Daytime Emmy Awards

*Awarded its 3rd Emmy Award and, 2nd for Outstanding Special Class Animated Program,*

May 2005



## Canadian Claimant Members 2004-2006 International Awards

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### 2005 Awards (continued)

#### Productions Zone 3

##### Dans une Galaxie Près de Chez Vous

Olivier Award

*Comedy of the Year*

##### Moshe Safdie, The Power Of Architecture

International Festival of Films on Art

*Best Educational Film*

#### Soapbox Productions

##### O.COM

38th Annual WorldFest-Houston

*Platinum Award*

##### A Beachcomber's Christmas

2005 - WorldFest-Houston

2005 - Gold Remi Award

2005 - Television and Cable Production Award for Feature made for television

#### Sullivan Entertainment

##### The Overlookers

New York International Independent Film and Video Festival (L.A.)

*Best Director*

### 2004 Awards

#### Amérimage-Spectra

##### Amelia (Opening Night)

American Choreography Awards

*The Outstanding Choreography Award (short film)*

Banff Television Festival

*Special Jury Award*



## Canadian Claimant Members 2004-2006 International Awards

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### **2004 Awards** (continued)

#### **Cinémaginaire Incorporated**

##### **The Barbarian Invasions**

Academy Awards

*Best Foreign Language Film*

Cannes Film Festival

*Best Screenplay (Denys Arcand)*

#### **CinémaGroupe Corporation / 9151-4190 Québec Incorporated**

##### **Tripping The Rift**

The Bay Festival (Italia)

*Pulcinella Award, Cartoons*

*Best TV Series for Teenagers and Adults of the Year*

*Best Program of the Year*

*Outstanding Non-Fiction Program (Alternative)*

#### **Decode Entertainment**

##### **The Blobheads**

The Alliance for Children & Television

*Winner of Award of Excellence, All Genres Category, Ages 3-5*

##### **Franny's Feet**

The Pulcinella Award

*Best TV Series, Infants*

##### **Girl Stuff Boy Stuff**

The New York Festivals

*Gold Medal Winner, Youth Program*

#### **Decode Entertainment**

##### **Radio Free Roscoe**

The New York Festivals

*Silver Medal Winner, Teen Programs*

The Parents' Choice Foundation

*Recommended, Ages 9-17*

##### **The Zack Files**

The Alliance for Children & Television

*Award of Excellence, All Genres Category, Ages 9-12*





## Canadian Claimant Members 2004-2006 International Awards

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### **2004 Awards** (continued)

Ellis Entertainment

#### **Warriors of the Yukon**

Worldfest-Houston International Film Festival  
*Bronze Award - Nature and Wildlife*

#### **Profiles of Nature Specials (XI) - Warriors of Yukon**

Worldfest-Houston International Film Festival  
*Bronze Award: Nature and Wildlife*

#### **The Baby Human ep.101 To Walk**

Worldfest-Houston International Film Festival  
*Bronze Award: Science and Research*

#### **The Baby Human: To Walk**

Worldfest-Houston International Film Festival  
*Bronze Award - Science and Research*

### **Fireworks Distribution/Global Television**

#### **Gene Roddenberry's Andromeda I-V**

Chicago International Film Festival  
*Gold Plaque- Best Dramatic Series- For episode "Double or Nothingness"*  
*Best Dramatic Series- For episode "Machinery of The Mind"*  
*Special Achievement in Direction - For episode "Double or Nothingness"*

Worldfest Houston

*Platinum Award – For episodes "Double or Nothingness" and "Machinery of The Mind"*

### **Force Four Entertainment**

#### **Human Cargo**

*Winner of Peabody Award*

### **Galafilm Incorporated**

#### **The Blue Butterfly**

Giffoni Film Festival  
*3rd place - "Free to Fly" (children 9-12)*

International Film Festival For Children And Young Audience Schlingel

*Winner - "European Children Film Prize"*

International Women's Film Festival

*Silver Plaque - 1st place - "Teen-Age Audience"*



## Canadian Claimant Members 2004-2006 International Awards

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### **2004 Awards** (continued)

#### **Knight Enterprises Incorporated**

##### **Cook Like A Chef**

Gourmand World Cookbook Awards

*Best English Cookbook Tied to a Television Program*

#### **Minds Eye Entertainment**

##### **Seven Times Lucky**

6<sup>th</sup> Annual Method Fest Independent Film Festival

*Award Winner*

#### **Motion Picture Distribution (formerly Alliance Atlantis)**

##### **Hitler: The Rise Of Evil**

American Society of Cinematographers

*Outstanding Achievement in Cinematography in Movies of the Week/Mini-Series'/Pilot for Network or Basic Broadcast TV*

#### **The National Film Board of Canada (NFB)**

##### **I Want a Dog**

World Festival of Animated Films

*Special Distinction - Children's Jury*

*Youth Jury Award - Category: Animation Kids*

June 2004, Zagreb - Croatia

International Film Festival

*Audience Award - Category: Ages 3-6*

March 2004, Cleveland – USA

International Children's Film Festival

*Bronze Plaque Award - Category: Education & Information*

March 2004, New York – USA

##### **La Cueca Sola**

Women Film Festival "La Mo-Viola"

*3rd Best Documentary Award*

October 2004, Torino - Italy



## Canadian Claimant Members 2004-2006 International Awards

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### **2004 Awards** (continued)

#### **The National Film Board of Canada (NFB)**

##### **Crapshoot: The Gamble with Our Wastes**

International Film Festival

*Silver Plaque - Category: Documentary: Science / Nature at the Television Awards*

*Bronze Plaque - Category: Science and Technology*

October 2005, Chicago – USA

International Film and Video Festival

*Second Place - Category: Oceans, Water Quality & Watersheds*

November 2004, Columbus – USA

EarthVision Film & Video Festival

October 2004, Santa Cruz – USA

##### **Stormy Night**

International Children's Film Festival

*Audience Award (8 - 14 years)*

March 4 to 20 2005, New York – USA

Black Nights Film Festival

*Award for Best Story*

*Certificate of Excellence given by the Adult Jury*

*Category: Animated Short film or Video*

November 27 to December 12 2004, Tallinn - Estonia

International Children's Film Festival

*Special Jury Prize*

October 2004, Chicago - USA

International Animation Festival

*Grand Prize - Category: Animation*

August 2004, Hiroshima – Japan

Kinder FilmFest

*Special Distinction (KOFIC Prize)-with a cash prize*

August 2004, Tokyo - Japan



## Canadian Claimant Members 2004-2006 International Awards

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### **2004 Awards** (continued)

#### **The National Film Board of Canada (NFB)**

##### **Stormy Night**

International Cartoon & Animation Festival (SICAF)

*Golden Slipper - Category: Animated Film - with film material by KODAK*

August 2004, Seoul – Korea

International Film Festival for Children and Youth

*Spirit of Moondance Award for Best Animation Films*

May 30 to June 5 2004, Zlin - Czech Republic

Moondance Film Festival

*Award for Best Children's Film - with a cash prize*

May 2004, Boulder - USA

International Animation Film Festival / International Trickfilm Festival

*Crystal Bear for best short film given by the Children's Jury*

April 2004, Stuttgart - Germany

International Film Festival

February 2004, Berlin – Germany

##### **The Gift of Diabetes**

International Film and Video Festival

*Bronze Plaque - Category: Physical Health*

*Best Public Service Award*

November 2005, Columbus - USA

##### **The Gift of Diabetes**

Annual American Indian Film Festival

*Award of Excellence - Category: Documentary Short*

November 2005, San Francisco – USA

##### **House Calls**

International Film and Video Festival

*Freddie Award - Category: Caregiving*

November 2005, Columbus – USA

International Health and Medical Media Awards ( Freddie )

November 2005, New York - USA



## Canadian Claimant Members 2004-2006 International Awards

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### **2004 Awards** (continued)

#### **The National Film Board of Canada (NFB)**

##### **Exiles in Lotusland**

WorldFest - International Film Festival

*Silver Remi Award*

April 2006, Houston - USA

##### **The True Story of Sawney Beane**

London International Animation Festival - LIAF

*Award for Best International Programme 3*

*"Centaur" Prize for best animation film*

August 2006, London - England

##### **Message to Man**

*Cineplex Odeon Award for Best Short Animation*

July 2006, St. Petersburg - Russia

International Film Festival

August 2005, Edinburgh - Scotland

#### **Westwind Pictures**

##### **Youkali Hotel**

Festival International de Programmes Audiovisuels (FIPA)

*Selected for Competition*

Paris, France

Rose D'Or

*Nominated*

Switzerland



# CANADIAN BROADCASTING CORPORATION 2004 and 2005

## CBC TELEVISION

<b>CBC Stations by Province*</b>	<b>Callsigns</b>	<b>Channel</b>
<b>Newfoundland</b>		
<i>St. John's</i>	CBNT	8
<b>Prince Edward Island</b>		
<i>Charlottetown</i>	CBCT	13
<b>Nova Scotia</b>		
<i>Halifax</i>	CBHT	3
<i>Sydney</i>	CBIT	5
<b>New Brunswick</b>		
<i>Fredericton</i>	CBAT-TV	4
<b>Quebec</b>		
<i>Montreal</i>	CBMT	6
<b>Ontario</b>		
<i>Ottawa</i>	CBOT	4
<i>Toronto</i>	CBLT	5
<i>Windsor</i>	CBET	9
<b><i>Private Affiliated Stations</i></b>		
<i>Kingston</i>	CKWS-TV	11
<i>Peterborough</i>	CHEX-TV	12
<i>Thunder Bay</i>	CKPR-TV	2
<b>Manitoba</b>		
<i>Winnipeg</i>	CBWT	6
<b><i>Private Affiliated Stations</i></b>		
<i>Brandon</i>	CKX-TV	5
<b>Saskatchewan</b>		
<i>Regina</i>	CBKT	9
<i>Saskatoon</i>	CBKST	11
<b>Alberta</b>		
<i>Calgary</i>	CBRT	9
<i>Edmonton</i>	CBXT	5
<b><i>Private Affiliated Stations</i></b>		
<i>Lloydminster</i>	CKSA-TV	2
<i>Medicine Hat</i>	CHAT-TV	6
<i>Red Deer</i>	CKRD-TV	6
<b>British Columbia</b>		
<i>Vancouver</i>	CBUT	2
<b><i>Private Affiliated Stations</i></b>		
<i>Dawson Creek</i>	CJDC-TV	5
<i>Kamloops</i>	CFJC-TV	4
<i>Kelowna</i>	CHBC-TV	2
<i>Prince George</i>	CKPG-TV	2
<i>Terrace</i>	CFTK-TV	3

**Exhibit CDN-1-F**



# CANADIAN BROADCASTING CORPORATION 2004 and 2005

## TÉLÉVISION DE RADIO-CANADA

### CBC Stations by Province\*

#### New Brunswick

*Moncton*

CBAFT 11

#### Quebec

*Montreal*

CBFT 2

*Quebec*

CBVT 11

#### *Private Affiliated Stations*

*Saguenay*

CKTV-TV 12

*Rivière-du-Loup*

CKRT-TV 7

*Rouyn*

CKRN-TV 4

*Sherbrooke*

CKSH-TV 9

*Trois-Rivières*

CKTM-TV 13

#### Ontario

*Ottawa*

CBOFT 9

#### Manitoba

*Winnipeg*

CBWFT 3

#### Saskatchewan

*Regina*

CBKFT 13

#### Alberta

*Edmonton*

CBXFT 11

#### British Columbia

*Vancouver*

CBUFT 26

\*All stations are owned and operated by CBC unless they have been identified as *Private Affiliated Stations*.



CBCtelevision

## CBC TELEVISION SCHEDULE 2003/2004

TIME	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
6:00 AM	Get Set For Life	CBC Morning						
6:30								
7:00 AM	Get Set For Life	Get Set For Life						
7:30								
8:00:AM	Coronation Street	<i>Clifford: The Big Red Dog</i> <i>Magic School Bus</i> <i>Dragon Tales</i>					<i>Rolie, Polie, Olie</i> <i>Arthur</i> <i>Mr. Dress-up</i>	Get Set For Life
8:30								
9:00 AM								
9:30	CBC News: Sunday	<i>The Save-ums</i> <i>Tiny Planets</i> <i>Cyberchase</i> <i>Little Bear</i> <i>Zoboomafoo</i>					<i>Me Too</i> <i>Poko</i> <i>Tractor Tom</i> <i>Franklin</i>	
10:00 AM								
10:30								
11:00 AM	Country Canada	CBC News						
11:30								
12:00 PM	Land & Sea / Moving On	The Red Green Show					CBC Sport Saturday	
12:30	Sunday	This Hours has 22 Minutes						
1:00 PM	Encore	Classic Matinee	Made in Canada					
1:30	Best of Current Affairs		Antiques Roadshow					
2:00 PM	Neverending	Coronation Street				Canadian Feature Films		
2:30	Story	Emmerdale						
3:00 PM	On the Road Again	The X						
3:30	It's A Living	Taina	The Blobheads	Ace Lightning	Radio Free Nutley	POV Sports		
4:00 PM	The Nature of Things	The Simpsons						
4:30		Street Cents	Kenny vs Spenny	Chilly Beach	Edgemont			
5:00 PM								
5:30								

CCG	JSC	PS
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**Exhibit CDN-1-G**





CBCtelevision

## CBC TELEVISION SCHEDULE 2003/2004

TIME	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
6:00 PM	The Wonderful World of Disney	CBC News: Canada Now					Saturday Report
6:30							Saturday Night
7:00 PM		This Hour Has 22 Minutes	Life & Times	The Nature of Things	Opening Night	It's A Living	Hockey Night In Canada
7:30	Royal Canadian Air Farce			On the Road Again			
8:00 PM	Cirque de Soleil Variety Series	Specials	72 Hours	Just for Laughs	Opening Night	Royal Canadian Air Farce	
8:30			Marketplace				
9:00 PM	Da Vinci's Inquest			CBC News: Disclosure	the fifth estate	Passionate Eye / Witness	
9:30						The Red Green Show	
10:00 PM	Sunday Report	The National					
10:30	Venture						
11:00 PM	Canadian Reflections	National 2nd Edition					
11:30	Sports Late Night	Zed					
12:00 AM		Best of French Canada	Best of Britain	International Movie Night	Cinema Canada	Friday Night at the Movies	Saturday Night at the Movies

CCG	JSC	PS
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## CBC TELEVISION SCHEDULE 2004/2005

TIME	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY												
6:00 AM	Kids' CBC	CBC Morning					Kids' CBC												
6:30																			
7:00		<b>Kids' CBC</b>																	
7:30		Slim Pig 		MumbleBumble 		Poko 													
8:00	Tractor Tom Dragon Booster The Doodlebops Franklin Me Too! Mr. Dressup Rolie, Polie, Olie					Little Bear 		Arthur 											
8:30						Coronation Street													
9:00											CBC News Sunday								
9:30																Dragon Tales		Magic School Bus	
10:00																			
10:30																			
11:00																			
11:30																			
12:00 PM	Country Canada	CBC News: Today					CBC Sports Saturday												
12:30	Land & Sea	The Red Green Show																	
1:00	Sunday	This Hour Has 22 Minutes																	
1:30	Encore	Made In Canada																	
2:00	Mansbridge One on One	Classic Matinee	Canadian Drama			Canadian Feature Films													
2:30	On The Road Again		<i>Fashion File / Mary Walsh: Open Book</i>																
3:00	Canadian		Antiques Roadshow																
3:30	Drama	Emmerdale																	
4:00	The Nature	The X																	
4:30	of Things	Edible Incredible	Dragon Booster	Spynet	Angela Anaconda	POV Sports													
5:00	The Wonderful	The Simpsons						CFL football  equestrian  cycling 											
5:30	World of Disney	Street Cents	Just For Laughs Gags			Chilly Beach													

CCG	JSC	PS
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## CBC TELEVISION SCHEDULE 2004/2005









TIME	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
6:00 PM	The Wonderful						CBC News: Sat. Report	
6:30	World of Disney	CBC News: Canada Now					Saturday Night	
7:00	CBC News: Marketplace	Royal Canadian Air Farce	This Hour Has 22 Minutes	Ciao Bella	The Nature of Things	On The Road Again	CBC's Hockey Night In Canada (**Scheduled)	
7:30	CBC News: Venture	Coronation Street	Coronation Street	Coronation Street		Coronation Street		
8:00	Specials	The Greatest Canadian	Making The Cut	The Greatest Canadian	Opening Night	Royal Canadian Air Farce		
8:30						This Hours Has 22 Minutes		
9:00	Human Cargo	Rick Mercer Show	Da Vinci's Inquest	CBC News: the fifth estate				The Red Green Show
	Prime Suspect	Comedy						
9:30	Sex Traffic	Winnipeg Comedy Fest Halifax Comedy Fest						
10:00	CBC News: Sunday Night	CBC News: The National						
10:30								
11:00	Mary Walsh: Open Book	CBC News: The National 2nd Edition						
11:30	Canadian Reflections	Zed						
12:00 AM	Sports Late Night	Best of French Canada	Best of Britain	International Movie Night	Cinema Canada	Friday Night at the Movies	Hockey Night In Canada After Hours	

\*\* NHL Lockout: September 16, 2004 - July 22, 2005

CCG	JSC	PS
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## CBC TELEVISION SCHEDULE 2005/2006

TIME	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
6:00 AM	Kids' CBC	 CBC Morning					
6:30							
7:00							
7:30		Kids' CBC				The Doodlebops	Kids' CBC
8:00	Coronation Street	Little Bear	Clifford: The Big Red Dog		Tractor Tom		
8:30		Arthur	Dragon Tales				
9:00		Franklin					
9:30		Mr. Dressup				Dragon Booster	
10:00	CBC News: Sunday	Me Too!					
10:30		MumbleBumble		Rolie, Polie, Olie			
11:00	Life and Times	Poko					
11:30							
12:00 PM	Market	CBC News: Today					Youth
12:30	Place	Absolutely Canadian					
1:00	Sunday Encore	Canadian Drama					Life and Times
1:30		Tom Stone / Emmerdale					
2:00	Moving On	Monday Afternoon	Lifestyle	Fashion File Loving Spoonfuls		Friday Afternoon	
2:30	Land & Sea		Lifestyle	The Love of Gardening			
3:00	Mansbridge One on One	Movie	Royal Canadian Air Farce			Movie	
3:30	On The Road Again		This Hour Has 22 Minutes				
4:00	Be The Creature	Chilly Beach / Edgemont		Youth			 skiing  curling  figure skating
4:30					Youth Nerve / Street Cents		
5:00	The Wonderful World of Disney	The Simpsons					
5:30		Just For Laughs Gags / Frasier		Just For Laughs Gags			

CCG
J SC
P S



## CBC TELEVISION SCHEDULE 2005/2006

TIME	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
6:00 PM	The Wonderful						CBC News: Sat. Report	
6:30	World of Disney	CBC News: Canada Now					Saturday Night	
7:00	CBC News: Marketplace/Venture	Royal Canadian Air Farce	This Hour Has 22 Minutes	Rick Mercer Report	On The Road Again	The Red Green Show	Hockey Night In Canada	
7:30		Coronation Street	Coronation Street	Coronation Street	Coronation Street	Coronation Street		
8:00	High Impact  <i>Waking Up Wally - The Walter Gretzky Story</i> <i>il Duce Canadese</i>	High Impact	Rick Mercer Report	The Nature of Things/This Is Wonderland	Antiques Roadshow	Royal Canadian Air Farce		
8:30			<i>Intelligence</i>  <i>Shania</i>			The Tournament/ What It's Like Being Alone		This Hours Has 22 Minutes
9:00		Da Vinci's City Hall		the fifth estate	The Passionate Eye	Just For Laughs/ Winnipeg Comedy Fest		
9:30								
10:00	CBC News: Sunday Night	CBC News: The National						
10:30	Canadian Reflections	CBC News: The National 2nd Edition						
11:00		Zed						
11:30								
12:00 AM	Sports Late Night	Best of French Canada	Best of Britain	International Movie Night	Cinema Canada	Friday Night at the Movies		

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## International Awards 2004 - 2006 CBC Television Network

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### 2006 Awards

#### British Broadcast Awards

##### Sex Traffic

*Best One-Off Drama*

#### Cairo International Film Festival for Children

##### The Peace Tree

*Silver Cairo for Short film*

*Children's International Jury Prize*

#### Columbus International Film & Video Festival

##### The Velvet Devil (Opening Night)

*The Silver Chris*

##### Appassionata: The Extraordinary Life and Music of Sonia Eckhardt-Gramatte (Opening Night)

*The Silver Chris*

#### Gabriel Awards

##### Evergreen Wishes Presents Dancing Day

(CBC Ottawa)

*Gabriel Award -Arts, Local Release*

#### Golden Prague

##### Burnt Toast (Opening Night)

*Grand Prix, Golden Prague*

May 2006, Czech Republic

##### Black Widow (Opening Night)

*Czech Crystal, Music or Dance Program made for Television*

#### International Health & Medical Media Awards (Freddie Awards)

##### The P.A.R.T.Y. DVD

(CBC Halifax/ CBC Partnerships)

*Freddie Award (Best of Category) - Youth Health*

#### International Olympic Committee Golden Rings Competition

##### Torino Olympic Games

*Bronze Ring (Domestic Production Category)*



## International Awards 2004 - 2006 CBC Television Network

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### 2006 Awards (continued)

#### The New York Festivals

##### Sex Traffic

*Silver WorldMedal – Best Camerawork (Chris Seager)*

##### I, Claudia (Opening Night)

(Sienna Films)

*Silver WorldMedal – Performing Arts*

#### Seoul Drama Awards

##### Prairie Giant: The Tommy Douglas Story

*Best Actor Award (Michael Therriault)*

#### WorldFest Houston

##### Shakin All Over!

*Platinum Remi Award*

##### Sammy's Episode (What it's Like Being Alone)

(The Orphanage Inc./CBC)

*Gold Remi Award*

### 2005 Awards

#### AIB Awards (Association for International Broadcasting)

##### How Bad Do You Want It (Nerve)

*Finalist, Best Children's TV Program*

#### British Academy Television Awards

##### Sex Traffic

(Granada Production for Channel 4 co-produced with CBC)

*British Academy Television Award for best drama serial*

*British Academy Television Award for best actress (Anamaria Marinca)*

*British Academy Television Craft Award for editing (fiction)*

*British Academy Television Craft Award for make-up and hair design*

*British Academy Television Craft Award for Original Television Music*

*British Academy Television Craft Award for photography and lighting (fiction)*

*British Academy Television Craft Award for production design*

*British Academy Television Craft Award for sound in fiction/entertainment*

*British Academy Television Craft Award Nomination for best costume design*



## International Awards 2004 - 2006 CBC Television Network

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### 2005 Awards (continued)

**Chicago International Television Competition**  
(Part of the Chicago International Film Festival)

**Il Duce Canadese**

*Silver Hugo Award, mini-series category*

**Columbia/Dupont**

**Crash of Flight 111 (The Nature of Things)**

(Nova, WBGH-TV and CBC)

*Finalist, duPont Award*

**Columbus International Film & Video Festival**

**Passion & Fury: The Emotional Brain "Anger" (The Nature of Things)**

*The Silver Chris (Best of its Division)*

**Sex, Lies and Secrecy: Dissecting Hysterectomy (The Nature of Things)**

*The Chris statuette*

**Passion & Fury: The Emotional Brain "Happiness" (The Nature of Things)**

*The Chris statuette*

**Passion & Fury: The Emotional Brain (the series)**

*The Chris statuette*

**Nerve: (R)evolution**

*The Chris statuette*

**Gabriel Awards**

**One Night in Acadie**

*Honourable Mention*

**Gracie Allen Awards** (Presented by the American Women in Radio & Television)

**Past Life Investigation**

*Outstanding Reality Show*

**International Emmy Awards**

**The Newsroom**

*International Emmy Award – Comedy*





## International Awards 2004 - 2006 CBC Television Network

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### 2005 Awards (continued)

#### International Emmy Awards

##### Holocaust – A Musical Memorial Film from Auschwitz

(CBC/BBC/TVP/ZDF)

*International Emmy Award – Arts Programming*

##### The Hamburg Cell

*Nominee – TV Movie/Mini-series*

#### International Health & Medical Media Awards (Freddie Awards)

##### Passion and Fury: The Emotional Brain (The Nature of Things)

*Winner – Health Series*

#### International Olympic Committee Golden Rings Competition

CBC Television received a bronze trophy in the category of Best Olympic Programme for coverage of Canadian hurdler Perdita Felicien at the 2004 Olympic Summer Games in Athens.

#### The Japan Prize

##### Poko II: Poko, Bibi

*Runner Up - Early Childhood*

#### Japan Wildlife Film Festival

##### Being Caribou (The Nature of Things)

*Best Environment and Conservation Award*

##### Dr. David Suzuki (The Nature of Things)

*Lifetime Contribution to the Environment Award*

#### Juno Awards

##### Toronto Rocks, Fred Nicolaidis

*Nomination – Best Music DVD of the Year*

#### Festival du Film Jules Vernes

##### The Ghosts of Lomako (The Nature of Things)

*Jury Special Award*



## International Awards 2004 - 2006 CBC Television Network

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### 2005 Awards (continued)

#### Monana CINE

##### When is Enough, Enough? (The Nature of Things)

*Focus Award*

##### The Hollowmen (The Nature of Things)

*Screening Award*

#### Monte-Carlo Television Festival

##### H2o

*Nymphe d'Or, Best Actor (Paul Gross)*

*Nomination, best mini-series*

##### Sex Traffic

*Nymphe d'Or, Best Actress (Anamaria Marinca)*

*Nomination, Best Mini-series*

#### The New York Festivals

##### Cross Canada Candlelight Christmas - Windsor Concert (Opening Night)

*Gold World Medal - Best Performance*

##### Athens 2004: The Olympic Games (CBC/Radio-Canada)

*Gold World Medal - Sports Program Opener and Titles*

##### When Is Enough, Enough? (The Nature of Things)

*Silver World Medal - Environment & Ecology*

##### Il Duce Canadese

*Silver World Medal – Mini Series*

##### The Value Of Life: Aids In Africa (The Nature of Things)

*Bronze World Medal – Health/Medical Issues*

##### The Weight Of The World (The Nature of Things)

*Bronze World Medal – Best Direction (Documentary/Info)*

##### 72 Hours: True Crime

*(Kensington Communications/Creative Anarchy)*

*Bronze World Medal - Docudrama*



## International Awards 2004 - 2006 CBC Television Network

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### 2005 Awards (continued)

#### Prix Europa

##### Sex Traffic

*Special Commendation*

#### Prix Italia

##### Sex Traffic

*Prize – Best TV Drama (Movies & Mini-series)*

*Prize – President of the Republic's Silver Cup*

*Prize – Special Students' Prize*

#### 18<sup>th</sup> Annual Rencontres Internationales de Television de Reims

##### Sex Traffic

*Best drama*

#### Royal Television Society

##### Sex Traffic

*(Granada/Channel 4/CBC)*

*Best drama serial*

*Best actor, female (Anamaria Marinca)*

#### San Francisco International Film Festival (Golden Gate Awards)

##### Baghdad Bound (The Newsroom, Season 3)

*Golden Gate Award – TV Narrative Short Form*

#### Summitt Awards (Portland)

##### My 48 Pontiac (Opening Night)

*Silver*

#### WorldFest Houston

##### Popcorn With Maple Syrup (Opening Night)

*(Pinewood Films Inc, Peter Rowe Productions in association with CBC)*

*Special Jury Award*

##### My 48 Pontiac (Opening Night)

*Platinum Remi Award*



## International Awards 2004 - 2006 CBC Television Network

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### 2004 Awards

**Chicago International Television Competition** (part of Chicago Int'l Film Festival)

**Amelia (Opening Night)**

*Silver Hugo, Special Performance Event*

**Columbus International Film & Video Festival**

**Practice, Practice, Practice (Opening Night)**

*The Silver Chris (Children & Youth)*

*Bronze Plaque (Arts Category)*

**Robert W Wagner Award**

**Human Cargo**

*(Best Narrative Screenwriting)*

*Bronze Plaque*

**The Weight of The World (The Nature of Things)**

*(CBC/NFB)*

*The Chris statuette*

*The Chris statuette (2<sup>nd</sup> category)*

**The Value of Life - AIDS in Africa Revisited (The Nature of Things)**

*The Chris statuette*

**Seeking the Way: The Hockey Journey of the Tootoo Brothers**

*The Chris statuette*

**Sports from the Edge**

*The Chris statuette*

**Corporate Agriculture: The Hollow Men (The Nature of Things)**

*The Chris statuette*

**Karen Armstrong "Spiral Staircase" (Hot Type)**

*The Chris statuette*

**Flying on the Moon: The Ludmila Story (Opening Night)**

*The Chris statuette*

**Il Duce Canadese**

*The Chris statuette*

**Gert's Secret (Rage Against The Darkness)**

*The Chris Statuette*



## International Awards 2004 - 2006 CBC Television Network

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### **2004 Awards** (continued)

#### **Earthwatch Film Award, Washington D.C.**

**Lords of the Arctic (The Nature of Things)**

*Sole winner of the 2004 Earthwatch Film Award*

#### **Golden Rose (Rose D'Or)**

**Amelia (Opening Night)**

*Rose d'Or*

#### **Gracie Allen Awards** (Presented by the American Women in Radio & Television)

**Land and Sea: Built From Scratch (Land and Sea)**

(Newfoundland & Labrador)

*Gracie Allen Award for Magazine Show*

**Legacy – The Halifax Explosion**

(CBC Halifax)

*Gracie Allen Award Outstanding Magazine Program, Local Markets 26+*

#### **International Emmy Awards**

**Henry VIII**

*Nomination – TV Movie/Mini Series*

**Amelia**

*Nomination - Arts Programming*

**The Newsroom – Anchors Away**

*Nomination - Comedy*

#### **International Health & Medical Media Awards (Freddie Awards)**

**The Value of Life - AIDS in Africa Revisited (The Nature of Things)**

*Freddie Award, Prevention Category*

*Finalist, Community Health Category*

*Finalist, Infectious Diseases Category*

**Weight of the World (The Nature of Things)**

*Freddie, Community Health Category*

#### **The Japan Prize**

**Nerve: How Bad Do You Want It?**

*Minister of Foreign Affairs Prize for Youth Education*

*(Best Youth Education Program) and a cash prize*



## International Awards 2004 - 2006 CBC Television Network

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### 2004 Awards (continued)

#### The New York Festivals

##### The Life and Times of Pope John Paul II

*Grand Award for Best Documentary*

##### The Life & Times of Pope John Paul II

*Gold WorldMedal, Best Biography/profiles*

#### The New York Festivals – Film & Video Competition

##### Ghosts of Lomako (The Nature of Things)

*Gold WorldMedal, Best nature & wildlife*

#### The Peabody Award

##### Ross Sheppard vs Kennebecasis (Smart Ask)

*Prix Jeunesse*

*Finalist & 3<sup>rd</sup> Place Certificate in Light Entertainment Category*

#### Wildscreen

##### When is Enough, Enough? (The Nature of Things)

*Finalist, One Planet Category*

#### WorldFest Houston

##### Il Duce Canadese

*Platinum Remi Award*

##### Sacred Balance

*Platinum Remi Award*



## Video Log CBC Television 2004-2005 Season Launch

The Greatest Canadian  
Making the Cut  
Trudeau: the Prequel  
Shania: The Movie  
Tommy Douglas: The Movie  
H2o  
Sex Traffic  
Murder Unveiled  
Open Heart  
Distant Drumming: A North of 60 Mystery Movie  
Papa Alpha  
Chasing Freedom  
Il Duce Canadese  
The Lord of the Rings: the Fellowship of the Ring  
Harry Potter: The Philosopher's Stone  
Harry Potter and the Chamber of Secrets  
Miss Marple  
The Forsyte Saga II  
Gunpowder, Treason and Plot, Mary Queen of Scots  
Coronation Street  
Coronation Street Specials  
Canadian Antiques Roadshow  
Opening Night  
Diana Krall & Friends  
Makin' Noise for Salome  
The Chieftains Special  
Cirque du Soleil: La Nouba  
Oscar & Oliver: The Concert  
Montreal Jazz Festival  
Shakin' All Over  
HSBC Stars on Ice  
Holiday Festival on Ice  
Kurt Browning's Gotta Skate IV  
Isabelle Brasseur & Lloyd Eisler Farewell Show  
Comedy Week: Comedy Gold  
Comedy Week: Men With Brooms  
Comedy Week: My Big Fat Greek Wedding  
The Tournament  
Ciao Bella  
The Magical Gathering  
The Wonderful World of Disney  
Rick Mercer's Monday Report  
Royal Canadian Air Farce  
This Hour Has 22 Minutes  
The Red Green Show  
Just For Laughs  
Halifax Comedy Fest  
CBC Winnipeg Comedy Show  
The Newsroom  
This is Wonderland

Da Vinci's Inquest  
What It's Like Being Alone  
Dragon Booster  
Surprise! It's Edible Incredible!  
Maple Shorts  
Spynet  
Nerve  
Chilly Beach  
The Passionate Eye

- Shake Hands with the Devil:  
The Journey of Romeo Dallaire
- O.Com: Cybersex Addiction
- The Take
- Sin Cities
- Rage Against the Darkness
- Canada's War in Colour

CBC News: The National  
CBC News: Canada Now  
CBC News: Morning  
CBC News: Sunday  
CBC News: Sunday Night  
CBC News: the fifth estate  
CBC News: Marketplace  
CBC News: Venture  
Cruelty Call  
Past Life Investigations  
CBC Newsworld

- CBC News: Correspondent
- CBC News: Face to Face
- Hemispheres
- Fashion File
- Sex, Truth & Videotape
- A Year at Kew: Living Garden History
- Rough Cuts
- Cinema Real

World Cup of Hockey  
World Figure Skating Championships  
The Rogers Cup  
Tennis Masters Canada  
Spruce Meadows Equestrian  
Calgary Stampede  
CBC Sports Saturday  
CFL on CBC  
Athens 2004 Paralympic Games  
CBC's Hockey Day in Canada  
CBC's Hockey Night in Canada  
Athens 2004 The Olympic Games

Ends: 18:37

# U.S. Census Bureau

## American FactFinder



**TM-PCT028. Percent of Persons of French (except Basque) Ancestry: 2000**  
Universe: **Total population**  
Data Set: **Census 2000 Summary File 3 (SF 3) - Sample Data**  
**United States by State**

NOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

### Legend

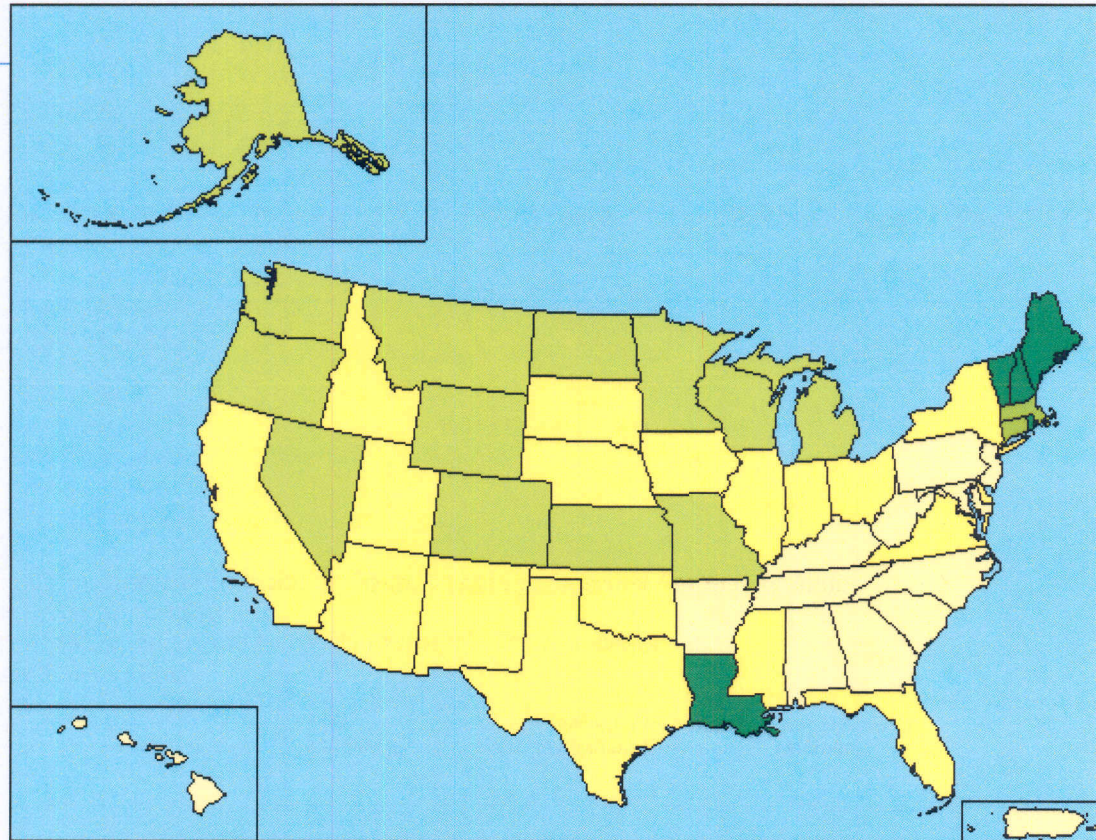
#### Data Classes

- Percent
- 0.1 - 1.9
  - 2.0 - 3.0
  - 3.1 - 4.9
  - 6.3 - 8.0
  - 10.9 - 14.6

#### Features

- Major Road
- Street
- Stream/Waterbody

Items in graytext are not visible at this zoom level



Source: U.S. Census Bureau, Census 2000 Summary File 3, Matrices P1, and PCT18.



**U.S. Census Bureau**  
**American FactFinder**



**TM-PCT029. Percent of Persons of French Canadian Ancestry: 2000**  
**Universe: Total population**  
**Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data**  
**United States by State**

NOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

**Legend**

**Data Classes**

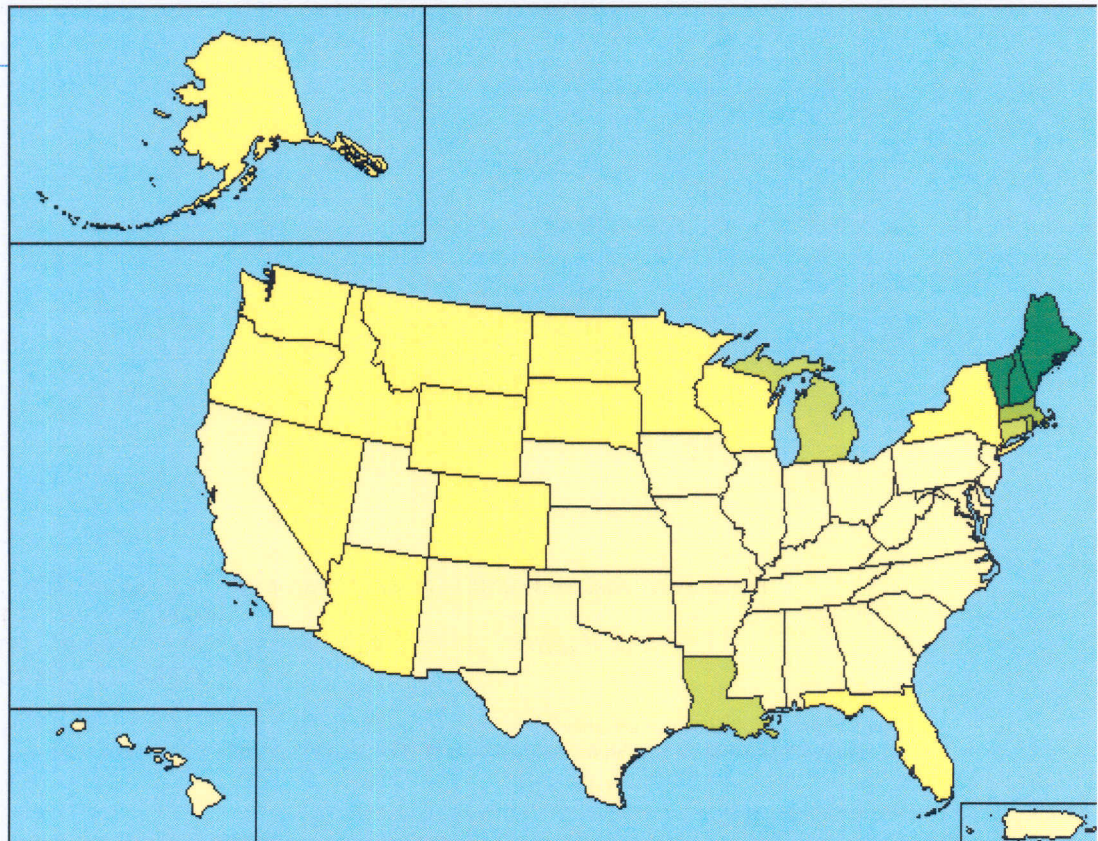
Percent

- 0.0 - 0.5
- 0.6 - 1.2
- 1.9 - 3.2
- 4.9 - 6.4
- 8.6 - 10.3

**Features**

- Major Road
- Street
- Stream/Waterbody

Items in gray text  
are not visible  
at this zoom level



Source: U.S. Census Bureau, Census 2000 Summary File 3, Matrices P1, and PCT18.

## 2005 Awards

### New York Festivals

#### Athènes 2004

*Gold Medal / Category: Sports Program Opener & Titles*  
New York – January 2005

#### Découverte : Luna L'épaulard Égaré

*Silver Medal / Category: Environment and Ecology*  
New York – January 2005

#### Enjeux : Poussière Mortelle

*Bronze Medal / Category: Best News Documentary*  
New York – January 2005

### 5e Festival du Film Scientifique – La Réunion

#### Découverte : La Greffe De Sang De Cordon Ombilical

*Grand Prix Sciences Réunion*  
France – April 2005

### PROMAX Awards

#### Jeux Olympiques D'athènes 2004

*Silver prize / Category: Campaign Using More Than One Media*  
New York – June 2005

### Broadcast Design Association Awards (BDA)

#### Athènes 2004

*Gold Prize / Category: Interstitials*  
New York – June 2005

#### Athènes 2004

*Gold Prize / Category: Program Opener*  
New York – June 2005

#### Athènes 2004

*Gold Prize / Category: All Around – Sports*  
New York – June 2005

#### simondurivage.com

*Silver Prize / Category: Interstitials*  
New York – June 2005

## 2005 Awards (continued)

### Broadcast Design Association Awards (BDA)

#### Gala Des Prix Gémeaux

*Silver Prize / Category: Interstitials (Category: Set – Special)*

New York – June 2005

#### 5 sur 5

*Bronze Prize / Category: Graphics*

New York – June 2005

#### Tout Le Monde En Parle

*Bronze Prize / Category: Talk Show Set*

New York – June 2005

### BDA World Gold Awards

#### Athènes 2004

*Gold Prize / Category: Interstitials*

New York – June 2005

#### Athènes 2004

*Gold Prize / Category: Program Opener*

New York – June 2005

## 2004 Awards

### New York Festivals

#### Zone Libre: Searching For Sarah « Portée Disparues »

*Silver Medal / Category: Best News Documentary*

United States – January 2004

### Prix Italia

#### Enjeux: Télé réalité: La Grande Illusion (Reality Show)

*Vincitore Signis Award*

(This award is given by the World Catholic Association for Communication)

Italy – September 2004

### 36th Festival international du Film maritime, d'exploration et d'environnement

#### Découverte: Les Marées Noires

*Environment Prize*

France – October 2004



TÉLÉVISION

TÉLÉVISION DE RADIO-CANADA SCHEDULE 2003/2004

CCG	JSC	PS
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TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	TIME					
6:00 AM	Tweenies					Benjamin		6:00 AM					
6:30	Les chatouilles 64, rue du zoo					Petit ours	Les chatouilles Rolie, Polie, Olie	6:30					
6:45	Moi / Les Frimousses					Max & Rudy	Le monde d'Henri	7:00 AM					
7:00 AM	Matin Express					Sagwa	Arthur / Sagwa	7:30					
											Dominique raconte...		7:45
7:30											Rémi	Le légende de Tarzan	8:00 AM
8:00 AM											Corneil & Bernie	Papyrus	8:30
8:30											Kim Possibie	Ayoye !	9:00 AM
9:00 AM	Cinéma					Les mystères de Merville		9:30					
9:30											Ayoye !	Le jour du seigneur	10:00 AM
10:00 AM											Galidor / Fais-moi peur !	Mon ange	10:30
10:30											Amandine Malabul		
11:00 AM						Ricardo					L'heure du midi		11:30
11:30	L'heure du midi					L'heure du midi		12:00 PM					
12:00 PM											Justice	La semaine verte	12:30
12:30						Caméra témoin	Second regard	1:00 PM					
1:00 PM	La facture et L'épicerie	Justice et Second regard	Découverte	Zone libre	Enjeux	L'accent	Mémoires d'enfance	1:30					
1:30	Sous le signe du lion/ Le coeur découvert	Fred-dy		Rivière-des-Jérémie	Le monde de Charlotte Caserne 24	Ça vaut le détour !	Christiane Charette en direct	2:00 PM					
2:00 PM	Ricardo							2:30					
2:30						Des mots et des maux		3:00 PM					
3:00 PM	Art Attack					Adrénaline	Les belles histoires des pays d'en haut	3:30					
3:30	Tetes à kat								4:00 PM				
4:00 PM	Watatatow							Le plateau	4:30				



TÉLÉVISION

TÉLÉVISION DE RADIO-CANADA SCHEDULE 2003/2004

CCG	JSC	PS
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TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	TIME					
5:00 PM	Aujourd'hui					Adrenaline	5 sur 5	5:00 PM					
5:30													5:30
6:00 PM											Le téléjournal		6:00 PM
6:30	L'union fait la force					La petite vie	Découverte	6:30					
7:00 PM	Virginie				Informan			7:00 PM					
7:30	Rumeurs	La facture	Le monde de Charlotte	L'épicerie	Palmares	Les grands films / La soirée du hockey	Les beaux dimanches	7:30					
8:00 PM	L'auberge du chien noir	Les super mamies/ Samuel et la mer/ Le bleu du ciel	Les grands films Le dernier chapitre: la vengeance/ Solstrom	Marché Jean-Talon/ Un gars, une fille Catherine/Les Bougon C'est aussi ça la vie	La fureur			8:00 PM					
8:30										8:30			
9:00 PM	Les aventures tumultueuses de Jack Carter/Humoristes à table/Grande ourse/Folles de jeunesse, phobies de vieillesse	Enjeux	Qui l'eût cru !	Cap Random/La double vie de Diane Sullivan/...ce soir on joue	Zone libre	9:00 PM							
9:30								9:30					
10:00 PM	Le téléjournal / Le point					Le téléjournal		10:00 PM					
10:30											Cinéma sous tension	Conversation	10:30
11:00 PM	Cinéma Cinéma	Crimes et tourments	Vues d'ici	Les grands documentaires de Découverte	Christiane Charette en direct	Cinéma sous tension	Le territoire de l'autre/Le garage	11:00 PM					
11:30										11:30			
12:00 AM				Brio	Culture-choc		Ciné-club	12:00 AM					
12:30				Bibliotheca									
1:00 AM	Le politique Fédérale					Cinéma sous tension	Ciné-club	1:00 AM					
1:05	Le politique provinciale												



# TÉLÉVISION DE RADIO-CANADA SCHEDULE 2004/2005

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	TIME	
6:00 AM			Tweenies			La Famille	Les chatouilles	6:00 AM	
6:30			Les chatouilles			Passiflore	Les Hoobs		
			Les Frimousses			La Famille Berenstain	Lapitch - Le petit cordonnier	6:30	
6:45			64, rue du zoo						
7:00			Matin Express			Boohbah		7:00	
7:30						Les Sauvetout	Rolie, Polie, Olie	7:30	
8:00						Le Monde d'Henri	Poko	8:00	
8:30						Mona le vampire	Sagwa	8:30	
						Kim Possible	La grosse minute... Le roi c'est moi !	9:00	
9:00						Zoé Kézako	Les mystères de Moville	9:30	
9:30			37 5			Hôtel Bordemer		9:45	
10:00			C'est dans l'air !			Chasseurs de dragon	Le jour du seigneur	10:00	
10:30						La Légende de Tarzan		10:30	
11:00			Ricardo			Code Lyoko	Mon ange	11:00	
						Spider-man-les nouvelles aventures			
11:30			Simondurivage.com					11:30	
12:00 PM			Le Téléjournal / Midi					12:00 PM	
12:30			Simondurivage.com				La semaine verte	12:30	
							Ciné - famille		
1:00							Second regard	1:00	
1:30			Urgences				37 5 Hebdo	2:00	
2:00						La Douce Folie de l'aventure		2:30	
2:30			La loi et l'ordre			L'accent	Le revers de la médaille	3:00	
3:00									
3:30			Les Aventures de Tintin / Belle et Sébastien			Territoire de l'autre/ Brio	Adrénaline	3:30	
4:45			Benjamin						4:00
4:00			Lizzie McGuire			Ça vaut le détour !			
4:30			Têtes @ kat					4:30	

CCG JSC PS



TÉLÉVISION

TÉLÉVISION DE RADIO-CANADA SCHEDULE 2004/2005

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	TIME
5:00 PM	Watatatow				Le groulx luxe c'est n'importe quoi !	Histoires Oubliées	5 sur 5	5:00 PM
5:30	Le téléjournal / Montréal					Justice		5:30
6:00	L'union fait la force					Le téléjournal		6:00
6:30	Virginie				Francoeur	La fureur	Découverte	6:30
7:00	Rumeurs	La facture	Un monde à part	L'épicerie	Infoman	Les grands films	et Dieu créa.. Laflaque	7:00
7:30	L'auberge du chien noir	Le bleu du ciel	Un gars, une fille et...	Qui l'eût cru !	Ça va être ta fête !		Tout le monde en parle	7:30
8:00	Temps dur / Eau trouble	Enjeux	Les Bougon- c'est aussi ça la vie !	Ciao Bella	Zone libre			9:00
8:30			La vie rêvée de Mario Jean	La Petite Vie		Les Leçons de Josh	9:30	
9:00	Le téléjournal / Le point					Le téléjournal		10:00
9:30	C'est dans l'air !					Le Garage	Pleins Feux	10:30
10:00	Mémoires d'enfance	Découverte	Les grands documentaires de découverte	Vues d'ici	Cinéma Cinéma	Cinéma Cinéma		11:00
10:30	Bibliotheca							
11:00	Le politique féd.	Insectia				Ciné-club	12:00 AM	
11:30	Le politique prov.						1:00	
12:00 AM								
12:30								
1:00								
1:05								

CCG JSC P S



## TÉLÉVISION DE RADIO-CANADA SCHEDULE 2005/2006

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	TIME					
6:00 AM	Matin Express					Les Hoobs	La Petite Minute Kléo	6:00 AM					
											Boohbah		6:30
											Poko	La Famille Passiflore	7:00
											Les Sauvetout	Les Calinours	7:30
8:00	Simondurivage.com					Mona le vampire	Dominique Raconte Les Cotoons	8:00					
											La grosse minute W.I.T.C.H.	Le Monde d'Henri	8:15 8:30
9:00	Coup de Pouce					Kim Possible	La grosse minute... Le Roi C'est Moi !	9:00					
											Lizzie McGuire	Code Lyoko	9:30
10:00	Droit au Coeur					Ma Vie de Star / La Légende de Tarzan	Le jour du seigneur	10:00					
											La Légende du Dragon	10:30	
11:00	Ricardo					Le Projet Zeta	Les Coulisses du Pouvoir	11:00					
											Spider-Man	11:30	
11:30	Simondurivage.com					Le téléjournal / Midi							
12:00 PM	Le Téléjournal / Midi								12:00 PM				
12:30	Simondurivage.com					Art Circuit	La semaine verte	12:30					
											L'accent	1:00	
1:00	Urgences					109/ Y Paraît que...	Second Regard	1:30					
											Ça Vaut le Détour !	Vu de Large	2:00
2:00	Deuxième Chance						Histoires Oubliées	2:30					
											Iznogoud	Ciné-famille	3:00
3:00	Les Belles Histoires des Pays d'en Haut					Les Aventures de Tintin		3:30					
											Aux Frontières de l'étrange		4:00
4:00	La Fosse aux Lionnes					Match !		4:30					

CCG	JSC	PS
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## TÉLÉVISION DE RADIO-CANADA SCHEDULE 2005/2006

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	TIME
5:00 PM	Le téléjournal / Montréal					Le téléjournal		5:00 PM
						5 sur 5		5:30
6:00	Véro				L'union Fait la Force			6:00
6:30					La Petite Vie	La fureur	Découverte	6:30
7:00	Virginie				Au-Delà du Réal			
7:30	Rumeurs	La facture	L'épicerie	Cover Girl	Infoman		et Dieu créa.. Laflaque	7:30
8:00	L'auberge du chien noir	Providence	Le Match des Étoiles	Les Mission de Patrice	Janette	Les grands films	Tout le monde en parle	8:00
9:00	SMASH	Enjeux	Les Invincibles	Au Nom de la Loi	Zone Libre			
9:30	Les Bougon- C'est Aussi ça la Vie !							
10:00	Le téléjournal / Le point					Le téléjournal		10:00
						Au Nom de la Loi	Pleins Feux	10:30
11:00	Au-Dessus de la Mêlée							
11:30	Véro				Janette	Pour L'amour du Country	Ciné-club	11:30
12:30 AM	La Fosse aux Lionnes							
1:30	Le politique féd.				Parlez-moi des Hommes, Parlez-moi des Femmes	Cinéma Cinéma		
	Le politique prov.							

CCG	JSC	PS
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## Royalties Paid For Distant Signals 1998 through 2005

### Total Distant Royalties (Base, 3.75% and Syndex)

By Accounting Period			Relative Change From 1998-1999 Average	
Accounting Period	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998-1	\$1,160,429	\$36,922,246		
1998-2	\$1,122,303	\$37,943,928		
1999-1	\$1,289,424	\$39,297,637		
1999-2	\$1,385,943	\$39,483,040		
<i>1998-1999 Average</i>	<i>\$1,239,525</i>	<i>\$38,411,713</i>		
2000-1	\$1,516,426	\$41,675,901	22%	8%
2000-2	\$1,478,853	\$41,549,030	19%	8%
2001-1	\$1,520,197	\$42,404,630	23%	10%
2001-2	\$1,862,506	\$43,043,719	50%	12%
2002-1	\$2,233,415	\$44,778,784	80%	17%
2002-2	\$2,134,143	\$46,626,564	72%	21%
2003-1	\$2,079,158	\$46,728,937	68%	22%
2003-2	\$2,454,412	\$46,464,972	98%	21%
2004-1	\$2,228,738	\$48,012,156	80%	25%
2004-2	\$1,886,884	\$50,057,958	52%	30%
2005-1	\$2,151,952	\$50,614,159	74%	32%
2005-2	\$2,270,745	\$50,874,214	83%	32%

By Year			Relative Change From 1998-1999 Average	
Year	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998	\$2,282,732	\$74,866,174		
1999	\$2,675,367	\$78,780,677		
<i>1998-1999 Average</i>	<i>\$2,479,050</i>	<i>\$76,823,426</i>		
2000	\$2,995,279	\$83,224,931	21%	8%
2001	\$3,382,703	\$85,448,349	36%	11%
2002	\$4,367,558	\$91,405,348	76%	19%
2003	\$4,533,570	\$93,193,909	83%	21%
2004	\$4,115,622	\$98,070,114	66%	28%
2005	\$4,422,697	\$101,488,373	78%	32%

## Royalties Paid For Distant Signals 1998 through 2005

### Base Royalties

By Accounting Period			Relative Change From 1998-1999 Average	
Accounting Period	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998-1	\$1,137,931	\$32,003,322		
1998-2	\$1,092,786	\$33,153,775		
1999-1	\$1,259,893	\$34,390,096		
1999-2	\$1,325,435	\$33,992,214		
<i>1998-1999 Average</i>	<i>\$1,204,011</i>	<i>\$33,384,852</i>		
2000-1	\$1,418,457	\$35,281,387	18%	6%
2000-2	\$1,429,401	\$35,953,190	19%	8%
2001-1	\$1,466,254	\$36,097,290	22%	8%
2001-2	\$1,592,100	\$36,118,254	32%	8%
2002-1	\$2,034,544	\$37,884,561	69%	13%
2002-2	\$1,783,054	\$37,695,175	48%	13%
2003-1	\$1,829,288	\$38,514,913	52%	15%
2003-2	\$2,005,715	\$38,626,062	67%	16%
2004-1	\$1,765,414	\$38,839,146	47%	16%
2004-2	\$1,670,310	\$40,444,803	39%	21%
2005-1	\$1,888,116	\$41,775,743	57%	25%
2005-2	\$1,974,321	\$42,879,531	64%	28%

By Year			Relative Change From 1998-1999 Average	
Year	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998	\$2,230,717	\$65,157,097		
1999	\$2,585,328	\$68,382,310		
<i>1998-1999 Average</i>	<i>\$2,408,023</i>	<i>\$66,769,704</i>		
2000	\$2,847,858	\$71,234,577	18%	7%
2001	\$3,058,354	\$72,215,544	27%	8%
2002	\$3,817,598	\$75,579,736	59%	13%
2003	\$3,835,003	\$77,140,975	59%	16%
2004	\$3,435,724	\$79,283,949	43%	19%
2005	\$3,862,437	\$84,655,274	60%	27%

## Royalties Paid For Distant Signals 1998 through 2005

### 3.75% Royalties

By Accounting Period			Relative Change From 1998-1999 Average	
Accounting Period	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998-1	\$9,532	\$4,887,522		
1998-2	\$15,007	\$4,759,736		
1999-1	\$29,531	\$4,876,613		
1999-2	\$36,024	\$5,466,676		
<i>1998-1999 Average</i>	<i>\$22,524</i>	<i>\$4,997,637</i>		
2000-1	\$37,883	\$6,363,125	68%	27%
2000-2	\$32,194	\$5,585,287	43%	12%
2001-1	\$37,465	\$6,278,017	66%	26%
2001-2	\$242,314	\$6,914,562	976%	38%
2002-1	\$198,871	\$6,877,899	783%	38%
2002-2	\$351,089	\$8,911,289	1459%	78%
2003-1	\$249,870	\$8,195,265	1009%	64%
2003-2	\$448,697	\$7,820,259	1892%	56%
2004-1	\$463,324	\$9,151,690	1957%	83%
2004-2	\$216,574	\$9,587,932	862%	92%
2005-1	\$263,836	\$8,817,188	1071%	76%
2005-2	\$296,424	\$7,968,658	1216%	59%

By Year			Relative Change From 1998-1999 Average	
Year	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998	\$24,539	\$9,647,258		
1999	\$65,555	\$10,343,289		
<i>1998-1999 Average</i>	<i>\$45,047</i>	<i>\$9,995,274</i>		
2000	\$70,077	\$11,948,412	56%	20%
2001	\$279,779	\$13,192,579	521%	32%
2002	\$549,960	\$15,789,188	1121%	58%
2003	\$698,567	\$16,015,524	1451%	60%
2004	\$679,898	\$18,739,622	1409%	87%
2005	\$560,260	\$16,785,846	1144%	68%

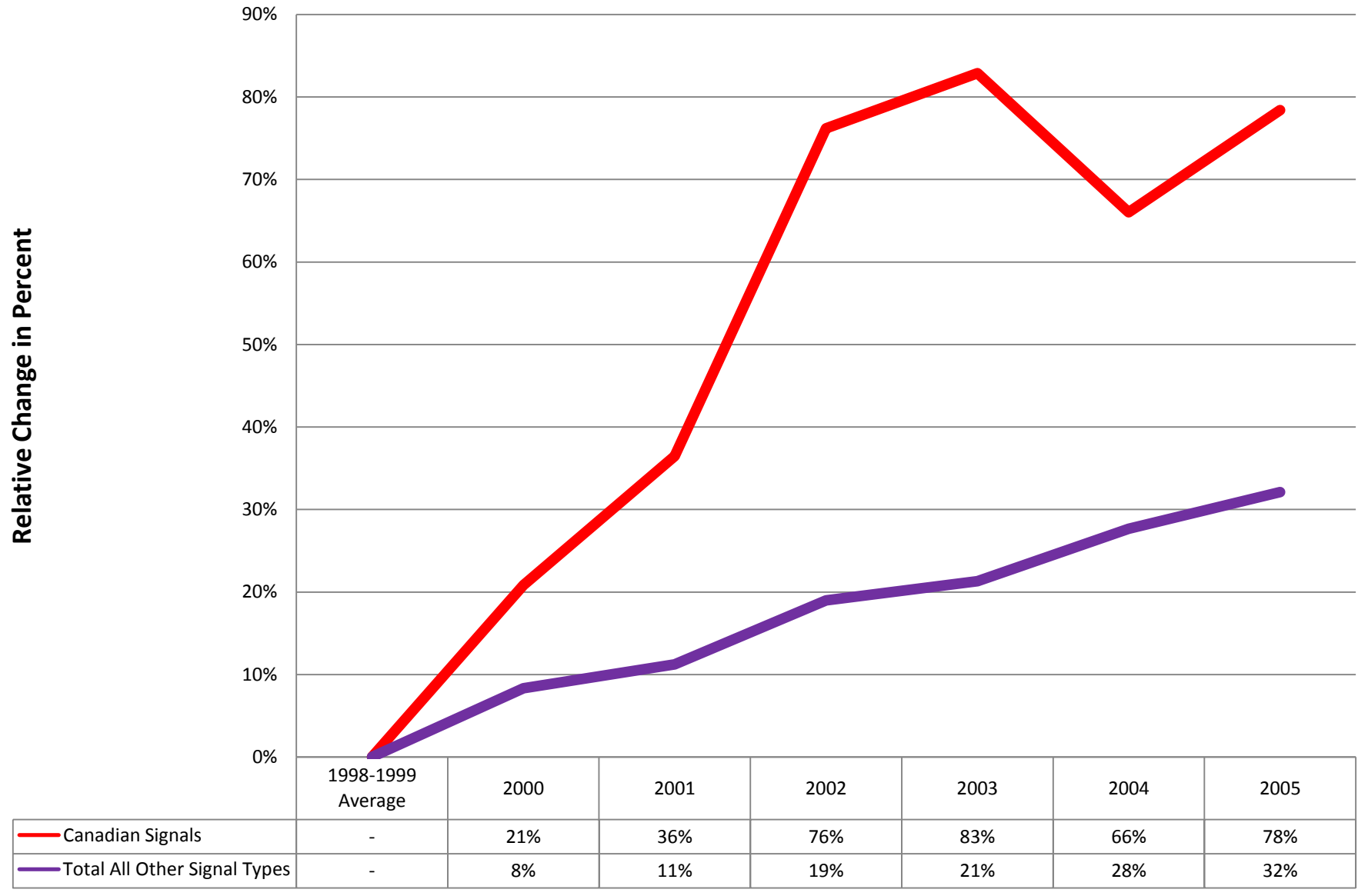
## Royalties Paid For Distant Signals 1998 through 2005

### Syndex Royalties

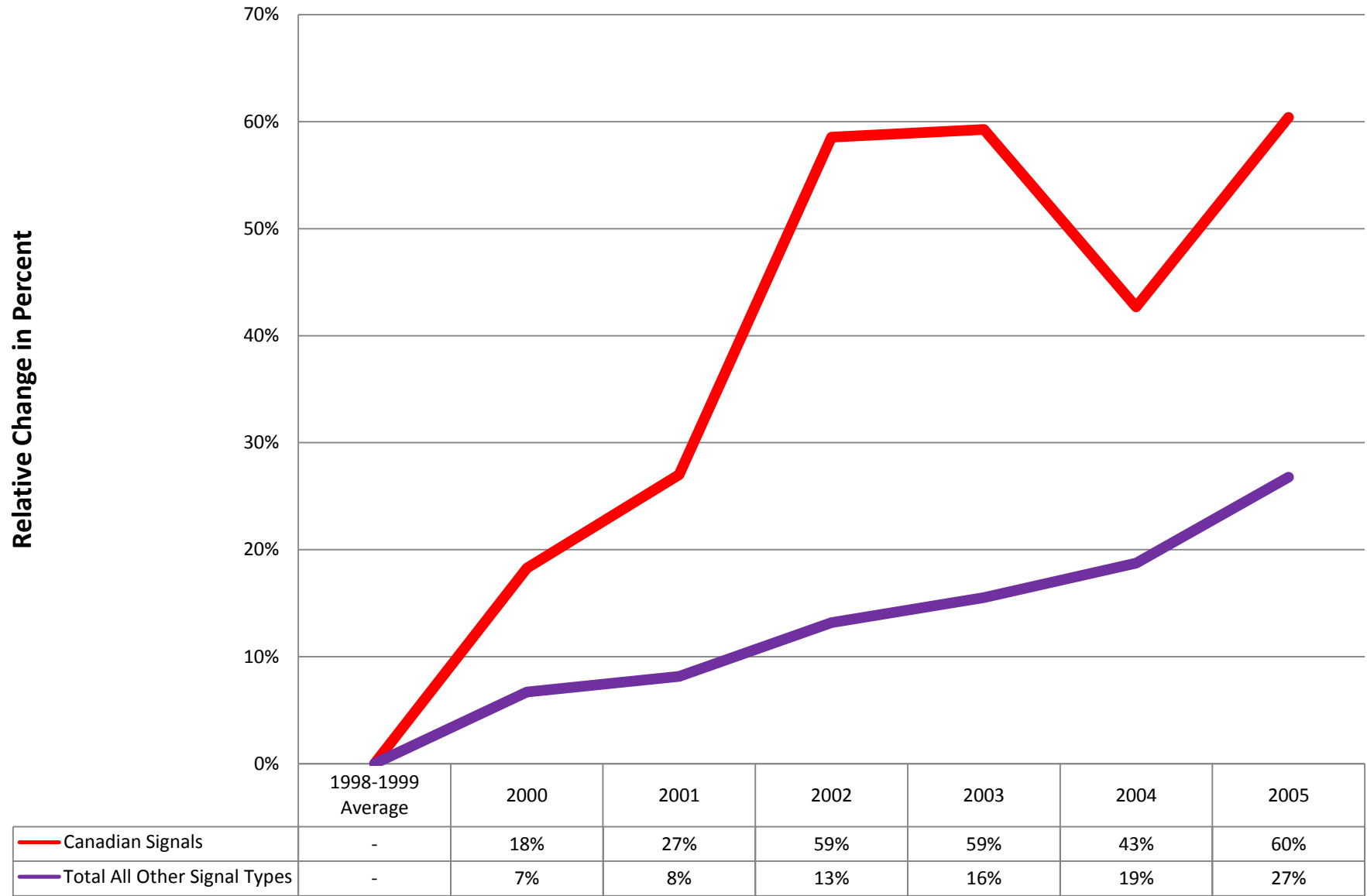
By Accounting Period			Relative Change From 1998-1999 Average	
Accounting Period	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998-1	\$12,966	\$31,402		
1998-2	\$14,510	\$30,417		
1999-1	\$0	\$30,928		
1999-2	\$24,484	\$24,150		
<i>1998-1999 Average</i>	<i>\$12,990</i>	<i>\$29,224</i>		
2000-1	\$60,086	\$31,389	363%	7%
2000-2	\$17,258	\$10,553	33%	-64%
2001-1	\$16,478	\$29,323	27%	0%
2001-2	\$28,092	\$10,903	116%	-63%
2002-1	\$0	\$16,324	-100%	-44%
2002-2	\$0	\$20,100	-100%	-31%
2003-1	\$0	\$18,759	-100%	-36%
2003-2	\$0	\$18,651	-100%	-36%
2004-1	\$0	\$21,320	-100%	-27%
2004-2	\$0	\$25,223	-100%	-14%
2005-1	\$0	\$21,228	-100%	-27%
2005-2	\$0	\$26,025	-100%	-11%

By Year			Relative Change From 1998-1999 Average	
Year	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998	\$27,476	\$61,819		
1999	\$24,484	\$55,078		
<i>1998-1999 Average</i>	<i>\$25,980</i>	<i>\$58,449</i>		
2000	\$77,344	\$41,942	198%	-28%
2001	\$44,570	\$40,226	72%	-31%
2002	\$0	\$36,424	-100%	-38%
2003	\$0	\$37,410	-100%	-36%
2004	\$0	\$46,543	-100%	-20%
2005	\$0	\$47,253	-100%	-19%

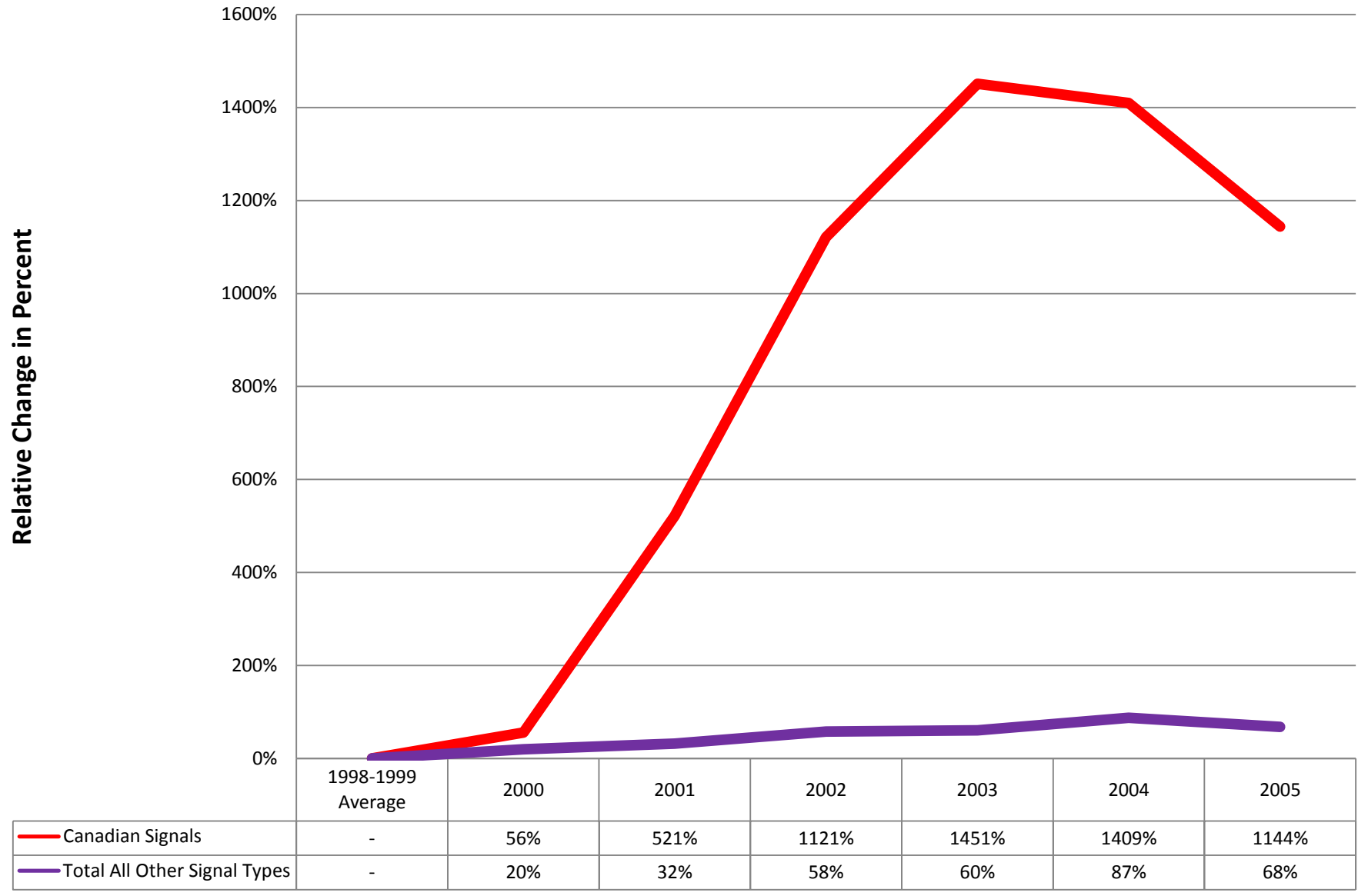
## Relative Change in Total Distant Royalties For Distant Carriage Since 1998-1999



## Relative Change in Base Royalties For Distant Carriage Since 1998-1999



## Relative Change in 3.75% Royalties For Distant Carriage Since 1998-1999





**Royalties Paid for Distant Signals  
by Signal Type  
1998 through 2005**

**Total Royalties  
(Base, 3.75% and Syndex)**

Dollars					
Accounting Period	Independent	Network	Educational	Canadian	Total (includes Low Power and Mexican)
1998-1	\$32,531,762	\$3,086,993	\$1,250,433	\$1,160,429	\$38,082,675
1998-2	\$33,561,446	\$2,995,658	\$1,337,503	\$1,122,303	\$39,066,231
1999-1	\$34,683,568	\$3,126,251	\$1,379,184	\$1,289,424	\$40,587,061
1999-2	\$34,781,568	\$3,209,304	\$1,401,169	\$1,385,943	\$40,868,983
2000-1	\$36,726,429	\$3,408,663	\$1,348,308	\$1,516,426	\$43,192,327
2000-2	\$36,618,554	\$3,328,131	\$1,435,261	\$1,478,853	\$43,027,883
2001-1	\$37,046,985	\$3,627,462	\$1,459,947	\$1,520,197	\$43,924,827
2001-2	\$37,677,409	\$3,427,984	\$1,586,058	\$1,862,506	\$44,906,225
2002-1	\$38,700,185	\$3,740,048	\$1,838,940	\$2,233,415	\$47,012,199
2002-2	\$40,503,389	\$3,947,419	\$1,660,300	\$2,134,143	\$48,760,707
2003-1	\$40,577,989	\$3,810,306	\$1,819,232	\$2,079,158	\$48,808,095
2003-2	\$40,200,986	\$3,753,804	\$1,883,522	\$2,454,412	\$48,919,384
2004-1	\$41,808,038	\$3,808,016	\$1,713,033	\$2,228,738	\$50,240,894
2004-2	\$43,787,648	\$3,882,099	\$1,757,224	\$1,886,884	\$51,944,842
2005-1	\$44,239,090	\$3,785,510	\$1,796,099	\$2,151,952	\$52,766,111
2005-2	\$44,943,609	\$3,313,165	\$1,810,020	\$2,270,745	\$53,144,959

Percentage					
Accounting Period	Independent	Network	Educational	Canadian	Total (includes Low Power and Mexican)
1998-1	85.42%	8.11%	3.28%	3.05%	100.00%
1998-2	85.91%	7.67%	3.42%	2.87%	100.00%
1999-1	85.45%	7.70%	3.40%	3.18%	100.00%
1999-2	85.11%	7.85%	3.43%	3.39%	100.00%
2000-1	85.03%	7.89%	3.12%	3.51%	100.00%
2000-2	85.10%	7.73%	3.34%	3.44%	100.00%
2001-1	84.34%	8.26%	3.32%	3.46%	100.00%
2001-2	83.90%	7.63%	3.53%	4.15%	100.00%
2002-1	82.32%	7.96%	3.91%	4.75%	100.00%
2002-2	83.07%	8.10%	3.40%	4.38%	100.00%
2003-1	83.14%	7.81%	3.73%	4.26%	100.00%
2003-2	82.18%	7.67%	3.85%	5.02%	100.00%
2004-1	83.22%	7.58%	3.41%	4.44%	100.00%
2004-2	84.30%	7.47%	3.38%	3.63%	100.00%
2005-1	83.84%	7.17%	3.40%	4.08%	100.00%
2005-2	84.57%	6.23%	3.41%	4.27%	100.00%

**Royalties Paid for Distant Signals  
by Signal Type  
1998 through 2005**

**Base Fund Royalties**

Dollars					
Accounting Period	Independent	Network	Educational	Canadian	Total (includes Low Power and Mexican)
1998-1	\$28,590,158	\$2,109,673	\$1,250,433	\$1,137,931	\$33,141,253
1998-2	\$29,723,360	\$2,051,106	\$1,329,988	\$1,092,786	\$34,246,561
1999-1	\$30,771,705	\$2,139,362	\$1,370,395	\$1,259,893	\$35,649,989
1999-2	\$30,362,375	\$2,137,671	\$1,401,169	\$1,325,435	\$35,317,649
2000-1	\$31,637,369	\$2,229,195	\$1,339,005	\$1,418,457	\$36,699,844
2000-2	\$32,216,996	\$2,232,015	\$1,435,174	\$1,429,401	\$37,382,591
2001-1	\$32,142,167	\$2,389,729	\$1,459,947	\$1,466,254	\$37,563,544
2001-2	\$32,049,187	\$2,325,290	\$1,572,486	\$1,592,100	\$37,710,354
2002-1	\$33,323,641	\$2,490,164	\$1,823,209	\$2,034,544	\$39,919,105
2002-2	\$33,464,024	\$2,284,025	\$1,648,419	\$1,783,054	\$39,478,229
2003-1	\$34,058,703	\$2,347,886	\$1,807,492	\$1,829,288	\$40,344,201
2003-2	\$34,000,305	\$2,383,749	\$1,870,510	\$2,005,715	\$40,631,777
2004-1	\$34,449,102	\$2,337,495	\$1,694,275	\$1,765,414	\$40,604,560
2004-2	\$36,040,437	\$2,359,893	\$1,719,772	\$1,670,310	\$42,115,113
2005-1	\$37,274,332	\$2,304,399	\$1,784,938	\$1,888,116	\$43,663,859
2005-2	\$38,536,848	\$2,040,214	\$1,779,617	\$1,974,321	\$44,853,852

Percentage					
Accounting Period	Independent	Network	Educational	Canadian	Total (includes Low Power and Mexican)
1998-1	86.27%	6.37%	3.77%	3.43%	100.00%
1998-2	86.79%	5.99%	3.88%	3.19%	100.00%
1999-1	86.32%	6.00%	3.84%	3.53%	100.00%
1999-2	85.97%	6.05%	3.97%	3.75%	100.00%
2000-1	86.21%	6.07%	3.65%	3.87%	100.00%
2000-2	86.18%	5.97%	3.84%	3.82%	100.00%
2001-1	85.57%	6.36%	3.89%	3.90%	100.00%
2001-2	84.99%	6.17%	4.17%	4.22%	100.00%
2002-1	83.48%	6.24%	4.57%	5.10%	100.00%
2002-2	84.77%	5.79%	4.18%	4.52%	100.00%
2003-1	84.42%	5.82%	4.48%	4.53%	100.00%
2003-2	83.68%	5.87%	4.60%	4.94%	100.00%
2004-1	84.84%	5.76%	4.17%	4.35%	100.00%
2004-2	85.58%	5.60%	4.08%	3.97%	100.00%
2005-1	85.37%	5.28%	4.09%	4.32%	100.00%
2005-2	85.92%	4.55%	3.97%	4.40%	100.00%

**Royalties Paid for Distant Signals  
by Signal Type  
1998 through 2005**

**3.75% Fund Royalties**

Dollars					
Accounting Period	Independent	Network	Educational	Canadian	Total (includes Low Power and Mexican)
1998-1	\$3,924,968	\$962,554	\$0	\$9,532	\$4,897,054
1998-2	\$3,821,366	\$930,855	\$7,515	\$15,007	\$4,774,743
1999-1	\$3,895,365	\$972,459	\$8,789	\$29,531	\$4,906,144
1999-2	\$4,409,157	\$1,057,519	\$0	\$36,024	\$5,502,700
2000-1	\$5,069,389	\$1,167,750	\$9,303	\$37,883	\$6,401,008
2000-2	\$4,395,466	\$1,091,655	\$87	\$32,194	\$5,617,481
2001-1	\$4,881,715	\$1,231,513	\$0	\$37,465	\$6,315,482
2001-2	\$5,622,138	\$1,097,875	\$13,572	\$242,314	\$7,156,876
2002-1	\$5,365,500	\$1,244,951	\$15,384	\$198,871	\$7,076,770
2002-2	\$7,027,015	\$1,655,644	\$11,881	\$351,089	\$9,262,378
2003-1	\$6,513,041	\$1,449,906	\$11,740	\$249,870	\$8,445,135
2003-2	\$6,194,911	\$1,357,174	\$13,012	\$448,697	\$8,268,956
2004-1	\$7,351,887	\$1,456,250	\$18,758	\$463,324	\$9,615,014
2004-2	\$7,738,228	\$1,506,223	\$37,195	\$216,574	\$9,804,506
2005-1	\$6,959,012	\$1,465,629	\$11,161	\$263,836	\$9,081,024
2005-2	\$6,397,035	\$1,256,948	\$30,107	\$296,424	\$8,265,082

Percentage					
Accounting Period	Independent	Network	Educational	Canadian	Total (includes Low Power and Mexican)
1998-1	80.15%	19.66%	0.00%	0.19%	100.00%
1998-2	80.03%	19.50%	0.16%	0.31%	100.00%
1999-1	79.40%	19.82%	0.18%	0.60%	100.00%
1999-2	80.13%	19.22%	0.00%	0.65%	100.00%
2000-1	79.20%	18.24%	0.15%	0.59%	100.00%
2000-2	78.25%	19.43%	0.00%	0.57%	100.00%
2001-1	77.30%	19.50%	0.00%	0.59%	100.00%
2001-2	78.56%	15.34%	0.19%	3.39%	100.00%
2002-1	75.82%	17.59%	0.22%	2.81%	100.00%
2002-2	75.87%	17.87%	0.13%	3.79%	100.00%
2003-1	77.12%	17.17%	0.14%	2.96%	100.00%
2003-2	74.92%	16.41%	0.16%	5.43%	100.00%
2004-1	76.46%	15.15%	0.20%	4.82%	100.00%
2004-2	78.93%	15.36%	0.38%	2.21%	100.00%
2005-1	76.63%	16.14%	0.12%	2.91%	100.00%
2005-2	77.40%	15.21%	0.36%	3.59%	100.00%

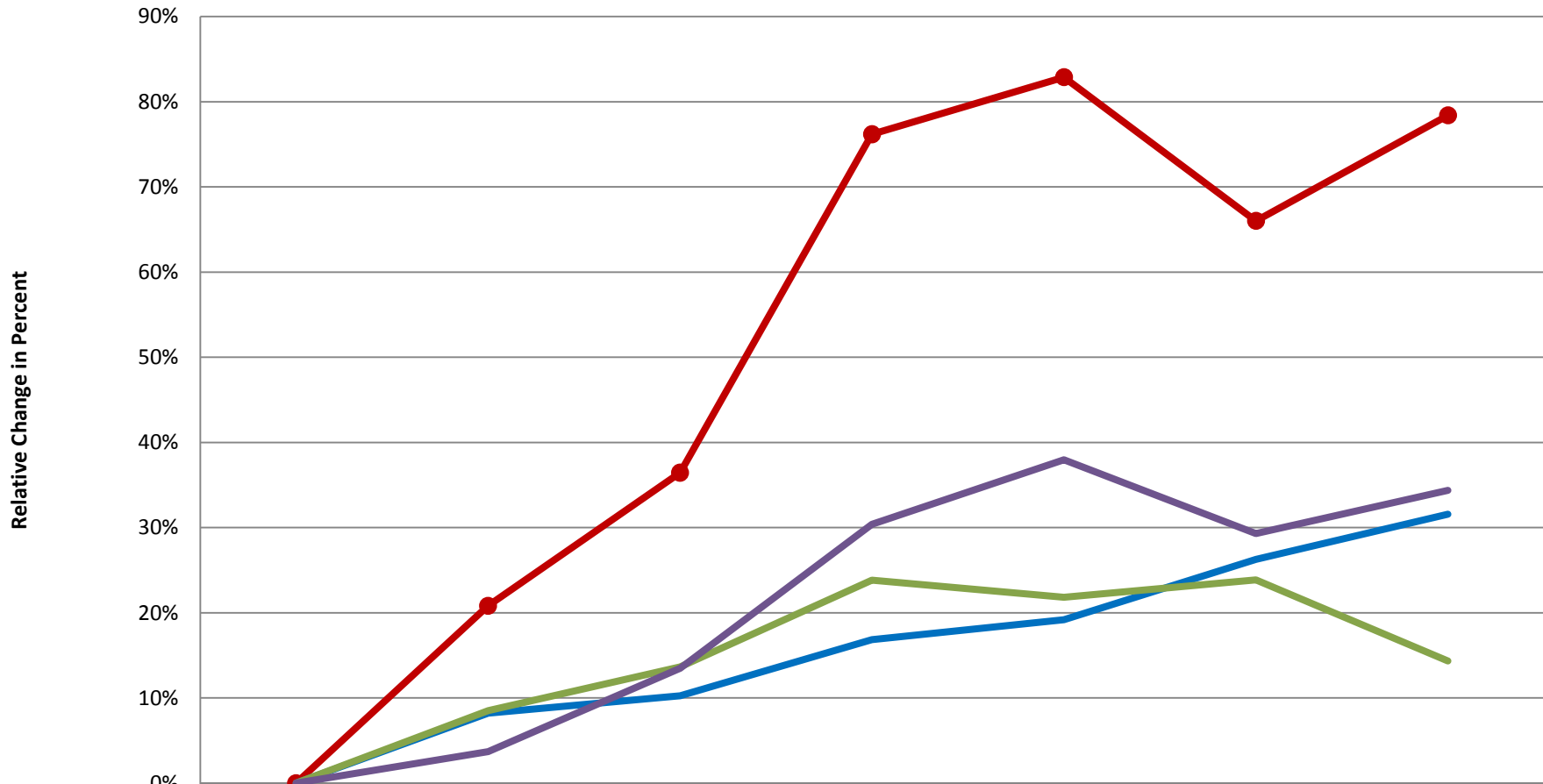
**Royalties Paid for Distant Signals  
by Signal Type  
1998 through 2005**

**Sydney Fund Royalties**

Dollars					
Accounting Period	Independent	Network	Educational	Canadian	Total (includes Low Power and Mexican)
1998-1	\$16,636	\$14,766	\$0	\$12,966	\$44,368
1998-2	\$16,720	\$13,697	\$0	\$14,510	\$44,927
1999-1	\$16,498	\$14,430	\$0	\$0	\$30,928
1999-2	\$10,036	\$14,114	\$0	\$24,484	\$48,634
2000-1	\$19,671	\$11,718	\$0	\$60,086	\$91,475
2000-2	\$6,092	\$4,461	\$0	\$17,258	\$27,811
2001-1	\$23,103	\$6,220	\$0	\$16,478	\$45,801
2001-2	\$6,084	\$4,819	\$0	\$28,092	\$38,995
2002-1	\$11,044	\$4,933	\$347	\$0	\$16,324
2002-2	\$12,350	\$7,750	\$0	\$0	\$20,100
2003-1	\$6,245	\$12,514	\$0	\$0	\$18,759
2003-2	\$5,770	\$12,881	\$0	\$0	\$18,651
2004-1	\$7,049	\$14,271	\$0	\$0	\$21,320
2004-2	\$8,983	\$15,983	\$257	\$0	\$25,223
2005-1	\$5,746	\$15,482	\$0	\$0	\$21,228
2005-2	\$9,726	\$16,003	\$296	\$0	\$26,025

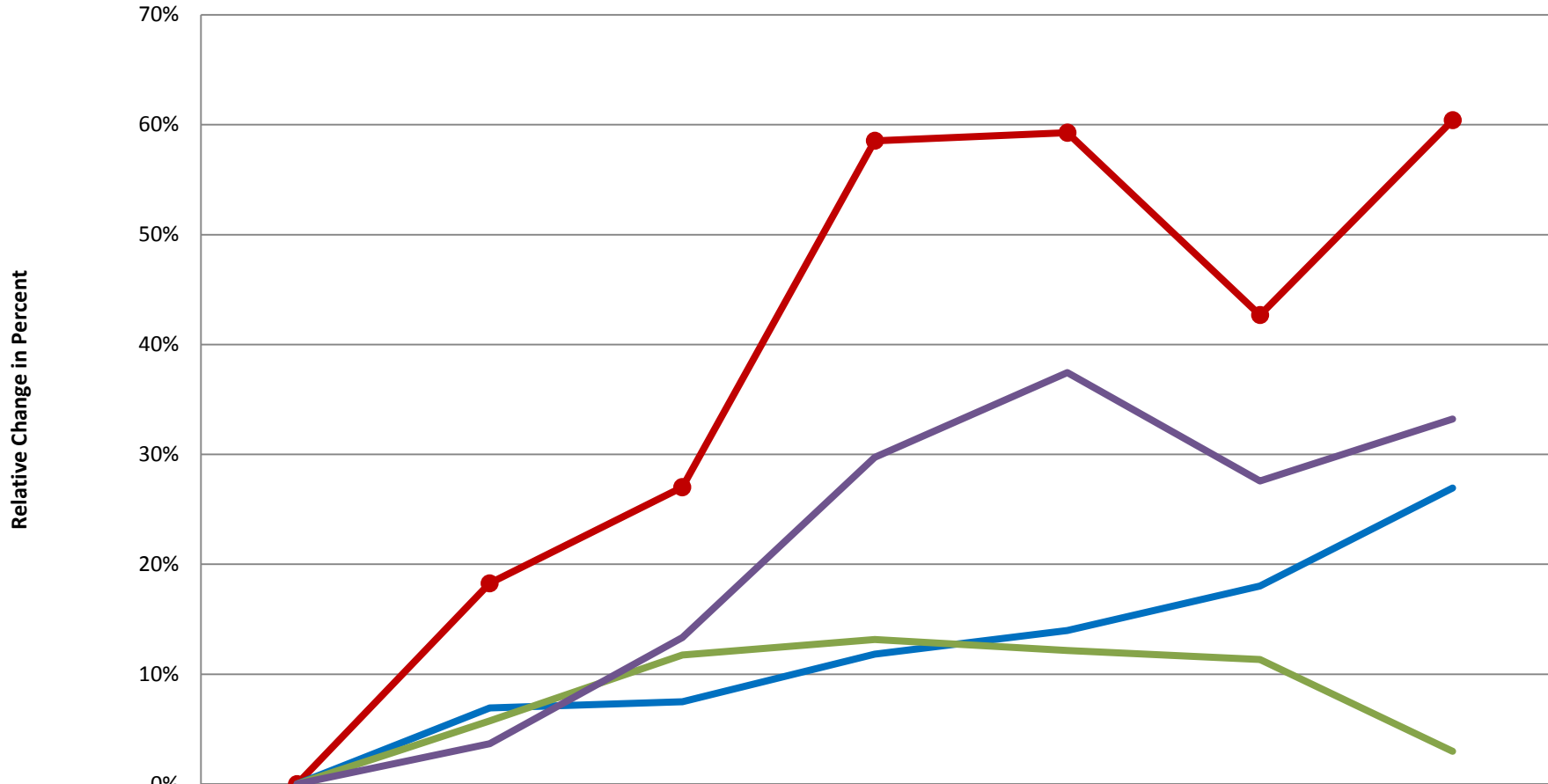
Percentage					
Accounting Period	Independent	Network	Educational	Canadian	Total (includes Low Power and Mexican)
1998-1	37.50%	33.28%	0.00%	29.22%	100.00%
1998-2	37.22%	30.49%	0.00%	32.30%	100.00%
1999-1	53.34%	46.66%	0.00%	0.00%	100.00%
1999-2	20.64%	29.02%	0.00%	50.34%	100.00%
2000-1	21.50%	12.81%	0.00%	65.69%	100.00%
2000-2	21.91%	16.04%	0.00%	62.05%	100.00%
2001-1	50.44%	13.58%	0.00%	35.98%	100.00%
2001-2	15.60%	12.36%	0.00%	72.04%	100.00%
2002-1	67.65%	30.22%	2.13%	0.00%	100.00%
2002-2	61.44%	38.56%	0.00%	0.00%	100.00%
2003-1	33.29%	66.71%	0.00%	0.00%	100.00%
2003-2	30.94%	69.06%	0.00%	0.00%	100.00%
2004-1	33.06%	66.94%	0.00%	0.00%	100.00%
2004-2	35.61%	63.37%	1.02%	0.00%	100.00%
2005-1	27.07%	72.93%	0.00%	0.00%	100.00%
2005-2	37.37%	61.49%	1.14%	0.00%	100.00%

## Relative Change in Total Royalties Paid for Distant Signals Since 1998-1999



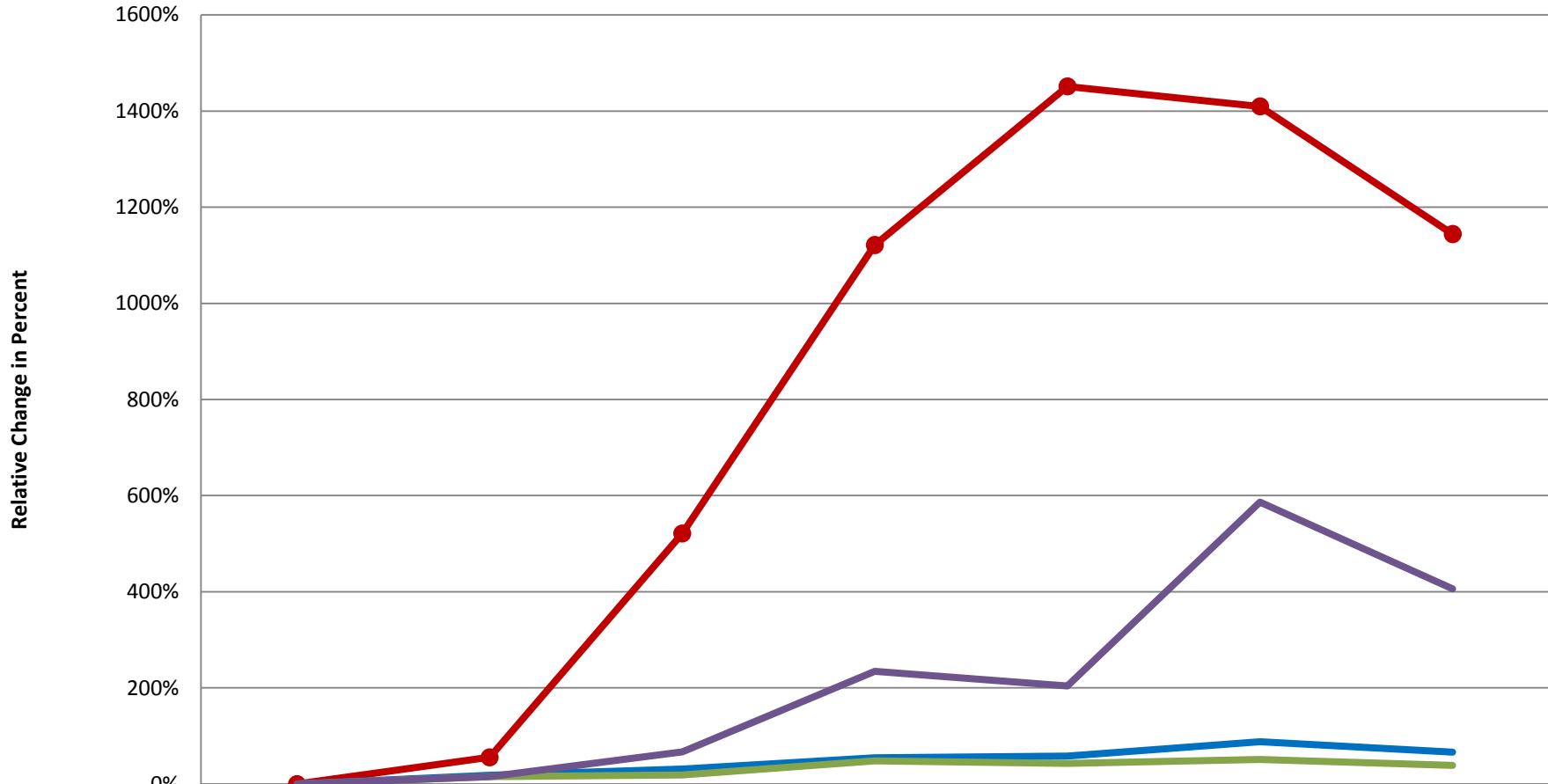
	1998-1999 Average	2000	2001	2002	2003	2004	2005
—●— Canadian	-	21%	36%	76%	83%	66%	78%
— Independent	-	8%	10%	17%	19%	26%	32%
— Network	-	8%	14%	24%	22%	24%	14%
— Educational	-	4%	13%	30%	38%	29%	34%

## Relative Change in Base Royalties Paid for Distant Signals Since 1998-1999



	1998-1999 Average	2000	2001	2002	2003	2004	2005
● Canadian	-	18%	27%	59%	59%	43%	60%
— Independent	-	7%	7%	12%	14%	18%	27%
— Network	-	6%	12%	13%	12%	11%	3%
— Educational	-	4%	13%	30%	37%	28%	33%

## Relative Change in 3.75% Royalties Paid for Distant Signals Since 1998-1999



	1998-1999 Average	2000	2001	2002	2003	2004	2005
● Canadian	-	56%	521%	1121%	1451%	1409%	1144%
— Independent	-	18%	31%	54%	58%	88%	66%
— Network	-	15%	19%	48%	43%	51%	39%
— Educational	-	15%	66%	234%	204%	586%	406%

**Change in Minimum Fee Royalties  
For Systems with Zero Distant Stations**

Accounting Period	Number of Systems with Zero Distant Stations	Minimum Fees from Systems with Zero Distant Stations Only
1990-1	17	\$220,384
1990-2	12	\$99,466
1991-1	13	\$130,956
1991-2	12	\$106,446
1992-1	14	\$103,779
1992-2	17	\$182,636
1993-1	15	\$123,847
1993-2	18	\$199,525
1994-1	10	\$56,240
1994-2	14	\$135,709
1995-1	12	\$126,145
1995-2	12	\$101,683
1996-1	15	\$124,968
1996-2	27	\$236,759
1997-1	38	\$278,660
1997-2	40	\$329,240
1998-1	459	\$9,971,366
1998-2	437	\$9,528,758
1999-1	382	\$9,133,797
1999-2	378	\$10,012,495
2000-1	380	\$10,181,373
2000-2	311	\$10,742,072
2001-1	325	\$11,176,775
2001-2	312	\$11,218,132
2002-1	306	\$11,878,343
2002-2	308	\$11,705,460
2003-1	300	\$11,569,243
2003-2	272	\$11,027,799
2004-1	261	\$10,757,009
2004-2	214	\$8,937,346
2005-1	210	\$8,630,343
2005-2	182	\$8,852,824



## Summary of Royalties Generated by Canadian Distant Signals 1998 through 2005

### Base Royalties

Year	Canadian Signals	All Signals (Including Canadian)	Canadian Signal Royalties as a Percentage of All Signal Royalties
1998	\$2,230,717	\$67,387,814	3.31027%
1999	\$2,585,328	\$70,967,638	3.64297%
2000	\$2,847,858	\$74,082,435	3.84417%
2001	\$3,058,354	\$75,273,898	4.06297%
2002	\$3,817,598	\$79,397,334	4.80822%
2003	\$3,835,003	\$80,975,978	4.73598%
2004	\$3,435,724	\$82,719,673	4.15345%
2005	\$3,862,437	\$88,517,711	4.36346%

### 3.75% Royalties

Year	Canadian Signals	All Signals (Including Canadian)	Canadian Signal Royalties as a Percentage of All Signal Royalties
1998	\$24,539	\$9,671,797	0.25372%
1999	\$65,555	\$10,408,844	0.62980%
2000	\$70,077	\$12,018,489	0.58308%
2001	\$279,779	\$13,472,358	2.07669%
2002	\$549,960	\$16,339,148	3.36590%
2003	\$698,567	\$16,714,091	4.17951%
2004	\$679,898	\$19,419,520	3.50111%
2005	\$560,260	\$17,346,106	3.22989%

**Total Distant Royalties Paid by Form 3 Systems for Canadian Signals  
2004 through 2005 Combined, by Signal**

<b>Signal</b>	<b>Affiliation</b>	<b>Total Distant Royalties over 2 years</b>	<b>Percentage of Royalties</b>	<b>Cumulative Share of Royalties</b>
<b>CBUT</b>	CBC	\$ 3,044,345	35.53%	35.53%
<b>CKSH</b>	CBC	\$ 1,392,843	16.25%	51.78%
<b>CBET</b>	CBC	\$ 1,211,321	14.14%	65.92%
<b>CBMT</b>	CBC	\$ 909,087	10.61%	76.52%
<b>CFTO</b>	CTV	\$ 440,020	5.13%	81.66%
<b>CBLT</b>	CBC	\$ 341,168	3.98%	85.64%
<b>CKWS</b>	CBC	\$ 314,599	3.67%	89.31%
<b>CHLT</b>	TVA	\$ 234,633	2.74%	92.05%
<b>CBFT</b>	CBC	\$ 177,951	2.08%	94.13%
<b>CHCH</b>	CANWEST GLOBAL	\$ 162,080	1.89%	96.02%
<b>CBWT</b>	CBC	\$ 88,197	1.03%	97.05%
<b>CIII</b>	CANWEST GLOBAL	\$ 72,727	0.85%	97.90%
<b>CJOH</b>	CTV	\$ 67,024	0.78%	98.68%
<b>CISA</b>	CANWEST GLOBAL	\$ 57,425	0.67%	99.35%
<b>CFCF</b>	CTV	\$ 28,637	0.33%	99.68%
<b>CKY</b>	CTV	\$ 9,042	0.11%	99.79%
<b>CBAFT</b>	CBC	\$ 4,395	0.05%	99.84%
<b>CBAT</b>	CBC	\$ 4,395	0.05%	99.89%
<b>CIMT</b>	TVA	\$ 4,395	0.05%	99.94%
<b>CKRT</b>	CBC	\$ 4,395	0.05%	99.99%
<b>CBOT</b>	CBC	\$ 644	0.01%	100.00%

**Distant Subscriber Instances  
1998 through 2005**

<b>By Accounting Period</b>			<b>Relative Change From 1998-1999 Average</b>	
Accounting Period	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998-1	2,327,993	64,059,396		
1998-2	2,444,712	65,383,286		
1999-1	2,439,682	66,538,738		
1999-2	2,517,869	65,546,945		
<hr/>				
<i>1998-1999 Accounting Period</i>	<i>2,432,564</i>	<i>65,382,091</i>		
<i>Average</i>				
2000-1	2,669,097	67,651,296	10%	3%
2000-2	2,585,301	66,144,447	6%	1%
2001-1	2,653,758	66,258,761	9%	1%
2001-2	2,913,025	67,658,907	20%	3%
2002-1	2,940,482	70,284,785	21%	7%
2002-2	2,803,228	67,886,093	15%	4%
2003-1	2,921,592	65,080,421	20%	0%
2003-2	3,262,903	67,828,088	34%	4%
2004-1	2,760,217	66,611,390	13%	2%
2004-2	2,614,578	71,256,505	7%	9%
2005-1	3,020,164	68,399,151	24%	5%
2005-2	2,860,093	65,278,076	18%	0%

<b>By Year</b>			<b>Relative Change From 1998-1999 Average</b>	
Year	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998	4,772,705	129,442,682		
1999	4,957,551	132,085,683		
<hr/>				
<i>1998-1999 Annual Average</i>	<i>4,865,128</i>	<i>130,764,183</i>		
2000	5,254,398	133,795,743	8%	2%
2001	5,566,783	133,917,668	14%	2%
2002	5,743,710	138,170,878	18%	6%
2003	6,184,495	132,908,509	27%	2%
2004	5,374,795	137,867,895	10%	5%
2005	5,880,257	133,677,227	21%	2%

## Distant Subscriber Instances 1998 through 2005

### By Signal Type

Subscriber Instances					
Accounting Period	Educational	Independent	Network	Canadian	Total (includes Low Power and Mexican)
1998-1	6,759,956	44,823,509	12,390,331	2,327,993	66,387,389
1998-2	6,675,840	46,354,662	12,295,766	2,444,712	67,827,998
1999-1	7,197,983	46,799,617	12,433,075	2,439,682	68,978,420
1999-2	6,906,145	46,170,112	12,370,674	2,517,869	68,064,814
2000-1	7,312,512	47,210,365	12,986,626	2,669,097	70,320,393
2000-2	7,378,205	46,296,435	12,362,361	2,585,301	68,729,748
2001-1	7,349,460	46,023,231	12,691,231	2,653,758	68,912,519
2001-2	7,631,906	46,997,906	12,673,984	2,913,025	70,571,932
2002-1	7,992,233	47,567,051	14,203,397	2,940,482	73,225,267
2002-2	8,105,654	46,888,038	12,299,893	2,803,228	70,689,321
2003-1	8,565,559	44,307,823	11,704,640	2,921,592	68,002,013
2003-2	9,363,059	45,278,929	12,531,801	3,262,903	71,090,991
2004-1	8,441,273	45,486,549	12,051,522	2,760,217	69,371,607
2004-2	8,731,210	48,863,780	13,086,987	2,614,578	73,871,083
2005-1	8,803,075	47,309,300	11,604,903	3,020,164	71,419,315
2005-2	8,220,169	46,412,769	9,859,156	2,860,093	68,138,169

Percentages of Total					
Accounting Period	Educational	Independent	Network	Canadian	Total (includes Low Power and Mexican)
1998-1	10.18%	67.52%	18.66%	3.51%	100.00%
1998-2	9.84%	68.34%	18.13%	3.60%	100.00%
1999-1	10.44%	67.85%	18.02%	3.54%	100.00%
1999-2	10.15%	67.83%	18.17%	3.70%	100.00%
2000-1	10.40%	67.14%	18.47%	3.80%	100.00%
2000-2	10.74%	67.36%	17.99%	3.76%	100.00%
2001-1	10.66%	66.79%	18.42%	3.85%	100.00%
2001-2	10.81%	66.60%	17.96%	4.13%	100.00%
2002-1	10.91%	64.96%	19.40%	4.02%	100.00%
2002-2	11.47%	66.33%	17.40%	3.97%	100.00%
2003-1	12.60%	65.16%	17.21%	4.30%	100.00%
2003-2	13.17%	63.69%	17.63%	4.59%	100.00%
2004-1	12.17%	65.57%	17.37%	3.98%	100.00%
2004-2	11.82%	66.15%	17.72%	3.54%	100.00%
2005-1	12.33%	66.24%	16.25%	4.23%	100.00%
2005-2	12.06%	68.12%	14.47%	4.20%	100.00%

**Distant Instances of Carriage  
1998 through 2005**

By Accounting Period			Relative Change From 1998-1999 Average	
Accounting Period	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998-1	88	4,032		
1998-2	85	4,114		
1999-1	80	4,196		
1999-2	78	4,229		
<hr/>				
<i>1998-1999 Accounting Period Average</i>	<i>83</i>	<i>4,143</i>		
2000-1	84	4,291	2%	4%
2000-2	72	3,505	-13%	-15%
2001-1	74	3,511	-11%	-15%
2001-2	82	3,559	-1%	-14%
2002-1	77	3,575	-7%	-14%
2002-2	89	3,708	8%	-10%
2003-1	79	3,614	-5%	-13%
2003-2	79	3,713	-5%	-10%
2004-1	76	3,740	-8%	-10%
2004-2	70	3,833	-15%	-7%
2005-1	69	3,884	-17%	-6%
2005-2	59	3,151	-29%	-24%

By Year			Relative Change From 1998-1999 Average	
Year	Canadian Signals	Total All Other Signal Types	Canadian Signals	Total All Other Signal Types
1998	173	8,146		
1999	158	8,425		
<hr/>				
<i>1998-1999 Annual Average</i>	<i>166</i>	<i>8,286</i>		
2000	156	7,796	-6%	-6%
2001	156	7,070	-6%	-15%
2002	166	7,283	0%	-12%
2003	158	7,327	-5%	-12%
2004	146	7,573	-12%	-9%
2005	128	7,035	-23%	-15%

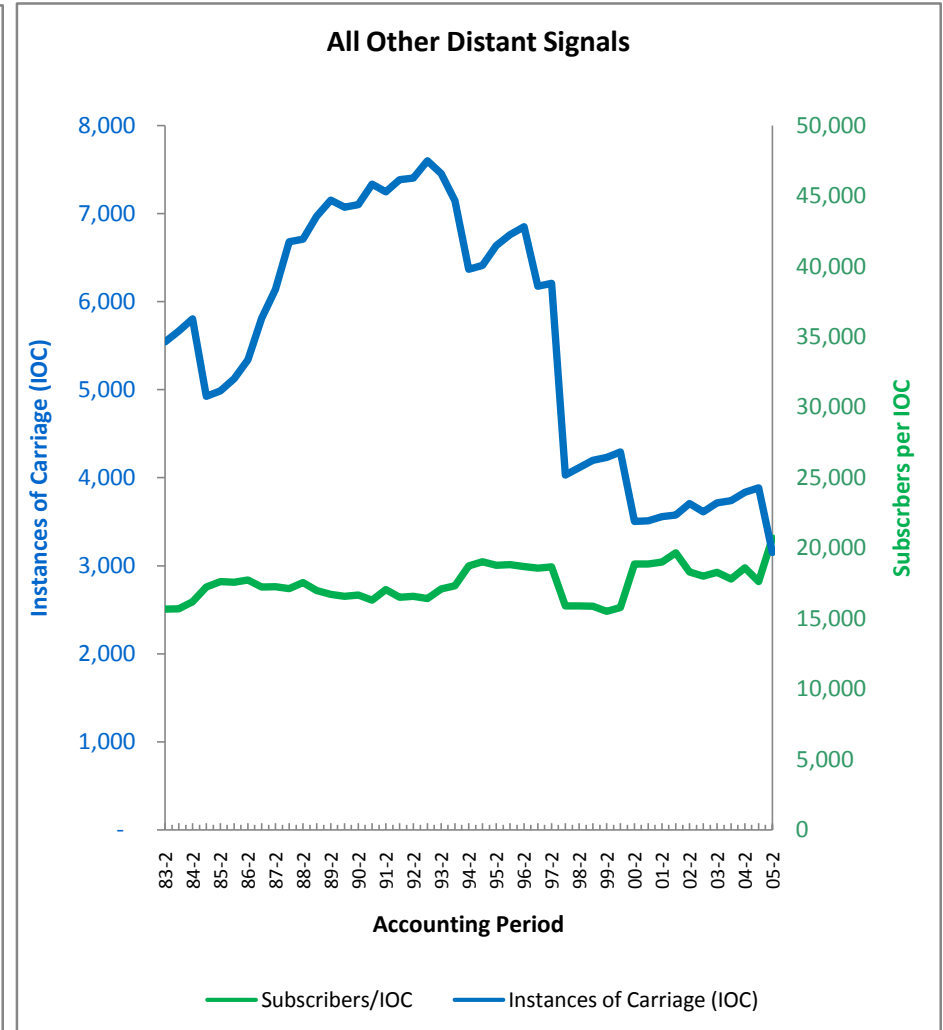
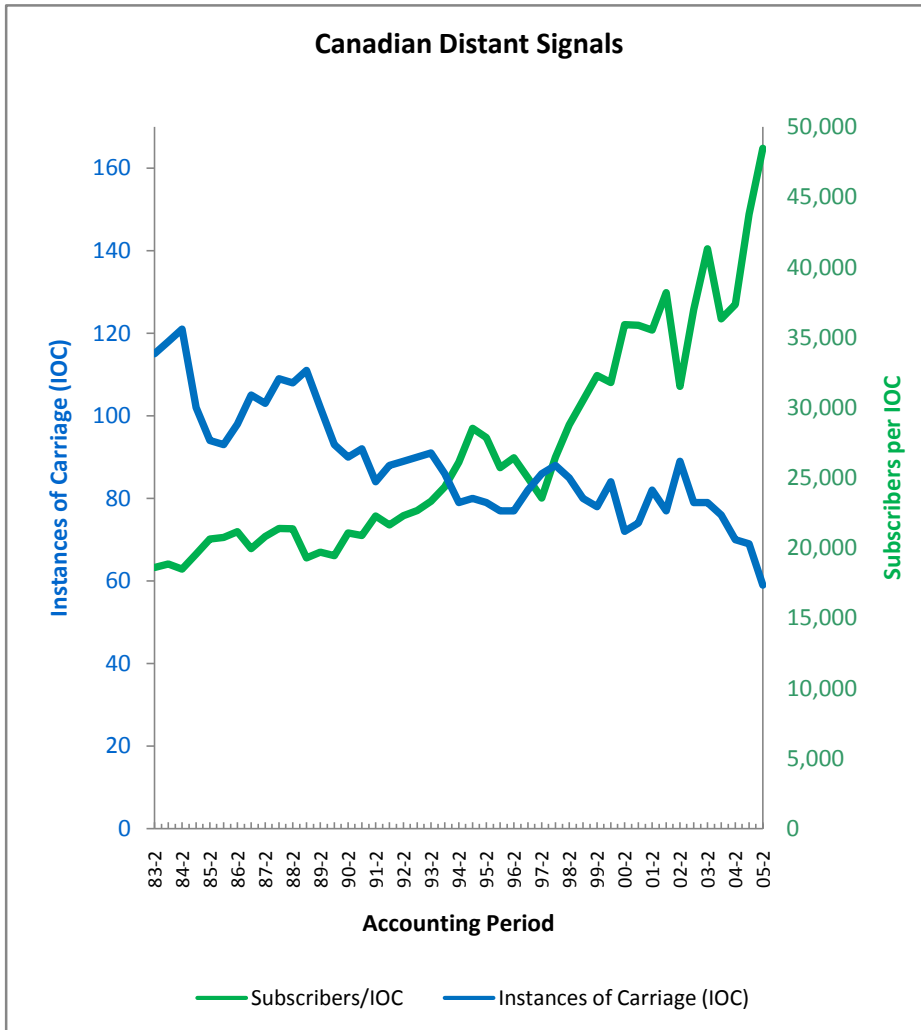
## Distant Instances of Carriage 1998 through 2005

### By Signal Type

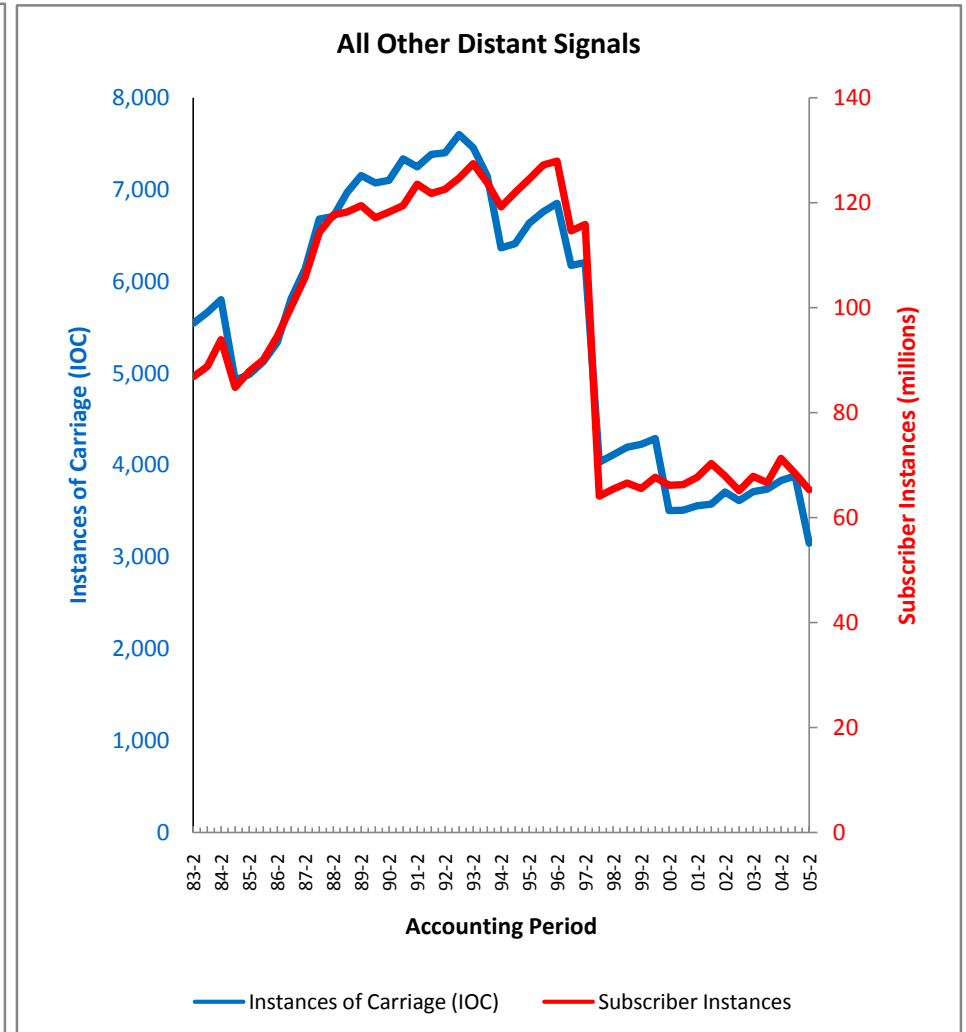
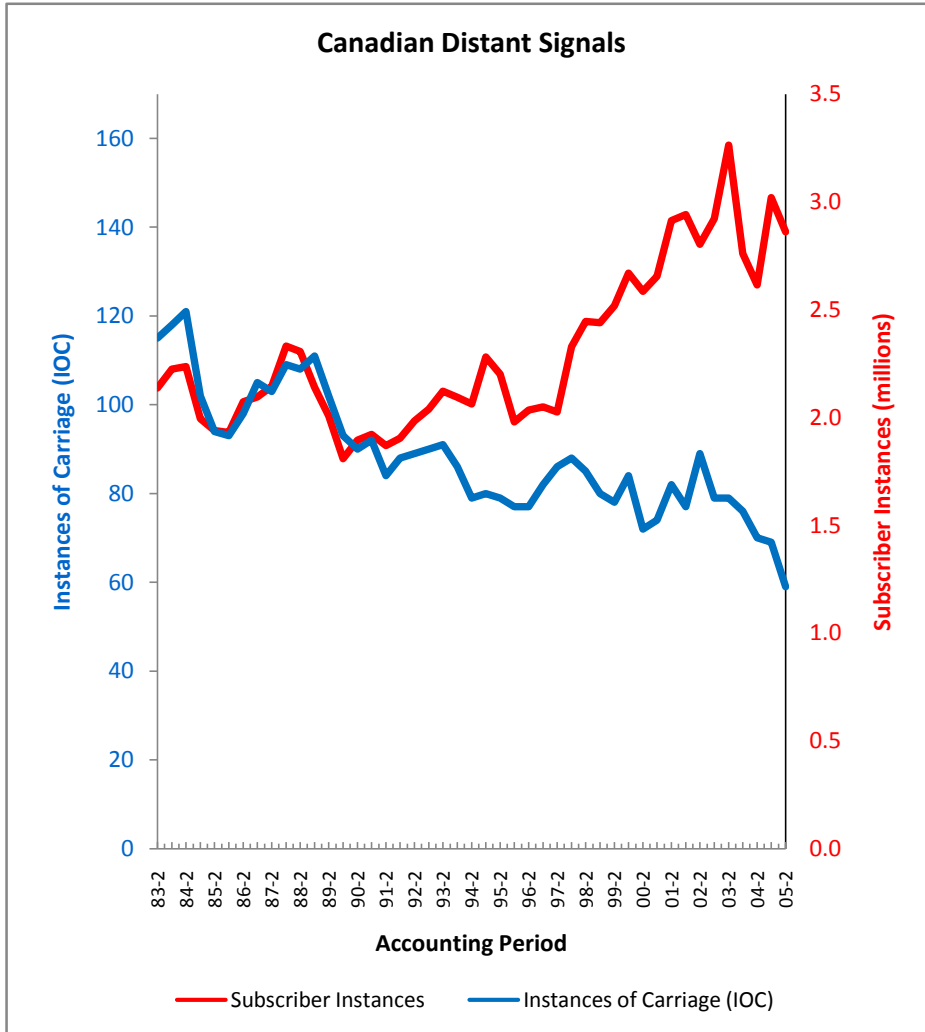
Instances of Carriage					
Accounting Period	Educational	Independent	Network	Canadian	Total (includes Low Power and Mexican)
1998-1	590	2,224	1,212	88	4,120
1998-2	583	2,295	1,226	85	4,199
1999-1	603	2,315	1,265	80	4,276
1999-2	602	2,304	1,304	78	4,307
2000-1	626	2,315	1,329	84	4,375
2000-2	528	1,913	1,043	72	3,577
2001-1	528	1,889	1,068	74	3,585
2001-2	558	1,874	1,096	82	3,641
2002-1	577	1,847	1,117	77	3,652
2002-2	602	1,890	1,169	89	3,797
2003-1	608	1,831	1,128	79	3,693
2003-2	628	1,877	1,155	79	3,792
2004-1	646	1,863	1,176	76	3,816
2004-2	670	1,892	1,216	70	3,903
2005-1	679	1,897	1,238	69	3,953
2005-2	546	1,567	969	59	3,210

Percentages of Total					
Accounting Period	Educational	Independent	Network	Canadian	Total (includes Low Power and Mexican)
1998-1	14.32%	53.98%	29.42%	2.14%	100.00%
1998-2	13.88%	54.66%	29.20%	2.02%	100.00%
1999-1	14.10%	54.14%	29.58%	1.87%	100.00%
1999-2	13.98%	53.49%	30.28%	1.81%	100.00%
2000-1	14.31%	52.91%	30.38%	1.92%	100.00%
2000-2	14.76%	53.48%	29.16%	2.01%	100.00%
2001-1	14.73%	52.69%	29.79%	2.06%	100.00%
2001-2	15.33%	51.47%	30.10%	2.25%	100.00%
2002-1	15.80%	50.58%	30.59%	2.11%	100.00%
2002-2	15.85%	49.78%	30.79%	2.34%	100.00%
2003-1	16.46%	49.58%	30.54%	2.14%	100.00%
2003-2	16.56%	49.50%	30.46%	2.08%	100.00%
2004-1	16.93%	48.82%	30.82%	1.99%	100.00%
2004-2	17.17%	48.48%	31.16%	1.79%	100.00%
2005-1	17.18%	47.99%	31.32%	1.75%	100.00%
2005-2	17.01%	48.82%	30.19%	1.84%	100.00%

# Instances of Carriage Compared to Subscriber Instances per Instance of Carriage 1983 through 2005



## Instances of Carriage Compared to Subscriber Instances 1983 through 2005





**Relative Change in Total Royalties Paid Per Subscriber Instance  
Since 1998-1999**

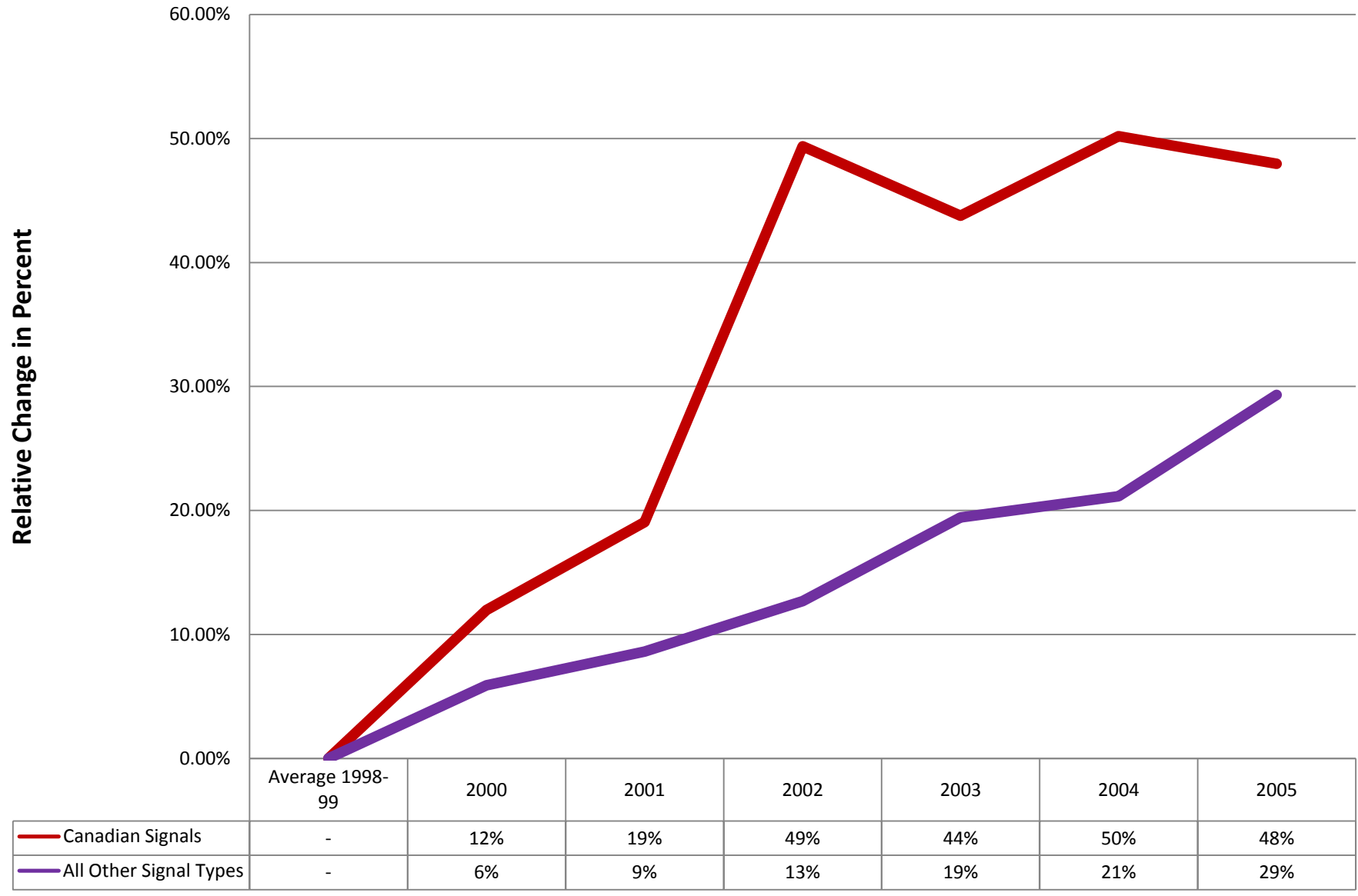
<b>Canadian Signals</b>				
Year	Total Distant Royalties	Distant Subscriber Instances	Total Distant Royalties per Subscriber Instance	Relative Change From 1998-1999 Average

<i>1998-1999 Annual Average</i>	\$2,479,050	4,865,128	\$0.5096	-
2000	\$2,995,279	5,254,398	\$0.5701	12%
2001	\$3,382,703	5,566,783	\$0.6077	19%
2002	\$4,367,558	5,743,710	\$0.7604	49%
2003	\$4,533,570	6,184,495	\$0.7331	44%
2004	\$4,115,622	5,374,795	\$0.7657	50%
2005	\$4,422,697	5,880,257	\$0.7521	48%

<b>Total All Other Signal Types</b>				
Year	Total Distant Royalties	Distant Subscriber Instances	Total Royalties per Subscriber Instance	Relative Change From 1998-1999 Average

<i>1998-1999 Annual Average</i>	\$76,823,426	130,764,183	\$0.5875	-
2000	\$83,224,931	133,795,743	\$0.6220	6%
2001	\$85,448,349	133,917,668	\$0.6381	9%
2002	\$91,405,348	138,170,878	\$0.6615	13%
2003	\$93,193,909	132,908,509	\$0.7012	19%
2004	\$98,070,114	137,867,895	\$0.7113	21%
2005	\$101,488,373	133,677,227	\$0.7592	29%

## Relative Change in Total Fund Royalties Paid Per Subscriber Instance Since 1998-1999



**Relative Change in Total Royalties Paid Per Instance of Carriage  
Since 1998-1999**

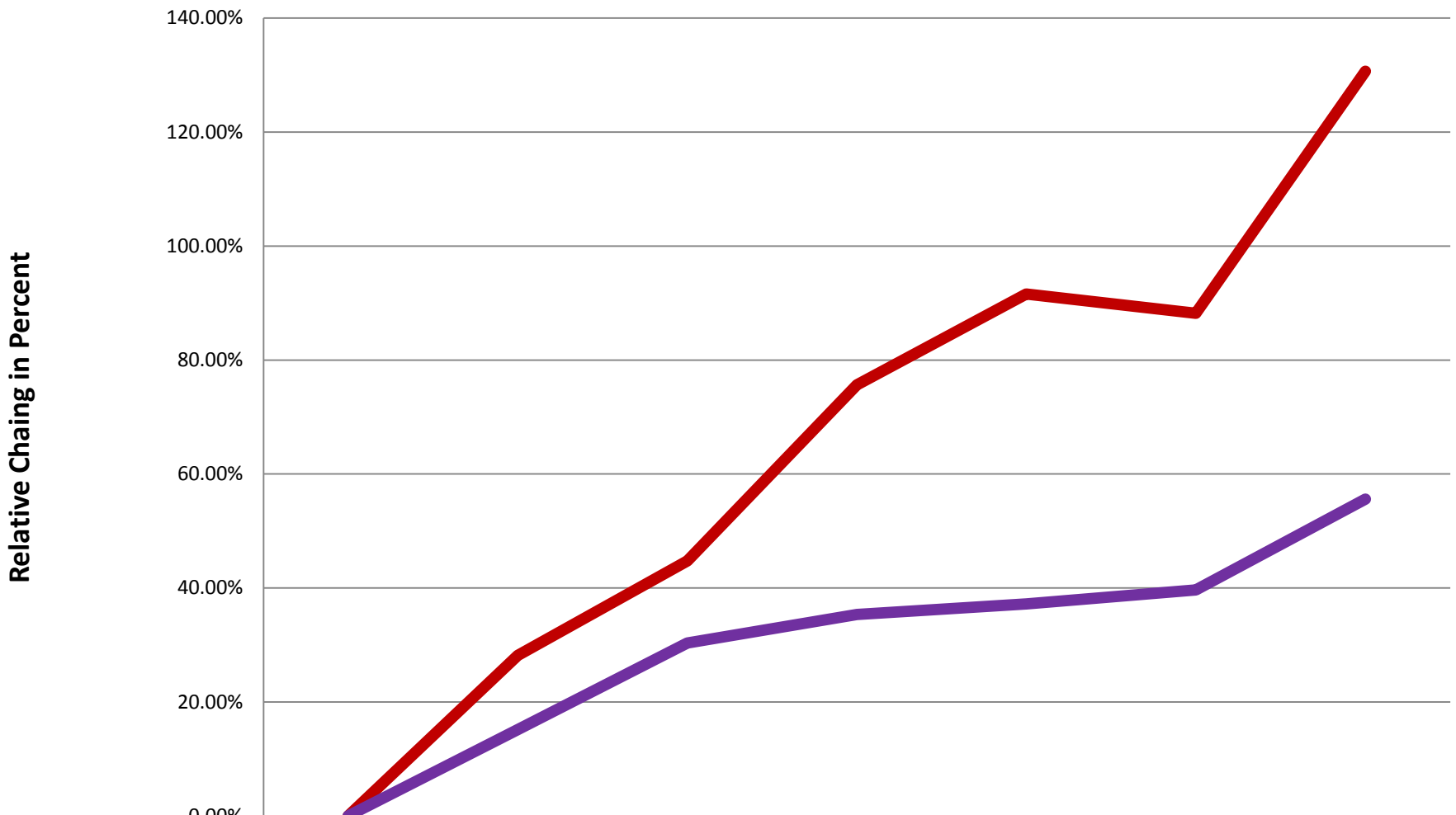
<b>Canadian Signals</b>				
<b>Year</b>	<b>Total Distant Royalties</b>	<b>Distant Instances of Carriage</b>	<b>Total Distant Royalties per Instance of Carriage</b>	<b>Relative Change From 1998-1999 Average</b>

<i>1998-1999 Annual</i>	\$2,479,050	166	\$14,979	-
2000	\$2,995,279	156	\$19,201	28%
2001	\$3,382,703	156	\$21,684	45%
2002	\$4,367,558	166	\$26,311	76%
2003	\$4,533,570	158	\$28,693	92%
2004	\$4,115,622	146	\$28,189	88%
2005	\$4,422,697	128	\$34,552	131%

<b>Total All Other Signal Types</b>				
<b>Year</b>	<b>Total Distant Royalties</b>	<b>Distant Instances of Carriage</b>	<b>Total Distant Royalties per Instance of Carriage</b>	<b>Relative Change From 1998-1999 Average</b>

<i>1998-1999 Annual</i>	\$76,823,426	8,286	\$9,272	-
2000	\$83,224,931	7,796	\$10,675	15%
2001	\$85,448,349	7,070	\$12,086	30%
2002	\$91,405,348	7,283	\$12,551	35%
2003	\$93,193,909	7,327	\$12,719	37%
2004	\$98,070,114	7,573	\$12,950	40%
2005	\$101,488,373	7,035	\$14,426	56%

## Relative Change in Total Distant Royalties Paid per Instance of Carriage Since 1998-1999



	1998-99 Average	2000	2001	2002	2003	2004	2005
Canadian Signals	-	28%	45%	76%	92%	88%	131%
All Other Signal Types	-	15%	30%	35%	37%	40%	56%

# WRITTEN DIRECT TESTIMONY OF

## ALISON SMITH

2004—2005 Cable Royalty Distribution Proceeding  
Docket No. 2007-03 CRB CD 2004-2005

### Introduction

My name is Alison Smith. I am currently a Washington Television News Correspondent for the Canadian Broadcasting Corporation. I have worked for CBC News for more than 30 years in a variety of positions, but primarily as a news anchor and reporter. I am now based in Washington, DC covering U.S. news of interest to Canadians. That includes U.S. politics, foreign affairs, the economy, and news features that reflect American life. This fall, I will return to Canada, as a host and senior correspondent covering both domestic and international news.

### The CBC

Another witness, Janice de Freitas, has provided general information on the Canadian Broadcasting Corporation, our nation's public broadcaster, which is funded through Parliament by the people of Canada. My testimony focuses on CBC News and Current Affairs, most particularly on English television. The mandate for the CBC is established in Canada's Broadcasting Act. It states that the CBC should provide programming that "informs, enlightens, and entertains." The Act goes on to say that among other attributes, CBC programming should be predominantly and distinctively Canadian and actively contribute to the flow and exchange of cultural expression.

### CBC News

CBC News programming soundly fulfills those directives. Established in 1941 (originally as a radio service), the CBC News Service has been informing and enlightening its audiences for almost 70 years and considers it a duty to provide consistently high quality reporting. The News Service is an integral component of CBC, seen as one of its greatest strengths in a unique position of trust. It is the most substantial and broadly-based broadcast journalism organization in Canada. It employs more than 800 journalists at home and around the world. The CBC has more bureaus across Canada than any other network and 14 outside of the country. There are three bureaus in the US: Washington, New York and Los Angeles. Other locations include London, Paris, Jerusalem, Mexico City, Moscow, Beijing, Shanghai, Nairobi, Bangkok and Kandahar.

Not only do we offer viewers reliable up-to-the-minute news coverage of domestic and international events via radio, television, Internet, and wireless devices, we do it very well. From the inception of the news service, CBC news and current affairs journalists have won international recognition for their work. Over the two years covered by this proceeding, CBC news and current affairs programs received almost 400 national and international awards. A select list of international awards is attached to my testimony as **Exhibit CDN-2-A**.

### CBC Newsworld

CBC Newsworld is a 24-hour cable news network, wholly-owned by the CBC. I was an anchor for the network when it launched in 1989. Since its inception, CBC Newsworld has established itself as an important element in the CBC's overall service to Canadians. It is the world's third-oldest television service of this nature, after CNN in the United States and Sky News in the United Kingdom. It provides the more than 10 million Canadians who receive it with a domestic alternative enabling them to keep up to date with national and international events. Newsworld's schedule is comprised of live news programs and documentaries.

## **CBC News & Current Affairs Programming**

It has been said that Canada is a nation of news junkies. CBC seeks to quench their craving by giving our viewers lots of opportunities to catch up with their world. Our flagship evening newscast is called *The National*. During 2004 and 2005 it ran as a double-header with back-to-back broadcasts at 10 and again at 11 p.m. Our other numerous news programs include, on weekdays, *CBC Morning*, *CBC News: Today* (mid-day), *CBC News: Canada Now* (supper hour), and on weekends, *CBC News: Saturday Report*, *CBC News: Sunday* and *CBC News: Sunday Night*. In addition, we broadcast numerous current affairs series. These include: *Marketplace*, *Venture*, *Mansbridge One on One* and *the fifth estate*. These programs are listed on the schedules attached to Janice de Freitas' testimony, **Exhibit CDN-1-G**.

### **Description of News Programs**

***The National***: As I stated earlier *The National* is the CBC's flagship television newscast. The program itself is a Canadian institution. It originated in 1954, shortly after CBC Television began. It has long been the program Canadians turn to when big news events occur. *The National* focuses on major Canadian and international news. The format includes more than twenty minutes of news and completes the hour with current affairs. The current affairs segments may include long form news features, documentaries and interviews.

***CBC News: Morning*** is a live morning news program across all Canadian time zones. It sets the agenda for the news day--covering breaking news from Canada and around the world featuring reports and interviews from across Canada and around the globe.

***CBC News: Today*** is a dynamic, live news program that airs at midday, a very busy news time. The team keeps on top of the latest breaking Canadian and international news and tracks up-to-the-minute developments in stories. (This news slot was introduced in 2003.)

Coverage of top local news is pre-eminent at the dinner hour (6 p.m.). Currently called *CBC News at 6*, during the time period of these hearings it was called *Canada Now*.

On weekends we keep our viewers informed with *CBC News: Saturday Report*, *CBC News: Sunday* and to wrap it up, *CBC News: Sunday Night*.

### **Description of Current Affairs Programs**

CBC has a long, proud and distinguished history of current affairs programming.

For over a quarter of a century, *the fifth estate* has been Canada's premier investigative documentary program. It has won 243 awards, including an Oscar for best documentary, three International Emmy Awards, dozens of honours from The New York and Columbus International Film and Video Festivals and a prestigious Michener Award for meritorious public service journalism.

Another pillar of our reputation rests on *Marketplace*. Now 35 years old, it is the trusted consumer watchdog of the CBC. It investigates and exposes wrongdoings against consumers, and has influenced companies and the government to change policies and products.

For more than two decades our business series, *Venture*, reported on business news and took viewers behind the scenes, into the factory or the corporate headquarters.

*Mansbridge One on One* is a weekly interview program hosted by our award-winning news anchor Peter Mansbridge. His guests include politicians, journalists, arts and sports figures and newsmakers behind the issues and news of the day.

## **Responsibilities**

I have been a reporter and network news anchor with the CBC for more than thirty years, covering stories from every Canadian province and territory and countries around the globe. Working in the field and anchoring live network coverage I have reported on the Iraqi invasion of Kuwait and the first Gulf War, the death of Diana, the Princess of Wales, the funeral of Pope John Paul II, and the tragedy of September 11, 2001. I have covered provincial and national politics, including federal elections and budgets – most of the major stories of the past two decades.

In 2003, I became the host of *CBC News Morning*, the network morning news program on both CBC and CBC Newsworld. The program was live, three hours daily, setting the news agenda for the day to come. At the same time, I was a Senior Correspondent and a primary back-up anchor for *The National*.

In the fall of 2005, I became Washington Correspondent for Television News. Since then I've covered stories that include the aftermath of hurricane Katrina, the controversy around the detention facility at Guantanamo Bay, the politics of the closing years of the Bush administration, and the political campaign that led to the election of President Barak Obama. Some of my work can be seen in the short video attached as **Exhibit CDN-2-B**.

## **Distinctive Programming**

*CBC News*, like the rest of CBC, is mandated to provide distinctive programming for its primary audience – Canadians. This home-grown distinctiveness ultimately distinguishes it from American newscasts. Home-grown, however, does not mean home-focused. We know Canadians especially value international news; consequently our news programming responds to this desire. Another distinction is that our network television news, *The National*, is an hour long compared to half an hour for most American newscasts. Not only do we break the news, we provide context and analysis and stay with unfolding stories. It is evident from CBC's program schedules that we allocate over 20% of our broadcast week to news and current affairs programs. However, the primary difference is, of course, our perspective. Whether the story is about health care, US politics, or the latest crisis in the Middle East, we are Canadians telling stories to a Canadian audience and that is necessarily reflected in what appears in our broadcasts. Our coverage has been praised both at home and abroad for its informed, respectful and balanced treatment.

## **American Audience**

Americans living near the border are able to watch CBC programming, including our news and current affairs programming, either over the air or when they subscribe to a local cable system that retransmits one of our signals. We know of other circumstances when viewers have had access to our news programming through American broadcasters, including C-SPAN. Most notably this occurred on September 11, 2001, when they (and other American broadcast services) carried the CBC's coverage of the September 11, 2001 attacks in New York City and Washington, D.C. C-SPAN has also carried CBC's coverage of major events affecting Canadians, including: Canadian federal elections, the death and state funeral of Pierre Elliott Trudeau, the power outage crisis in summer 2003, and American elections. Recently, CBC's coverage of the Presidential Inauguration was carried on C-SPAN3.

## **Conclusion**

CBC TV News has been in the business of gathering and delivering news to make sense of our chaotic world for over 50 years. We do it well. We do it distinctively. We produce for an audience that we know has a thirst for international news. It is my personal experience that Americans who view our news and current affairs programs are impressed with the professionalism, quality and balance of our broadcasts.



# International Awards 2004 - 2006 News & Current Affairs Programs CBC Television Network

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## 2006 Awards

### Banff Television Festival

#### God Only Knows: Same-Sex Marriage (The Lens)

"Playback Best Canadian Award"

Nomination - Social & Political Documentaries

### British Academy Television Awards

#### The Real Sex Traffic

Nomination - Flaherty Award For Single Documentary

(Simcha Jacobovici, Brian Woods, Ric Bienstock

(Associated Producers/True Vision Productions/CBC/Canal D/Channel 4)

### British Broadcast Awards

#### The Real Sex Traffic (Sex Slaves – The Passionate Eye)

Best Documentary Programme

#### The Power of Nightmares

Best Documentary Series

### Columbus International Film & Video Festival

#### Who Shot My Brother (CBC News: The Passionate Eye)

(The National Film Board/Argus Films in association with CBC Newsworld)

Best of Festival

#### the fifth estate - Tsunami: Untold Stories

The Silver Chris (Best of Division)

#### CBC News: Venture - The Scandalist

The Chris Statuette (best of category)

#### The Liberation of Holland

The Chris Statuette

#### the fifth estate - Black Dawn: The Next Pandemic

The Chris Statuette

### Commonwealth Broadcasting Association Awards

#### A War in Words: An Iraqi Family Diary

(CBC News: Correspondent)

CBA Rolls Royce Award for Exceptional News Feature (Tara Sutton)





## International Awards 2004 - 2006 News & Current Affairs Programs CBC Television Network

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### **2006 Awards** (continued)

#### **Commonwealth Broadcasting Association Awards**

##### **Adrienne Arsenaault**

*CBA Thomson Foundation Award for Journalist of the Year*

#### **DOCNZ Film Festival (New Zealand)**

##### **Braindamadj'd...Take II (The Lens)**

(CBC Newsworld)

*Special Mention, Medium Documentary Category*

#### **Gabriel Awards**

##### **Auschwitz: Speaking of the Unspeakable (The National)**

*Gabriel Award -Short Feature, National Release*

##### **Indecently Exposed, (The Passionate Eye)**

(WestWind Pictures Ltd/CBC/SCN)

*Gabriel Award -Documentary, National Release*

#### **Gracie Allen Awards** (Presented by the American Women in Radio & Television)

##### **Fasten Your Seatbelts (the fifth estate)**

*Gracie Award – Outstanding Public Affairs*

##### **Sex Slaves (The Passionate Eye)**

*Gracie Award – Outstanding Documentary Long Length*

##### **The Northern Nurse (Land and Sea)**

*Gracie Award – Outstanding Magazine Program (Local)*

##### **Crystal Fear, Crystal Clear**

*Gracie Award – Outstanding Director News Special or Series (Individual Achievement)*

*(Eva Wunderman)*

#### **The Japan Prize**

##### **Braindamadj'd...Take II (The Lens)**

(Apartment 11 Productions in association with CBC Newsworld)

(CBC Newsworld)

*Grand Prix Japan (best of Festival)*

*Adult Education Prize*



## International Awards 2004 - 2006 News & Current Affairs Programs CBC Television Network

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### 2006 Awards (continued)

#### Monte-Carlo Television Festival

[CBC News: The National - Land, Gold, and Women](#)

*Nominee - News Documentary*

#### Moscow Disability Film Festival – “Breaking Down Barriers” (Russia)

[Braindamadj’d...Take II \(The Lens\)](#)

(CBC Newsworld)

*Winner – Grand Prix Award*

#### National Press Photographers Association (Best of Photojournalism)

[Beyond Words: Photographers of War \(CBC News: Sunday\)](#)

*Judges' Choice Award*

#### The New York Festivals

[War Without Borders \(the fifth estate\)](#)

*Gold WorldMedal - Best Investigative Report (Longform)*

[War Photographers \(CBC News: Sunday\)](#)

*Silver WorldMedal - Inserts: Human Interest*

[Strange Destiny \(CBC News: The National\)](#)

*Bronze WorldMedal - Social Issues/Current Events*

[Temple Grandin - The Family Story \(Hot Type\)](#)

*Bronze WorldMedal - Human Relations*

#### Superfest XXVI International Disabilities Film Festival (Berkeley, CA)

[Braindamadj’d...Take II \(The Lens\)](#)

(CBC Newsworld)

(Apartment 11 Productions in association with CBC Newsworld)

*Superfest Excellence Award*

*Superfest Spirit Award*

#### WorldFest Houston

[Runaway Grooms](#)

(ASLI Films Inc./CBC)

*Gold Remi Award*

[The Secret Mulroneys Tapes](#)

*Special Jury Award*



## International Awards 2004 - 2006 News & Current Affairs Programs CBC Television Network

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### 2005 Awards

#### Banff Television Festival

##### Shake Hands with the Devil: The Journey of Romeo Dallaire

(White Pine Pictures in Association: Canadian Broadcasting Corporation  
Societe Radio Canada)

*Best Canadian Program*

*Rockie Award for Feature Length Documentaries*

##### Hana's Suitcase: An Odyssey of Hope (Passionate Eye)

(CBC)

*Special Jury Prize - Family & Youth Programs*

#### Chicago International Television Competition

(Part of the Chicago International Film Festival)

##### A Perfect Fake

(Primitive Entertainment Inc)

*Silver Plaque, Documentary: Social/Political*

#### Columbus International Film & Video Festival

##### The Liberation of Holland

*The Chris statuette*

##### The Year of the Hunter: The Story of Nanook

*The Chris statuette*

##### Talking Canadian

*The Chris statuette*

##### A War in Words: An Iraqi Family Diary (CBC News: Sunday/Correspondent)

*The Chris statuette*

##### Hana's Suitcase: An Odyssey of Hope (The Passionate Eye)

*The Chris statuette*

#### Commonwealth Broadcasting Association Awards

##### Of Crimes and Courage (The National)

*Exceptional News Coverage*



International Awards 2004 - 2006  
News & Current Affairs Programs  
CBC Television Network

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**2005 Awards** (continued)

**Gabriel Awards**

**War Photographers (CBC News: Sunday)**

*Gabriel Award*

**Madiba: The Life and Times of Nelson Mandela**

*Honourable Mention*

**Gracie Allen Awards** (Presented by the American Women in Radio & Television)

**Hana's Suitcase: An Odyssey of Hope (Passionate Eye)**

*Outstanding Documentary – Mid Length Format*

**Shedding the Past (CBC News: Canada Now)**

(CBC Regina)

*Outstanding Documentary – Short Length Format*

Market: Local - 26+

**Miriam Toews (CBC News: Canada Now)**

(CBC Winnipeg)

*Outstanding News Story – Soft News*

Market: Local - 1-25

**Monte-Carlo Television Festival**

**Anatomy of a Revolution (CBC News: Correspondent )**

*Nomination, news documentary category*

**News and Documentary Emmy Awards**

**The Crash of Flight 111 (The Nature Of Things)**

Aired in Canada as **"The Investigation of Swiss Air 111"**

(CBC/ Swiss National Television/ PBS)

*Nomination, Outstanding Investigative Journalism-Long Form*

*Nomination, Outstanding Individual Achievement In A Craft: Research*

*(Researchers: Howard Green; Cass Sapir; Kurt Schaad)*

**The New York Festivals**

**Karen Armstrong - The Spiral Staircase: My Climb Out Of Darkness (Hot Type)**

*Gold World Medal - Religious Programs*

**Of Crimes And Courage (The National)**

*Gold World Medal - Best Public Affairs Program*



## International Awards 2004 - 2006 News & Current Affairs Programs CBC Television Network

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### 2005 Awards (continued)

#### The New York Festivals

##### Who's Life Is It Anyway? (the fifth estate)

*Gold World Medal - Sports and Recreation*

##### Janet Connors: From The Heart

*Gold World Medal – Biography/Profiles*

##### The Life and Times of Arthur Erickson (Life and Times)

*Gold World Medal*

##### CBC News: Life and Times

*Silver World Medal - Biography/Profiles*

##### Legacy: The Halifax Explosion

*Silver World Medal - History & Society*

##### Robbing The Cradle Of Civilization

*Silver World Medal - National/International Affairs*

##### Shadows of Stars (Canada Now: Regina)

*Bronze World Medal – Inserts: Human Interest*

##### The Year Of The Hunter: The Story Of Nanook

*Bronze World Medal – The Arts*

##### Flesh And The Devil - Impact Of Terror (Witness)

*Bronze World Medal – Social Issues/Current Events*

##### Poussière mortelle / Deadly Dust

*(Société Radio-Canada)*

*Bronze World Medal - Best News Documentary/Special*

#### Overseas Press Club Award

##### Impact of Terror (Witness)

#### Philadelphia Film Festival

##### Shake Hands with the Devil: The Journey of Romeo Dallaire (Passionate Eye)

*Documentary Award*



## International Awards 2004 - 2006 News & Current Affairs Programs CBC Television Network

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### 2005 Awards (continued)

#### Sundance Film Festival

[Shake Hands With The Devil: The Journey of Romeo Dallaire \(The Passionate Eye\)](#)

*World Cinema Documentary Audience Award*

#### [Why We Fight](#)

(BBC.ARTE/CBC)

*The American Documentary Grand Jury Prize*

#### WorldFest Houston

[Impact of Terror \(Witness\)](#)

(Associated Producers/CBC)

*Special Jury Award*

[O.com: Cybersex Addiction \(The Passionate Eye\)](#)

(Soapbox Productions in Association with CBC)

*Platinum Remi Award*

[The Life and Times of Daniel Igali \(Life and Times\)](#)

*Gold Remi Award*

### 2004 Awards

#### Banff Television Festival

[The Origins of AIDS](#)

(MFP/Pathé Archives/Galafilm/Les Films de la Passerelle/RTBF in association with Channel 4/CBC-Radio Canada/Canal+ Spain/TSR/TV5 Monde/SBS with the participation of France 2)

*Rockie Award – Popular Science/Natural History Programs*

#### Canadian Club of New York Arts and Letters Award

[Peter Mansbridge](#)

Chicago International Television Competition(part of the Chicago Intl. Film Festival)

[The Origins of AIDS](#)

*Silver Hugo, Documentary, Science/Nature*



## International Awards 2004 - 2006 News & Current Affairs Programs CBC Television Network

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### **2004 Awards** (continued)

#### **Columbia/Dupont**

##### **A Toxic Company (the fifth estate)**

(CBC/Frontline)

*Silver Baton - under the title "A Dangerous Business"*

#### **Columbus International Film & Video Festival**

##### **The Brand Man (Venture)**

*The Silver Chris*

##### **Vasectomy Club (CBC News: Sunday)**

*The Chris statuette*

##### **Women's Wrestling (Sports Journal)**

(CBC Newsworld)

*The Chris statuette*

##### **Karen Armstrong "Spiral Staircase" (Hot Type)**

*The Chris statuette*

##### **Gert's Secret (Rage Against The Darkness)**

*The Chris Statuette*

#### **George Polk Award**

##### **A Toxic Company (the fifth estate)**

(CBC/Frontline)

(Under the title "A Dangerous Business")

*Award for Labor Reporting*

#### **Gracie Allen Awards (Presented by the American Women in Radio & Television)**

##### **Land and Sea: Built From Scratch (Land and Sea)**

(Newfoundland & Labrador)

*Gracie Allen Award for Magazine Show*

##### **The Bishop of Bountiful (the fifth estate)**

*Gracie Allen Award - Outstanding Investigative Program*

#### **International Emmy Awards**

##### **The Origins of Aids**

*Nomination – Documentary*



## International Awards 2004 - 2006 News & Current Affairs Programs CBC Television Network

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### 2004 Awards (continued)

#### International Health & Medical Media Awards (Freddie Awards)

[Angela's Journey \(CBC News: Sunday/Passionate Eye\) Freddie, Oncology Category](#)

*Founders Award, Michael E. DeBakey, M.D. Award for finest educational entry*

#### Monte-Carlo Television Festival

[Deadline Iraq - Uncensored Stories of the War \(CBC News: Sunday\)](#)

*Nomination Certificate in the news documentary category*

*Special Mention in the Prize of the Red Cross International Committee category*

#### National News & Documentary Emmy Awards

[A Toxic Company \(the fifth estate\)](#)

(CBC/Frontline)

(Under the title "A Dangerous Business")

*Nominated in the Outstanding Investigative Journalism-Long Form category*

#### The New York Festivals

[Witness](#)

*Gold WorldMedal, Best social issues/current events*

[The Iceland Experiment \(Venture\)](#)

*Gold WorldMedal, Best editing*

[Hockey Night in the Highlands \(Venture\)](#)

*Gold WorldMedal, Best inserts: human interest*

[A Toxic Company \(the fifth estate\)](#)

*Gold WorldMedal, Best investigative report*

[Searching for Sarah \(Zone Libre/CBC News: Sunday\)](#)

*Gold WorldMedal, Best news documentary special*

[The Iceland Experiment \(Venture\)](#)

*Silver WorldMedal, Best inserts/special report*

[Marina's Art \(CBC News: Sunday\)](#)

*Silver WorldMedal, Best arts*

[A Toxic Company \(the fifth estate\)](#)

(CBC/Frontline) (Under the title "A Dangerous Business")

*The Peabody Award*





## International Awards 2004 - 2006 News & Current Affairs Programs CBC Television Network

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### **2004 Awards** (continued)

#### **Prix Europa**

##### **Origins of Aids (Witness)**

*Prix Europa Award for Current Affairs: Television Programme of the Year 2004*

#### **The Pulitzer Prize\***

##### **A Toxic Company (the fifth estate)**

(CBC/The New York Times/PBS Frontline)

*\*The Pulitzer Prize for public service was awarded to the feature in its newspaper format*



## Video Log CBC News Alison Smith

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### News Clips

- Auschwitz 60 - January 27, 2005
- New Orleans - November 4, 2005
- Athens Today - August 27, 2004
- Mexico Stalemate - July 3, 2006
- Khadr Guantanamo - January 10, 2006
- Gas Crisis - April 27, 2006
- Campaign Billions - November 2, 2006
- American Civil Liberties Union Suit - December 6, 2005

Time: 3:50

**WRITTEN DIRECT TESTIMONY OF**  
**JOAN FISHER**

2004—2005 Cable Royalty Distribution Proceeding  
Docket No. 2007-03 CRB CD 2004-2005

**INTRODUCTION**

**Professional Experience**

My name is Joan Fisher of Toronto, Ontario. I was called to the Ontario Bar in 1978, have been an entertainment lawyer since 1980, and legal counsel for Decode Entertainment, Inc., since its incorporation in 1997. I handle all legal aspects of development, financing, production and distribution of Decode's television series and other audio-visual productions.

I began my career as in-house counsel for the feature film company Quadrant Films Limited during the heyday of public offerings of feature film units in Canada when most Canadian films starred either Canadians Donald Sutherland or Christopher Plummer.

I have specialized in entertainment law since that time, working for the Canadian firm Cassels, Brock and its spin-off boutique arm Peter Steinmetz and Associates (specializing in film, television and music). In 1987, I established my own firm providing counsel to several Canadian television producers and/or distributors of pre-school and youth series. I also rendered legal and business affairs services to Alliance Communications Inc. (now AllianceFilms), which encompassed development, production and distribution of television series, movies-of-the week and feature films. I have taught business and entertainment courses at Toronto based colleges (Ryerson and Centennial) and participated as lecturer and panelist at entertainment conferences in Canada and the U.S.

**About Decode**

Housed in an historic brick building at the fringe of Toronto's production district, Decode is a small company that has made a big impact creating and producing programming for young audiences in Canada and the rest of the world. Its subsidiary, Decode Enterprises (UK) Limited is an international television distributor, which licenses Decode's series worldwide as well as a limited number of series produced by independent producers from Canada, the U.S. and the United Kingdom. In 2006, Decode merged with The Halifax Film Company to create DHX Media Ltd., a public company that trades on London's AIM exchange and on the TSX in Toronto.

**Responsibilities**

In 1997, I became Decode's head of Business Affairs. In its first two years, Decode produced the cut and paste animated series *Angela Anaconda*, the live action series *The Zack Files* and co-produced an animated series based on the UK classic children's book *Watership Down*. Since then I have acted as legal counsel on the additional 21 television series which Decode

has either produced or co-produced as well as preparing and negotiating the acquisition agreements for its development slate. My responsibilities for Decode Enterprises (UK) Ltd. include negotiating license agreements with major broadcasters and distributors as well as acquisition agreements for distribution rights to third party series.

### **What Makes Decode Distinct?**

Decode has become a sought-after supplier and co-producer thanks to our reputation of producing distinctive shows that stand out despite an increasingly competitive market. We hire some of the industry's best creative talent and employ innovative production techniques to ensure that our series are outstanding. Our production division develops a limited slate of programming that typically covers all age ranges, from pre-school to teen programming, to ensure that no Decode series will compete with another on the slate. Our projects are often driven by specific market needs and opportunities. We test our productions at early stages with worldwide customers. This has led to a high number of Decode developed projects going into production and becoming successful worldwide. Decode's series have won and been nominated for numerous awards including Gemini (Canadian television), BAFTA (British Academy of Film and Television Arts) and Daytime Emmy Awards (US television). A complete list of awards is included in **Exhibit CDN-3-A**.

### **Our Productions**

Decode specializes in productions for young people – from pre-schoolers to teens. Prominent live action and animated series are *Angela Anaconda*, *Be The Creature*, *Delilah & Julius*, *Franny's Feet*, *Freaky Stories*, *King*, *The Latest Buzz*, *Naturally Sadie*, *Radio Free Roscoe*, *Rainbow Fish*, *Save-Ums!*, *Urban Vermin*, *The Zack Files* and other series of interstitials or short programming. Twelve of our full-length television series were international co-productions with the U.K., Spain, Singapore, Australia and Hong Kong and co-ventures with the U.S.

Co-Productions include *Planet Sketch*, *Chop Socky Chooks*, *Bromwell High*, *Watership Down*, *"Blobheads*, *Clang Invasion*, *The Hoobs*. Decode's co-ventures are *Super Why* with Out of the Blue Studios LLC and *Undergrads* with MTV Networks.

**Exhibit CDN-3-B** provides short descriptions of several Decode Productions, including the name of any co-producer.

### **International Success**

As indicated previously, Decode's distribution arm, Decode Enterprises (UK) Limited, distributes all of Decode's television and interactive content as well as third-party television series. It has concluded almost 1500 television and home entertainment license agreements with more than 300 clients worldwide. In addition to the primary broadcasters, most of Decode's shows are distributed on terrestrial, pay, pay/cable and satellite throughout the world including the U.K., France, Germany, Italy, Eastern Europe, Australia, Latin America, the Middle East, South America and Asia. Exhibit CDN-3-A also notes major broadcasters (domestic and international) that the described productions have been licensed to.

## **Canadian Broadcasts 2004-2005**

During the period of 2004 to 2005, *Angela Anaconda*, *Be The Creature*, *The Blobheads*, *Save 'Ums (Les Sauvetout!)* and *Les Hoobs (The Hoobs)* and *Le Roi C'est Moi (King)* were all broadcast on free over-the-air signals specifically the Canadian Broadcasting Corporation or its French counterpart, Radio-Canada. These productions are described in promotional pages attached in **Exhibit CDN-3-C** and Exhibit CDN-3-B. In addition, I have prepared a short promotional video containing excerpts from these productions. It is attached to my testimony as **Exhibit CDN-3-D**.

## **Conclusion**

As is the case with many Canadian production companies, Decode generally does not have the budget of a television series fully financed before it commences production. Licenses from Canadian broadcasters cover from approximately 5% to 30% of the budget. The balance of the financing usually consists of government subsidies (called tax credits), grants from industry funds, equity financing, foreign pre-sales, and most often a distribution advance from Decode Enterprises (UK) Limited of approximately 10% to 30% of the budget against anticipated sales interim financed by a Canadian bank. Decode is a small company in a busy production community. We are about a 100 people engaged in a creative industry making a product enjoyed by children and adults around the world. To stay in business Decode needs to exploit revenue from its intellectual property from all sources to repay the distribution advances and allow further investment in television properties. In addition, Decode has a very broad base of moderately budgeted unique children's and youth programming but does not produce blockbuster prime time programming. For this reason as well, it is important to derive revenue from every source available whether it be major broadcasters, modest licenses in small territories or royalties payable on account of the exploitation of its catalogue.



# Decode Awards & Recognition

## ONTARIO GLOBAL TRADERS AWARD 2002

- Winner of the 2002 Provincial Global Traders Award in the Market Expansion – Product category

## 2002 CANADA EXPORT AWARDS

- 2002 Winner Canada Export Award, sponsored by The Department of Foreign Affairs and Export Development Canada

## BEST MANAGED COMPANIES 2001

- 2001, Winner of Canada's *50 Best Managed Companies* Program, sponsored by Andersen, CIBC, National Post and Queen's School of Business

## ANGELA ANACONDA

- Winner of the 2002 Alliance for Children & Television Award of Excellence, Animation Category, Ages 6-8.
- 2002 BAFTA (British Academy of Film and Television Arts) Nomination, International Children's' Programme
- 2001 BAFTA Nomination, International Children's' Programme
- 2002 Gemini Nomination, for Best Animated Program or Series
- 2001 Gemini Nomination, for Best Animated Program or Series (Canada)
- Annecy 2000, Awarded *Le Grand Prix Annecy 2000* for best TV Animation Programme (France)
- 2000 Gemini Award, for *Best Animated Program or Series or Short Animated Program* (Canada)
- 2000 / 2001 Daytime Emmy Nominations, for *Outstanding Special Class Animated Program* (U.S.)
- Festival du Film d'Animation pour la Jeunesse 2000, chosen for official selection (Holland)

## BE THE CREATURE

- 2004 Gold Medal Winner of The Aurora Awards, Nature/Environment
- 2005 Winner, International Wildlife Film Festival, Best Children's Series



# Decode Awards & Recognition

## **BROMWELL HIGH**

- 2006 British Animation Awards, Best Comedy
- 2006 Gemini Award, Best Animated Program or Series

## **THE BLOBHEADS**

- 2004 Winner of The Alliance for Children & Television Award of Excellence, All Genres Category, Ages 3-5
- 2004 Winner of The Canadian Screenwriters Award, Children/pre-school
- 2004 Directors Guild of Canada, Nominated for Outstanding Team Achievement in a Television Series, Family
- 2004 Gemini Nominated, Best Visual Effects
- 2005 Winner, The Alliance for Children and Television, Ages 6 - 8

## **FRANNY'S FEET**

- 2004 The Pulcinella Award, Best Television Series for Infants
- 2004 Sprockets Toronto International Film Festival
- 2004 Chicago International Children's Film Festival
- 2004 Japan Prize Finalist, Early Ages Category
- 2005 New York Festival Finalist, Children's Program
- 2005 Gemini Award, Best Musical Score for an Animated Series
- 2005 Shaw Rocket Prize Finalist
- 2006 iParenting Media Award, Television
- 2006 Chicago International Children's Film Festival
- 2007 New York Festival Finalist, Children's Program
- 2007 Fort Lauderdale Film Festival - FAB! Films Easter Program

## **DUDSON**

- 2006 In Your Face: Contemporary Graphic Design, Powerhouse Museum, Australia
- 2006 Under the Radar, Foundation for Art/Creative Technology, UK
- 2006 Oz Digital Shorts, Experimenta, Australia
- 2007 Sprockets Toronto International Children's Film Festival



# Decode Awards & Recognition

## **GIRLSTUFF BOYSTUFF**

- 2004 Gold Medal Winner at The New York Festivals, Youth Program

## **THE HOOBS**

- 2002 Winner of The Alliance for Children & Television Award of Excellence, All Genres Category, Ages 3-5.
- 2001 BAFTA (British Academy of Film and Television Arts) Winner, Best Pre-School Programme
- 2004 Gemini Nominated, Best Pre-School Program or Series and Best Performance in a Pre-School Program or Series

## **KING**

- 2004 Gemini Nominated, Best Animated Program or Series
- 2005 Gemini Winner, Best Original Music Score/Animated Program

## **PLANET SKETCH**

- 2005 Ottawa International Animation Festival
- 2006 Seoul International Cartoon Animation Festival
- 2006 Annecy International Animated Film Festival
- 2006 Nominated, The Pulcinella Award
- 2006 Viewfinders International Film Festival for Youth

## **RADIO FREE ROSCOE**

- 2004 Silver Medal Winner, The New York Festivals, Teen Programs
- 2004 Recommended by the Parents' Choice Foundation, Ages 9 – 17 yrs.
- 2004 Directors Guild of Canada, Nominated for Outstanding Team Achievement in a Television Series, Family
- 2004 Gemini Nominated, Best Children's or Youth Fiction Program or Series and Best Performance in a Children's or Youth Fiction Program or Series
- 2005 Winner, The Alliance for Children and Television, Ages 9 – 12
- 2005 Gemini Award, Best Children's or Youth Fiction Program or Series





# Decode Awards & Recognition

## THE SAVE-UMS!

- 2003 Recommended by The Parents' Choice Foundation, Ages 2 – 6 yrs.
- 2004 Gemini Nominated, Best Pre-School Program or Series
- 2006 Daytime Emmy Nominated, Outstanding Special Class Animated Series

## THE ZACK FILES

- 2000, TV Guide, Top Ten New Children's Series by (U.S.), October 21-27,
- 2002 29th Daytime Emmy Winner, Outstanding Achievement In Sound Mixing
- 2003 18th Annual Gemini Award, Best Writing in a Children's or Youth's Program or Series, "*Zackeo & Juliet*"
- 2004 Winner of The Alliance for Children & Television Award of Excellence, All Genres Category, Ages 9-12

## THE LATEST BUZZ

- 2007 Accolade Award Winner – Award of Excellence.
- 2009 Vanessa Morgan nominated for Young Hollywood Artist Award for Best Performance in a TV Series (Comedy or Drama) – Leading Young Actress.

## CHOP SOCKY CHOOKS

- 2008 Gemini Awards Winner – Best Animated Program or Series.

## SUPERWHY!

- 2008 Nominated for Daytime Emmy Awards – Preschool Children's Series



# Decode Awards & Recognition

## SELECTED INTERACTIVE AWARDS

- [www.undergrads.tv](http://www.undergrads.tv) Undergrads Online 2002 winner of Most Popular Website at the 17<sup>th</sup> annual Gemini Awards
- Dan Fill, 2002 Producer of the Year, Canada New Media Awards
- [www.angelaA.com](http://www.angelaA.com) Angela Online 2001 winner of Most Innovative website at the 16<sup>th</sup> annual Gemini Awards
- [www.angelaA.com](http://www.angelaA.com) nominated for a Interactive BAFTA (The British Academy of Film and Television Arts), for children's category. (United Kingdom)
- 2001 Baddeck International New Media Awards – Best Entertainment Web Site for UNDERGRADS. (Canada)
- Selected as Macromedia's Shockwave *Site of the Day* (U.S.)
- Won three Baddeck International New Media Awards - Telefilm Canada New Media Award, Best Technical Achievement and honourable mention for Best Entertainment site.
- Nominated by the Academy of Canadian Cinema & Television, for “*Most Popular Website*” in conjunction with the 15th Annual Gemini Awards.  
<http://www.academy.ca/webvote/votes.cfm> (Canada)
- 2005 Nominated by The Alliance for Children and Television for best pre-school website, [www.frannysfeet.com](http://www.frannysfeet.com)
- 2005 Nominated by the Canadian New Media Awards for Excellence in iTV, [www.bethecreature.tv](http://www.bethecreature.tv), company of the year, [www.decode.tv](http://www.decode.tv) and Woman of Vision, Diana Arruda.
- 2008 Nominated by the Canadian New Media Awards for Excellence in Gaming, [www.urbanvermin.com](http://www.urbanvermin.com)
- 2008 Nominated for a Gemini Award for Excellence in Cross Platform, [www.urbanvermin.com](http://www.urbanvermin.com)



Selected DECODE Productions and their  
Major Broadcasters

**DECODE** Entertainment

Address: 235 Carlaw Avenue, 5th Floor, Toronto, ON, M4M 2S1  
Ph: 416.363.8034 Fax: 416.363.8919 Email: [decode@decode-ent.com](mailto:decode@decode-ent.com) Web: [www.decode.tv](http://www.decode.tv)

# Angela Anaconda

65 x 22' or 130 x 11'  
[www.angela.com](http://www.angela.com)  
SHOW DESCRIPTION



Freckle-faced and knock-kneed, Angela is tormented on a regular basis by her arch-nemesis, Nannette Manoir. Angela's allies include the cinnamon swirl-loving Gina Lash, the not-too-swift Johnny Abbati, and the pasty, inhaler-dependent Gordy Rhinehart. Together, armed with wit and determination, the friends combat the daily trials and tribulations of childhood. *ANGELA ANACONDA* is produced by DECODE Entertainment, in association with C.O.R.E. Digital Pictures.

Major Broadcasters: TELETOON and CBC (Canada), FOX Family Channel (US), Cartoon Network (Europe), Channel 4 (UK), Super RTL (Germany), France 3, ABC and Mediatrade (Italy)

# KRATT BROS BE THE CREATURE

26 x 1hour  
[www.bethecreature.tv](http://www.bethecreature.tv)  
SHOW DESCRIPTION



What does it mean to "be a creature?" Why do animals live as they do and what unique adaptations have they evolved over time that lets them thrive and survive? Naturalists and documentary filmmakers Chris and Martin Kratt explore the biology, physiology, and natural behavior of unique creatures. *BE THE CREATURE* is produced by DECODE Entertainment Inc. and The Kratt Brothers Company.

Major Broadcasters: CBC and Tele-Quebec (Canada), The National Geographic Channel (US), National Geographic International (Worldwide Cable/Satellite)

# THE BLOBHEADS

26 x 22'  
[www.theblobheads.tv](http://www.theblobheads.tv)  
SHOW DESCRIPTION



With one flush of the toilet, Billy Barnes's life changed forever. 14-year-old Billy Barnes thought his life was complicated when his baby brother Silas arrived, but now the morphing, mess-making Zerek, Kerek and Derek have come from the Planet Blob to declare that Silas is the Most High Emperor of the Universe! *THE BLOBHEADS* is a Canada/UK co-production by DECODE Entertainment Inc. and Wark Clements (Scotland).

Major Broadcasters: CBC and VRAK (Canada); Nickelodeon (UK, Europe, Australia), Canal J (France), ZDF (Germany)

# Bromwell High

39 x 11'  
[www.bromwellhigh.ca](http://www.bromwellhigh.ca)  
SHOW DESCRIPTION



BROMWELL HIGH is set in an under-funded, graffiti-scarred secondary school in south London and follows the exploits of three exceptionally naughty schoolgirls, one maverick headmaster and a bunch of desperate teachers. *BROMWELL HIGH* is a UK/Canada co-production with Hat Trick Productions.

Major Broadcasters: **Teletoon (Canada), Channel 4 (UK)**

# CHOP SOCKY CHOOKS

26 x 22'  
[www.chopsockychooks.com](http://www.chopsockychooks.com)  
SHOW DESCRIPTION

The CHOP SOCKY CHOOKS are a crack team of Kung Fu Chickens who use a combination of martial arts skills, hi-tech computer wizardry and razor-sharp wits to oppose Dr. Wasabi, an evil mutated piranha and his bodyguard Bubba, a strong but simple-minded albino gorilla. *CHOP SOCKY CHOOKS* is a Canada/UK co-production between DECODE Entertainment Inc and Aardman Animations Ltd.

Major Broadcasters: **Teletoon (Canada), Cartoon Network (Worldwide)**

# CLANG INVASION

26 x 22' or 52 x 11'  
[www.clanginvasion.com](http://www.clanginvasion.com)  
SHOW DESCRIPTION



CLANG INVASION is a fast-paced, anything-can-happen, roller coaster ride of comedy that has the same attention span as the kids that are in the story. *CLANG INVASION* was developed by Singapore's Scrawl Studios and the Media Development Authority of Singapore (MDA) in co-production with DECODE, YTV and Agogo Entertainment Ltd

Major Broadcasters: **YTV (Canada)**

# DELILAH & JULIUS

52 x 22'  
www.delilahandjulius.com  
SHOW DESCRIPTION



DELILAH & JULIUS follows the adventures of two stylish teen super spies as they travel the globe stopping covert plots for world domination. They take down sinister villains using their wits and skills, supported by an assortment of super cool gadgets, martial arts training and impeccable killer instincts. *DELILAH & JULIUS is a co-production between DECODE Entertainment Inc and Collideascope Animation Studios.*

Major Broadcasters: **Teletoon (Canada), Nickelodeon (Germany) and ABC2.**



52 x 11' or 26 x 22'  
SHOW DESCRIPTION



Dirtgirl's backyard is full of friends. There's Scrap Boy, her best friend, a cow punk who's a whiz with junk, Grubby with her worm's eye view, Ken the weevil, a super stunt star weevil with an inferiority complex, Roger the Rooster and The Chicks, Hayman the monosyllabic scarecrow, and The Green Thumbs...real kids in real gardens having unreal fun.

Major Broadcasters: **BBC**



90 x 15 sec or 23 x 1 min  
www.dudson.tv  
SHOW DESCRIPTION



DUDSON'S MODERN TALES is a collection of highly stylized shorts that centre on Dudson, an off-beat, absurd cab driver, along with his friends who are an eclectic cast of characters. DUDSON is about getting through the day with all of life's frustrations and small victories. It's Dudson's world and Normal is the New Weird.

Major Broadcasters: **BITE TV, ONE STOP Network (Canada)**

# THE ZACK FILES

65 x 22' or 130 x 11'  
[www.thezackfiles.com](http://www.thezackfiles.com)

## SHOW DESCRIPTION



Life is weird - full of the odd, the spooky and the inexplicable. Off-kilter and funny, **THE ZACK FILES** follows Zack Greenburg and the out-of-this-world things that keep happening to him. He's an accidental young "Fox Mulder" with an interesting crew of friends who join him in his bizarre, paranormal adventures. Based on the book series, "The Zack Files," by Dan Greenburg. *THE ZACK FILES* is produced by *DECODE Entertainment Inc.*, in association with *YTV*, A Corus Entertainment Company, with *EM TV and Merchandising AG* and *RCN Entertainment*.

Major Broadcasters: **YTV and SRC (Canada), ZDF (Germany), Fox Kids and Channel 4 (UK), France 3 and Disney Channel (France)**



39 x 22'

## SHOW DESCRIPTION



**WATERSHIP DOWN** is a remarkable tale about the friendship, survival and heroism of a group of rabbits who leave their endangered warren in search of a new home. The rabbits are driven by a vision of a Promised Land. *WATERSHIP DOWN* is a co-production with UK-based *Alltime Entertainment*.

Major broadcasters: **YTV, CBC, VRAK (Canada), ITV (UK), Super RLT (Germany) and Buena Vista Home Video**



26 x 22'  
[www.urbanvermin.com](http://www.urbanvermin.com)

## SHOW DESCRIPTION



This is a story about two brothers. Once best of friends, now best of enemies. **ABE** and **KEN** are two brothers who know their way around an average pile of trash. Maybe it's because they love garbage the way people love their morning coffee. Or maybe it's because they've eaten trash their entire lives. Or maybe it's because they're raccoons.

Major Broadcasters: **YTV, Jetix Europe**



250 x 22'  
www.hoobsthegame.com  
SHOW DESCRIPTION



THE HOOBS are five furry 'finder outers' from Hoobland: Iver, Hubba Hubba, Groove, Roma and Tula, whose mission is the search for knowledge about all things Earthly. The Hoobs is a series of fun educational programmes for a pre-school audience, using a mixture of puppetry, animation, stock footage and real children performers. *Jim Henson's THE HOOBS is a co-production with DECODE for Channel 4 in the UK.*

Major broadcasters: **TVO (Canada), Channel 4 (UK)**



65 x 22'  
SHOW DESCRIPTION



SUPER WHY! is the first superhero series that helps children learn to read through interactive fairytale adventures! Whyatt Beanstalk, along with his best friends Red Riding Hood, The Princess & the Pea, the Littlest Pig - and the Home Viewer, magically transform into Super Why and the Super Readers. They jump into classic and original stories to find answers to questions about everyday problems and use special reading powers to save the day!

Major Broadcasters: **CBC (Canada)**



26 x 22' or 52 x 11'  
SHOW DESCRIPTION

Set in the Bay of Neptune, RAINBOW FISH is the story of a glittery fish named Rainbow who is full of mischief and adventure. Rainbow is your typical kid, except scali-er! He has a thirst for adventure and a hunger for kelp. Each episode follows the escapades of Rainbow and his school of fishy friends including Blue, Sea Filly, Stingo and Chomper. *RAINBOW FISH is a DECODE co-production in partnership with Sony Wonder and EM.TV & Merchandising AG*

Major Broadcasters: **TVO (Canada), HBO (US)**





**39 x 11'**  
**www.planetsketch.com**  
**SHOW DESCRIPTION**



Aardman Animation and DECODE Entertainment present PLANET SKETCH, featuring a quirky collection of madcap new characters brought to life with a unique mix of comedy and charm. With their outrageous behaviour and unforgettable catchphrases, these offbeat and memorable creations are destined to become schoolyard favourites. *PLANET SKETCH is a Canada/UK co-production between DECODE Entertainment Inc and Aardman Animations Ltd.*

Major Broadcasters : **Teletoon ( Canada), ITV ( UK), ARD (Germany) and France 3**



**26 x 3:15'**  
**www.naughtynaughtypets.com**  
**SHOW DESCRIPTION**



A pug who digs through the floor, a cat that leaves trails of "presents" wrapped in a bow, and a chicken named Heedley who will peck you in the eye! Follow the ridiculous antics of the Naughty Naughty Pets as Windywoo tries to keep them in line and out of trouble.

Major Broadcasters: **CBC (Canada), Cartoon Network (US), Canal + (France)**



**65 x 22'**  
**www.naturally-sadie.com**  
**SHOW DESCRIPTION**



With high school in full steam and her friends branching out, Sadie hopes that she has finally gotten to the bottom of it all. Scientifically speaking, of course. Still a budding naturalist, Sadie is more passionate than ever about global and ecological changes. But with her various romantic entanglements, lively array of friends and older brother, Hal, she's got more than her share of wild to sort out.

Major Broadcasters: **The Family Channel (Canada), The Disney Channel (US), Nickelodeon ( UK), France 2**

# the Latest BUZZ

36 x 22'  
SHOW DESCRIPTION



THE LATEST BUZZ is a half-hour live action sitcom which centers around five 14 year-old writers' who work at a youth magazine during 8th period at school. Follow Rebecca, Michael, Noah, Amanda and Wilder as they learn about the fast-paced world of publishing, all while living the fast-paced life of a teenager.

Major Broadcasters: **Family Channel (Canada)**

# KING

52 x 22'  
[www.kingrussell.com](http://www.kingrussell.com)  
SHOW DESCRIPTION



Shortly after moving into a new house, 12-year-old Russell discovers something weird under his bed - a trap door leading to the fantastic world of Under! Russell is crowned King of Under, and boy, does his kingdom need help! *KING is a Funbag Animation Studios Inc./DECODE Entertainment Inc. Production*

Major broadcasters: **Family Channel (Canada), ABC (Australia), France 5 and Nick UK**

# Freaky Stories

140 x 5'  
SHOW DESCRIPTION

It happened to a friend of a friend of mine...

FREAKY STORIES are 140 of the weirdest, eerie, "did that really happen?" urban myths that will leave you with a chill running down your spine. *FREAKY STORIES is produced by DECODE Entertainment Inc., Sound Ventures Productions Ltd., Funbag Animation*

Major broadcasters: **YTV and VRAK (Canada), FOX Family Channel (US), ABC**



**104 x 11' or 52 x 22'**  
**www.frannysfeet.com**

**SHOW DESCRIPTION**



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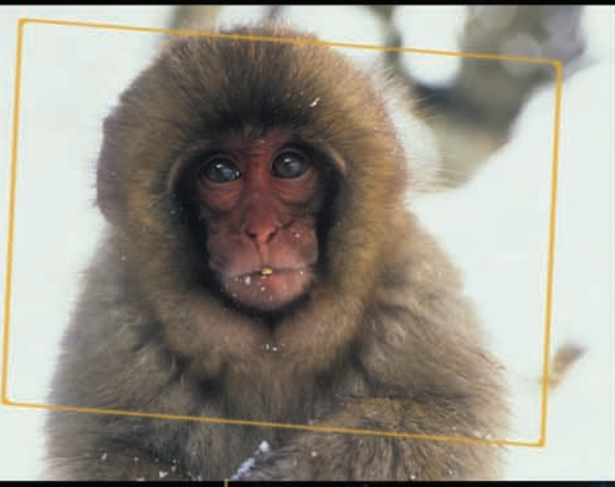
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ELEPHANT: SAVUTI, BOTSWANA AFRICA

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Time: 4:20

**DECLARATION OF DEBRA J. RINGOLD**

2004-2005 Cable Royalty Distribution Proceeding  
Docket No. 2007-03 CRB CD 2004-2005

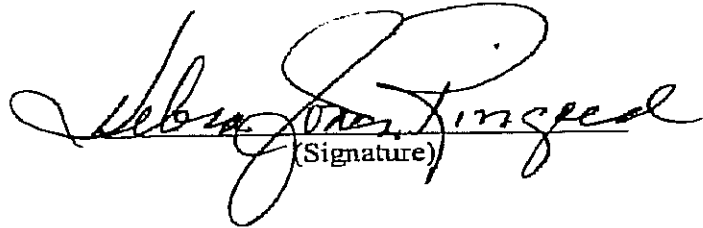
I, Debra J. Ringold, Ph.D., declare as follows:

I am sponsoring two reports entitled: "The Value of Canadian Programming to Cable Systems in the United States: 2004-2005" and "The Longitudinal Value of Canadian Programming to Cable Systems in the United States: 1996 to 2005." I am the co-author of the first report and was primarily responsible for supervising the execution of the surveys described in the report. I am the sole author of the second report.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed in Corvallis, Oregon on

05/27/09

  
(Signature)

The Value of Canadian Programming to Cable Systems  
In the United States: 2004-2005

to be submitted to

The Copyright Royalty Judges

by

Gary T. Ford  
Emeritus Professor of Marketing  
Kogod College of Business Administration  
American University

and

Debra J. Ringold  
Dean and JELD-WEN Professor of Free Enterprise  
Atkinson Graduate School of Management  
Willamette University

May 2009

**EXHIBIT CDN-4-A**



# The Value of Canadian Programming to Cable Systems In the United States: 2004-2005

by

Gary T. Ford and Debra J. Ringold<sup>1</sup>

## I. INTRODUCTION

This report discusses the objectives, methodology, and results of two surveys of United States cable system operators who retransmitted Canadian television stations as distant signals during 2004 and 2005. These studies were commissioned by the Canadian Claimants Group and were conducted annually each of these years.

This report includes the following four sections:

- II. Executive Summary
- III. Methodology
- IV. Results
- V. Conclusion

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<sup>1</sup> Resumes for Dr. Ford and Dr. Ringold are provided in Appendix 1.



## **II. EXECUTIVE SUMMARY**

### **OBJECTIVES:**

1. The primary objective of this research was to estimate the value of Canadian programming on Canadian distant signals retransmitted by Form 3 cable system operators in the United States.
2. A second, and less important, objective was to determine the relative importance of other types of programming on three different types of distant signals: superstations or TBS; Canadian stations; and United States independent stations.

### **METHODOLOGY:**

3. In each of the years 2004 and 2005, a survey was conducted of the eligible population of Form 3 cable systems retransmitting either a distant English-language or distant French-language Canadian signal. The response rates were 54% and 62%, respectively. These relatively high response rates make nonresponse bias unlikely.
4. The surveys were conducted with the persons responsible for deciding which distant signals their cable systems retransmit. On average, respondents were in this position at his/her cable system approximately six years and thus, were experienced in making these decisions (Table 4). Participants were also queried as to their program budget responsibilities. Ninety-two percent of the respondents identified themselves as the individual responsible for making program budget decisions or recommendations.
5. The surveys asked about the value of seven different types of programming carried on a Canadian signal randomly chosen from those Canadian signals retransmitted by the cable system: (1) live professional and college team sports, excluding Canadian Football League games; (2) Canadian-produced news, public

affairs, religious, and documentary programs; (3) U.S. syndicated series, movies, and specials; (4) sports programming such as the Olympics, Canadian Football League games, skating, skiing, tennis, and auto racing; (5) Canadian-produced series, movies, arts and variety shows, and specials; (6) Canadian-produced children's programming; and (7) other programming. This approach allowed a signal-specific determination of the relative value of Canadian-produced programming compared to programming produced by other claimants.

6. Similar categories of programming shown on a randomly chosen superstation or cable network TBS and a randomly chosen U.S. independent station carried by the respondents' systems were also evaluated to reduce the chances that respondents would guess the survey purpose or sponsor.

7. While the categories used to describe superstation or cable network TBS, Canadian, and independent programming are reasonably analogous, differences due to the Canadian network programming offered by Canadian signals do exist. In addition, questionnaire forms reflect the language in which Canadian programming is retransmitted by a particular signal.

## **RESULTS:**

8. For the years 2004 and 2005, respondents estimated that Canadian-produced programming accounted for approximately 60% and 60%, respectively, of the value of all programming shown on Canadian signals (Table 1).

9. For these same years, live professional and college team sports shown on the Canadian signals were valued at approximately 27% and 30%, respectively (Table 1).

10. U.S. syndicated series and movies shown on the Canadian signals were valued, during these years, at approximately 13% and 10%, respectively (Table 1).

### Summary of Results for Canadian Signals

<b>Programming Category</b>	<b>2004</b>	<b>2005</b>
Canadian-produced programming	60%	60%
Live professional and college team sports	27%	30%
U.S. syndicated series and movies	13%	10%
Other programming	0%	0%

11. For superstations, live professional and college sports were valued at approximately 26% and 35%, for the years 2004 and 2005 (Table 2). For independent stations, live professional and college sports were valued at approximately 22% in 2004 and 26% in 2005 (Table 3).

12. Movies and syndicated series were valued at approximately 41% and 45% on superstations in 2004 and 2005 (Table 2). Movies and syndicated series were valued at approximately 40% and 35% on independent stations during the same period (Table 3). Both superstation and independent station evaluations are substantially higher than the approximately 13% and 10% values reported for U.S. movies and syndicated series on Canadian signals (Table 1).

### **CONCLUSION:**

13. In our opinion, these results indicate that cable system operators who retransmit Canadian signals do so primarily for their unique Canadian programming, but also value the live professional and college team sports carried on these signals. U.S. syndicated shows and movies on Canadian signals appear to have less value to cable system operators.

During this period, Canadian programming constituted about 60% of the total programming value provided by imported Canadian signals.

### III. METHODOLOGY

From a methodological perspective, the survey objectives of estimating the value of Canadian programming required attention to three important factors. First, during the period under study, Canadian signals were retransmitted by up to 59 eligible cable systems. Because the annual populations of cables systems are relatively small, it was important to develop a methodology that would maximize the number of completed interviews. Relatively high response rates make significant bias in the results due to nonresponse unlikely. Therefore, maximizing the survey response rates was important.

Second, any survey runs the risk of producing biased results if respondents detect the purpose of the survey or guess the survey sponsor. For this reason, it was important to design the survey questionnaire and use interviewing techniques that masked the purpose of the survey and its sponsor.

Third, Canadian signals carry Canadian programming as well as programming copyrighted by other claimants participating in the cable copyright royalty distribution proceedings. Thus, it was necessary to develop an approach that would allow us to estimate the value of Canadian programming relative to other programming carried on the signal. The methodological decisions made regarding each of these issues are discussed below.

Procedures used to increase survey response rates. A screening study of Form 3 cable systems known to have retransmitted Canadian programming during 2004 and 2005 identified 59 and 52 eligible cable systems, respectively. If cable systems were found to retransmit both an English- and French-language Canadian signal, the system was interviewed with the French-language version of the questionnaire, due to the smaller number of French-language signals. Because these populations were small, it was necessary to attempt to interview respondents from each of these cable systems.

No respondent was interviewed more than twice in one year about retransmitting Canadian signals. This decision was made to reduce both the chance of guessing the purpose of the survey and to minimize redundancy in responses. Thus, to be eligible for the 2004 and 2005 studies, Form 3 systems had to have carried Canadian signals in the study year and the respondent could not participate in more than two interviews. To increase response rates the following procedures were used:

1. Each of the cable systems was contacted by telephone to verify the name of the person (or persons) responsible for “deciding which television stations your cable system offers” for their cable system. A copy of the screening form that was used for these telephone contacts is attached as Appendix 2.
2. The person responsible for deciding which distant signals to retransmit for cable systems importing a Canadian signal was then faxed an appropriate survey notification letter. During the years 2004 and 2005, this letter informed him/her that an interviewer would be calling in the next week regarding a study concerned with “...factors important to cable systems in their decisions to carry television signals.” It also mentioned that the interview would take “less than ten minutes” and that they would be paid a \$75.00 honorarium. Those responsible for responding for two cable systems were promised a \$150.00 honorarium. A copy of this notification letter is provided in Appendix 3.
3. The survey research contractor, Westat<sup>2</sup>, was instructed to continue attempts to contact potential respondents until the interview was completed or the respondent definitely refused. Virtually all of the completed interviews were accomplished during the first or second direct communication with the respondent. Other call attempts were associated with efforts to identify, reach, and/or schedule the qualified respondent. To ensure standardization in the interviews, Westat assigned the same

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<sup>2</sup> Westat served as the research contractor in 2004 and 2005. In 2004, it was the third largest marketing research organization in the United States. Westat is known for its expertise in executing survey research projects for agencies of the federal government and a variety of large commercial clients (Honomichl 2005).

interviewer to complete all interviews in both years. Westat personnel were experienced in surveying professional and managerial participants.

Because of the efforts made to identify a specific person to interview, the survey notification letter, the honorarium, and the efforts made to conveniently schedule interviews, overall response rates were relatively high. Response rates were 54% and 62% for 2004 and 2005, respectively. These response rates make nonresponse bias less likely. Details concerning the response rates are provided in Appendix 4.

Methodology used to disguise purpose of surveys. It is well known that survey answers may contain bias if the respondent can guess the purpose of the survey or its sponsor. To prevent that type of bias, four safeguards were built into the research design:

1. At no time was the survey sponsor identified or the purpose of the study conveyed to potential respondents or to the interviewer at Westat. The survey notification letter was sent from Westat on its stationery. Since the surveys were "double-blind," the chances that the interviewer would inadvertently cue a respondent to the survey purpose or sponsor was minimal.
2. To reduce the likelihood that the respondent would guess the purpose of the survey and to reduce redundancy in responses, it was decided to limit the number of interviews conducted with any one respondent to two in a given year.
3. An attempt was made to ask each respondent about the value of programming on up to three types of retransmitted distant signals actually carried by the respondent's systems, i.e., a superstation such as WPIX (or the cable network TBS if we were unable to confirm carriage of a distant superstation), a Canadian programming station, and an independent station. In the vast majority of cases, respondents evaluated programming on two or three different signals. In 2004, every respondent evaluated programming on at least two different signals, while in only four cases in 2005 did a respondent evaluate a Canadian signal alone. Even in these few cases, respondents were asked about superstation and independent station carriage in the

signal verification section of the questionnaire. Thus, it is unlikely that respondents knew whether the survey was intended to concentrate on any one type of signal or on multiple and different types of signals.

4. The surveys asked about six different types of programming carried on each signal (plus an "other" category). For the United States superstations and independent stations, the programming categories were: (1) live professional and college team sports; (2) news, public affairs, children's programs, and talk shows produced by and shown on the station; (3) syndicated shows, series, and specials other than children's or religious programs; (4) movies; (5) syndicated children's programming; (6) devotional and religious programming; and (7) other programming.

For the Canadian signals, programming categories were: (1) live professional and college team sports, excluding Canadian Football League games; (2) Canadian network- and station-produced news, public affairs, religious, and documentary programs; (3) U.S. syndicated series, movies, and specials; (4) Canadian-produced sports programming such as the Olympics, Canadian Football League games, skating, skiing, tennis, and auto racing; (5) Canadian-produced series, movies, arts and variety shows, and specials not including children's programming; (6) Canadian-produced children's programming; and (7) other programming.

Thus, each respondent was asked about six specific and different types of programming carried on, for most respondents, each of two or three different types of signals. This decreases the chances that respondents would ascertain that the surveys were concerned with the value of Canadian-produced programming.

In sum, four approaches were used to guard against respondents guessing the purpose of the surveys. First, the surveys were "double-blind." That is, neither the interviewer nor the respondents knew the purpose or sponsor of the survey. Second, no respondent was interviewed more than twice in one year about retransmitting Canadian signals reducing both the chance of guessing the purpose of the survey and redundancy in responses. Third,

the vast majority of respondents were asked to evaluate the value of different types of programming on at least two retransmitted distant signals. This decreases the likelihood that respondents would guess that the focus was on the Canadian signal. Finally, the respondents were asked about the value of a variety of specific types of programming on each signal. The fact that the six specific programming categories were similar (although not identical) across signals further decreases the likelihood that respondents would detect the interest in Canadian-produced programming.

Neither we, nor the supervisors, observed any inquiry associated with Canadian programming, Canadian stations, or the Canadian Claimants as interviews were monitored in 2004 or 2005. Moreover, the interviewers reported no inquiries associated with Canadian programming, Canadian stations, or the Canadian Claimants. Over the years, participants rarely inquired or speculated as to the sponsor or purpose of these surveys. When participants did comment or inquire, typically they volunteered "the government" or a competing cable company as the likely sponsor. Respondents sometimes volunteered comments indicating that other survey research organizations had recently contacted their cable systems. With increasing frequency, potential respondents refusing to participate cite "corporate" policies developed to address numerous requests for management participation in similar studies.

Approach used to distinguish unique value of Canadian programming. The entire questionnaire was developed to provide an unbiased estimate of the unique value of Canadian-produced programming:

1. The way in which the value of programming on a signal was assessed was through the use of a 100-point constant sum scale. The respondent was asked to "assume the total value of all the programming now carried on \_\_\_ \_\_ \_\_<sup>3</sup> equals 100 percent. I'll read a list of seven different program categories. I'll give you a chance to think

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<sup>3</sup> When this question was read during the interview, these dashes were replaced by the signal's call letters.



about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value. The sum must total to 100 percent.”

Examples of the survey questionnaires<sup>4</sup> are provided in Appendix 5.

After reading the list of programming categories, the interviewer asked, “What percentage, if any, of the total value of programming carried on \_\_\_ \_\_\_ \_\_\_ \_\_\_ would you say is accounted for by . . . .?”

It should be noted that the purpose of the 100-point constant sum scale was clear to respondents and easy for them to use. The relative value of programming carried on each of the specific signals evaluated was clearly communicated by the points they assigned to each category. Thus, this scale is likely to provide an accurate measure of their perceptions of the value of different types of programming on each of the specific signals evaluated.

2. To eliminate effects on responses due to the order in which questions were asked, the order in which the various types of programming content was evaluated was varied systematically.

Thus, several steps were taken to increase confidence that the perceptions of the value of Canadian programming were being measured accurately. The value of categories of programming was assessed by having respondents allocate 100 points across programming categories. The purpose of the 100-point scale was clear to respondents and easy for them to use, and thus, responses are likely to accurately reflect their perceptions of the value of different types of programming. To eliminate order bias, the starting point for asking the series of questions on programming value was varied across respondents.

Summary of methodological decisions. In developing a research methodology to assess the value of Canadian-produced programming, we attempted to design a survey instrument that was free from biased or leading questions, to develop an approach which would provide the

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<sup>4</sup> Questionnaire forms reflect the language of the Canadian programming on a particular retransmitted signal.

maximum number of respondents while minimizing the biases which can occur when respondents and interviewers know the purpose of the research, and to develop questions that were relevant given the issues under investigation and simultaneously, understandable to respondents. The results follow.

#### IV. RESULTS

This Results section is divided into three categories: (1) a discussion of the value of Canadian programming; (2) presentation of findings regarding programming on superstations and independent stations; and (3) summary information about the work experience respondents have had making programming decisions for cable systems.

The value of Canadian programming.<sup>5</sup> Table 1 summarizes the respondents' perceptions of the value of the different types of programming shown on Canadian signals for the years 2004 and 2005.

There are three important findings in Table 1:

1. For the years 2004 and 2005, Canadian programming was valued at approximately 60% and 60%, respectively, of the total value of the programming shown on Canadian signals.

For 2004, the sum of the approximate values assigned to categories of Canadian programming (i.e., news, public affairs, religious, and documentary programs [23%], Canadian-produced sports programming [17%], Canadian-produced series, movies, arts and variety shows, and specials [11%], and Canadian-produced children's programming [8%]) is approximately 60%.

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<sup>5</sup> In addition to the findings discussed in detail here, Table 5 reports the average value of programming shown on English-language Canadian signals. Table 6 reports the average value of programming shown on French-language Canadian signals. Table 7 reports the average value of programming shown on Canadian signals when Signal A was a superstation and/or Signal C was an independent station or when a Canadian signal was evaluated alone. Table 8 reports the average value of programming shown on Canadian signals when TBS served as signal A or C. All tables are for years 2004 and 2005 and can be found in Appendix 6.

For 2005, the sum of the approximate values assigned to categories of Canadian programming (i.e., news, public affairs, religious, and documentary programs [17%], Canadian-produced sports programming [21%], Canadian-produced series, movies, arts and variety shows, and specials [13%], and Canadian-produced children's programming [9%]) is approximately 60%.

2. For the years 2004 and 2005, live professional and college team sports, excluding Canadian Football League games, shown on Canadian signals were valued at approximately 27% and 30%, respectively.

3. For the years 2004 and 2005, U.S. syndicated series, movies, and specials contributed approximately 13% and 10%, respectively, to the value of the programming shown on Canadian signal.

The results reported in Table 1 have several implications. The first and most obvious is that most cable operators appear to be well aware of the variety of programming available on the Canadian signal and able to assign value to the different components of the signal. Second, the value of the Canadian-produced programming (on average, approximately 60%) is substantially more than the value of live professional and college team sports, excluding Canadian Football League games (on average, approximately 29%). Third, the value of Canadian-produced programming (on average, approximately 60%) is substantially more than the value of U.S. syndicated series, movies, and specials (on average, approximately 11%).

The value of programming on super- and independent stations. The survey results for the values assigned to different types of programming shown on superstations and independent stations are summarized in Tables 2 and 3, respectively. The important findings from these tables are as follows:

1. For superstations and TBS, live professional and college team sports were valued at approximately 26% and 35%, respectively, during the years 2004 and 2005. For independent stations, live professional and college team sports were valued at approximately 22% and 26% during the same years.

Thus, live professional and college team sports were valued, on average, at approximately 30% for superstations, approximately 24% for independent stations, and approximately 29% on Canadian signals.

2. Local news, public affairs, children's programs, and talk shows produced by, and shown exclusively on, the station were valued at approximately 14% and 8% on the superstations and approximately 19% and 15% on the independent stations, respectively, during the years 2004 and 2005. Using a slightly different category, the comparable Canadian signal values were approximately 23% and 17% during the same years.

Thus, local news, public affairs, children's programs, and talk shows produced by, and shown exclusively on, the station were valued, on average, at approximately 11% on the superstations and approximately 17% on the independent stations. Using a slightly different category, the comparable Canadian signal value was, on average, approximately 20%.

3. Syndicated shows, series, and specials other than children's or religious programs on the superstations were valued at approximately 21% and 21% respectively, for the years 2004 through 2005. For the same years, movies on superstations were valued at approximately 20% and 25%.

On the independent stations syndicated shows, series, and specials other than children's or religious programs were valued at approximately 23% and 23%, and movies were valued at approximately 16% and 12%.

Thus, the total value, on average, for movies and syndicated series was approximately 43% on the superstations and approximately 37% on the independent stations. For the Canadian signals, U.S. movies and syndicated series were combined into one category. On average, this category was valued at approximately 11%. Thus, there are substantial differences in the value of movies and syndicated series relative to other superstation, independent, and Canadian signal programming. Cable operators perceive U.S. syndicated series and movies shown on Canadian television as providing much less value than the same type of programming shown on U.S. stations.

4. Devotional and religious programming was valued at about 6% and 4% on the superstations and at about 9% and 3% on the independent stations, respectively, during the years 2004 and 2005. There is no comparable category for Canadian signals.

These results suggest that the value of Canadian signal resides primarily in Canadian-produced programming for two reasons. First, the total value of Canadian-produced programming (on average, about 60%) exceeds the value of professional and college team sports (on average, about 29%) on Canadian signals. Second, U.S. movies and syndicated series are valued, on average, at approximately 11% on Canadian signals as compared to 43% on the superstations and 37% on the independent stations. This 11% value of U.S. movies and syndicated series is substantially lower than the 60% total value of Canadian-produced programming on Canadian signals and demonstrates that U.S. programming is not a substantial factor in cable system operators' decisions to import a Canadian signal.

Work experience of respondents. Table 4 summarizes what we learned about the work experience of the respondents to the 2004 and 2005 surveys. The important point from Table 4 is that the respondents are quite experienced. That is, the average respondent had worked in the cable television industry for about 14 years and had been responsible for deciding which distant signals to retransmit for about six years. Therefore, these respondents should provide an accurate estimate of the value of Canadian produced programming.

## **V. CONCLUSIONS**

In our opinion, these results indicate that cable system operators retransmit the Canadian signals primarily for their unique Canadian programming rather than for live professional and college team sports or U.S. syndicated series and movies already available on U.S. television.

The value of Canadian programming greatly exceeds that of live professional and college team sports and U.S. syndicated series and movies. During this period, Canadian programming constituted about 60% of the total programming value provided by imported Canadian signals.

Table 1  
The Average Value of Programming  
Shown on Canadian Signals

	2004		2005	
	Mean	Std Deviation	Mean	Std Deviation
Live professional and college team sports, excluding Canadian Football League games.	27.16	18.41	29.91	18.51
Canadian-produced news, public affairs, religious, and documentary programs. This includes both Canadian network- and station-produced programs.	23.25	17.58	17.34	11.22
U.S. syndicated series, movies and specials.	12.75	7.34	9.56	8.85
Canadian-produced sports programming such as the Olympics, Canadian League games, skating, skiing, tennis and auto racing.	17.34	6.58	21.31	11.68
Canadian produced series, movies, arts and variety shows, and specials. This does not include children's programming.	11.22	6.81	12.56	9.09
Canadian-produced children's programming.	8.13	4.70	9.16	8.08
Other programming.	0.16	0.88	0.16	0.88
Total	100.01		100.00	
Total value of Canadian-produced programming.	59.94		60.37	
Respondents	32		32	

Table 2

## The Average Value of Programming Shown on Superstations

	2004		2005	
	Mean	Std Deviation	Mean	Std Deviation
Live professional and college team sports.	26.31	14.27	35.04	21.61
Station-produced programs shown exclusively on the superstation. This includes local news, public affairs, children's programs, and talk shows hosted by the station's own personalities.	14.28	9.59	8.11	8.34
Syndicated shows, series, and specials other than children's or religious programs.	21.16	11.69	20.61	11.74
Movies.	20.06	9.39	24.75	15.54
Syndicated children's programming.	12.31	6.88	7.32	5.92
Devotional and religious programming.	5.56	4.59	3.82	6.16
Other programming.	0.31	1.77	0.36	1.31
Total	99.99		100.01	
Respondents	32		28	



Table 3

## The Average Value of Programming Shown on Independent Stations

	2004		2005	
	Mean	Std Deviation	Mean	Std Deviation
Live professional and college team sports.	22.31	20.48	26.36	29.76
Station-produced programs shown exclusively on the independent station. This includes local news, public affairs, children's programs, and talk shows hosted by the station's own personalities.	18.85	18.05	15.45	14.22
Syndicated shows, series, and specials other than children's or religious programs.	23.46	8.51	22.73	18.08
Movies.	16.15	10.44	11.82	9.29
Syndicated children's programming.	9.23	6.72	7.73	6.07
Devotional and religious programming.	8.85	10.03	3.18	7.51
Other programming.	1.15	4.16	12.73	27.33
Total	100.00		100.00	
Respondents	13		11	

Table 4

## Cable Television Experience of Survey Respondents

	2004		2005	
	Mean	Std Deviation	Mean	Std Deviation
Years responsible for deciding which distant television stations present system carries.	6.06	4.81	6.09	4.46
Years in present job.	5.81	3.88	5.59	4.34
Years worked for present cable system.	8.69	6.93	8.56	5.51
Years worked in cable television industry.	14.19	9.97	13.25	8.60
Age of respondent.	45.31	16.65	46.94	19.05
Respondents	32		32	

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**EDUCATION**

Ph.D., Marketing, STATE UNIVERSITY OF NEW YORK AT BUFFALO,  
Buffalo, NY, 1973.

M.B.A., Marketing, STATE UNIVERSITY OF NEW YORK AT BUFFALO,  
Buffalo, NY, 1968.

B.B.A., Accounting, CLARKSON COLLEGE, Potsdam, NY, 1966.

**ACADEMIC/PROFESSIONAL EXPERIENCE**

AMERICAN UNIVERSITY, Kogod School of Business, Washington, D.C.,  
Emeritus Professor of Marketing, 2008.

Professor of Marketing, 1985-2007.

Chairman of Marketing, 1989-94, 1999-2001, 2004, 2006-2007.

CATHOLIC UNIVERSITY OF LEUVEN, Department of Applied Economics,  
Leuven, Belgium, 1991-1992

Visiting Professor of Marketing

UNIVERSITY OF MARYLAND, College of Business and Management  
Chairman, Faculty of Marketing, 1980-1985

Associate Professor of Marketing, 1978-1985

Assistant Professor of Marketing, 1973-1978

FEDERAL TRADE COMMISSION, Bureau of Economics, 1979-1980

Visiting Marketing Professor, Division of Consumer Protection

## PUBLICATIONS

### Refereed Journal Publications

- 1) "Effects of Donor Recruitment Methods on Population Responses," with E.L. Wallace, *Transfusion*, pp. 159-164 (March-April 1975).
- 2) "A Study of Prices and Market Shares in the Computer Mainframe Industry," with B.T. Ratchford, *Journal of Business*, pp. 194-218 (April 1976).
- 3) "Some Relationships of States' Characteristics to the Passage of Consumer Legislation," *Journal of Consumer Affairs*, pp. 177-182 (Summer 1977).
- 4) "Perceptions of Uncertainty Within A Buying Task Group," with R.E. Spekman, *Industrial Marketing Management*, pp. 395-403 (December 1977).
- 5) "Adoption of Consumerism Policy by the States: Some Empirical Perspectives," *Journal of Marketing Research*, pp. 125-134 (February 1978).
- 6) "A Study of Prices and Market Shares in the Computer Mainframe Industry: Reply," with B.T. Ratchford, *Journal of Business*, pp. 125-135 (January 1979).
- 7) "Evaluation of Consumer Education Programs," with P.N. Bloom, *Journal of Consumer Research*, pp. 270-279 (December 1979).
- 8) "Marketing and Marketing Research for Information Scientists," with P. Wasserman, *Journal of Library Administration*, pp. 27-31 (Fall 1982).
- 9) "Viewer Miscomprehension of Televised Communications: A Comment," with R. Yalch, *Journal of Marketing*, pp. 27-31 (Fall 1982). Reprinted in *Mass Communication Review Yearbook Vol. 4*, E. Wartella, D.C. Whitney and S. Windall (eds.), Beverly Hills: Sage Publications, pp. 145-150 (1983).
- 10) "Unit Pricing Ten Years Later: A Replication," with D.A. Aaker, *Journal of Marketing*, pp. 118-122 (Winter 1983).
- 11) "Recent Developments in FTC Policy on Deception," with J.E. Calfee, *Journal of Marketing*, 82-103 (July 1986).
- 12) "Inferential Beliefs in Consumer Evaluations: An Assessment of Alternative Processing Strategies," with R.A. Smith, *Journal of Consumer Research*, pp. 363-371 (December 1987).
- 13) "Consumer Skepticism of Advertising Claims: Testing Hypotheses from Economics of Information," with D.B. Smith and J.L. Swasy, *Journal of Consumer Research*, pp. 433-441 (March 1990).
- 14) "Normative Values for the Beck Anxiety Inventory, Fear Questionnaire, Penn State Worry Questionnaire and Social Phobia an Anxiety Inventory," with M. Gillis, D. Haaga and A.F. Ford, *Psychological Assessment*, vol. 7, no. 4, pp. 450-455 (1995).

- 15) "Can Consumers Interpret Nutrition Information in the Presence of a Health Claim? A Laboratory Investigation," with M. Hastak, A. Mitra and D.J. Ringold, *Journal of Public Policy and Marketing*, vol. 15, no. 1, pp. 16-27 (1996).
- 16) "Informing Buyers of Risks: An Analysis of the Marketing and Regulation of All-Terrain Vehicles," with M.B. Mazis, *Journal of Consumer Affairs*, pp. 90-123 (Summer 1996).
- 17) "Can the Educationally Disadvantaged Interpret the FDA-Mandated Nutrition Facts Panel in the Presence of an Implied Health Claim," with M. Hastak, A. Mitra and D. J. Ringold, *Journal of Public Policy and Marketing*, vol. 18, no. 1, pp. 106-117 (Summer 1999).
- 18) "Consumer Search for Information in the Digital Age: An Empirical Study of Pre-Purchase Search for Automobiles," with L. Klein, *Journal of Interactive Marketing*, vol. 17, no. 3, pp. 1-22 (Summer 2003).
- 19) "Application of Research on Consumer Complaint Rates to the Estimation of the Financial Impact of Prospective Product Defects," (with D. Scheffman and D. Weiskopf), *Journal of Consumer Satisfaction, Dissatisfaction and Complaining Behavior*, pp. 130-141 (Fall 2004)
- 20) "The Impact of the *Daubert* Decision on Survey Research Used in Litigation," *Journal of Public Policy and Marketing*, pp. 234-252, Fall 2005. (The members of the Editorial Review Board voted this article to receive the "Kinnear Award," as the best article published in *JPPM* from 2003-05.)

#### **Refereed and Special Session, Proceedings Publications**

- 1) "A Multivariate Investigation of Market Structure," refereed, *Combined Proceedings of the American Marketing Association*, pp. 177-182 (1974).
- 2) "The Status of Consumer Behavior: Some Empirical Perspectives," with P.G. Kuehl and R.F. Dyer, refereed, *Advances in Consumer Research*, vol. 2, pp. 51-61 (1975).
- 3) "Classifying and Measuring Deceptive Advertising: An Experimental Approach," with P.G. Kuehl and O. Reksten, refereed, *Combined Proceedings of the American Marketing Association*, pp. 493-497 (1975).
- 4) "Public Policy, The Sherman Act and the IBM Antitrust Case," with B.T. Ratchford, refereed, *Combined Proceedings of the American Marketing Association*, pp. 593-596 (1975).
- 5) "A Functional Analysis of Macro and Micro Marketing Systems," with W. Nickels, referred, *Proceedings of the Southern Marketing Association*, pp. 76-79 (1975).
- 6) "Measuring the Impact of Consumer Survival Kit: Some Preliminary Results," with P.N. Bloom and J.W. Harvey, refereed, *Advances in Consumer Research*, vol. 3, pp. 388-391 (1976).

- 7) "Consumer Research and Public Policy Formation: The Case of Truth in Contributions," with P.G. Kuehl and P.N. Bloom, refereed, *Combined Proceedings of the American Marketing Association*, pp. 445-450 (1976).
- 8) "An Assessment of the Consumer Protection Act of 1975," refereed, *Combined Proceedings of the American Marketing Association*, pp. 209-212 (1976).
- 9) "A Multivariate Analysis of State Consumerism Policy," refereed, *Proceedings of the Annual Meeting of the American Institute for Decision Sciences*, pp. 211-213 (1976).
- 10) "The Promotion of Medical and Legal Services," with P.G. Kuehl, refereed, *Proceedings of the American Marketing Association*, pp. 39-44 (1977).
- 11) "Consumer Protection Agencies: Their Budgets and Activities," refereed, *Proceedings of the American Marketing Association*, pp. 93-96 (1978).
- 12) "Box-Jenkins Analysis of a Retail Sales Intervention," with F.B. Alt, refereed abstract, *Northeast Aids Proceedings*, pp. 28-32 (1979).
- 13) "The Industrial Marketing Implications of Organizational Hierarchy Within Purchasing Departments," with R.E. Spekman, refereed, *Proceedings of the American Marketing Association*, pp. 178-181 (1981).
- 14) "Consumer Research Issues at the Federal Trade Commission," with J. Calfee and T. Maronick, refereed, *Advances in Consumer Research*, vol. 19, pp. 263-267 (1983).
- 15) "Consumer Psychology Research Needs at the Federal Trade Commission," with J. Calfee, refereed, *Proceedings of the Division of Consumer Psychology*, American Psychological Association, pp. 118-122 (1984).
- 16) "Market Forces, Information and Reduced Flammability Cigarettes," with J. Calfee, Special Session, *Advances in Consumer Research*, vol. 14, pp. 274-278 (1987).
- 17) "An Empirical Test of the Search, Experience and Credence Attributes Framework," with D.B. Smith and J. Swasy, special session, *Advances in Consumer Research*, vol. 15, pp. 239-243 (1988).
- 18) "Economics, Information and Consumer Behavior," with J. Calfee, special session, *Advances in Consumer Research*, vol. 15, pp. 234-238 (1988).
- 19) "Cigarettes in the Popular Press, 1930-1960: Preliminary Research," with D.J. Ringold and M. Rogers, special session, *Advances in Consumer Research*, vol. 17, pp. 467-473 (1990).
- 20) "Regulation of Advertising in the European Economic Community: An Overview," special session, *European Advances in Consumer Research*, vol. 1, pp. 559-564 (1993).
- 21) "Consumer Search for Information in the Digital Age: an Empirical Study of Pre-Purchase Search for Automobiles" (with Lisa Klein) *Advances in Consumer Research*. (2001).

### Articles in Books

- 1) "Problems in Education and Training in Marketing and Marketing Research in Information Science," with P. Wasserman, *Education and Training: Theory and Provision*, Federation International De Documentation: The Hague, pp. 105-112 (1979) (a different version of the *Journal of Library Administration* article).
- 2) "Label Warnings in OTC Drug Advertising: Some Experimental Results," with P.G. Kuehl, *Current Issues and Research in Advertising*, J.H. Leigh and C.R. Martin (eds.), Univ. of Michigan Press: Ann Arbor, pp. 115-130 (1979).
- 3) "Using Marketing Techniques to Increase Immunization Levels: A Field Experiment," with R.E. Spekman, *Exploring and Developing Government Marketing*, S. Permut and M. Mokwa (eds.), New York, Praeger Press, pp. 304-317 (1981).
- 4) "The FTC's Product Defects Program and Consumer Perceptions of Product Quality," with J. Calfee, *Perceived Quality*, J. Jacoby and J. Olson (eds.), Lexington, Massachusetts, Lexington Books, pp. 175-191 (1985).
- 5) "The Economics of Information: Research Issues," with D.B. Smith and J.L. Swasy, *Marketing and Advertising Regulation: The Federal Trade Commission in the 1990s*, P. Murphy and W. Wilkie (eds.), pp. 300-312 (1990).

### Books Edited

- 1) *Marketing and the Library*, New York, Haworth Press (1984).
- 2) *AMA Educators Proceedings*, co-edited with R.L. Lusch, G.L. Frazier, R.D. Howell, C.A. Ingene, M. Reilly and R.W. Stampf, Chicago, American Marketing Association, 403 pages (1985).
- 3) *AMA Educators Proceedings*, co-edited with S.P. Douglas, M.R. Solomon, V. Mahajan, M.I. Alpert, W.M. Pride, G.L. Frazier, J.C. Anderson and P. Doyle, Chicago, American Marketing Association, 287 pages (1987).

### Research Reports

- 1) "A Study of Parks, Recreation and Open Space in Prince George's and Montgomery Counties, Maryland," with R.W. Janes and P.G. Kuehl, for Maryland National Capital Park and Planning Commission, 253 pages (1975).
- 2) "A Feasibility Study to Identify Methods to Increase the Levels of Immunization of Children Receiving Services from BCHS Funded Clinics," with R.E. Spekman, prepared for Bureau of Community Health Services, D.H.E.W., 97 pages (1979).
- 3) "The Effects of Reduced Flammability Cigarettes on Smoker Behavior," with J.P. Brown and J.E. Calfee, prepared for the National Bureau of Standards, 65 pages (October 1986).

- 4) "Final Report on Undercover Investigation of ATV Dealers," prepared for Consumer Product Safety Commission, 53 pages (1989).
- 5) Preliminary Report "ABA Digital Evidence Project Survey on Electronic Discovery Trends and Proposed Amendments to the Federal Rules of Civil Procedure," prepared for ABA Section of Science & Technology, 64 pages (2005).

## PRESENTATIONS

"The Role of Dispute Mediation in Consumer Protection," presented at Meetings of the Practicing Justice Institute, Marymount College, New York City (1978).

"The Use of Consumer Research in the Bureau of Economics, FTC," presented at Association for Consumer Research Conference, San Francisco (1979).

"The FTC's 1983 Deception Policy Statement," presented at Southern Marketing Association (November 1984).

Proposed, organized and chaired special session on "FTC Policy Toward Deception," at Association for Consumer Research Conference, Washington, D.C. (1984).

As faculty member at AMA Doctoral Students Consortium at Notre Dame, presented "Economics of Information, Advertising and Public Policy (1986) (same session was repeated at 1987 Consortium at NYU).

Proposed, organized and chaired special session on "Cigarettes and Regulation: Unintended Consequences?" at Association for Consumer Research Conference, Toronto (1986).

"An Economics of Information Approach to the Regulation of Advertising," with J. Calfee, Winter Educators Conference of the American Marketing Association (1988).

"Signals in Advertising: Preliminary Results," with D.B. Smith and J.L. Swasy, special session, Winter Educators Conference of the American Marketing Association (1991).

"Content Analysis of Advertising for All-Terrain Vehicles, 1980-1987," presented to the marketing faculty at INSEAD, Fontainebleu, France and to marketing faculty at Catholic University at Leuven (1992).

"Can Consumers Interpret Nutrition Information in the Presence of a Health Claim? A Laboratory Investigation," with M. Hastak, A. Mitra and D.J. Ringold, presented at the Annual Meeting of the Association for Consumer Research (1993).



“Interpretation of Health Claims and Nutrition Information by Disadvantaged Consumers,” with A. Mitra, M. Hastak and D.J. Ringold, presented at the Annual Meeting of the Association for Consumer Research (1994).

“The Effects of Health Claims on Consumer Interpretation of FDA-mandated Nutrition Disclosures: a Mall Intercept Study,” with M. Hastak, A. Mitra and D.J. Ringold, presented at the Annual Marketing Association Public Policy Conference (1997).

“Regulation of Advertising on the Internet,” with J. Calfee, presented at the Annual American Marketing Association Public Policy Conference (1997).

“Consumer Search on the Internet,” with Lisa Klein, presented at the Annual American Marketing Association Public Policy Conference (1999).

“Consumer Search on the Internet: Predictions from the Economics of Information,” with Lisa Klein, presented at the Annual Meeting of the Association for Consumer Research (1999).

“Philosophy of Science and the Supreme Court: The Impact of the *Daubert* Decision on Survey Research Used in Litigation,” presented at Kenan-Flager School of Business, UNC at Chapel Hill (Fall 2002) and Marketing Faculty Consortium at Georgetown University (April 2003)

“Philosophy of Science and the Supreme Court: The Impact of the *Daubert* Decision on Survey Research Used in Litigation,” presented at the Annual American Marketing Association Public Policy Conference (2003).

## PROFESSIONAL ACTIVITIES/MEMBERSHIPS

Manuscript reviewer for the American Marketing Association Educators’ Conferences, 1976-present; Southern Marketing Association Conferences, 1977-1978; *Journal of Marketing*, 1979-1981, 1999-2001; *Journal of Business Research*, 1980; Association for Consumer Research Conferences, 1980, 1982, 1983, 1985-1990, 1999-2000 and *Journal of Consumer Research*, 1987-1992, 1995, 1997-2001, *Journal of Marketing Research*, 1997-2000, *Journal of Consumer Psychology*, 1999.

Reviewer for AMA Dissertation Competition, 1983, 1987, 1995. Proposal reviewer for the National Science Foundation, the Ford Foundation and the Department of Energy.

Discussant at AMA Consumerism Workshop, 1976; Southern Marketing Association Conference, 1977; American Marketing Association Educators’ Conference, 1978-1980; Association for Consumer Research Conference, 1978-

1980; AMA Professional Services Marketing Conference, 1981 and Public Policy Conference, 1993, 1994, 1995, 1997.

Member of Program Committee, Association for Consumer Research meeting, 1980, 1984, 2000.

Co-Chairman of AMA Doctoral Students Consortium, 1981.

Faculty participant at AMA Doctoral Students Consortium, 1980, 1986 and 1987.

Elected to Board of Directors, Association for Consumer Research, 1982-1985.

Editorial Review Board, *Journal of Marketing*, 1982-1997.

Editorial Review Board, *Journal of Public Policy and Marketing*, 1983-present.

Special Editor, Marketing and Information Science Issue, *Journal of Library Administration*, 1983-1984.

Public Policy Track Chairman, Educators' Conference of the American Marketing Association, 1985, 1987, 2001.

Book Review Editor *Journal of Public Policy and Marketing*, 2001 to 2004.

Appointed as representative from American Marketing Association to "Census Advisory Committee of Professional Associations" for 2010 United States Census.

## **GRANTS, CONTRACTS AND AWARDS RECEIVED**

Received competitively-bid contract from the Maryland National Park and Planning Commission for *A Survey of Parks, Recreation and Open Space in Prince George's and Montgomery Counties, Maryland*, with R.W. Janes and P.G. Kuehl, \$33,878 (Spring and Summer 1975).

Received contract from National Institute of Health to develop curriculum for a two-day Cancer Communications Marketing Seminar, \$8,000 (Summer 1978).

Received contract for "A Feasibility Study to Identify Methods to Increase the Levels of Immunization of Children and Adolescents Receiving Services from BCHS Funded Clinics," with Robert Spekman, from Bureau of Community Health Services, DHEW, \$9,972 (Fall 1998).

Received contract for "The Effects of Reduced Flammability Cigarettes on Smoker Behavior," with John P. Brown, from Consumer Product Safety Commission and National Bureau of Standards, \$19,925.

Course Release, Senate Research Committee, American University (Spring 1987 and Spring 1988).

Summer Research Grants, Kogod College of Business Administration, American University (1986 and 1987).

Received award for “The Effects of New Food Labels on Disadvantaged Consumers,” with M. Hastak, A. Mitra and D. Ringold, from Marketing Science Institute, \$26,000 (1993) (proposal was one of six funded out of 45 entries in MSI “Using Research to Help Society Competition”).

Listed as one of “The Best Researchers in Marketing,” *Marketing Educator*, p. 5 (Summer 1997).

Received the “Kinnear Award” for the best article published in the *Journal of Public Policy and Marketing* between 2003 and 2005 (February 2007).

Selected as “Outstanding Scholar,” Kogod School of Business, 2006.

## **CONSULTING WORK**

American Automobile Association  
Organization of American States  
Insituto De Investigaciones Electricas, Mexico  
Dames and Moore, Inc.  
Public Broadcasting System  
Bureau of Economics, Federal Trade Commission

## **EXPERT AND EXPERT WITNESS ASSIGNMENTS SINCE 2005**

Polo Ralph Lauren v. United States Polo Association  
Paul Weiss (2005)  
Expert Report, Rebuttal Report, deposition, testimony  
Schick Manufacturing, Inc. v. The Gillette Company (P&G)  
Ropes & Gray (2005)  
Weil, Gotshal & Manges (2006)  
Expert Report, Rebuttal Report, deposition, testimony  
Omni Pacific, Inc. v. OmniBrands, Inc.  
DLA Piper (2005)  
Expert Report  
USA v. QVC, Inc.  
Baker & Hostetler (2005)  
Expert Report, deposition  
9 Squared, Inc. v. Moviso, LLC and InfoSpace, Inc.  
Holland & Hart (2006)  
Expert Report, deposition

- Medi-Flex, Inc. v. Nice-Pak Products, Inc and Professional Disposables, Inc.  
Lerner, David, Littenberg, Krumholz & Mentlik (2006)  
Declaration, deposition
- Align Techology, Inc. v. Orthoclear, Inc. and Orthoclear Holdings, Inc.  
Paul, Hastings, Janofsky and Walker LLP (2006)  
Expert report, deposition
- Shuttlesworth et al. v. Carleton Sheets and American Marketing Systems, Inc.  
Sachnoff & Weaver (2006)  
Expert Report
- American Century Proprietary Holdings, Inc. v. American Century Casualty  
Company and American Century Claims Service, Inc.  
Leydig, Voit and Mayer (2006)  
Expert Report, deposition
- Phar-Mor, Inc. v. McKesson Corporation t/d/b/a and McKesson Drug Company  
Shepard, Mullin, Richter & Hampton (2006)  
Expert Report, deposition
- Leggett & Platt, Incorporated and L&P Property Management Company v. Vutek,  
Inc.  
Howrey LLP (2006)  
Expert Report, deposition
- Bass Pro Trademarks, L.L.C. v. Sportsman's Warehouse  
Husch & Eppenberger, L.L.C. (2006)  
Expert Report, deposition
- Louis Vuitton Malletier S.A. v. Haute Diggety Dog, LLC et al.  
Arent Fox, PLLC (2006)  
Expert Report
- Ohio Savings Bank d/b/a Amtrust Bank v. Amtrust Mortgage Corporation  
Benesch, Friedlander, Coplan & Aronoff LLP (2007)  
Expert Report, deposition, testimony at Daubert hearing
- Ecce Panis, Inc. v. Maple Leaf Foods USA Inc. (2007)  
Lerner, David, Littenberg, Krumholz & Mentlik  
Declaration, testimony at evidentiary hearing
- Eric Bischoff v. Boar's Head Provisions Co., Inc, et. al (2007)  
Weil, Gotshal & Manges  
Surrebuttal report, deposition
- Rexall Sundown Inc. v. Perrigo Company (2008)  
Kelley Drye Collier Shannon  
Expert report, deposition
- Pernod Ricard LLC v. Bacardi USA Inc. (2008)  
Kelley Drye Collier Shannon  
Rebuttal report, deposition
- The Evercare Company v. 3M Company  
Paul Weiss (2008)  
Rebuttal report, deposition

Lannett Company Inc. v. KV Pharmaceutical Company  
Kenyon & Kenyon (2008)  
Expert Report

Quixtar, Inc. v. Signature Management Team, LLC d/b/a Team  
Brinks, Hofer, Gilson and Lione (2008)  
Expert report, deposition

### **THESIS COMMITTEES**

Chairman of dissertation committees for George Coan, Dennis Pitta, Debra Ringold and Darlene Smith.

Member of dissertation committee for Bill Grazer, Michael McGinnis, Dennis McDonald, Frank Franzak, Ronald Hill and Dennis McDonnell.

### **COMMITTEE SERVICE AT AMERICAN UNIVERSITY**

Kogod Rank and Tenure Committee (1987-1988, 1995-1998, 2004-2005)

Faculty Senate Research Committee (1985-1989)

Marketing Department Faculty Recruiting Committee (1985-2007)

Ad hoc Research committee, KSB (1986-1989)

Committee on Faculty Relations (1988-1989)

Dean's Executive Committee (1989-1994, 1999-2001, 2004, 2006-2007)

Executive Committee of the AU Chairs (1993-1994)

AU Presidential Search Committee (1993-1994)

President's Committee on Strategic Planning (1995-1997)

AU Provost's Committee on Academic Programs (1995-1997)

Director of MBA Field Studies (1995-1997)

Chair of Executive Education Committee (1998)

Women's Varsity Soccer Coach Search Committee (2000)

Faculty Advisor Men's Soccer (2002 to 2007)

Associate Dean Search Committee, KSB, (2003)

### **UNDERGRADUATE COURSES TAUGHT**

"Principles of Marketing"

"Marketing Research Methods"

"Fundamentals of Marketing and Business for Communications"

### **GRADUATE COURSES TAUGHT**

"Marketing Research Methods"

"Doctoral Seminar in Marketing and Public Policy"

"Research Methodology for Doctoral Students"

"Consumer Behavior"

"Marketing Management"

January 1, 2009

DEBRA J. RINGOLD

2616 NW Lupine Place  
Corvallis, Oregon 97330-3537  
541-752-1058 (phone)  
541-752-1160 (fax)

PROFESSIONAL OBJECTIVE

To make a significant contribution to marketing thought and practice through teaching, research, and service

Primary Teaching Interests: marketing research, marketing and public policy, marketing management, marketing communications, strategic marketing for nonprofit organizations

Primary Research Interests: economics of information, regulation of commercial speech

Primary Service Interests: education, professional, and social service organizations

ACADEMIC BACKGROUND

Doctor of Philosophy: University of Maryland-College Park, 1986  
Major Area: Marketing  
Minor Areas: Statistics,  
Applied Developmental Psychology (CAPS)

Dissertation: Consumer Response to Reductions in Freedom

Selected Coursework: Seminar in Consumer Behavior  
Seminar in Marketing and Public Policy  
Seminar in Industrial Marketing  
Seminar in Causal Modeling  
Multivariate Statistics I and II  
Advanced Regression Analysis  
Nonparametric Statistics  
Marketing Research Methods  
Business Research Methodology

Master of Business Administration: Southern Illinois University, 1979  
Major: Marketing  
Minor: Management

Bachelor of Arts: Texas Tech University, 1977  
Major: Zoology  
Minor: Chemistry

## PROFESSIONAL EXPERIENCE

### Academic Employment:

January 2008 to present

Dean

Atkinson Graduate School of Management

Willamette University

900 State Street

Salem, Oregon 97301

January 2007 to December 2007

Interim Dean

Atkinson Graduate School of Management

Willamette University

900 State Street

Salem, Oregon 97301

August 2002 to May 2005

Associate Dean

Atkinson Graduate School of Management

Willamette University

900 State Street

Salem, Oregon 97301

September 1997 to present

Professor of Marketing

Atkinson Graduate School of Management

Willamette University

900 State Street

Salem, Oregon 97301

September 1994 to August 1997

Associate Professor of Marketing

Atkinson Graduate School of Management

Willamette University

900 State Street

Salem, Oregon 97301

April 1992 to August 1994

Associate Professor of Marketing

Robert G. Merrick School of Business (RGMSB)

University of Baltimore

1420 North Charles Street

Baltimore, Maryland 21201

September 1988 to March 1992  
Assistant Professor of Marketing  
Robert G. Merrick School of Business  
University of Baltimore  
1420 North Charles Street  
Baltimore, Maryland 21201

September 1986 to August 1988  
Assistant Professor of Marketing  
Kogod College of Business Administration (KCBA)  
The American University  
Washington, D.C. 20016

September 1985 to August 1986  
Instructor, Marketing Research Methods  
Instructor, Principles of Marketing  
Kogod College of Business Administration  
The American University  
Washington, D.C. 20016

August 1983 to May 1985  
Instructor, Marketing Research Methods  
[Course Coordinator, Fall 1984]  
College of Business and Management  
University of Maryland  
College Park, Maryland 20742

August 1984 to January 1985  
Research Assistant to  
Samuel Kotz, Professor of Statistics  
College of Business and Management  
University of Maryland  
College Park, Maryland 20742

June 1982 to May 1983  
Instructor, Marketing Principles and Organization  
University College  
University of Maryland  
College Park, Maryland 20742

August 1982 to May 1983  
Teaching Assistant, Marketing Principles and Organization  
College of Business and Management  
University of Maryland  
College Park, Maryland 20742



Public Sector Employment:

June 1983 to January 1984  
Evaluation Research Assistant  
Office of Impact Evaluation  
Federal Trade Commission  
Washington, D.C. 20580

July 1979 to August 1982  
Assistant to Director/Assistant Director  
The Maryland Student Union  
University of Maryland  
College Park, Maryland 20742

July 1977 to June 1979  
Program Advisor  
The University Center  
Southern Illinois University  
Edwardsville, Illinois 62025

Recent Clients:

Consultant  
Anheuser-Busch Companies, Inc.  
One Busch Place  
St. Louis, Missouri 63118

Consultant  
Division of Market Studies  
Food and Drug Administration  
College Park, Maryland 20740

Consultant  
Canadian Broadcasting Corporation  
P.O. Box 8478  
Ottawa, Ontario  
CANADA K1G 3J5

Consultant  
Hewlett-Packard Company  
1070 NE Circle Boulevard  
Corvallis, Oregon 97330

Consultant  
State Farm Insurance Companies  
Pacific Northwest Region  
1000 Wilmington Drive  
DuPont, Washington 98327

Consultant  
Bureau of Economics, Division of Consumer Protection  
Federal Trade Commission  
Sixth and Pennsylvania, NW  
Washington, D.C. 20580

## RESEARCH

### Peer Reviewed Publications:

Ringold, D.J. (2008), "Le Mieux Est L'ennemi Du Bien," Journal of Public Policy and Marketing, 27 (2), 197-201.

Ringold, D.J. (2008) "Responsibility and Brand Advertising in the Alcohol Beverage Market: The Modeling of Normative Drinking Behavior," Journal of Advertising, 37 (1), 127-141.

Ringold, D.J. and B. Weitz (2007), "The American Marketing Association Definition of Marketing: Moving from Lagging to Leading Indicator," Journal of Public Policy and Marketing, 26 (2), 251-260.

Ringold, D.J. (2006), "The Morality of Markets, Marketing, and the Corporate Purpose," in Does Marketing Need Reform?, Jagdish N. Sheth and Rajendra S. Sisodia, eds., Armonk, NY: M.E. Sharpe, 64-68.

Ringold, D.J. (2005), "Vulnerability in the Marketplace: Concepts, Caveats, and Possible Solutions," Journal of Macromarketing, 25 (2), 202-214.

Ringold, D.J. (2002), "Boomerang Effects In Response to Public Health Interventions: Some Unintended Consequences in the Alcoholic Beverage Market," Journal of Consumer Policy, 25 (1), 27-63.

Pappalardo, J.K. and D.J. Ringold (2000), "Regulating Commercial Speech in a Dynamic Environment: Forty Years of Margarine and Oil Advertising Before the NLEA," Journal of Public Policy and Marketing, 19 (1), 74-92.

Mitra, A., M. Hastak, G.T. Ford, and D.J. Ringold (1999), "Can the Educationally Disadvantaged Interpret the FDA-Mandated Nutrition Facts Panel in the Presence of an Implied Health Claim?" Journal of Public Policy and Marketing, 18 (1), 106-117.

Ringold, D.J. (1998), "A Comment on the Pontifical Council for Social Communications' *Ethics in Advertising*," Journal of Public Policy and Marketing, 17 (2), 332-335.

Ford, G.T., M. Hastak, A. Mitra, and D.J. Ringold (1996) "Can Consumers Interpret Nutrition Information in the Presence of a Health Claim? A Laboratory Investigation," Journal of Public Policy and Marketing, 15 (1), 16-27.

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Ringold, D.J. (1991), "Consumer Response to Product Withdrawal: Psychological Reactance and Subsequent Product Choice," in Advances in Marketing and Public Policy, 2, Greenwich: JAI Press, Inc., 41-78.

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Ringold, D.J. and J.E. Calfee (1990), "What Can We Learn From the Informational Content of Cigarette Advertising? A Reply and Further Analysis", Journal of Public Policy and Marketing, 9, 30-41.

Ford, G.T., D.J. Ringold, and M. Rogers (1990), "Tobacco in the Popular Press 1925-1960: Preliminary Research" in Advances in Consumer Research, 17, Provo, UT: Association for Consumer Research, 467-473.

Calfee, J.E. and D.J. Ringold (1990), "What Would Happen if Cigarette Advertising and Promotion Were Banned?" in Advances in Consumer Research, 17, Provo, UT: Association for Consumer Research, 474-479.

Ringold, D.J. and J.E. Calfee (1989), "The Informational Content of Cigarette Advertising: 1926-1986," Journal of Public Policy and Marketing, 8, 1-23.

Miller, R.D. and D.J. Ringold (1989), "The Economic Theory of Information and Public Policy: ReRegulation of the Air Transportation Market," in Proceedings 1989 AMA Summer Educators' Conference, Chicago: American Marketing Association, 89-93.

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Ringold, D.J. (1988), "Consumer Response to Product Withdrawal: The Reformulation of Coca-Cola," Psychology and Marketing, 5 (3), 189-210. *Reprinted* in Ronald Jay Cohen, editor, 65 Exercises in Psychological Testing and Assessment, a companion to the textbook Psychological Testing and Assessment, Second Edition, New York: Mayfield Publishing (1992).

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Ringold, D.J. (1987), "A Selective History of Cigarette Advertising: Preliminary Perspectives," in American Council of Consumer Interests Annual Conference Proceedings, Vicki Hampton, ed., Columbia, Mo: ACCI, 20-27.

Ringold, D.J. (1987), "A Preliminary Investigation of the Information Content of Cigarette Advertising: A Longitudinal Analysis," in Advances in Consumer Research, 14, Provo, UT: Association for Consumer Research, 269-273.

Ringold, D.J. and P.N. Bloom (1985), "Adopter Incentives in Social Marketing: The Case of Recycling," in Services Marketing in a Changing Environment, T.M. Bloch, et al., eds., Chicago: American Marketing Association, 77-80.

#### Contract Research—Peer Reviewed and Published:

Ringold, D.J., J.P. Santell, and P.J. Schneider (2000), "ASHP National Survey of Pharmacy Practice in Acute Care Settings: Dispensing and Administration—1999," American Journal of Health-System Pharmacy, 57 (19), 1759-1775.

Ringold, D.J., J.P. Santell, P.J. Schneider, and S. Arenberg (1999), "ASHP National Survey of Pharmacy Practice in Acute Care Settings: Prescribing and Transcribing—1998," American Journal of Health-System Pharmacy, 56 (2), 142-157.

#### Contract Research—Published:

Ringold, D.J., T.M.P. Olson, and L. Leete (2003), "Managing Medicaid Take-Up, CHIP and Medicaid Outreach: Strategies, Efforts, and Evaluation," Nelson A. Rockefeller Institute of Government, Federalism Research Group.

#### Invited Publications:

Maltz, E.N., D.J. Ringold, and F. Thompson (2008), "Assessing Corporate Social Initiatives: A Tough-minded, But Sympathetic, Approach to Corporate Social Responsibility," FSR forum, Corporate Social Responsibility, June, 20-25.

Ringold, D.J. (2006), "Three Current Best Sellers and One Really Good Book," Journal of Public Policy and Marketing, 25 (1), 127-130.

### Work In Progress:

Maltz, Elliot N., Debra J. Ringold, and Fred Thompson (2007), "Maximizing Societal Return on Investment: An Efficiency View of Corporate Social Responsibility," to be submitted to *Journal of Consumer Policy*, summer 2009.

Ringold, Debra J. (2008), "Enduring Consumer Beliefs about Advertising and the Press: Implications for Earning Media," data collection complete, to be written and submitted to *Journal of Advertising*, summer 2009.

Ringold, Debra J., Alan S. Levy, John Kozup, Brenda Derby, and Janis K. Pappalardo (2008), "The Impact of FDA vs. FTC Regulations on Consumer Beliefs, Skepticism, and Judgments about Food," data collection completed January 2008, to be submitted to *American Journal of Public Health*, fall 2009.

### Selected Presentations:

Marketing and Public Policy Conference, "Corporate Societal Marketing: A Different View," Summer 2004 (peer reviewed), published abstract.

AMA Summer Educators Conference, "JPPM and the Reemergence of Public Policy: Substantive and Publication Insights From the Editor and Award Winning Authors," Summer 2003 (invited).

Marketing and Public Policy Conference, "Political and Civic Participation: Hypotheses Developed During a Campaign for the State Legislature," Summer 2001 (invited).

Marketing and Public Policy Conference, "Campaign Finance Reform: Views of a Participant Observer," Summer 2000 (invited).

Marketing and Public Policy Conference, "Exploring the Effects of Political Action and the Desire to Reform Campaign Finance," Summer 1999 (invited), published abstract.

Marketing and Public Policy Conference, "The Effects of Health Claims on Consumer Interpretation of FDA-Mandated Nutrition Disclosures: A Mall-Intercept Study," Spring 1997 (peer reviewed).

Marketing and Public Policy Conference, "Examining Alternative Explanations for Health Claim Changes Associated with Regulation: The Consumer Interest Hypothesis," Spring 1996 (peer reviewed).

American Marketing Association Marketing and Society Mini-Conference, "Can the Educationally Disadvantaged Interpret Nutrition Information in the Presence of a Health Claim?" Fall 1995 (invited).

Marketing and Public Policy Conference, "...The Search for Objective, Intersubjectively Verifiable Knowledge..." Spring 1995 (peer reviewed).

Association for Consumer Research Conference, "Can Educationally Disadvantaged Consumers Interpret Nutrition Information in the Presence of a Health Claim? Preliminary Results," Fall 1994 (peer reviewed).

Federal Trade Commission, Bureau of Economics, "The Effects of Health Claims on Consumer Judgements About the Healthfulness of Food: A Laboratory Experiment," Summer 1993 (invited).

Federal Trade Commission, Bureau of Economics, "Enduring Consumer Beliefs About, and Responses to Advertising," Summer 1992 (invited).

Federal Trade Commission, Bureau of Economics, "The Information Content of Margarine and Oil Advertising: 1950-1989," Summer 1992 (invited).

The Federal Trade Commission, "Perceived Age and Attractiveness of Models in Cigarette Advertising," Spring 1991 (invited).

#### SELECTED HONORS

Faculty Mentor, Marketing and Society Doctoral Consortium, Villanova University, 2008

JELD-WEN Professor of Free Enterprise, May 2008 to present

Administrator of the Year, Willamette University, 2005

Thomas C. Kinnear/*Journal of Public Policy and Marketing* Award for the article (with Janis K. Pappalardo) "Regulating Commercial Speech in a Dynamic Environment: Forty Years of Margarine and Oil Advertising Before the NLEA." The article was chosen by a vote of the members of the Editorial Board for its significant contribution to the discipline, 2004

Faculty Mentor, Marketing and Society Doctoral Consortium, University of Utah, 2004

Corvallis Area Chamber of Commerce, Volunteer of the Year Award, 2002

United Methodist Award for Exemplary Teaching and Community Service, Willamette University, 2002

Kenneth H. Cooley Memorial Award for Outstanding Volunteer Service and Dedicated Community Leadership, United Way of Benton County, 2002

Faculty Mentor, Marketing and Society Doctoral Consortium, Federal Trade Commission, 2000

Resident Faculty, Marketing and Society Doctoral Consortium, Notre Dame University, 1999

Jerry E. Hudson Distinguished Teaching Award, Willamette University, 1997

Session Chair and Presenter, 1995 Doctoral Symposium on Marketing and Public Policy, Georgia State University

Finalist, Thomas C. Kinnear/*Journal of Public Policy and Marketing* Award for the article (with John E. Calfee) "The Informational Content of Cigarette Advertising: 1926-1986." The article was chosen by a vote of the members of the Editorial Board for its significant contribution to the discipline, 1993

Dean James Chair for Distinguished Teaching, Robert G. Merrick School of Business, University of Baltimore, 1991

Finalist, Dean James Chair for Distinguished Teaching, Merrick School of Business, University of Baltimore, 1990, 1992-93

Black and Decker Research Award Nominee, Robert G. Merrick School of Business, University of Baltimore, 1990-93

Fellow, Center for Marketing Policy Research, The American University, Washington, D.C. 1988 to present

Kogod College of Business Administration Nominee for University Teaching Award, The American University, 1987

Nash Outstanding Doctoral Student Award, College of Business and Management, University of Maryland, 1985

American Marketing Association Doctoral Consortium Fellow, College of Business and Management, University of Maryland, 1984

"Top Teachers" Award, College of Business and Management, University of Maryland, 1983, 1984

Beta Gamma Sigma; Alpha Kappa Psi (Faculty)

Mortar Board

#### SELECTED UNIVERSITY SERVICE

Chair, AGSM Personnel Committee, 2006

Willamette University Institutional Review Board, 1994-99

AGSM Dean's Search Committee Member, 1998

Chair, AGSM Curriculum Committee, 1997-98

AGSM Faculty Representative to the Board of Trustees 1995-97

Willamette University Board of Trustees Academic Affairs Committee, 1994-95

Advisor, AGSM chapter of the American Marketing Association, 1994-2004

Chair, RGMSB Promotion and Tenure Committee, 1993-94

Member, RGMSB Promotion and Tenure Committee, 1992-93

Chair, RGMSB Teaching Committee, 1991-92

University of Baltimore Academic Policy Committee, 1990-92

Chair, RGMSB Master of Business Administration Committee, 1990-91

Advisor, RGMSB chapter of the American Marketing Association, 1988-94

Advisor, KCBA chapter of the American Marketing Association, 1985-87

#### SELECTED COMMUNITY SERVICE

U.S. Census Advisory Committee, 2007-10

Board of Directors, United Way of Benton County, 2000-06; Board Chair, 2005-06

Board of Directors, OSU Federal Credit Union, Corvallis, Oregon, 2001-05

Board of Trustees, Linn-Benton Community College Foundation, 2001-04

Board of Directors, Corvallis Caring Place Nonprofit Assisted Living Facility, Corvallis, Oregon, 1999-2002

Board of Directors, Family Building Blocks Relief Nursery, Salem, Oregon, 1997-2000

Site Council Representative, Wilson Elementary School, Corvallis, Oregon, 1997-99

President, Parent Teacher Association, Wilson Elementary School, Corvallis, Oregon, 1996-97, 1998-99

Budget Committee, Corvallis School District 509J Board of Directors, Corvallis, Oregon, 1995-2001

Member, Board of Directors, The Aidan Montessori School, Washington, D.C., 1989-90, 1992-93

President, Board of Directors, The Aidan Montessori School, Washington, D.C., 1990-91

#### SELECTED PROFESSIONAL SERVICE

Board of Directors, American Marketing Association, 2000-03, 2004-08; Finance Committee of the Board, 2002-08, Secretary-Treasurer, 2004-05, Chair-elect 2005-06, Chairperson of the Board, 2006-07



Board of Trustees, American Marketing Association Foundation, 2003-06

Vice President of Teaching and Information Dissemination of the American Marketing Association  
Academic Council, Elect 1997-98, Served 1998-99

Chair, Board of Directors, Marketing and Society Special Interest Group, American Marketing  
Association, 1996-97

Member, Board of Directors, Marketing and Society Special Interest Group, American Marketing  
Association, 1994-2000

Associate Editor, Journal of Public Policy and Marketing, 2006-09

Editorial Board Member, Journal of Public Policy and Marketing, 1991 to present

Editorial Board Member, Journal of Advertising, 1997-2004

Ad Hoc Reviewer, Journal of Marketing, Psychology and Marketing, Journal of Consumer Affairs,  
Journal of Consumer Policy, Journal of the Academy of Marketing Science, 1991 to present

Track Chair, AMA Summer Educators Conference, 1999, 2004

Co-Chair/Chair, AMA Marketing and Society Special Interest Group Mini-Conferences, 1995,  
1997, 1998

Program Committee and Reviewer, Marketing and Public Policy Conferences, 1991-93, 1995-  
2002, 2004-08

Chair, Marketing and Public Policy Conference, Guest Editor, Journal of Public Policy and  
Marketing, 1994

Reviewer/Discussant/Session Chair: Academy of Marketing Science Conferences,  
American Marketing Association Services Marketing Conferences, American Marketing  
Association Summer Educators' Conferences, American Marketing Association Winter Educators'  
Conferences, Association of Consumer Research Conferences, and American Psychological  
Association Conferences, 1986 to present

Local Arrangements Chair, American Psychological Association, Division 23, National  
Conference, Washington, D.C., 1986

## PROFESSIONAL AFFILIATIONS

American Academy of Advertising

American Marketing Association

Association for Consumer Research

Screening Survey to Verify Decision Makers and Signal Carriage

2004 Version

# Screening Survey to Verify Decision Makers and Signal Carriage

Approved 09/10/04

"Hello, I am (interviewer name) calling from Westat, a research firm located in Rockville, Maryland.

1. "Is this \_\_\_\_\_(name of cable system)?"

Yes 1  
No [Call information for correct number.] 2

\_\_\_\_\_ [Record area code and number.]

2. "Could you tell me the name and title of the person in your company who is responsible for deciding which television stations your cable system offers?"

First person named:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

"May we reach him/her at this same number?"

Yes 1  
No ["May I have the number where he/she can be reached?"] 2

\_\_\_\_\_ [Record area code and number.]

3. "Is there anyone else responsible for deciding which television stations are carried by your cable system?"

Second person named:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

"May we reach him/her at this same number?"

Yes 1  
No ["May I have the number where he/she can be reached?"] 2

\_\_\_\_\_ [Record area code and number.]

4. "Your cable system carries a number of distant television stations, i.e., broadcast stations that do not originate in your local television market. Who in your organization has a list of the call letters of the distant television stations your cable system carries?"

Name: \_\_\_\_\_ Title: \_\_\_\_\_

"May we reach him/her at this same number?"

Yes ["Will you please transfer me?"] 1  
No ["May I have the number where he/she can be reached?"] 2

\_\_\_\_\_ [Record area code and number.]

[Transfer or redial the person named in Q4.]

"Hello, Mr./Ms. \_\_\_\_\_, I am [interviewer name] calling from Westat, a research firm located in Rockville, Maryland. We are conducting telephone interviews to determine which distant television stations are carried by different cable systems. Our questions will take only a few minutes.

Refusal ["Is there someone else in your organization who can give us a list of the call letters of the distant television stations carried by your cable system?" Record below.] 1

"First, let me check some background information."

5. "Are you familiar with, or can you consult a list of, the call letters (i.e., call signs) of the distant television stations carried by your cable system?" By distant I mean broadcast stations that do not originate in your local television market.

Yes 1 (Q7)  
No ["Who in your organization has a list of the call letters of the distant television stations your cable system carries?"] 2

Name: \_\_\_\_\_ Title: \_\_\_\_\_

"May we reach him/her at this same number?"

Yes ["Will you please transfer me?"] 1  
No ["May I have the number where he/she can be reached?"] 2

\_\_\_\_\_ [Record area code and number.]

[Transfer or redial the person named in Q5.]

"Hello, Mr./Ms. \_\_\_\_\_, I am [interviewer name] calling from Westat, a research firm located in Rockville, Maryland. We are conducting telephone interviews to determine which distant television stations are carried by different cable systems. Our questions will take only a few minutes.

Refusal ["Is there someone else in your organization who can give us a list of the call letters of the distant television stations your cable system carries?" Record below.] 1

"First, let me check some background information."

6. "Are you familiar with, or can you consult a list of, the call letters (i.e., call signs) of the distant television stations carried by your cable system?" By distant I mean broadcast stations that do not originate in your local television market.

Yes 1 (Q7)  
No ["Who in your organization has a list of the call letters of the distant television stations carried by your cable system?"] 2

Name: \_\_\_\_\_ Title: \_\_\_\_\_

"May we reach him/her at this same number?"

Yes ["Will you please transfer me?"] 1  
No ["May I have the number where he/she can be reached?"] 2

\_\_\_\_\_ [Record area code and number.]

[Transfer or redial the person named in Q6 and repeat above inquiry until someone familiar with the call letters of the distant signals carried by the cable system has been located.]

7. "As I understand it you are the [job title] at your cable system. [If necessary, revise title previously noted above.]

8. "How many years have you been with this cable system?" \_\_\_\_\_

9. "How many years have you worked in the cable industry?" \_\_\_\_\_

10. "So that we do not miss any information during our interview, would you please consult a list of the call letters of the distant television stations carried by your cable system?"

Yes 1  
No, has them memorized 2

11. "According to public records, your cable system carries a number of distant television stations, i.e., broadcast stations that do not originate in your local television market. As I name each distant television station, could you tell me whether your cable system currently carries it?" [Distant signals to be reviewed are those found in columns "A," "B," and "C" for each system in the population list provided.]

- |    |       |     |   |               |
|----|-------|-----|---|---------------|
| a. | _____ | Yes | 1 | _____         |
|    |       | No  | 2 | mm/yy dropped |
| b. | _____ | Yes | 1 | _____         |
|    |       | No  | 2 | mm/yy dropped |
| c. | _____ | Yes | 1 | _____         |
|    |       | No  | 2 | mm/yy dropped |
| d. | _____ | Yes | 1 | _____         |
|    |       | No  | 2 | mm/yy dropped |
| e. | _____ | Yes | 1 | _____         |
|    |       | No  | 2 | mm/yy dropped |
| f. | _____ | Yes | 1 | _____         |
|    |       | No  | 2 | mm/yy dropped |
| g. | _____ | Yes | 1 | _____         |
|    |       | No  | 2 | mm/yy dropped |

12. "Does your cable system currently offer WTBS?"

- |     |   |
|-----|---|
| No  | 1 |
| Yes | 2 |

13. "Does your cable system carry any distant television stations that I have not mentioned?"

- |                        |         |
|------------------------|---------|
| No                     | 1 (Q14) |
| Yes ["What are they?"] | 2       |

\_\_\_\_\_ mm/yy added

\_\_\_\_\_ mm/yy added

\_\_\_\_\_ mm/yy added

\_\_\_\_\_ mm/yy added

14. Finally, please let me verify the fax number and address of your cable company?

Name: \_\_\_\_\_

Fax: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

# Screening Survey to Verify Decision Makers and Signal Carriage

2005 Version



# Screening Survey to Verify Decision Makers and Signal Carriage

Approved 08/23/05

"Hello, I am (interviewer name) calling from Westat, a research firm located in Rockville, Maryland.

1. "Is this \_\_\_\_\_(name of cable system)?"

Yes 1  
No [Call information for correct number.] 2

\_\_\_\_\_ [Record area code and number.]

2. "Could you tell me the name and title of the person in your company who is responsible for deciding which television stations your cable system offers?"

First person named:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

"May we reach him/her at this same number?"

Yes 1  
No ["May I have the number where he/she can be reached?"] 2

\_\_\_\_\_ [Record area code and number.]

3. "Is there anyone else responsible for deciding which television stations are carried by your cable system?"

Second person named:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

"May we reach him/her at this same number?"

Yes 1  
No ["May I have the number where he/she can be reached?"] 2

\_\_\_\_\_ [Record area code and number.]

4. "Your cable system carries a number of distant television stations, i.e., broadcast stations that do not originate in your local television market. Who in your organization has a list of the call letters of the distant television stations your cable system carries?"

Name: \_\_\_\_\_ Title: \_\_\_\_\_

"May we reach him/her at this same number?"

Yes ["Will you please transfer me?"] 1  
No ["May I have the number where he/she can be reached?"] 2

\_\_\_\_\_ [Record area code and number.]

[Transfer or redial the person named in Q4.]

"Hello, Mr./Ms. \_\_\_\_\_, I am [interviewer name] calling from Westat, a research firm located in Rockville, Maryland. We are conducting telephone interviews to determine which distant television stations are carried by different cable systems. Our questions will take only a few minutes.

Refusal ["Is there someone else in your organization who can give us a list of the call letters of the distant television stations carried by your cable system?" Record below.] 1

"First, let me check some background information."

5. "Are you familiar with, or can you consult a list of, the call letters (i.e., call signs) of the distant television stations carried by your cable system?" By distant I mean broadcast stations that do not originate in your local television market.

Yes 1 (Q7)  
No ["Who in your organization has a list of the call letters of the distant television stations your cable system carries?"] 2

Name: \_\_\_\_\_ Title: \_\_\_\_\_

"May we reach him/her at this same number?"

Yes ["Will you please transfer me?"] 1  
No ["May I have the number where he/she can be reached?"] 2

\_\_\_\_\_ [Record area code and number.]

[Transfer or redial the person named in Q5.]

"Hello, Mr./Ms. \_\_\_\_\_, I am [interviewer name] calling from Westat, a research firm located in Rockville, Maryland. We are conducting telephone interviews to determine which distant television stations are carried by different cable systems. Our questions will take only a few minutes.

Refusal ["Is there someone else in your organization who can give us a list of the call letters of the distant television stations your cable system carries?" Record below.] 1

"First, let me check some background information."

6. "Are you familiar with, or can you consult a list of, the call letters (i.e., call signs) of the distant television stations carried by your cable system?" By distant I mean broadcast stations that do not originate in your local television market.

Yes 1 (Q7)  
No ["Who in your organization has a list of the call letters of the distant television stations carried by your cable system?"] 2

Name: \_\_\_\_\_ Title: \_\_\_\_\_

"May we reach him/her at this same number?"

Yes ["Will you please transfer me?"] 1  
No ["May I have the number where he/she can be reached?"] 2

\_\_\_\_\_ [Record area code and number.]

[Transfer or redial the person named in Q6 and repeat above inquiry until someone familiar with the call letters of the distant signals carried by the cable system has been located.]

7. "As I understand it you are the [job title] at your cable system. [If necessary, revise title previously noted above.]

8. "How many years have you been with this cable system?" \_\_\_\_\_

9. "How many years have you worked in the cable industry?" \_\_\_\_\_

10. "So that we do not miss any information during our interview, would you please consult a list of the call letters of the distant television stations carried by your cable system?"

Yes 1  
No, has them memorized 2

11. "According to public records, your cable system carries a number of distant television stations, i.e., broadcast stations that do not originate in your local television market. As I name each distant television station, could you tell me whether your cable system currently carries it?" [Distant signals to be reviewed are those found in columns "A," "B," and "C" for each system in the population list provided.]

- a. \_\_\_\_\_ Yes 1 \_\_\_\_\_  
No 2 mm/yy dropped
- b. \_\_\_\_\_ Yes 1 \_\_\_\_\_  
No 2 mm/yy dropped
- c. \_\_\_\_\_ Yes 1 \_\_\_\_\_  
No 2 mm/yy dropped
- d. \_\_\_\_\_ Yes 1 \_\_\_\_\_  
No 2 mm/yy dropped
- e. \_\_\_\_\_ Yes 1 \_\_\_\_\_  
No 2 mm/yy dropped
- f. \_\_\_\_\_ Yes 1 \_\_\_\_\_  
No 2 mm/yy dropped
- g. \_\_\_\_\_ Yes 1 \_\_\_\_\_  
No 2 mm/yy dropped

12. "Does your cable system currently offer WTBS?"

- No 1
- Yes 2

13. "Does your cable system carry any distant television stations that I have not mentioned?"

- No 1 (Q14)
- Yes ["What are they?"] 2

\_\_\_\_\_ mm/yy added

\_\_\_\_\_ mm/yy added

\_\_\_\_\_ mm/yy added

\_\_\_\_\_ mm/yy added

14. Finally, please let me verify the fax number and address of your cable company?

Name: \_\_\_\_\_

Fax: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Date

Mr./Ms. \_\_\_\_\_  
Cable System Manager  
Cablevision Services, Inc.  
121 Mill Street  
Anywhere, Maine 04210

Dear Mr./Ms. \_\_\_\_\_:

Westat, a research firm located in Rockville, Maryland is conducting a telephone interview study of the factors important to cable systems in their decisions to carry television signals. This letter is to alert you that your cable system has been selected for inclusion in our study.

We realize that your time is valuable and that you are probably called frequently to participate in surveys. Because of this, we have designed a short survey, (*it takes less than ten minutes*), and we are offering each study respondent a \$75.00 honorarium.

One of our researchers will be calling in the next few days. At that time, you will be asked if it is convenient to conduct the interview or whether we should call back at another time. We will be happy to conduct the interview at your convenience, day or night.

Since we have selected a small sample, each response is important to the success of our study. We look forward to speaking with you about this important project.

Cordially,

## Appendix 4

### Disposition of Cable Systems Carrying Canadian Programming

	2004	2005
Form 3 Systems with one or more Canadian distant signals	64	52
Systems ineligible due to multiple respondents	5	0
Population of eligible cable system respondents, (ECSR)	59	52
Completed interviews, (CI)	32	32
Survey response rate, (CI/ECSR)	54%	62%

## Questionnaire 2004 A



Form A  
Distant Signal Questionnaire  
Approved 09/10/04

"Hello, I am (interviewer name) calling from Westat, a research firm located in Rockville, Maryland. I would like to speak to \_\_\_\_\_; s/he is expecting my call."

[If respondent not available, set up appointment to callback, record on call record form.]

When respondent comes on, say:

"Hello Mr./Ms. \_\_\_\_\_, I am (interviewer name) calling from Westat, a research firm located in Rockville, Maryland. We recently "faxed" you a letter saying that we would be calling about a survey on cable television channel decisions. We said in the letter, that the interview will take less than ten minutes and we will pay you \$75.00 for your time. The results will be combined for statistical purposes, but your individual responses will remain anonymous."

"May we proceed with the interview?"

Yes

No --> "When is a convenient time to call back?"

(Record date and time for callback on call record form.)

No, refusal--> "Could you please tell me why you have decided not to participate?"

(Record verbatim.)

---

"Any other reason?" (Record verbatim.)

"First, let me go over some background information."

1a. "As I understand it you are the person primarily responsible for deciding which television stations your cable system carries. Is that correct?"

Yes

1 (1b)

No --> "Could you tell me the name and title of the person at your cable system who is responsible for deciding which television stations the system offers?"

[Record name:\_\_\_\_\_ title:\_\_\_\_\_]

"May we reach him/her at this same number?"

Yes

1

No--> "May I have the number where he/she can be reached?"

2

\_\_\_\_\_ [Record area code and number.]

(Thank respondent and terminate interview.)

1b. "Were you responsible for deciding which television stations this cable system carried during 2004?"  
 Yes 1 (1c)

No--> Ask:

2

"Is the person who was responsible for deciding which television stations to carry in 2004 still working at this cable system?"

No (Thank respondent and terminate interview.) 2  
 Yes 1

[Record name: \_\_\_\_\_ title: \_\_\_\_\_]

"May we reach him/her at this same number?"

Yes 1  
 No--> "May I have the number where he/she can be reached?" 2

\_\_\_\_\_ [Record area code and number.]  
 (Thank respondent and terminate interview.)

1c. "In addition to selecting television stations, are you, or someone you supervise, responsible for making the budget decisions or recommendations associated with station carriage?"

Yes 1  
 No--> "How are these budget decisions made?" (Record verbatim.) 2

\_\_\_\_\_  
 \_\_\_\_\_

2a. "According to public records, your cable system currently carries a number of distant television stations and/or cable networks." [If asked, "Distant television stations are broadcast stations that do not originate in your local television market."]

**For the Signal A List:**

[Determine if each distant Signal A was carried in 2004.]

	Y	N	D/K
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal A carried during 2004 and go to Signal B List.

If no Signal A has been carried during 2004, ask "Any distant superstation carried in 2004?"

Yes \_\_\_ \_\_\_ \_\_\_ (RECORD AT Q2b.) 1  
 No --> (DO NOT ASK ABOUT SIGNAL A ON REST OF SURVEY.) 2

Then for the Signal B List:

[Determine if each distant Signal B was carried during 2004.]

	Y	N	D/K
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal B carried during 2004 and go to Signal C List.

If no Signal B has been carried during 2004, ask "Any distant Canadian station carried in 2004?"

Yes ___ ___ ___ (RECORD AT Q2b.)	1
No --> (DO NOT ASK ABOUT SIGNAL B ON REST OF SURVEY.)	2

Then for the Signal C list:

[Determine if each distant Signal C was carried during 2004.]

	Y	N	D/K
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal C carried during 2004 and continue.

If no Signal C has been carried during 2004, ask "Any distant independent station carried in 2004?"

Yes ___ ___ ___ (RECORD AT Q2b.)	1
No --> (DO NOT ASK ABOUT SIGNAL C ON REST OF SURVEY.)	2

2b. "Okay, from what you have said your system has carried the following distant television stations during 2004."

Call letters:	Yes	No
SIGNAL A: ___ ___ ___	1	2
SIGNAL B: ___ ___ ___	1	2
SIGNAL C: ___ ___ ___	1	2

(THANK RESPONDENT AND TERMINATE INTERVIEW IF NO SIGNAL B RECORDED AT Q2B.)

"The purpose of the next question is to get your perception of the relative value of the programming available on [SIGNAL A] \_\_ \_\_ \_\_ \_\_."

3. "Assume the total value of all the programming now carried on [SIGNAL A] \_\_ \_\_ \_\_ \_\_ equals 100 percent. First, I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value.

The sum must total to 100 percent. This means that if you felt that the seven programming categories were of equal value, you would assign each a little under 15 percentage points."

(Read program types in order starting with the "checked" programming type. Read "Other" last.)

"What percentage, if any, of the total value of programming carried on [A] \_\_ \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [A] \_\_ \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
( )	<u>Live professional and college team sports shown on</u> (SIG. A).	__ __
( )	<u>Station produced programs shown exclusively on</u> (SIG. A). This includes local news, public affairs, children's programs and talk shows hosted by the station's own personalities.	__ __
( )	<u>Syndicated shows, series, and specials other than children's or religious programs shown on</u> (SIG. A).	__ __
( )	<u>Movies shown on</u> (SIG. A).	__ __
( )	<u>Syndicated children's programming shown on</u> (SIG. A).	__ __
( )	<u>Devotional and religious programming shown on</u> (SIG. A).	__ __
	<u>Other Programming shown on</u> (SIG. A). (Ask respondent to specify type of programming. Probe with "anything else?")	__ __
<hr/>		
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(THIS MUST TOTAL TO 100% !)

TOTAL 100%

"The next question asks similar information for the programming available on [SIGNAL B] \_\_ \_\_ \_\_ \_\_."

4. "Again, assume the total value of all the programming now carried on [SIGNAL B]\_\_ \_\_ \_\_ \_\_ equals 100 percent. I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value. The sum must total to 100 percent.

(Read program types in order starting with the "checked" programming type. Read "Other" last.)

"What percentage, if any, of the total value of programming carried on [B] \_\_ \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [B] \_\_ \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
( )	<u>Live professional and college team sports, excluding Canadian Football League games, shown on</u> (SIG. B).	__ __
( )	<u>Canadian produced news, public affairs, religious, and documentary programs shown on</u> (SIG. B). This includes both Canadian network and station produced programs.	__ __
( )	<u>U.S. syndicated series, movies, and specials shown on</u> (SIG. B).	__ __
( )	<u>Sports programming such as the Olympics, Canadian Football League games, skating, skiing, tennis, and auto racing shown on</u> (SIG. B).	__ __
( )	<u>Canadian produced series, movies, arts and variety shows, and specials shown on</u> (SIG. B). This does not include children's programming.	__ __
( )	<u>Canadian produced children's programming shown on</u> (SIG. B).	__ __
	<u>Other Programming shown on</u> (SIG. B). (Ask respondent to specify type of programming. Probe with "anything else?")	__ __
<hr/>		
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(THIS MUST TOTAL TO 100% !)

TOTAL 100%

"The next question asks similar information for the programming available on [SIGNAL C] \_ \_ \_ \_."

5. "Once again, assume the total value of all the programming now carried on [SIGNAL C] \_ \_ \_ \_ equals 100 percent. I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value. The sum must total to 100 percent.

(Read program types in order starting with the "checked" programming type. Read "other" last.)

"What percentage, if any, of the total value of programming carried on [C] \_ \_ \_ \_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [C] \_ \_ \_ \_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
( )	<u>Live professional and college team sports shown on</u> (SIG. C).	__ __
( )	<u>Station produced programs shown exclusively on</u> (SIG. C). This includes local news, public affairs, children's programs and talk shows hosted by the station's own personalities.	__ __
( )	<u>Syndicated shows, series, and specials other than children's or religious programs shown on</u> (SIG. C).	__ __
( )	<u>Movies shown on</u> (SIG. C).	__ __
( )	<u>Syndicated children's programming shown on</u> (SIG. C).	__ __
( )	<u>Devotional and religious programming shown on</u> (SIG. C).	__ __
	<u>Other Programming shown on</u> (SIG. C). (Ask respondent to specify type of programming. Probe with "anything else?")	__ __

\_\_\_\_\_  
\_\_\_\_\_.

(THIS MUST TOTAL TO 100%!) TOTAL 100%

6. "My final questions are for demographic purposes only. (In whole years.) Please tell me..."

a. "How many years have you been in your present job?" \_\_\_\_\_

b. "How many years have you worked for this cable system?" \_\_\_\_\_

c. "For how many years have you been responsible for deciding which distant television stations this system carries?" \_\_\_\_\_

d. "How many years have you worked in the cable television industry?" \_\_\_\_\_

e. "How old are you?" \_\_\_\_\_

f. Gender of respondent. (OBSERVATION ONLY.)

Male	1
Female	2

7. "Finally, let me verify that the name and address we have for you is correct, so that we can send you your honorarium." (Check this with the information on the first page of the call record sheet.)

"Thank you for your help with our survey."

## Questionnaire 2004 C



Form C  
Distant Signal Questionnaire  
Approved 09/10/04

"Hello, I am (interviewer name) calling from Westat, a research firm located in Rockville, Maryland. I would like to speak to \_\_\_\_\_; s/he is expecting my call."

[If respondent not available, set up appointment to callback, record on call record form.]

When respondent comes on, say:

"Hello Mr./Ms. \_\_\_\_\_, I am (interviewer name) calling from Westat, a research firm located in Rockville, Maryland. We recently "faxed" you a letter saying that we would be calling about a survey on cable television channel decisions. We said in the letter, that the interview will take less than ten minutes and we will pay you \$75.00 for your time. The results will be combined for statistical purposes, but your individual responses will remain anonymous."

"May we proceed with the interview?"

Yes

No --> "When is a convenient time to call back?"

(Record date and time for callback on call record form.)

No, refusal--> "Could you please tell me why you have decided not to participate?"

(Record verbatim.)

---

"Any other reason?" (Record verbatim.)

"First, let me go over some background information."

1a. "As I understand it you are the person primarily responsible for deciding which television stations your cable system carries. Is that correct?"

Yes

1 (1b)

No --> "Could you tell me the name and title of the person at your cable system who is responsible for deciding which television stations the system offers?"

[Record name:\_\_\_\_\_ title:\_\_\_\_\_]

"May we reach him/her at this same number?"

Yes

1

No--> "May I have the number where he/she can be reached?"

2

\_\_\_\_\_ [Record area code and number.]

(Thank respondent and terminate interview.)

1b. "Were you responsible for deciding which television stations this cable system carried during 2004?"  
 Yes 1 (1c)  
 No--> Ask:

2

"Is the person who was responsible for deciding which television stations to carry in 2004 still working at this cable system?"

No (Thank respondent and terminate interview.) 2  
 Yes 1

[Record name: \_\_\_\_\_ title: \_\_\_\_\_]

"May we reach him/her at this same number?"

Yes 1  
 No--> "May I have the number where he/she can be reached?" 2

\_\_\_\_\_ [Record area code and number.]

(Thank respondent and terminate interview.)

1c. "In addition to selecting television stations, are you, or someone you supervise, responsible for making the budget decisions or recommendations associated with station carriage?"

Yes 1  
 No--> "How are these budget decisions made?" (Record verbatim.) 2

\_\_\_\_\_  
 \_\_\_\_\_

2a. "According to public records, your cable system currently carries a number of distant television stations and/or cable networks." [If asked, "Distant television stations are broadcast stations that do not originate in your local television market."]

**For the Signal A List:**

[Determine if each distant Signal A was carried in 2004.]

	Y	N	D/K
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal A carried during 2004 and go to Signal B List.

If no Signal A has been carried during 2004, ask "Any distant superstation carried in 2004?"

Yes \_\_\_ \_\_\_ \_\_\_ (RECORD AT Q2b.) 1  
 No --> (DO NOT ASK ABOUT SIGNAL A ON REST OF SURVEY.) 2

Then for the Signal B List:

[Determine if each distant Signal B was carried during 2004.]

	Y	N	D/K
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal B carried during 2004 and go to Signal C List.

If no Signal B has been carried during 2004, ask "Any distant French language station carried in 2004?"

Yes ___ ___ ___ (RECORD AT Q2b.)	1
No --> (DO NOT ASK ABOUT SIGNAL B ON REST OF SURVEY.)	2

Then for the Signal C list:

[Determine if each distant Signal C was carried during 2004.]

	Y	N	D/K
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2004, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal C carried during 2004 and continue.

If no Signal C has been carried during 2004, ask "Any distant independent station carried in 2004?"

Yes ___ ___ ___ (RECORD AT Q2b.)	1
No --> (DO NOT ASK ABOUT SIGNAL C ON REST OF SURVEY.)	2

2b. "Okay, from what you have said your system has carried the following distant television stations during 2004."

Call letters:	Yes	No
SIGNAL A: ___ ___ ___	1	2
SIGNAL B: ___ ___ ___	1	2
SIGNAL C: ___ ___ ___	1	2

(THANK RESPONDENT AND TERMINATE INTERVIEW IF NO SIGNAL B RECORDED AT Q2B.)

"The purpose of the next question is to get your perception of the relative value of the programming available on [SIGNAL A] \_\_ \_\_ \_\_ ."

3. "Assume the total value of all the programming now carried on [SIGNAL A] \_\_ \_\_ \_\_ equals 100 percent. First, I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value.

The sum must total to 100 percent. This means that if you felt that the seven programming categories were of equal value, you would assign each a little under 15 percentage points."

(Read program types in order starting with the "checked" programming type. Read "Other" last.)

"What percentage, if any, of the total value of programming carried on [A] \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [A] \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
( )	<u>Live professional and college team sports shown on</u> (SIG. A).	__ __
( )	<u>Station produced programs shown exclusively on</u> (SIG. A). This includes local news, public affairs, children's programs and talk shows hosted by the station's own personalities.	__ __
( )	<u>Syndicated shows, series, and specials other than children's or religious programs shown on</u> (SIG. A).	__ __
( )	<u>Movies shown on</u> (SIG. A).	__ __
( )	<u>Syndicated children's programming shown on</u> (SIG. A).	__ __
( )	<u>Devotional and religious programming shown on</u> (SIG. A).	__ __
	<u>Other Programming shown on</u> (SIG. A). (Ask respondent to specify type of programming. Probe with "anything else?")	__ __
<hr/>		
<hr/>		

(THIS MUST TOTAL TO 100% !)

TOTAL 100%

"The next question asks similar information for the programming available on [SIGNAL B] \_\_ \_\_ \_\_ \_\_."

4. "Again, assume the total value of all the programming now carried on [SIGNAL B]\_\_ \_\_ \_\_ \_\_ equals 100 percent. I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value. The sum must total to 100 percent.

(Read program types in order starting with the "checked" programming type. Read "Other" last.)

"What percentage, if any, of the total value of programming carried on [B] \_\_ \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [B] \_\_ \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
--------------	----------------------	-------------

()	<u>Live professional and college team sports in French, excluding Canadian Football League games, shown on</u> (SIG. B).	__ __
----	--	-------

()	<u>Canadian produced news, public affairs, religious, and documentary programs shown on</u> (SIG. B). This includes both Canadian network and station produced programs.	__ __
----	--	-------

()	<u>U.S. syndicated series, movies, and specials dubbed in French and shown on</u> (SIG. B).	__ __
----	---	-------

()	<u>Sports programming such as the Olympics, Canadian Football League games, skating, skiing, tennis, and auto racing shown on</u> (SIG. B).	__ __
----	---	-------

()	<u>Canadian produced series, movies, arts and variety shows, and specials shown on</u> (SIG. B). This does not include children's programming.	__ __
----	--	-------

()	<u>Canadian produced children's programming shown on</u> (SIG. B).	__ __
----	--	-------

Other Programming shown on (SIG. B). (Ask respondent to specify type of programming. Probe with "anything else?")

\_\_ \_\_

---



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(THIS MUST TOTAL TO 100% !)

TOTAL 100%

"The next question asks similar information for the programming available on [SIGNAL C] \_\_\_ \_\_\_ \_\_\_."

5. "Once again, assume the total value of all the programming now carried on [SIGNAL C] \_\_\_ \_\_\_ \_\_\_ equals 100 percent. I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value. The sum must total to 100 percent.

(Read program types in order starting with the "checked" programming type. Read "other" last.)

"What percentage, if any, of the total value of programming carried on [C] \_\_\_ \_\_\_ \_\_\_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [C] \_\_\_ \_\_\_ \_\_\_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
( )	<u>Live professional and college team sports shown on</u> (SIG. C).	___ ___
( )	<u>Station produced programs shown exclusively on</u> (SIG. C). This includes local news, public affairs, children's programs and talk shows hosted by the station's own personalities.	___ ___
( )	<u>Syndicated shows, series, and specials other than children's or religious programs shown on</u> (SIG. C).	___ ___
( )	<u>Movies shown on</u> (SIG. C).	___ ___
( )	<u>Syndicated children's programming shown on</u> (SIG. C).	___ ___
( )	<u>Devotional and religious programming shown on</u> (SIG. C).	___ ___
	<u>Other Programming shown on</u> (SIG. C). (Ask respondent to specify type of programming. Probe with "anything else?")	___ ___

\_\_\_\_\_  
\_\_\_\_\_.

(THIS MUST TOTAL TO 100% !)

TOTAL 100%

6. "My final questions are for demographic purposes only. (In whole years.) Please tell me..."

a. "How many years have you been in your present job?" \_\_\_\_\_

b. "How many years have you worked for this cable system?" \_\_\_\_\_

c. "For how many years have you been responsible for deciding which distant television stations this system carries?" \_\_\_\_\_

d. "How many years have you worked in the cable television industry?" \_\_\_\_\_

e. "How old are you?" \_\_\_\_\_

f. Gender of respondent. (OBSERVATION ONLY.)

Male	1
Female	2

7. "Finally, let me verify that the name and address we have for you is correct, so that we can send you your honorarium." (Check this with the information on the first page of the call record sheet.)

"Thank you for your help with our survey."

## Questionnaire 2005 A



Form A  
Distant Signal Questionnaire  
Approved 08/23/05

"Hello, I am (interviewer name) calling from Westat, a research firm located in Rockville, Maryland. I would like to speak to \_\_\_\_\_; s/he is expecting my call."

[If respondent not available, set up appointment to callback, record on call record form.]

When respondent comes on, say:

"Hello Mr./Ms. \_\_\_\_\_, I am (interviewer name) calling from Westat, a research firm located in Rockville, Maryland. We recently "faxed" you a letter saying that we would be calling about a survey on cable television channel decisions. We said in the letter, that the interview will take less than ten minutes and we will pay you \$75.00 for your time. The results will be combined for statistical purposes, but your individual responses will remain anonymous."

"May we proceed with the interview?"

Yes

No --> "When is a convenient time to call back?"

(Record date and time for callback on call record form.)

No, refusal--> "Could you please tell me why you have decided not to participate?"

(Record verbatim.)

---

"Any other reason?" (Record verbatim.)

"First, let me go over some background information."

1a. "As I understand it you are the person primarily responsible for deciding which television stations your cable system carries. Is that correct?"

Yes

1 (1b)

No --> "Could you tell me the name and title of the person at your cable system who is responsible for deciding which television stations the system offers?"

[Record name:\_\_\_\_\_ title:\_\_\_\_\_]

"May we reach him/her at this same number?"

Yes

1

No--> "May I have the number where he/she can be reached?"

2

\_\_\_\_\_ [Record area code and number.]

(Thank respondent and terminate interview.)

1b. "Were you responsible for deciding which television stations this cable system carried during 2005?"

Yes	1 (1c)
No--> Ask:	2

"Is the person who was responsible for deciding which television stations to carry in 2005 still working at this cable system?"

No (Thank respondent and terminate interview.)	2
Yes	1

[Record name: \_\_\_\_\_ title: \_\_\_\_\_]

"May we reach him/her at this same number?"

Yes	1
No--> "May I have the number where he/she can be reached?"	2
_____ [Record area code and number.]	
(Thank respondent and terminate interview.)	

1c. "In addition to selecting television stations, are you, or someone you supervise, responsible for making the budget decisions or recommendations associated with station carriage?"

Yes	1
No--> "How are these budget decisions made?" (Record verbatim.)	2

\_\_\_\_\_

\_\_\_\_\_

2a. "According to public records, your cable system currently carries a number of distant television stations and/or cable networks." [If asked, "Distant television stations are broadcast stations that do not originate in your local television market."]

For the Signal A List:

[Determine if each distant Signal A was carried in 2005.]

	Y	N	D/K
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal A carried during 2005 and go to Signal B List.

If no Signal A has been carried during 2005, ask "Any distant superstation carried in 2005?"

Yes ___ ___ ___ (RECORD AT Q2b.)	1
No --> (DO NOT ASK ABOUT SIGNAL A ON REST OF SURVEY.)	2

Then for the Signal B List:

[Determine if each distant Signal B was carried during 2005.]

	Y	N	D/K
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal B carried during 2005 and go to Signal C List.

If no Signal B has been carried during 2005, ask "Any distant Canadian station carried in 2005?"

Yes ___ ___ ___ (RECORD AT Q2b.)	1
No --> (DO NOT ASK ABOUT SIGNAL B ON REST OF SURVEY.)	2

Then for the Signal C list:

[Determine if each distant Signal C was carried during 2005.]

	Y	N	D/K
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal C carried during 2005 and continue.

If no Signal C has been carried during 2005, ask "Any distant independent station carried in 2005?"

Yes ___ ___ ___ (RECORD AT Q2b.)	1
No --> (DO NOT ASK ABOUT SIGNAL C ON REST OF SURVEY.)	2

2b. "Okay, from what you have said your system has carried the following distant television stations during 2005."

Call letters:	Yes	No
SIGNAL A: ___ ___ ___	1	2
SIGNAL B: ___ ___ ___	1	2
SIGNAL C: ___ ___ ___	1	2

(THANK RESPONDENT AND TERMINATE INTERVIEW IF NO SIGNAL B RECORDED AT Q2B.)

"The purpose of the next question is to get your perception of the relative value of the programming available on [SIGNAL A] \_ \_ \_ \_."

3. "Assume the total value of all the programming now carried on [SIGNAL A] \_ \_ \_ \_ equals 100 percent. First, I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value.

The sum must total to 100 percent. This means that if you felt that the seven programming categories were of equal value, you would assign each a little under 15 percentage points."

(Read program types in order starting with the "checked" programming type. Read "Other" last.)

"What percentage, if any, of the total value of programming carried on [A] \_ \_ \_ \_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [A] \_ \_ \_ \_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
( )	<u>Live professional and college team sports shown on</u> (SIG. A).	_ _
( )	<u>Station produced programs shown exclusively on</u> (SIG. A). This includes local news, public affairs, children's programs and talk shows hosted by the station's own personalities.	_ _
( )	<u>Syndicated shows, series, and specials other than children's or religious programs shown on</u> (SIG. A).	_ _
( )	<u>Movies shown on</u> (SIG. A).	_ _
( )	<u>Syndicated children's programming shown on</u> (SIG. A).	_ _
( )	<u>Devotional and religious programming shown on</u> (SIG. A).	_ _
	<u>Other Programming shown on</u> (SIG. A). (Ask respondent to specify type of programming. Probe with "anything else?")	_ _
<hr/>		
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(THIS MUST TOTAL TO 100% !)

TOTAL 100%

"The next question asks similar information for the programming available on [SIGNAL B] \_\_ \_\_ \_\_ \_\_."

4. "Again, assume the total value of all the programming now carried on [SIGNAL B]\_\_ \_\_ \_\_ \_\_ equals 100 percent. I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value. The sum must total to 100 percent.

(Read program types in order starting with the "checked" programming type. Read "Other" last.)

"What percentage, if any, of the total value of programming carried on [B] \_\_ \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [B] \_\_ \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
( )	<u>Live professional and college team sports, excluding Canadian Football League games, shown on</u> (SIG. B).	__ __
( )	<u>Canadian produced news, public affairs, religious, and documentary programs shown on</u> (SIG. B). This includes both Canadian network and station produced programs.	__ __
( )	<u>U.S. syndicated series, movies, and specials shown on</u> (SIG. B).	__ __
( )	<u>Sports programming such as the Olympics, Canadian Football League games, skating, skiing, tennis, and auto racing shown on</u> (SIG. B).	__ __
( )	<u>Canadian produced series, movies, arts and variety shows, and specials shown on</u> (SIG. B). This does not include children's programming.	__ __
( )	<u>Canadian produced children's programming shown on</u> (SIG. B).	__ __
	<u>Other Programming shown on</u> (SIG. B). (Ask respondent to specify type of programming. Probe with "anything else?")	__ __
	_____	
	_____.	

(THIS MUST TOTAL TO 100% !)

TOTAL 100%

"The next question asks similar information for the programming available on [SIGNAL C] \_ \_ \_ \_."

5. "Once again, assume the total value of all the programming now carried on [SIGNAL C] \_ \_ \_ \_ equals 100 percent. I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value. The sum must total to 100 percent.

(Read program types in order starting with the "checked" programming type. Read "other" last.)

"What percentage, if any, of the total value of programming carried on [C] \_ \_ \_ \_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [C] \_ \_ \_ \_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
( )	<u>Live professional and college team sports shown on</u> (SIG. C).	__ __
( )	<u>Station produced programs shown exclusively on</u> (SIG. C). This includes local news, public affairs, children's programs and talk shows hosted by the station's own personalities.	__ __
( )	<u>Syndicated shows, series, and specials other than children's or religious programs shown on</u> (SIG. C).	__ __
( )	<u>Movies shown on</u> (SIG. C).	__ __
( )	<u>Syndicated children's programming shown on</u> (SIG. C).	__ __
( )	<u>Devotional and religious programming shown on</u> (SIG. C).	__ __
	<u>Other Programming shown on</u> (SIG. C). (Ask respondent to specify type of programming. Probe with "anything else?")	__ __

\_\_\_\_\_  
\_\_\_\_\_.

(THIS MUST TOTAL TO 100% !)

TOTAL 100%

6. "My final questions are for demographic purposes only. (In whole years.) Please tell me..."

a. "How many years have you been in your present job?" \_\_\_\_\_

b. "How many years have you worked for this cable system?" \_\_\_\_\_

c. "For how many years have you been responsible for deciding which distant television stations this system carries?" \_\_\_\_\_

d. "How many years have you worked in the cable television industry?" \_\_\_\_\_

e. "How old are you?" \_\_\_\_\_

f. Gender of respondent. (OBSERVATION ONLY.)

Male	1
Female	2

7. "Finally, let me verify that the name and address we have for you is correct, so that we can send you your honorarium." (Check this with the information on the first page of the call record sheet.)

"Thank you for your help with our survey."

## Questionnaire 2005 C



Form C  
Distant Signal Questionnaire  
Approved 08/23/05

"Hello, I am (interviewer name) calling from Westat, a research firm located in Rockville, Maryland. I would like to speak to \_\_\_\_\_; s/he is expecting my call."

[If respondent not available, set up appointment to callback, record on call record form.]

When respondent comes on, say:

"Hello Mr./Ms. \_\_\_\_\_, I am (interviewer name) calling from Westat, a research firm located in Rockville, Maryland. We recently "faxed" you a letter saying that we would be calling about a survey on cable television channel decisions. We said in the letter, that the interview will take less than ten minutes and we will pay you \$75.00 for your time. The results will be combined for statistical purposes, but your individual responses will remain anonymous."

"May we proceed with the interview?"

Yes

No --> "When is a convenient time to call back?"

(Record date and time for callback on call record form.)

No, refusal--> "Could you please tell me why you have decided not to participate?"

(Record verbatim.)

---

"Any other reason?" (Record verbatim.)

"First, let me go over some background information."

1a. "As I understand it you are the person primarily responsible for deciding which television stations your cable system carries. Is that correct?"

Yes

1 (1b)

No --> "Could you tell me the name and title of the person at your cable system who is responsible for deciding which television stations the system offers?"

[Record name:\_\_\_\_\_ title:\_\_\_\_\_]

"May we reach him/her at this same number?"

Yes

1

No--> "May I have the number where he/she can be reached?"

2

\_\_\_\_\_ [Record area code and number.]

(Thank respondent and terminate interview.)

1b. "Were you responsible for deciding which television stations this cable system carried during 2005?"

Yes	1 (1c)
No--> Ask:	2

"Is the person who was responsible for deciding which television stations to carry in 2005 still working at this cable system?"

No (Thank respondent and terminate interview.)	2
Yes	1

[Record name: \_\_\_\_\_ title: \_\_\_\_\_]

"May we reach him/her at this same number?"

Yes	1
No--> "May I have the number where he/she can be reached?"	2
_____ [Record area code and number.]	
(Thank respondent and terminate interview.)	

1c. "In addition to selecting television stations, are you, or someone you supervise, responsible for making the budget decisions or recommendations associated with station carriage?"

Yes	1
No--> "How are these budget decisions made?" (Record verbatim.)	2

\_\_\_\_\_  
 \_\_\_\_\_

2a. "According to public records, your cable system currently carries a number of distant television stations and/or cable networks." [If asked, "Distant television stations are broadcast stations that do not originate in your local television market."]

For the Signal A List:

[Determine if each distant Signal A was carried in 2005.]

	Y	N	D/K
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal A carried during 2005 and go to Signal B List.

If no Signal A has been carried during 2005, ask "Any distant superstation carried in 2005?"

Yes ___ ___ ___ (RECORD AT Q2b.)	1
No --> (DO NOT ASK ABOUT SIGNAL A ON REST OF SURVEY.)	2

Then for the Signal B List:

[Determine if each distant Signal B was carried during 2005.]

	Y	N	D/K
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal B carried during 2005 and go to Signal C List.

If no Signal B has been carried during 2005, ask "Any distant French language station carried in 2005?"

Yes ___ ___ ___ (RECORD AT Q2b.)	1
No --> (DO NOT ASK ABOUT SIGNAL B ON REST OF SURVEY.)	2

Then for the Signal C list:

[Determine if each distant Signal C was carried during 2005.]

	Y	N	D/K
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3
"During 2005, has ___ ___ ___ been carried by your cable system?"	1	2	3

[Record at Q2b the first Signal C carried during 2005 and continue.

If no Signal C has been carried during 2005, ask "Any distant independent station carried in 2005?"

Yes ___ ___ ___ (RECORD AT Q2b.)	1
No --> (DO NOT ASK ABOUT SIGNAL C ON REST OF SURVEY.)	2

2b. "Okay, from what you have said your system has carried the following distant television stations during 2005."

Call letters:	Yes	No
SIGNAL A: ___ ___ ___	1	2
SIGNAL B: ___ ___ ___	1	2
SIGNAL C: ___ ___ ___	1	2

(THANK RESPONDENT AND TERMINATE INTERVIEW IF NO SIGNAL B RECORDED AT Q2B.)

"The purpose of the next question is to get your perception of the relative value of the programming available on [SIGNAL A] \_\_ \_\_ \_\_ ."

3. "Assume the total value of all the programming now carried on [SIGNAL A] \_\_ \_\_ \_\_ equals 100 percent. First, I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value.

The sum must total to 100 percent. This means that if you felt that the seven programming categories were of equal value, you would assign each a little under 15 percentage points."

(Read program types in order starting with the "checked" programming type. Read "Other" last.)

"What percentage, if any, of the total value of programming carried on [A] \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [A] \_\_ \_\_ \_\_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
( )	<u>Live professional and college team sports shown on</u> (SIG. A).	__ __
( )	<u>Station produced programs shown exclusively on</u> (SIG. A). This includes local news, public affairs, children's programs and talk shows hosted by the station's own personalities.	__ __
( )	<u>Syndicated shows, series, and specials other than children's or religious programs shown on</u> (SIG. A).	__ __
( )	<u>Movies shown on</u> (SIG. A).	__ __
( )	<u>Syndicated children's programming shown on</u> (SIG. A).	__ __
( )	<u>Devotional and religious programming shown on</u> (SIG. A).	__ __
	<u>Other Programming shown on</u> (SIG. A). (Ask respondent to specify type of programming. Probe with "anything else?")	__ __
<hr/>		
<hr/>		

(THIS MUST TOTAL TO 100% !)

TOTAL 100%

"The next question asks similar information for the programming available on [SIGNAL B] \_\_\_ \_\_\_ \_\_\_."

4. "Again, assume the total value of all the programming now carried on [SIGNAL B]\_\_\_ \_\_\_ \_\_\_ equals 100 percent. I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value. The sum must total to 100 percent.

(Read program types in order starting with the "checked" programming type. Read "Other" last.)

"What percentage, if any, of the total value of programming carried on [B] \_\_\_ \_\_\_ \_\_\_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [B] \_\_\_ \_\_\_ \_\_\_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
-----------------	----------------------	-------------

()	<u>Live professional and college team sports in French, excluding Canadian Football League games, shown on</u> _____ (SIG. B).	___ ___
----	--	---------

()	<u>Canadian produced news, public affairs, religious, and documentary programs shown on</u> _____ (SIG. B). This includes both Canadian network and station produced programs.	___ ___
----	--	---------

()	<u>U.S. syndicated series, movies, and specials dubbed in French and shown on</u> _____ (SIG. B).	___ ___
----	---	---------

()	<u>Sports programming such as the Olympics, Canadian Football League games, skating, skiing, tennis, and auto racing shown on</u> _____ (SIG. B).	___ ___
----	---	---------

()	<u>Canadian produced series, movies, arts and variety shows, and specials shown on</u> _____ (SIG. B). This does not include children's programming.	___ ___
----	--	---------

()	<u>Canadian produced children's programming shown on</u> _____ (SIG. B).	___ ___
----	--	---------

	<u>Other Programming shown on</u> _____ (SIG. B). (Ask respondent to specify type of programming. Probe with "anything else?")	___ ___
--	--	---------

---



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(THIS MUST TOTAL TO 100% !)

TOTAL 100%

"The next question asks similar information for the programming available on [SIGNAL C] \_\_\_ \_\_\_ \_\_\_."

5. "Once again, assume the total value of all the programming now carried on [SIGNAL C] \_\_\_ \_\_\_ \_\_\_ equals 100 percent. I'll read a list of seven different program categories. I'll give you a chance to think about each one and jot them down if you wish. Then, I will read the list again and get your estimates of each category's value. The sum must total to 100 percent.

(Read program types in order starting with the "checked" programming type. Read "other" last.)

"What percentage, if any, of the total value of programming carried on [C] \_\_\_ \_\_\_ \_\_\_ would you say is accounted for by the . . ." (Start with "checked" program type.)

"And what percentage, if any, of the total value of programming carried on [C] \_\_\_ \_\_\_ \_\_\_ would you say is accounted for by the . . ." (Read next program type.)

GO THROUGH REST OF LIST THIS WAY.

Start Point:	Type of programming:	Percentage:
( )	<u>Live professional and college team sports shown on</u> (SIG. C).	___ ___
( )	<u>Station produced programs shown exclusively on</u> (SIG. C). This includes local news, public affairs, children's programs and talk shows hosted by the station's own personalities.	___ ___
( )	<u>Syndicated shows, series, and specials other than children's or religious programs shown on</u> (SIG. C).	___ ___
( )	<u>Movies shown on</u> (SIG. C).	___ ___
( )	<u>Syndicated children's programming shown on</u> (SIG. C).	___ ___
( )	<u>Devotional and religious programming shown on</u> (SIG. C).	___ ___
	<u>Other Programming shown on</u> (SIG. C). (Ask respondent to specify type of programming. Probe with "anything else?")	___ ___

---

---

(THIS MUST TOTAL TO 100% !)

TOTAL 100%

6. "My final questions are for demographic purposes only. (In whole years.) Please tell me..."

a. "How many years have you been in your present job?" \_\_\_\_\_

b. "How many years have you worked for this cable system?" \_\_\_\_\_

c. "For how many years have you been responsible for deciding which distant television stations this system carries?" \_\_\_\_\_

d. "How many years have you worked in the cable television industry?" \_\_\_\_\_

e. "How old are you?" \_\_\_\_\_

f. Gender of respondent. (OBSERVATION ONLY.)

Male	1
Female	2

7. "Finally, let me verify that the name and address we have for you is correct, so that we can send you your honorarium." (Check this with the information on the first page of the call record sheet.)

"Thank you for your help with our survey."

Table 5

## The Average Value of Programming Shown on English-Language Canadian Signals

	2004		2005	
	Mean	Std Deviation	Mean	Std Deviation
Live professional and college team sports, excluding Canadian Football League games.	29.14	21.36	33.19	21.74
Canadian-produced news, public affairs, religious, and documentary programs. This includes both Canadian network- and station-produced programs.	23.43	20.96	16.90	12.10
U.S. syndicated series, movies and specials.	12.67	8.48	7.43	8.05
Canadian-produced sports programming such as the Olympics, Canadian League games, skating, skiing, tennis and auto racing.	17.81	7.17	24.62	11.75
Canadian produced series, movies, arts and variety shows, and specials. This does not include children's programming.	9.67	7.23	10.10	9.28
Canadian-produced children's programming.	7.05	5.19	7.52	7.88
Other programming.	0.24	1.09	0.24	1.09
Total	100.01		100.00	
Total value of Canadian-produced programming.	57.96		59.14	
Respondents	21		21	



Table 6

The Average Value of Programming  
Shown on French-Language Canadian Signals

	2004		2005	
	Mean	Std Deviation	Mean	Std Deviation
Live professional and college team sports, excluding Canadian Football League games.	23.36	10.65	23.64	7.10
Canadian-produced news, public affairs, religious, and documentary programs. This includes both Canadian network- and station-produced programs.	22.91	8.89	18.18	9.82
U.S. syndicated series, movies and specials.	12.91	4.81	13.64	9.24
Canadian-produced sports programming such as the Olympics, Canadian League games, skating, skiing, tennis and auto racing.	16.45	5.50	15.00	8.94
Canadian produced series, movies, arts and variety shows, and specials. This does not include children's programming.	14.18	4.94	17.27	6.84
Canadian-produced children's programming.	10.18	2.71	12.27	7.86
Other programming.	0.00	0.00	0.00	0.00
Total	99.99		100.00	
Total value of Canadian-produced programming.	63.72		62.72	
Respondents	11		11	

Table 7

The Average Value of Programming Shown on Canadian Signals When TBS Was Not Signal A or C

	2004		2005	
	Mean	Std Deviation	Mean	Std Deviation
Live professional and college team sports, excluding Canadian Football League games.	20.69	8.10	28.65	15.79
Canadian-produced news, public affairs, religious, and documentary programs. This includes both Canadian network- and station-produced programs.	20.69	7.84	15.65	11.97
U.S. syndicated series, movies and specials.	14.08	5.55	6.53	7.53
Canadian-produced sports programming such as the Olympics, Canadian League games, skating, skiing, tennis and auto racing.	19.38	3.84	23.06	12.44
Canadian produced series, movies, arts and variety shows, and specials. This does not include children's programming.	14.08	4.27	14.53	8.84
Canadian-produced children's programming.	11.08	3.33	11.29	9.34
Other programming.	0.00	0.00	0.29	1.21
Total	100.00		100.00	
Total value of Canadian-produced programming.	65.23		64.53	
Respondents	13		17	

Table 8

The Average Value of Programming  
Shown on Canadian Signals When TBS Was Signal A or C

	2004		2005	
	Mean	Std Deviation	Mean	Std Deviation
Live professional and college team sports, excluding Canadian Football League games.	31.58	22.11	31.33	21.67
Canadian-produced news, public affairs, religious, and documentary programs. This includes both Canadian network- and station-produced programs.	25.00	21.99	19.27	10.37
U.S. syndicated series, movies and specials.	11.84	8.37	13.00	9.22
Canadian-produced sports programming such as the Olympics, Canadian League games, skating, skiing, tennis and auto racing.	15.95	7.73	19.33	10.83
Canadian produced series, movies, arts and variety shows, and specials. This does not include children's programming.	9.26	7.59	10.33	9.16
Canadian-produced children's programming.	6.11	4.47	6.73	5.75
Other programming.	0.26	1.15	0.00	0.00
Total	100.00		99.99	
Total value of Canadian-produced programming.	56.32		55.66	
Respondents	19		15	

**The Longitudinal Value of Canadian Programming to Cable Systems  
In the United States 1996 to 2005**

to be submitted to

The Copyright Royalty Judges

by

Debra J. Ringold  
Dean and JELD-WEN Professor of Free Enterprise  
Atkinson Graduate School of Management  
Willamette University

May 2009

**EXHIBIT CDN-4-B**



## **Introduction:**

1. This report presents and discusses the results of ten surveys of United States Form 3 cable system operators who retransmitted Canadian television stations as distant signals during the years 1996 to 2005. These studies, and the present one, were commissioned by the Canadian Claimants Group.

2. The objective of this research is to examine the stability and/or robustness of the value of Canadian programming on Canadian distant signals retransmitted by U.S. Form 3 cable system operators over time.

3. This report includes the following four sections:
- Summary of Annual Survey Methodology
  - Summary of Longitudinal Methodology
  - Results
  - Conclusions

## **Summary of Annual Survey Methodology:**

4. In the years 1996 to 2005, surveys of the eligible population of Form 3 cable systems retransmitting either a distant English-language or distant French-language Canadian signal were conducted. Detailed discussions of these efforts are available in three reports by Gary T. Ford and Debra J. Ringold, one submitted to the Copyright Arbitration Royalty Panel (in 2002) and two submitted to the Copyright Royalty Judges (both in 2009).

5. The surveys were conducted with the persons responsible for deciding which distant signals their cable systems retransmit. Respondents were experienced in making these decisions. The vast majority identified themselves as the individual responsible for making program budget decisions or recommendations.

6. Using a 100-point constant sum scale, the surveys asked about the value of seven different types of programming carried on a Canadian signal randomly chosen from those Canadian signals retransmitted by the cable system: (1) live professional and college team sports, excluding Canadian Football League games; (2) Canadian produced news, public affairs, religious, and documentary programs; (3) U.S. syndicated series,

movies, and specials; (4) sports programming such as the Olympics, Canadian Football League games, skating, skiing, tennis, and auto racing; (5) Canadian-produced series, movies, arts and variety shows, and specials; (6) Canadian-produced children's programming; and (7) other programming. This approach allowed a signal-specific determination of the relative value of Canadian-produced programming compared to programming produced by other claimants on the same signal.

7. Similar categories of programming shown on a randomly chosen superstation or cable network TBS and a randomly chosen U.S. independent station carried by the respondents' systems were also evaluated to reduce the chances that respondents would guess the survey purpose or sponsor.

8. While the categories used to describe superstation or TBS, Canadian, and independent signal programming are reasonably analogous, differences in category descriptions reflect different types of programming on different types of signals. In addition, questionnaire forms reflect the language, French or English, in which Canadian programming is broadcast on a particular retransmitted signal.

### **Summary of Longitudinal Methodology<sup>1</sup>:**

9. A longitudinal study involves analyzing data collected using the same methodology to ask the same population of respondents the same question(s) over time. It is useful in evaluating the stability and/or robustness of an estimate.

10. Stability is evidence of the reliability of a measure and is determined by surveying the same population of respondents using the same methodology over time. Stability is achieved when measure(s) reveal consistent response(s) over time.

11. Robustness is further evidence of the reliability of a measure and is

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<sup>1</sup> This discussion of longitudinal surveys and reliability of measures is drawn from Ferber, Robert and P.J. Verdoorn (1962), *Research Methods in Economics and Business*, New York: The Macmillan Company; Churchill, Gilbert A. Jr. (1992), *Basic Marketing Research*, Second Edition, Forth Worth: The Dryden Press; Malhotra, Naresh K. (2004), *Marketing Research: An Applied Orientation*, Fourth Edition, Upper Saddle River, NJ: Pearson, Prentice Hall.

determined by surveying the same population of respondents using the same methodology over time under differing conditions. Thus, robustness of an estimate refers to stability over time despite changes in conditions such as economic/political circumstances, industry structure, survey research contractors, individual respondents, and survey response rates. Robustness is achieved when measure(s) reveal consistent response(s) over time despite change.

12. Longitudinal studies also permit the evaluation of error in an estimate. The differences between the (in this case, annual) observed values of a measure and the long-run average of the observed values in repetitions of the measurement are informative. The smaller the difference between each (annual) estimate and the long-run average of the estimate, the less error associated with the estimate.

13. During the years 1996 to 2005, persons responsible for deciding which distant signals their cable systems retransmit at Form 3 cable systems retransmitting a distant Canadian signal were surveyed. The same study methodology was used in each of the ten studies.

## **Results:**

14. During the years 1996 to 2005, response rates varied from 54% to 82% and two different survey research contractors were used. With such high response rates to each individual survey, and collectively across all surveys, nonresponse bias is unlikely.

15. During the years 1996 to 2005, economic and industry circumstances varied and a number of Form 3 cable systems retransmitting a distant Canadian signal came under new ownership, were the object of mergers, and/or changed status with respect to these hearings. During this period, a number of Form 3 systems retransmitting a distant Canadian signal changed individuals responsible for selecting distant signals for retransmission, and participated some years but refused in other years.

16. During the years 1996 to 2005, cable system operators who transmitted Canadian signals reported that Canadian Claimant programming constituted from 58% to 64% of the total programming value provided by imported Canadian signals. A weighted average of these results reveals that, for this period, Canadian programming constituted



about 61% of the total programming value provided by imported Canadian signals.<sup>2</sup> Inspection of Figure 1, attached, reveals that the relative value of Canadian programming on distant Canadian signals to cable systems during the period 1996 to 2005 is remarkably stable, robust, and error free.

17. During the years 1996 to 2005, cable system operators who transmitted Canadian signals reported that Joint Sports programming constituted from 24% to 31% of the total programming value provided by imported Canadian signals. A weighted average of these results reveals that, for this period, Joint Sports programming constituted about 27% of the total programming value provided by imported Canadian signals. The ten year results for Joint Sports programming can be seen in Figure 1, attached.

18. During the years 1996 to 2005, cable system operators who transmitted Canadian signals reported that Program Supplier programming constituted from 8% to 14% of the total programming value provided by imported Canadian signals. A weighted average of these results reveals that, for this period, Program Supplier programming constituted about 11% of the total programming value provided by imported Canadian signals. The ten year results for Program Supplier programming can be seen in Figure 1, attached.

### **Conclusions:**

19. In my opinion, these results are both stable and robust and therefore, can be relied upon to accurately estimate the value of Canadian programming on distant Canadian signals imported by cable systems in the U.S.

20. These surveys strongly support the conclusion that cable system operators who retransmit Canadian signals do so primarily for their unique Canadian programming.

21. Over a ten year period, Canadian programming constituted, on average, about 61% of the total programming value provided by imported Canadian signals.

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<sup>2</sup> In this context, the weighted average is equal to averaging all of the responses over the ten year period. The number is derived by multiplying the number of responses for each year by the average value for just that year, totaling those figures, and then dividing by the total number of responses for all ten years.

## The Longitudinal Value of Programming on Distant Canadian Signals Retransmitted by U.S. Cable Systems 1996 to 2005

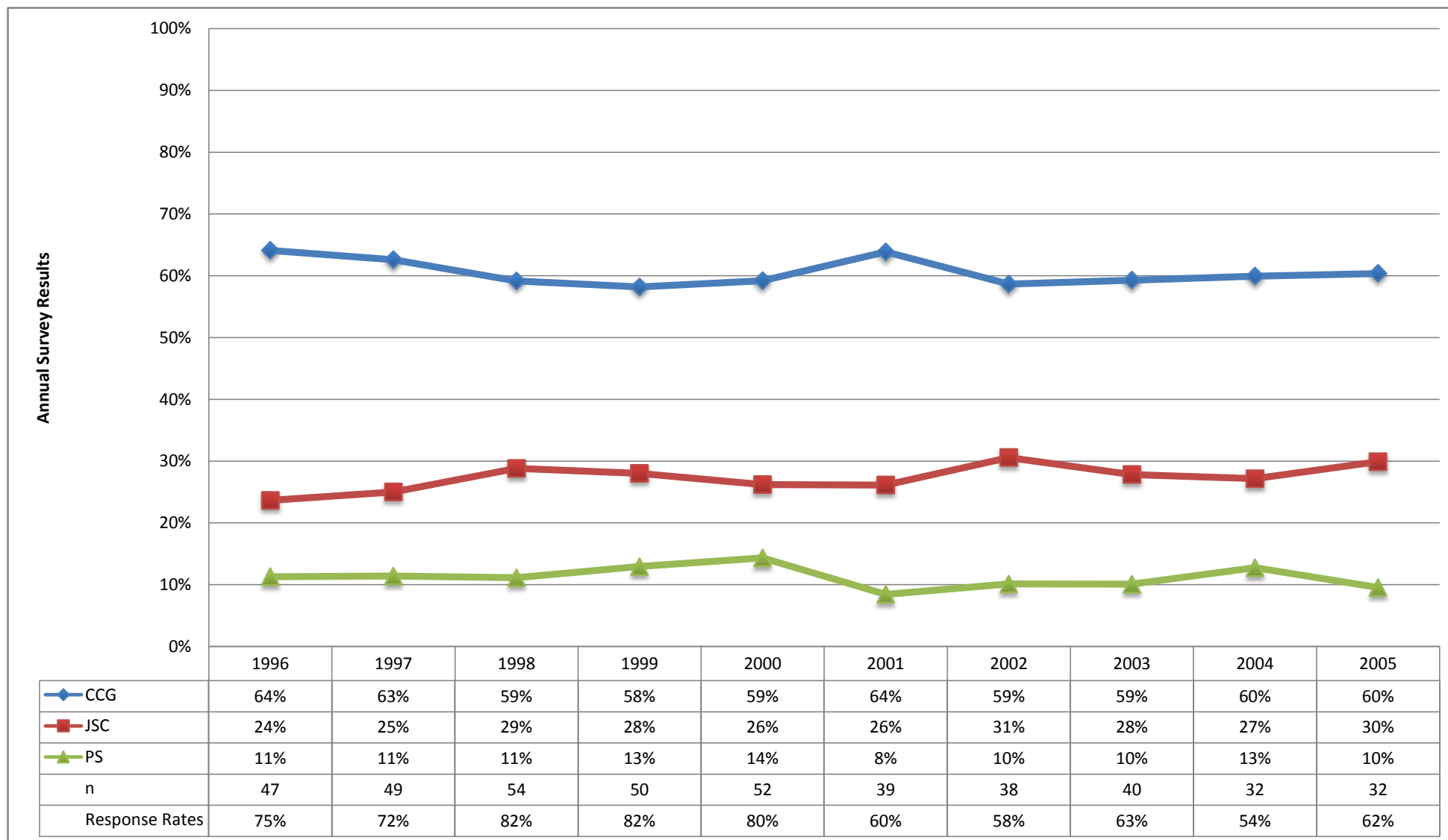


Figure 1

**Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.**

<p><b>In the Matter of</b></p> <p><b>Distribution of the</b></p> <p><b>2004 and 2005 Cable Royalty Funds</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Docket No. 2007-3 CRB CD 2004-2005</b></p>
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**CANADIAN CLAIMANT GROUP'S LIST OF ADMITTED REBUTTAL CASE  
EXHIBITS FOR 2004-05 CABLE ROYALTY DISTRIBUTION PROCEEDING**

CDN-R-1	Jonda K. Martin WRT	None
CDN-R-2	Dr. Gary T. Ford WRT	Correction to tables 1-4 on pages 10-12 removing the "000"s at the top left of each of the tables.
CDN-R-3	Dr. John E. Calfee WRT	None
CDN-R-4	In the matter of: Distribution of the 2000-2003 Cable Royalty Funds – Oral Rebuttal Testimony of Dr. John E. Calfee (Sept. 1, 2009)	None
CDN-R-5	In the matter of: Distribution of the 2000-2003 Cable Royalty Funds – Oral Direct Testimony of Linda McLaughlin (June 15, 2009)	None
CDN-R-6	Dr. Brian T. Ratchford WRT	Correction to first line of page 10. Line should read: is "no reference to any specific time period in the allocation questions in the questionnaire."

## **Rebuttal Testimony of Jonda K. Martin**

Submitted on Behalf of the Canadian Claimants Group  
Docket No. 2007-3 CRB CD 2004-2005

My name is Jonda K. Martin. I am president and owner of Cable Data Corporation (CDC), an information company based in Rockville, Maryland specializing in the collection, reporting and analysis of Statement of Account data as filed by cable and satellite systems with the Licensing Division of the U.S. Copyright Office. I have worked at CDC for over 20 years, and during this time, I have been actively involved in all operations of the business. I received a Bachelor of Science/Business Administration degree from American University in Washington, DC, with concentrations in international business and management information systems. I also received an MBA from the University of Maryland.

I have previously testified before the Copyright Arbitration Royalty Panel (CARP) regarding CDC's data collection and reports prepared for the 1998 and 1999 cable compulsory license royalties, and recently before the Copyright Royalty Judges (Judges) in connection with the proceeding to distribute the 2000 through 2003 cable royalty funds. I have also sponsored written direct testimony in this proceeding on behalf of other claimant groups but was not called to testify.

### **A. Purpose of Testimony.**

The purpose of my rebuttal testimony is to describe the methodologies used in the production of data and reports supplied to the Canadian Claimants Group ("CCG") for use in their 2004-2005 rebuttal case. For this proceeding, the CCG has asked me to conduct two analyses on CDC's fees-generated (fees-gen) data. I believe the CCG's witness John Calfee addresses the actual application of this data to the issues in this proceeding.

This testimony covers two issues: (1) a "Min-Max" analysis of base rate royalties paid for Canadian distant signals, and (2) a 3.75% Fund reallocation analysis for systems carrying Canadian distant signals.

**B. Min-Max Analysis of Base Rate Royalties Paid for Canadian Distant Signals.**

The CCG requested an analysis of Canadian base rate fees-gen allocations. This analysis assesses the minimum and maximum possible fees-gen for Canadian stations and is intended by the CCG to rebut the testimony of Linda McLaughlin from the 2000-2003 proceeding, which was incorporated by reference into her testimony in this proceeding, that the sliding scale used to determine base rate royalties means that any allocation of royalties to signals or signal types by CDC is arbitrary. I believe it has also been used by Calfee in his examination of the Bortz Survey.

Cable systems pay royalties based on the total Distant Signal Equivalent (DSE) value of the stations carried. The royalties are based on a sliding rate scale, shown below in Table 1. They pay a higher rate for the first DSE, slightly less for the second through fourth DSE, and an even lower rate for any DSEs over 4.0.

**Table 1**  
**Base Rate Fee Schedule**

	Distant Signal Equivalent		
	First	Second through Fourth	Fifth and Beyond
Percentage of Gross Receipts for 2004-1 through 2005-1	.956%	.630%	.296%
Percentage of Gross Receipts for 2005-2	1.013%	.668%	.314%

One of CDC's ongoing projects is to provide a means to match these royalties with individual stations to show, in effect, how much of the royalty fund was attributable to each station. CDC apportions the total royalty fees paid by an individual cable system among all the distant broadcast stations the system carries. These apportioned royalties are known as "fees-generated" or "fees-gen." CDC allocates fees-gen based on each station's DSE value, relative to the total DSE value for the system. CDC does not select which distant station is the first DSE, second DSE, etc. I explained CDC's method for allocating royalties to stations in greater detail in my prior testimony.

In conjunction with their rebuttal case, the CCG asked me to conduct a study analyzing the effect on Canadian base rate fees-gen if Canadian stations were considered the first DSE or the last DSE for each system carrying a distant Canadian station. In other words, for each distant Canadian station, calculate the maximum and minimum base rate fees-gen that could be allocated to the distant Canadian station(s) for each system and compare those results with the

actual fees-gen calculated under CDC's current protocols. I performed the same analysis for the CCG in the 2000-2003 proceeding and it is my understanding that the CCG had done similar analyses on its own in two prior litigated distribution proceedings, though I have not reviewed those analyses.

This study encompassed all Form Three systems in 2004-1 through 2005-2 that were reporting and paying base royalty fees for distant Canadian stations.

The maximum fees-gen were derived by calculating fees for the Canadian stations at the first base rate. If there were two distant Canadian stations, the first would be calculated using the first base rate and the second signal at the second rate. The sum of these two calculations would represent the maximum fees possible for Canadian stations for that system.

The process to calculate the smallest possible amount of fees-gen takes into account all distant stations reported by the system by ordering the non-Canadian stations first and Canadian stations last. For example, consider a system in 2005-2 that reports two distant independent stations, one U.S. and one Canadian. The U.S. independent station's fees would be calculated at the first base rate of 1.013% of gross receipts and the Canadian station's fees would be calculated at the second base rate of .668%. In cases where the Canadian station's DSE was split between base rates, CDC would calculate each portion of the Canadian DSE at the appropriate rate. For example, if a system carries three distant network stations and one Canadian station, the three networks - each with a DSE value of .250 - would be calculated at the first base rate totaling .750 DSEs. The remaining Canadian station at 1.000 DSE would be split between the first and second base rates. Fees would be calculated using .250 of the Canadian station at the first base rate, and the remaining .750 of Canadian DSEs multiplied by the second base rate. In cases where Canadian stations are the only distant stations, the minimum, maximum, and actual fees-gen amounts are the same.

In completing my analysis, I calculated the minimum, actual, and maximum fees-generated for each system carrying a Canadian distant station. The results were subtotaled for each system and then aggregated for the year. The final results show that the actual CDC fees-generated fall between the maximum and minimum totals. Minimum totals were 95.18% and 95.72% of the actual fee gen for 2004 and 2005, respectively. Maximum totals were 105.62% and 105.07% of the actual fee gen for 2004 and 2005, respectively. The results are shown in Table 2, below:

**Table 2**  
**Min Max Analysis for Canadian Distant Signal Base Rate Royalties**

<b>Year</b>	<b>Minimum Canadian Base Fees</b>	<b>Actual CDC Canadian Fees Gen</b>	<b>Maximum Canadian Base Fees</b>	<b>Min Base Fee As % of Actual</b>	<b>Max Base Fees As % of Actual</b>
2004	\$ 3,253,644	\$ 3,418,469	\$ 3,610,509	95.18%	105.62%
2005	\$ 3,674,384	\$ 3,838,746	\$ 4,033,266	95.72%	105.07%

For both years, I identified a few systems where the actual fees paid by the system were less than the calculated minimum or exceeded the calculated maximum. Royalties that exceeded the minimum and maximum by more than 0.75% were treated as exceptions and the systems were excluded from the totals above. There were a few systems whose actual fees were less than the minimum or exceeded the maximum but were not treated as exceptions because the differences were minor and appeared to be largely due to rounding. In the years 2004 and 2005, there were 2 systems in each year that that were treated as exceptions and excluded from the calculations above. I also calculated the results using every system - including exceptions - and those results were essentially the same as the results that excluded the exceptions. The results including the exceptions are shown in Appendix A, Table 3.

**C. Analysis of “Market Quota” 3.75% Fee Reallocation.**

The CCG requested that CDC conduct an analysis of cases where cable systems pay a 3.75% fee because they carry independent stations that exceed the FCC “market quota.” This portion of my testimony is intended by the CCG to rebut the incorporated testimony of Linda McLaughlin that the allocation of the 3.75% royalties by CDC is arbitrary, as well as the underlying implication that a fair allocation method cannot be produced.

The criteria for inclusion in this analysis were form three systems that paid a 3.75% fee, reported at least one U.S. Independent station, and at least one Canadian station, of which one was “permitted” on a market-quota basis. In these carriage instances, it may be somewhat arbitrary as to which of the stations the cable system could indicate as “permitted” and which are not. This analysis attempts to eliminate any arbitrary effect on fees-generated by reallocating the 3.75% fees and base fees paid for these carriage instances on a proportional DSE basis. In this case, all stations are independent stations.

To understand this analysis, consider an example: A cable system carries three Independent stations, A, B and C, and reports on its Statement of Account that two, A and B, are “permitted” under the FCC market quota rules and the third Independent station, C, is carried subject to the 3.75% fee. The system would pay 2.000 DSEs worth of Base Rate royalties for the two stations deemed permitted, A and B, and 1.000 DSE worth of royalties for the third station, C, at the 3.75% rate. CDC currently allocates these royalties by allocating equal shares of the Base rate royalties to each of the two Independent stations, A and B, and allocating all of the 3.75% royalties to the third signal, C. Conceivably, however, any of the three stations could have been the 3.75% station. In this reallocation analysis, all of the fees paid for these stations are distributed evenly to show that all had an equal opportunity to be the 3.75% fee signal or one of the two base rate signals. In this case, the base rate fees paid for the 2.000 permitted DSEs and the 3.75% fee paid for 1.000 non-permitted are divided equally and reallocated to each of the three independent stations, so that stations A,B, and C, have one-third each of the base rate royalties and one-third each of the 3.75% royalties.

I applied this reallocation protocol to every qualifying U.S. and Canadian independent station in the category above. The results are shown for base, 3.75% and total royalties in Table 3:

**Table 3**  
**3.75% Fee Reallocation for Systems Carrying Canadian Distant Signals**

Year	Station Type	CDC's Standard Allocation Method			Adjusted Reallocation Method			Total Difference
		Total	Base Rate	3.75% Rate	Total	Base Rate	3.75% Rate	
2004	CANADIAN	\$548,811	\$50,671	\$498,140	\$433,638	\$79,828	\$353,810	(\$115,173)
2004	US-INDEPENDENTS	\$738,657	\$186,041	\$552,616	\$853,830	\$156,884	\$696,946	\$115,173
2005	CANADIAN	\$578,505	\$18,417	\$560,088	\$447,819	\$56,544	\$391,275	(\$130,686)
2005	US-INDEPENDENTS	\$517,283	\$132,037	\$385,246	\$647,969	\$93,910	\$554,059	\$130,686

**D. Conclusion.**

Thank you for the opportunity to present the above “Min-Max” analysis of base rate royalties paid for Canadian distant signals, and the 3.75% Fund reallocation analysis for systems carrying Canadian distant signals. I hope these data and analyses are helpful in the Judges’ deliberations.



**Appendix A**

**Table 4**  
**Min Max Analysis with All Exceptions Included**

<b>Year</b>	<b>Minimum Canadian Base Fees</b>	<b>Actual CDC Canadian Fees Gen</b>	<b>Maximum Canadian Base Fees</b>	<b>Min Base Fee As % of Actual</b>	<b>Max Base Fees As % of Actual</b>
2004	\$ 3,270,463	\$ 3,433,707	\$ 3,268,566	95.25%	105.67%
2005	\$ 3,689,354	\$ 3,858,125	\$ 4,052,114	95.63%	105.03%

## Declaration of Jonda K. Martin

2004-2005 Cable Royalty Distribution Proceeding  
Docket No. 2007-03 CRB CD 2004-2005

I, Jonda K. Martin, declare under penalty of perjury under the laws of the United States of America that the foregoing written rebuttal testimony prepared for submission by the Canadian Claimants Group to the Copyright Royalty Judges is true and correct.

Dec 9, 2009  
Date

Jonda K. Martin  
Jonda K. Martin

**An Evaluation of the 2004 and 2005 Bortz Studies  
And the Methodology Used by Linda McLaughlin to Augment the Bortz Survey  
Regarding the Value of Programming on Canadian Distant Signals**

by

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Prepared for:

Canadian Claimants Group  
2004-2005 Cable Copyright Royalty Distribution Proceedings  
December 2009

**An Evaluation of the 2004 and 2005 Bortz Studies  
And the Methodology Used by Linda McLaughlin to Augment the Bortz Survey  
Regarding the Value of Programming on Canadian Distant Signals**

This written report is submitted on behalf of the Canadian Claimants Group to rebut the 2004 and 2005 Bortz Surveys and the adjustments to those Surveys proposed by Linda McLaughlin.

**I. Qualifications and Background.**

I am Emeritus Professor of Marketing at the Kogod School of Business at American University, where formerly, I was Chair and Professor of Marketing. I was also Chair and Associate Professor of Marketing in the College of Business and Management at the University of Maryland at College Park and Visiting Professor in the Department of Applied Economics at Catholic University of Leuven, Belgium.

During my academic career, I taught undergraduate and MBA courses in Marketing Research and Doctoral Seminars on Research Methodology, as well as Marketing Management, Consumer Behavior and other courses. The Marketing Research and Research Methods courses I have taught include material on survey research design, questionnaire design, sampling, content analysis, statistical methods and other topics. I supervised the research design, questionnaire design, sampling procedures, content analysis, statistical analysis and final reports of over a hundred surveys completed in the Marketing Research courses I have taught.

In addition to the surveys I supervised as a professor, I have also designed and conducted surveys for both my academic research and litigation. I have published over forty academic articles and papers, the vast majority of which involve surveys that I and my co-authors designed, conducted and analyzed. In addition, in a

litigation context, I have designed, conducted, analyzed and prepared expert reports on dozens of surveys and have evaluated the survey research efforts of others in trademark, false advertising and antitrust matters.

My research has been published in the *Journal of Consumer Research*, *Journal of Marketing*, *Journal of Public Policy and Marketing*, *Journal of Marketing Research* and other journals, books and proceedings. In 1997, I was listed as one of the “best researchers in marketing” in the article “The Best Researchers in Marketing,” published in the *Marketing Educator* (Summer).

A peer-reviewed article I published in the *Journal of Public Policy and Marketing* in November 2005 is entitled, “The Impact of the *Daubert* Decision on Survey Research Used in Litigation.”<sup>1</sup> This article provides a comprehensive analysis of the criteria that are being used to admit or exclude surveys from trials since the U.S. Supreme Court decision in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993). This article recently received the Kinnear Award signifying the best article published in the *Journal of Public Policy and Marketing* between 2003 and 2005.

I served on the Board of Directors of the Association for Consumer Research, the largest academic organization in the field of consumer behavior, for four years. I served as an Editorial Review Board member for the *Journal of Marketing* for over ten years. At present, I serve on the Editorial Review Board of the *Journal of Public Policy and Marketing* and frequently review manuscripts for the *Journal of Consumer Research*, *Journal of Marketing Research*, *Journal of Marketing* and other journals and conferences. Currently, I serve as one of four academic representatives of the American Marketing Association (the largest professional association for marketing professors) to the U.S. Census Bureau regarding planning for the 2010 Census.

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<sup>1</sup> Ford, G. 2005. “The Impact of the *Daubert* Decision on Survey Research Used in Litigation.” *Journal of Public Policy and Marketing*, 24(2): 234-252.

I have served as a Marketing Expert for the Federal Trade Commission in both consumer protection and antitrust matters. I have also served as a Marketing Expert for the Department of Justice, the Consumer Product Safety Commission and the Federal Communications Commission.

A complete copy of my resume, including a list of my publications over the last ten years and a list of the proceedings in which I have testified in the last four years is attached at Appendix A.

In 1996, during the rebuttal phase of the 1990-1992 Cable Royalty Distribution Proceedings, I provided a comprehensive written evaluation of the Bortz survey methodology in a previous CARP proceeding, entitled "An Evaluation of the 1991 and 1992 Bortz Studies With Respect to Programming on Canadian Distant Signals," Gary T. Ford ("1990-92 Ford Written Rebuttal"). I also testified orally in that proceeding.

## **II. Introduction and Conclusions.**

The report has two primary objectives: First, it evaluates the 2004 and 2005 Bortz surveys in terms of whether they can provide a reliable estimate of imported Canadian distant signals. Second, it evaluates whether the methodology used by Linda McLaughlin on behalf of PTV to "augment" the Bortz sample results can be validly applied to estimate the value of Canadian distant signals.<sup>2</sup>

In my opinion, the Bortz survey does not provide reliable information regarding the value of programming on Canadian distant signals for two reasons. First, the disproportionate stratified sampling plan "undersamples" strata 1 and 2 (the low royalty strata) and "oversamples" strata 3 and 4 (the high royalty strata). Second, the

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<sup>2</sup> The complete title of the Bortz survey report is, "Cable Operator Valuation of Distant Signal Non-Network Programming: 2004-05," June 1, 2009 ("Bortz Report"). The complete title of the McLaughlin report is: "Testimony of Linda McLaughlin," September 30, 2009.

focus of the questionnaire on the unaided recall of “most popular” programming just before the key question on relative value of programming on imported distant signals has the effect of reducing the likelihood that cable operators will think about the value of niche programming to their systems.

Regarding the first point, because the cable systems that import Canadian distant signals are most likely to be in strata 1 and 2, the effect of the Bortz sample is to undersample the strata most likely to import Canadian distant signals. This issue is glaringly obvious in the Bortz sample of French-language Canadian distant signals with samples of one and two cable systems in 2004 and 2005, respectively, which imported Canadian French-language distant signals. The sample of cable systems which imported Canadian English-language is also problematic because it was weighted disproportionately to cable systems in Bortz strata 3 and 4, while the approximately two-thirds of the Cable systems that imported Canadian English-language distant signals were in strata 1 and 2. In sum, the Bortz sample of cable systems that import Canadian distant signals is both too small and unrepresentative of the underlying population.

Regarding the second point, by eliciting top-of-the-mind awareness of the most popular distant signal programming just before the relative value question, the Bortz questionnaire increases the likelihood that niche programming will not be mentioned by respondents. Because of the likelihood that respondents will strive to provide internally consistent responses and because the relative value question is a “zero sum game,” the value given to niche programming is likely to be diminished by the biases introduced by the most popular programming question.

For these reasons, it is my opinion that it would not be prudent to rely on the Bortz survey results for making copyright royalty awards regarding the value of Canadian distant signals.

It is also my opinion that the “augmentation” methodology proposed by Linda

McLaughlin cannot be used to estimate the value of imported Canadian distant signals. McLaughlin “augmented” the value of programming results by adding imputed values for PTV and Canadian programming from systems that imported only PTV, Canadian or both types of signals. McLaughlin’s approach assumes that the Bortz disproportionate sampling plan resulted in a sample that is representative of the underlying population of imported Canadian distant signals. The Bortz sample is not at all representative of the underlying population of cable systems that import Canadian signals because it undersamples cable systems that import Canadian distant signals in Bortz strata 1 and 2 and oversamples them in strata 3 and 4. In addition, McLaughlin’s augmentation approach does nothing to cure the second problem of bias created by the Bortz questionnaire. Consequently, McLaughlin’s augmentation approach cannot be applied to estimate the value of Canadian distant signals.

There are five additional sections in the report:

- Section III summarizes the objective of the Bortz studies and provides an overview of its methodology.
- Section IV provides a summary and evaluation of the strengths and weaknesses of the stratified sampling plan used and the questionnaire design in the Bortz studies for estimating the value of programming on Canadian distant signals.
- Section V summarizes my conclusions regarding the reliability of the Bortz survey regarding the value of Canadian distant signals.
- Section VI summarizes the McLaughlin methodology and evaluates whether it can be validly applied to augment the Bortz sample to estimate the value of Canadian distant signals.
- Finally, Section VII presents my conclusions that the Bortz and McLaughlin reports cannot be used to reliably estimate the value of imported Canadian distant signals.

### **III. Summary and Overview of the Bortz Study Objective and Methodology.**



The Bortz Report states that the “cornerstone” of the Bortz approach for estimating the value of distant signals is a survey of a “random sample of cable operators [who are asked] how they would allocate a fixed budget among the different programming categories on the distant signals they actually carried in the preceding year (i.e., a ‘constant sum’ approach).” (Bortz Report at 1-2.) Historically, the fact finders have given great weight to the Bortz methodology regarding the Program Suppliers (PS), Joint Sports Claimants (JSC) and the commercial television broadcasters (NAB) because it is focused on, “the relative value of the type of programming actually broadcast in terms of attracting and retaining subscribers.” For example, in 2003, the CARP panel stated it accepted, “the Bortz survey as an extremely robust (powerfully and reliably predictive) model for PS, JSC and NAB – for both the basic fund and the 3.75% fund.” In re Distribution of 1998 & 1999 Cable Royalty Funds, No. 2001-8 CARP CD 98-99, at 31 (CARP Oct. 21, 2003) (hereinafter *1998-99 CARP Report*).

The CARP panel also concluded, however, that methodologies other than the Bortz survey would, “be relied upon to determine the relative values of PTV, Music and Canadians.” *1998-99 CARP Report* at 31. Furthermore, the Bortz Report acknowledges that “it is appropriate to adjust the Bortz survey results to account for cable operators that carry only PBS and/or only Canadian distant signals (neither of which are included in our survey).”<sup>3</sup> (Bortz Report at 5.)

In both the 2004 and 2005 studies, Bortz and Company used the same general approach: A telephone survey asked individuals most responsible for programming decisions a series of questions concerning (a) unaided recall of the types of programming that is most popular with their subscribers, (b) unaided and aided recall of the types of programming featured in advertising, and (c) the relative values of seven categories of non-network programming measured with a 100-point constant sum scale of items representing the seven categories. Since the constant sum scale approach requires the respondent to allocate a percentage of a finite pool

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<sup>3</sup> As is discussed subsequently, although this adjustment is necessary, it is not sufficient to fully account for the value of Canadian distant signals.

(in this case, 100 percentage points of a hypothetical programming budget) to each of the program categories, an increased valuation of one program type can only be made at the expense of another. Thus, it is assumed this is similar to “real-world” budget allocations in which a fixed set of resources must be divided among competing possible uses. The Bortz studies used the constant sum scale on programming categories (or in the case of PTV and the Canadians, entire signals) aggregated across all of the distant signals the cable system imported. Although there have been some wording changes over the years in the definitions of the constant sum scale question used to assess the value of non-network programming, the same question was used in both 2004 and 2005.<sup>4</sup>

As in previous years, cable systems in the 2004 and 2005 samples were selected by disproportionate stratified sampling from the population of cable systems, which were grouped into four strata based on size of royalty payments. The decision to base the disproportionate sampling plan on royalty payments has the effect of sampling relatively more cable systems from strata with large variances in royalty payments and relatively fewer cable systems with smaller variances. Because the variances are larger in strata with larger mean royalty payments, the effect of this stratification plan was to “oversample” from the larger royalty payment strata and “undersample” from the smaller strata relative to proportionate sampling from each stratum.

#### **IV. The Affect of the Disproportionate Stratified Sampling Plan and Questionnaire Design on the Estimate of the Value of Canadian Distant Signals.**

As noted above, the Bortz studies grouped cable systems into four strata by size of royalty payment and then used disproportionate sampling to minimize the variance of the estimate of royalty payments. This approach ensures a minimum sample size that is able to estimate the mean and variance of the total of royalty payments over the population of cable systems. Unfortunately, using this basis for stratifying the

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<sup>4</sup> See, 1990-92 Ford Written Rebuttal.

sample is not consistent with the objective of the Bortz studies. According to Mr. Trautman's written direct testimony, for 2005, the Bortz surveys "sought to determine how cable operators valued, on a relative basis, the different categories of non-network distant signal programming that they carried in those years." (Bortz Report at 1-2.)

There is nothing per se inappropriate about using disproportionate stratified sampling in survey research. In fact, disproportionate stratified sampling allows the researcher to minimize sample size for a given level of statistical precision and confidence regarding the variable of interest. Thus, disproportionate stratified sampling is frequently used when it is difficult and/or costly to obtain sample elements. It is also used to ensure that observations will be drawn from each stratum in the population.

In the Bortz research, the variable being estimated is "relative value to your cable system of each type of programming actually broadcast by the stations I mentioned in 2004" (or 2005). Since the Bortz studies were attempting to estimate the value of programming types, ideally, stratification should have taken place as a measure of the programming types appearing on distant signals carried by cable systems. This would have ensured that the surveys included a sufficient number of observations for each type of programming regardless of the size of royalty payments. Otherwise, the researcher is not guaranteed that there will be enough observations from signals carrying each type of programming to develop valid estimates of the relative value of each type of programming on the distant signals that cable system operators buy. Essentially, the Bortz stratification plan oversampled from relatively large systems and undersampled from smaller systems, as will be shown in the following tables. Since the cable systems that imported Canadian distant signals were smaller rather than larger, the disproportionate sampling plan used in the Bortz survey actually diminished the accuracy of the estimates of the relative value of Canadian distant signal programming.

The following data in Tables 1 and 2 illustrate the problems with the way the Bortz samples were stratified. According to the Bortz study, and data produced to the Canadian Claimants Group during discovery, the 2004 and 2005 distribution of population elements and cable systems sampled was as follows:

**Table 1**  
**Sample and Population Comparisons for Bortz Data (2004)**

Royalty Stratum  (000)	Population of Form 3 Systems:		Respondents:		No. Respondents as Percentage of Stratum Size:
	#	%	#	%	%
1: \$0-20,628	936	56.8	37	22.8	03.9*
2: \$20,629-59,628	432	26.2	36	22.2	08.3
3: \$59,629-207,129	234	14.2	69	42.6	29.5
4: \$207,130+	045	02.7	20	12.3	44.4
Total	1,647	99.9%†	162	99.9%†	

Source: Bortz Report, Table A-2, p. 46; Bortz data produced in discovery.

Notes: \*for example, 37/936 = 3.9%; †Result is less than 100.0% due to rounding.

**Table 2**  
**Sample and Population Comparisons for Bortz Data (2005)**

Royalty Stratum  (000)	Population of Form 3 Systems:		Respondents:		No. Respondents as Percentage of Stratum Size:
	#	%	#	%	%
1: \$0-23,844	755	54.6	30	17.5	03.9*
2: \$23,845-65,344	378	27.4	39	22.8	10.3
3: \$65,345-239,844	210	15.2	80	46.8	38.1
4: \$239,845+	039	02.8	22	12.9	56.4
Total	1,382	100.0%	171	100.0%	

Source: Bortz Report, Table A-2, p. 46; Bortz data produced in discovery.

Notes: \*for example, 30/755 = 3.9%.

Table 1 shows that 56.8% of all cable systems in the 2004 Bortz study population paid royalty payments of less than \$20,629 and at the other end of the size spectrum, only 2.7% of cable systems paid royalty payments of \$207,130 or more. With the

stratified sampling approach based on royalty payments, the Bortz survey's final sample ended up with less than 4% ( $37/936 = 3.9\%$ ) of the smallest cable systems compared to more than forty percent of the largest systems ( $20/45 = 44.4\%$ ).

Furthermore, although only 16.9% ( $14.2\% + 2.7\%$ ) of all cable systems were in Bortz's two largest strata, 54.9% ( $42.6\% + 12.3\%$ ) of the respondents were from those strata. The disparity in the data is larger for 2005. As is shown in Table 2, 3.9% of the systems in the smallest dollar value stratum were sampled as compared to 54.6% of those in the largest dollar value stratum. Additionally, 59.7% ( $46.8\% + 12.9\%$ ) of the respondents came from the strata 3 and 4, although they account for 18.0% ( $15.2\% + 2.8\%$ ) of the population.

In sum, Tables 1 and 2 show that the Bortz stratified sampling plan resulted in a relatively larger sample than would be expected by chance in the two largest strata and a relatively smaller sample in the two smallest strata. Had the 2004 sample been selected with proportionate stratified samples, approximately 57% of the sample would have been from stratum 1, 26% would have been from stratum 2, 14% would have been from stratum 3 and only 3% would have been from stratum 4. As will be shown next, the actual sampling distribution in the Bortz surveys resulted in disproportionately smaller samples of cable systems that import Canadian distant signals.

Of the 61 U.S. cable systems that imported one or more Canadian distant signals in the first accounting period of 2004, 23 cable systems paid royalties of less than \$20,628; 20 paid royalties between \$20,629 and \$59,628; 13 paid royalties of between \$59,629 and \$207,129; and five paid royalties of \$207,130 or more. This information is presented in Table 3, below:

**Table 3**  
**Language of Imported Canadian Signals by Bortz Strata (2004-1)**

<b>Royalty Stratum (000)</b>	<b>French Signals Only:</b> <u># systems</u>	<b>Both French &amp; English Signals</b> <u># systems</u>	<b>English Signals Only:</b> <u># systems</u>	<b>Total Import Canad. Signals:</b> <u># systems</u>	<b>Distr. By Bortz Strata:</b> <u>%</u>
1: \$0<20,628	07	0	16	23	37.7%*
2: 20,629-59,628	06	02	12	20	32.8%
3: \$59,629-207,129	03	01	09	13	21.3%
4: \$207,130+	<u>00</u>	<u>00</u>	<u>05</u>	<u>05</u>	<u>08.2%</u>
Total	16	03	42	61	100.0%
Total %	26.2**	04.9	68.9		100.0%

Source: Cable Data Corporation; Bortz Report, Table A-2, p. 46.

Notes: \*For example, 23/61 = 37.7%; \*\*16/61 = 26.2%.

As is shown in Table 4, below, the data for 2005 are similar:

**Table 4**  
**Language of Imported Canadian Signals by Bortz Strata (2005-1)**

<b>Royalty Stratum (000)</b>	<b>French Signals Only:</b> <u># systems</u>	<b>Both French &amp; English Signals</b> <u># systems</u>	<b>English Signals Only:</b> <u># systems</u>	<b>Total Import Canad. Signals:</b> <u># systems</u>	<b>Distr. By Bortz Strata:</b> <u>%</u>
\$0<23,844	07	01	12	20	39.2%*
23,845-65,344	04	02	09	15	29.4%
\$65,345-239,844	04	01	09	14	27.5%
<u>\$239,845+</u>	<u>00</u>	<u>00</u>	<u>02</u>	<u>02</u>	<u>03.9%</u>
Total	15	04	32	51	100.0%
Total %	29.4**	07.8	62.7		99.9%†

Source: Cable Data Corporation; Bortz Report, Table A-2, p. 46.

Notes: \*For example, 20/51 = 39.2%; \*\*15/51 = 29.4%; †Result is less than 100.0% due to rounding.

The data in Tables 3 and 4 show the cable systems that import Canadian distant signals are predominantly in Bortz strata 1 and 2. In fact, approximately 71% of the cable systems that import Canadian distant signals are in Bortz strata 1 and 2 (i.e., in 2004, 37.7% are in stratum 1 and 32.8% are in stratum 2 for a total of 70.5%). In 2005, the same total is approximately 69%. Since the Bortz sampling approach disproportionately sampled more systems from strata 3 and 4, the effect was to

diminish the probability of reaching a representative sample of Canadian distant signals.

This is especially so for the French-language signals which are overwhelmingly imported by cable systems in strata 1 and 2. Specifically, in 2004, 78.9% (15 of 19) and in 2005, 74% (14 of 19) of the cable systems that imported only a French-language Canadian distant signal or both French and English Canadian distant signals were in Bortz strata 1 or 2. (See Tables 3 and 4.) Since the only logical explanation for paying royalty fees to import a French-language signal is to provide programming valued by a niche market segment of French speakers, a sampling plan that disproportionately misses those cable systems cannot provide accurate information about their value to the cable system. This is not a trivial matter because, in 2004 and 2005, French-language distant signals were imported by 31.1% (26.2% + 4.9%) and 37.2% (29.4% + 7.8%), respectively, of the cable systems importing a Canadian distant signal. (See Tables 3 and 4.) Thus, it is important to have a sufficient sample of cable systems that import French-language signals to draw any conclusions about the value of those signals.

Based on the Bortz survey data provided in discovery and Statement of Account Data provided by Cable Data Corporation, I determined that the Bortz 2004 survey sampled and interviewed only one cable system operator who imported a Canadian French-language distant signal. In 2005, the Bortz survey sampled only four and interviewed three respondents who imported a Canadian French-language distant signal. In sum, the Bortz sampling plan did not interview a sufficient number of cable system operators who imported French-language distant signals to draw any conclusions about the value of imported French-language signals.<sup>5</sup>

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<sup>5</sup> By way of contrast, the 2004 Ford-Ringold survey interviewed 11 of the 19 cable system operators who imported a French-language distant signal, and the 2005 survey interviewed 11 of the 19 cable system operators who imported a French-language distant signal. (Compare Exhibit CDN-4-A, App. 6, Table 6 with Tables 3 and 4, above.)

The same point is true about the Canadian English-language distant signals. In 2004, 66.7%  $((0+2+16+12)/45)$  and in 2005, 66.7%  $((1+2+12+9)/36)$  of the cable systems that imported English-language Canadian distant signals were in Bortz strata 1 and 2. (See Tables 3 and 4.) Yet, these strata account for 45% and 40% of the ending Bortz samples in 2004 and 2005, respectively. (See Tables 1 and 2). Consistent with this last point, although Bortz interviewed respondents from 10 cable systems that imported Canadian English-language signals in 2004, only 3 of these were from his strata 1 and 2. In 2005, the Bortz survey interviewed 13 cable systems that imported a Canadian English-language distant signal and 4 were from his strata 1 and 2. The Bortz sample disproportionately interviewed fewer respondents from the two smallest strata, which are the strata most likely to include cable systems importing Canadian distant signals. Thus, the Bortz sample is not representative of the cable systems that import Canadian distant signals.

This latter point is important because the larger cable systems appear to import more distant signals than do the smaller ones. In 2004, the cable systems in strata 3 and 4 in the Bortz survey that imported a Canadian distant signal imported an average of 8.13 distant signals. Of these, an average of 5.63 were commercial distant signals and an average of 1.13 were Canadian distant signals. In 2005, the comparable averages were a total of 8.89 distant signals imported, of which 6.33 were commercial, and an average of 1.44 were Canadian distant signals.<sup>6</sup> In contrast, in 2004, the cable systems in Bortz's strata 1 and 2 that imported Canadian distant signals imported an average of 4.0 signals, of which 2.0 were commercial and 1.0 was Canadian. For 2005, the strata 1 and 2 systems imported an average of 4.25 distant signals, of which an average of 1.75 were commercial distant signals and an average of 1.25 were

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<sup>6</sup> In both the 2004 and 2005 samples the average number of imported distant commercial signals was inflated by single systems importing 15 and 16 signals in 2004 and 2005, respectively. If these outliers are excluded, the mean number imported distant commercial signals decreases to 4.29 in 2004 and 5.38 in 2005, and the conclusion does not change.



Canadian distant signals.

The fact that the cable systems in strata 3 and 4 that imported Canadian distant signals imported more commercial distant signals relative to those in strata 1 and 2 likely influenced their responses to question 2b in the Bortz survey. Question 2a in the Bortz survey listed all of the distant signals imported by the cable system, and then in question 2b, respondents were asked an unaided recall question about the popularity of various types of programming.<sup>7</sup> It is more likely that cable system operators from the strata 3 and 4 systems that import an average of over five (or six) commercial stations will recall programming that appears on the commercial stations rather than programming from the one or two Canadian imported distant signals. In other words, the "most popular programming" question concerns modal categories, *i.e.*, largest categories of subscribers.

As such, the questionnaire design causes the cable system operator to focus on programming that has the widest appeal, and it may cause the cable system operator to ignore other categories of programming that are enjoyed by smaller, but nonetheless profitable, segments of its subscribers. For example, suppose a category of programming is most "popular" with 40% of the subscribers and three other categories are most "popular" with three groups consisting of 30%, 20% and 10%, respectively, of the subscribers. The Bortz question gets respondents to reply that the first segment is the most popular, even though the other segments are important to substantial minorities of its subscribers and important to the cable system operator. The likely bias introduced by questions 2a and 2b is exacerbated by the questionnaire design because, contrary to usual practice, there was no aided recall

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<sup>7</sup> Question 2a was: "Industry data indicate that during 2004 [or 2005] your system carried the following broadcast stations from other cities." The interviewer then reads call letters, city and affiliation for each distant signal. Next, in question 2b the interviewer asked, "Thinking back to 2004 [or 2005] what types of programming broadcast by these stations, other than any national network programming from ABC, CBS and NBC, do you think were most popular with your subscribers? (DO NOT READ LIST; RECORD ALL PROGRAMMING TYPES MENTIONED)." (Bortz Report App B.)

question asking about the popularity of the various other types of programming shown on imported distant signals that respondents may have inadvertently not mentioned.<sup>8</sup>

The next question on the survey (question 3a) asked whether the programming on the imported distant signals was “featured” in subscriber acquisition and retention advertising. Since most respondents said “no” to this question, i.e., 87.0% in the 2004 survey and 93.0% in the 2005 survey, the vast majority of respondents go directly to question 4a, which was the key question on the Bortz survey thinking about the type of distant signal programming they had just named.

Question 4a was as follows:

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<sup>8</sup> As was discussed in my previous evaluation of the Bortz survey, the way in which responses to this question were coded also was indefensible. (*See generally*, 1990-92 Ford Written Rebuttal.) That is, normally, when a survey includes an open-ended question, the interviewer is required to record the verbatim response of the respondent and usually to probe (with, for example, “Anything else?”) to make sure that the respondent’s complete thoughts on the question have been elicited. Later, the verbatim responses of the all respondents are read and coded, by a small number of coders (who are not the interviewers) into categories of similar responses. In the Bortz survey, and absolutely contrary to accepted survey research practice, the interviewers were supplied with the following list of coded responses and allowed to code the open-ended responses by themselves: “Movies,” “Live professional and college team sports,” “Syndicated shows, series and specials,” “News and public affairs programs,” “PBS and other programming broadcast by non-commercial station \_\_\_\_,” “Devotional / religious programming,” and “All programming broadcast by Canadian station \_\_\_\_.” (Bortz Report App B.) It is definitely not accepted survey research practice to allow the interviewer to listen to the respondents’ verbatim answer and then make the decision about which predefined category in which to code the response because there are usually many interviewers on a study and they are likely to have varying impressions about the meaning of responses. Additionally, there is no way to go back and independently verify whether the responses were coded correctly or not. All that one has is the interpretation of the interviewer about what the respondent meant when he/she responded to this question. There is no record of what the respondent actually said. One reason for letting interviewers do the coding is that the researcher does not really care about the answers because the question is only designed to raise the salience of programming that is likely to be mentioned in a “top of the mind” response.

"4a. Now, I would like you to estimate the relative value to your cable system of each type of programming actually broadcast by the stations I mentioned during 2004 [or 2005], other than any national network programming on ABC, CBS and NBC. That is, how much do you think each such type of programming was worth, if anything, on a comparative basis, in terms of attracting and retaining subscribers. We are only interested in U.S. commercial station(s) \_\_\_\_\_, U.S. non-commercial station(s) \_\_\_\_\_ and Canadian station(s) \_\_\_\_\_.

I'll read all the program types that were broadcast by these stations to give you a chance to think about them; please write down the categories as I am reading them. (READ PROGRAM TYPES IN ORDER OF RANDOM SEQUENCE NUMBER.) Assume you have a fixed dollar amount to spend in order to acquire all the programming actually broadcast by these stations during 2004 [or 2005] by the stations I listed. What percentage, if any, of the fixed dollar amount would you spend for each type of programming? Please write down your estimates and make sure they add to 100 percent.

What percentage, if any, of the fixed dollar amount would you spend on (READ FIRST PROGRAM TYPE)? And what percentage, if any, would you spend on (READ NEXT PROGRAM TYPE)? (COMPLETE LIST IN THIS MANNER.)

	Percentage:
Movies broadcast during 2004 [or 2005] by the U.S. commercial Stations I listed.	_____
Live professional and college team sports broadcast during 2004 [or 2005] by the U.S. commercial stations I listed.	_____
Syndicated shows, series and specials distributed to more than one Television station and broadcast during 2004 [or 2005] by the U.S. commercial stations I listed.	_____
News and public affairs programs produced by or for any of the U.S. commercial stations I listed for broadcast during 2004 [or 2005] only by that station.	_____
PBS and all other programming broadcast during 2004 [or 2005] by U.S. commercial station _____.	_____
Devotional and religious programming broadcast during 2004 [or 2005] by the U.S. commercial stations I listed.	_____
All programming broadcast during 2004 [or 2005] by Canadian Station _____.	_____
<b>TOTAL</b>	_____

PERCENTAGES MUST ADD TO 100 PERCENT; PROMPT RESPONDENT IF THEY DO NOT." (Bortz Report App. B.)

It is well-known that responses to a question can be biased by the topic and/or wording of prior questions. It is also well-known that respondents attempt to provide responses that are internally consistent.<sup>9</sup>

Clearly, to provide internally consistent responses, respondents will state that the most popular programs are also those that have the highest relative value. Suppose instead of the questions about "most popular programming" respondents were asked a series of questions about the market segments that view the programming that is shown on each of the signals that are imported, and then were asked question 4. If respondents thought about, and were interviewed about, segments for which they provide programming, they would have been likely to have considered the value to their system of all substantive segments, and their responses to question 4 would have been different.

Alternatively, suppose the questions about "most popular programming" and "programming featured in advertising," were deleted from the questionnaire. In this case, it is also quite likely that the response to question 4a would have been different because respondents would not have been cued to certain programming categories. To the extent that it is reasonable to expect that there would have been different responses to question 4a under either or both of these scenarios, there is the likelihood that the responses to question 4a were biased by the questions that preceded it.

## **V. Conclusions Regarding the Reliability of the Bortz Survey for Estimating the Value of Programming on Canadian Distant Signals.**

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<sup>9</sup> According to one standard survey methodology text: "In general, respondents who have formed a judgment are unlikely to start from scratch when asked to make a second, closely related judgment; rather they will probably derive the second judgment from the implications of the first, without reconsidering the original information used to form the initial judgment." Sudman, Seymour, Norman M. Bradburn and Norbet Schwarz, *Thinking About Answers The Application of Cognitive Processes to Survey Methodology*, Jossey-Bass Publishers: San Francisco, 1996, p. 86.

The Bortz survey does not provide reliable information regarding the value of programming on Canadian distant signals for several reasons. The cable systems that import Canadian distant signals are predominantly in strata 1 and 2. The Bortz survey “undersampled” these strata, as evidenced by the under-represented French-language Canadian distant signals example cited above. This undersampling of strata 1 and 2 not only lead to over-sampling of strata 3 and 4 but, more importantly, lead to results in the Bortz survey that are both too small and unrepresentative of the underlying population.

Furthermore, the Bortz survey questionnaire focuses on the recall of “most popular” programming right before respondents are asked the key question on relative value of programming. This question created considerable bias in the survey results by reducing the likelihood that cable operators will think about the value of niche programming, especially as respondents strive to provide internally consistent responses in the “zero sum” nature of the relative value question.

Due to these significant sampling and bias issues, the Bortz survey results should not be used to establish the relative value of Canadian programming for the purpose of making copyright royalty awards.

## **VI. Summary and Conclusions Regarding the Validity of the McLaughlin Methodology for Augmenting the Bortz Sample to Estimate the Value of Canadian Distant Signals.**

Linda McLaughlin, an economist, recalculated the Bortz survey estimates of PTV and Canadian programming on behalf of PTV. The McLaughlin analysis estimated that,

had all sampled systems with distant signals been considered eligible, the Bortz survey would have valued the PTV signals as 6.2% and the Canadian signals as 0.5% in 2004 and at 5.9-6.2% and 1.5-1.8% respectively in 2005. (McLaughlin Written Direct, Chart 4, p. 11).

The McLaughlin methodology made only one adjustment to the value of programming as estimated in the Bortz survey: To include cable systems that imported only either a PTV signal, a Canadian signal or only both in the estimates of the value of programming. Since the Bortz constant sum scale methodology asked about the value of programming on commercial distant signals and about entire signals for PTV and the Canadians, the Bortz survey could not obtain estimates of programming for cable systems that did not import a commercial distant signal. McLaughlin argues that since cable systems pay for PTV and Canadian distant signals, arbitrarily excluding them from the survey has an adverse effect on PTV and the Canadians because their value is not included in the Bortz estimates. Essentially, McLaughlin "augments" the Bortz sample by adding back the estimated values for PTV and Canadian distant signals that Bortz excluded. In 2004, this resulted in adding 9 observations to the PTV sample and one to the Canadian sample. In 2005, seven systems only carried a PTV distant signal, one only carried a Canadian distant signal and two carried both.

McLaughlin's argument has some theoretic logic, but the implementation with regards to the Canadian signals is flawed because it assumes that the Bortz sample is representative of the underlying population of imported Canadian distant signals and, as previously discussed, the Bortz sample is not at all representative of the underlying population of cable systems that import Canadian French-language or English-language signals. Because the Bortz survey undersamples cable systems that import Canadian distant signals, McLaughlin's augmentation approach cannot be applied to estimate the value of Canadian distant signals.

According to CDC's compilation of carriage data for 2004, 24.6% (*i.e.*, 15 of the 61) of cable systems that imported Canadian distant signals only imported a single distant

signal, and 13 of these 15 (or 86.7%) were in Bortz strata 1 and 2. According to comparable carriage data for 2005, 27.5% (14 of the 51) cable systems only imported a single distant signal, and 12 of these 14 (or 85.7%) were in Bortz strata 1 and 2. As discussed previously, because the Bortz sampling plan undersamples strata 1 and 2, it is not representative of the cable systems that (1) only import one distant signal, and (2) import that distant signal from Canada. Thus, McLaughlin's augmentation methodology cannot be applied to obtain a reliable estimate of the value of Canadian distant signals because the Bortz data under-represents the cable systems that only import a single (Canadian) distant signal.

Additionally, due to an apparent clerical error in the Bortz database, McLaughlin underestimated the "augmented" royalties estimated by her methodology. The Bortz sampling plan in 2004 omitted Comcast of Washington IV, a cable system which paid royalties on \$688,245, and which should have been assigned to stratum 4 (the largest royalty stratum). Since the Bortz survey intended to interview all of the stratum 4 systems and since Comcast of Washington IV only imported one distant signal, the Canadian signal CBUT, it should have been included in McLaughlin's augmented estimate of royalties due the Canadians. If this error is corrected, the augmented Canadian royalty increases by \$392,994.17 (*i.e.*, \$688,256 in system royalties times 100% of value times 57.1% response rate) and the augmented Canadian percentage increases from 0.5% to 1.9% for 2004, using McLaughlin's methodology.

Finally, as previously noted, McLaughlin's augmentation plan does not address the bias in the questionnaire that systematically underestimates the value of Canadian programming when respondents are asked about the Canadian signal. That is, the McLaughlin testimony does not consider questionnaire design biases at all.

## **VII. Conclusions**

McLaughlin's augmentation methodology assumes the Bortz sampling plan provides a representative sample of cable systems that only import distant signals from PTV or

Canada. In 2004, the Bortz sample included a clerical error and when this error was corrected, the McLaughlin estimate of the royalties due the Canadians increased by a factor of more than three (*i.e.*, from 0.5% to 1.9%). This point illustrates the fact that having a representative sample of cable systems that import Canadian signals is crucial to both the Bortz and McLaughlin approaches for estimating the value of imported distant signals.

My analysis shows that the Bortz disproportionate sampling plan results in a sample that is not representative of the cable systems that import Canadian distant signals. I also conclude that the Bortz questionnaire design is biased against niche programming because of the way it prompts respondents to recall only the most popular programming before asking the crucial valuation programming question.

In short, neither the Bortz approach nor the McLaughlin approach can be used to obtain a reliable estimate of the actual value of Canadian distant signals to cable system operators.



## Declaration of Gary T. Ford

2004-2005 Cable Royalty Distribution Proceeding  
Docket No. 2007-03 CRB CD 2004-2005

I, Gary T. Ford, declare under penalty of perjury under the laws of the United States of America that the foregoing written rebuttal testimony prepared for submission by the Canadian Claimants Group to the Copyright Royalty Judges is true and correct.

12/9/2009  
Date

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### Research Reports

- 1) "A Study of Parks, Recreation and Open Space in Prince George's and Montgomery Counties, Maryland," with R.W. Janes and P.G. Kuehl, for Maryland National Capital Park and Planning Commission, 253 pages (1975).
- 2) "A Feasibility Study to Identify Methods to Increase the Levels of Immunization of Children Receiving Services from BCHS Funded Clinics," with R.E. Spekman, prepared for Bureau of Community Health Services, D.H.E.W., 97 pages (1979).

- 3) "The Effects of Reduced Flammability Cigarettes on Smoker Behavior," with J.P. Brown and J.E. Calfee, prepared for the National Bureau of Standards, 65 pages (October 1986).
- 4) "Final Report on Undercover Investigation of ATV Dealers," prepared for Consumer Product Safety Commission, 53 pages (1989).
- 5) Preliminary Report "ABA Digital Evidence Project Survey on Electronic Discovery Trends and Proposed Amendments to the Federal Rules of Civil Procedure," prepared for ABA Section of Science & Technology, 64 pages (2005).

## PRESENTATIONS

"The Role of Dispute Mediation in Consumer Protection," presented at Meetings of the Practicing Justice Institute, Marymount College, New York City (1978).

"The Use of Consumer Research in the Bureau of Economics, FTC," presented at Association for Consumer Research Conference, San Francisco (1979).

"The FTC's 1983 Deception Policy Statement," presented at Southern Marketing Association (November 1984).

Proposed, organized and chaired special session on "FTC Policy Toward Deception," at Association for Consumer Research Conference, Washington, D.C. (1984).

As faculty member at AMA Doctoral Students Consortium at Notre Dame, presented "Economics of Information, Advertising and Public Policy (1986) (same session was repeated at 1987 Consortium at NYU).

Proposed, organized and chaired special session on "Cigarettes and Regulation: Unintended Consequences?" at Association for Consumer Research Conference, Toronto (1986).

"An Economics of Information Approach to the Regulation of Advertising," with J. Calfee, Winter Educators Conference of the American Marketing Association (1988).

"Signals in Advertising: Preliminary Results," with D.B. Smith and J.L. Swasy, special session, Winter Educators Conference of the American Marketing Association (1991).

"Content Analysis of Advertising for All-Terrain Vehicles, 1980-1987," presented to the marketing faculty at INSEAD, Fontainebleu, France and to marketing faculty at Catholic University at Leuven (1992).

"Can Consumers Interpret Nutrition Information in the Presence of a Health Claim? A Laboratory Investigation," with M. Hastak, A. Mitra and D.J. Ringold, presented at the Annual Meeting of the Association for Consumer Research (1993).

“Interpretation of Health Claims and Nutrition Information by Disadvantaged Consumers,” with A. Mitra, M. Hastak and D.J. Ringold, presented at the Annual Meeting of the Association for Consumer Research (1994).

“The Effects of Health Claims on Consumer Interpretation of FDA-mandated Nutrition Disclosures: a Mall Intercept Study,” with M. Hastak, A. Mitra and D.J. Ringold, presented at the Annual Marketing Association Public Policy Conference (1997).

“Regulation of Advertising on the Internet,” with J. Calfee, presented at the Annual American Marketing Association Public Policy Conference (1997).

“Consumer Search on the Internet,” with Lisa Klein, presented at the Annual American Marketing Association Public Policy Conference (1999).

“Consumer Search on the Internet: Predictions from the Economics of Information,” with Lisa Klein, presented at the Annual Meeting of the Association for Consumer Research (1999).

“Philosophy of Science and the Supreme Court: The Impact of the *Daubert* Decision on Survey Research Used in Litigation,” presented at Kenan-Flager School of Business, UNC at Chapel Hill (Fall 2002) and Marketing Faculty Consortium at Georgetown University (April 2003)

“Philosophy of Science and the Supreme Court: The Impact of the *Daubert* Decision on Survey Research Used in Litigation,” presented at the Annual American Marketing Association Public Policy Conference (2003).

## PROFESSIONAL ACTIVITIES/MEMBERSHIPS

Manuscript reviewer for the American Marketing Association Educators’ Conferences, 1976-present; Southern Marketing Association Conferences, 1977-1978; *Journal of Marketing*, 1979-1981, 1999-2001; *Journal of Business Research*, 1980; Association for Consumer Research Conferences, 1980, 1982, 1983, 1985-1990, 1999-2000 and *Journal of Consumer Research*, 1987-1992, 1995, 1997-2001, *Journal of Marketing Research*, 1997-2000, *Journal of Consumer Psychology*, 1999.

Reviewer for AMA Dissertation Competition, 1983, 1987, 1995. Proposal reviewer for the National Science Foundation, the Ford Foundation and the Department of Energy.

Discussant at AMA Consumerism Workshop, 1976; Southern Marketing Association Conference, 1977; American Marketing Association Educators’ Conference, 1978-1980; Association for Consumer Research Conference, 1978-



1980; AMA Professional Services Marketing Conference, 1981 and Public Policy Conference, 1993, 1994, 1995, 1997.

Member of Program Committee, Association for Consumer Research meeting, 1980, 1984, 2000.

Co-Chairman of AMA Doctoral Students Consortium, 1981.

Faculty participant at AMA Doctoral Students Consortium, 1980, 1986 and 1987.

Elected to Board of Directors, Association for Consumer Research, 1982-1985.

Editorial Review Board, *Journal of Marketing*, 1982-1997.

Editorial Review Board, *Journal of Public Policy and Marketing*, 1983-present.

Special Editor, Marketing and Information Science Issue, *Journal of Library Administration*, 1983-1984.

Public Policy Track Chairman, Educators' Conference of the American Marketing Association, 1985, 1987, 2001.

Book Review Editor *Journal of Public Policy and Marketing*, 2001 to 2004.

Appointed as representative from American Marketing Association to "Census Advisory Committee of Professional Associations" for 2010 United States Census.

## **GRANTS, CONTRACTS AND AWARDS RECEIVED**

Received competitively-bid contract from the Maryland National Park and Planning Commission for *A Survey of Parks, Recreation and Open Space in Prince George's and Montgomery Counties, Maryland*, with R.W. Janes and P.G. Kuehl, \$33,878 (Spring and Summer 1975).

Received contract from National Institute of Health to develop curriculum for a two-day Cancer Communications Marketing Seminar, \$8,000 (Summer 1978).

Received contract for "A Feasibility Study to Identify Methods to Increase the Levels of Immunization of Children and Adolescents Receiving Services from BCHS Funded Clinics," with Robert Spekman, from Bureau of Community Health Services, DHEW, \$9,972 (Fall 1998).

Received contract for "The Effects of Reduced Flammability Cigarettes on Smoker Behavior," with John P. Brown, from Consumer Product Safety Commission and National Bureau of Standards, \$19,925.

Course Release, Senate Research Committee, American University (Spring 1987 and Spring 1988).

Summer Research Grants, Kogod College of Business Administration, American University (1986 and 1987).

Received award for “The Effects of New Food Labels on Disadvantaged Consumers,” with M. Hastak, A. Mitra and D. Ringold, from Marketing Science Institute, \$26,000 (1993) (proposal was one of six funded out of 45 entries in MSI “Using Research to Help Society Competition”).

Listed as one of “The Best Researchers in Marketing,” *Marketing Educator*, p. 5 (Summer 1997).

Received the “Kinnear Award” for the best article published in the *Journal of Public Policy and Marketing* between 2003 and 2005 (February 2007).

Selected as “Outstanding Scholar,” Kogod School of Business, 2006.

### **CONSULTING WORK**

American Automobile Association  
Organization of American States  
Insituto De Investigaciones Electricas, Mexico  
Dames and Moore, Inc.  
Public Broadcasting System  
Bureau of Economics, Federal Trade Commission

### **EXPERT AND EXPERT WITNESS ASSIGNMENTS SINCE 2005**

Polo Ralph Lauren v. United States Polo Association  
Paul Weiss (2005)  
Expert Report, Rebuttal Report, deposition, testimony at trial  
Schick Manufacturing, Inc. v. The Gillette Company (P&G)  
Ropes & Gray (2005)  
Weil, Gotshal & Manges (2006)  
Expert Report, Rebuttal Report, deposition, testimony at hearing  
Omni Pacific, Inc. v. OmniBrands, Inc.  
DLA Piper (2005)  
Expert Report  
USA v. QVC, Inc.  
Baker & Hostetler (2005)  
Expert Report, deposition  
9 Squared, Inc. v. Moviso, LLC and InfoSpace, Inc.  
Holland & Hart (2006)  
Expert Report, deposition  
Medi-Flex, Inc. v. Nice-Pak Products, Inc and Professional Disposables, Inc.  
Lerner, David, Littenberg, Krumholz & Mentlik (2006)  
Declaration, deposition

- Align Techology, Inc. v. Orthoclear, Inc. and Orthoclear Holdings, Inc.  
Paul, Hastings, Janofsky and Walker LLP (2006)  
Expert report, deposition
- Shuttlesworth et al. v. Carleton Sheets and American Marketing Systems, Inc.  
Sachnoff & Weaver (2006)  
Expert Report
- American Century Proprietary Holdings, Inc. v. American Century Casualty  
Company and American Century Claims Service, Inc.  
Leydig, Voit and Mayer (2006)  
Expert Report, deposition
- Phar-Mor, Inc. v. McKesson Corporation t/d/b/a and McKesson Drug Company  
Shepard, Mullin, Richter & Hampton (2006)  
Expert Report, deposition
- Leggett & Platt, Incorporated et al. v. Vutek, Inc.  
Howrey LLP (2006)  
Expert Report, deposition
- Bass Pro Trademarks, L.L.C. v. Sportsman's Warehouse  
Husch & Eppenberger, L.L.C. (2006)  
Expert Report, deposition
- Louis Vuitton Malletier S.A. v. Haute Diggety Dog, LLC et al.  
Arent Fox, PLLC (2006)  
Expert Report
- Ohio Savings Bank d/b/a Amtrust Bank v. Amtrust Mortgage Corporation  
Benesch, Friedlander, Coplan & Aronoff LLP (2007)  
Expert Report, deposition, testimony at Daubert hearing
- Ecce Panis, Inc. v. Maple Leaf Foods USA Inc.  
Lerner, David, Littenberg, Krumholz & Mentlik (2007)  
Declaration, testimony at evidentiary hearing
- Eric Bischoff v. Boar's Head Provisions Co., Inc, et. al  
Weil, Gotshal & Manges (2007)  
Surrebuttal report, deposition
- Rexall Sundown Inc. v. Perrigo Company  
Kelley Drye Collier Shannon (2008)  
Expert report, deposition
- Pernod Ricard LLC v. Bacardi USA Inc.  
Kelley Drye Collier Shannon (2008)  
Rebuttal report, deposition, testimony at trial
- The Evercare Company v. 3M Company  
Paul Weiss (2008)  
Rebuttal report, deposition
- DGG Properties Co., Inc. v. Giovanni's II, Inc.  
Kelley Drye & Warren (2009)  
Expert Report
- Lannett Company Inc. v. KV Pharmaceutical Company

Kenyon & Kenyon (2009)  
Expert Report, deposition  
Amway Corp. v. MonaVie et. al  
Brinks, Hofer, Gilson and Lione (2009)  
Expert report, deposition  
The Hershey Company et al. v. Ptomotion In Motion, Inc.  
Kaye Sholer LLP (2009)  
Expert report, deposition.  
Philip Morris USA v. Veles Ltd. et al.  
Arnold & Porter (2009)  
Expert report, deposition  
Thoip (A Chorion Limited Company) v. The Walt Disney Company  
Moses & Singer (2009)  
Expert Report, deposition  
Farberware Licensing Company, LLC v. Meyer Marketing Co., Ltd.  
Dykema Gossett PLLC (2009)  
Expert Report, deposition, testimony at trial  
Julie Fitzpatrick and others v. General Mills and Yoplait USA Inc.  
O'Melveny & Myers LLP (2009)  
Expert report

### **THESIS COMMITTEES**

Chairman of dissertation committees for George Coan, Dennis Pitta, Debra Ringold and Darlene Smith.

Member of dissertation committee for Bill Grazer, Michael McGinnis, Dennis McDonald, Frank Franzak, Ronald Hill and Dennis McDonnell.

### **COMMITTEE SERVICE AT AMERICAN UNIVERSITY**

Kogod Rank and Tenure Committee (1987-1988, 1995-1998, 2004-2005)  
Faculty Senate Research Committee (1985-1989)  
Marketing Department Faculty Recruiting Committee (1985-2007)  
Ad hoc Research committee, KSB (1986-1989)  
Committee on Faculty Relations (1988-1989)  
Dean's Executive Committee (1989-1994, 1999-2001, 2004, 2006-2007)  
Executive Committee of the AU Chairs (1993-1994)  
AU Presidential Search Committee (1993-1994)  
President's Committee on Strategic Planning (1995-1997)  
AU Provost's Committee on Academic Programs (1995-1997)  
Director of MBA Field Studies (1995-1997)  
Chair of Executive Education Committee (1998)  
Faculty Advisor Men's Soccer (2002 to 2007)  
Associate Dean Search Committee, KSB, (2003)

**UNDERGRADUATE COURSES TAUGHT**

- “Principles of Marketing”
- “Marketing Research Methods”
- “Fundamentals of Marketing and Business for Communications”

**GRADUATE COURSES TAUGHT**

- “Marketing Research Methods”
- “Doctoral Seminar in Marketing and Public Policy”
- “Research Methodology for Doctoral Students”
- “Consumer Behavior”
- “Marketing Management”

November 22, 2009

**Oral Rebuttal Testimony Correction To The Written Rebuttal Testimony**

**Of Dr. Gary T. Ford**

The CCG respectfully seeks to inform the judges of a correction made by Dr. Gary T. Ford while testifying before the Copyright Arbitration Royalty Panel on February 3, 2010 in present proceeding. As reflected on page 2971 on the transcript for that date, Dr. Ford made a correction to tables 1 through 4 located on pages 10 and 12 of his written rebuttal testimony. Dr. Ford requested that the three zeroes (“000”) at the top left of each of the tables be removed. As Dr. Ford did not formally submit this written correction, his testimony contained on the following pages does not reflect this change.

**Rebuttal Testimony of John E. Calfee, Ph.D.**

**CORRECTED FEBRUARY 1, 2010**

Submitted on Behalf of the Canadian Claimants Group

Docket No. 2007-3 CRB CD 2004-2005

My name is John E. Calfee. I am submitting this testimony in the Rebuttal Phase of the Copyright Royalty Judges' proceedings in the matter of the Distribution of the 2004 and 2005 Cable Royalty Funds. I offer this testimony on behalf of the Canadian Claimants Group (CCG) and not as an employee of the American Enterprise Institute, which does not take institutional positions on specific legislation, litigation, or regulatory proceedings. I have been asked to address the written and oral direct testimonies of Linda M. McLaughlin and James M. Trautman and also aspects of the testimony of Arthur C. Gruen, George S. Ford and Joel Waldfogel.

**1. Qualifications**

I received my Ph.D. in economics in 1980 from the University of California at Berkeley. My dissertation was on potential demand for electric vehicles. The goal of that research was to estimate consumer demand for products that were not in the marketplace. To deal with the fact that the market could not provide prices and thus could not permit consumers to reveal their valuation of competing products, I used a combination of survey research and econometric methods developed by my thesis supervisor, Daniel McFadden. My first job after receiving my Ph.D. was at the Bureau of Economics at the Federal Trade Commission, where I was a staff economist and later a Deputy Assistant Director and Special Assistant to the Director of the Bureau of Economics. At the FTC, I became familiar with interactions between government and industry and observed the ways in which government regulators took account of the preferences and interests of various parties affected by their regulations, including the role of public comments in regulatory rulemaking. When at the FTC and since then, most of my research and publications have focused on the operation of regulated markets. Among the specific topics I have written on are: The measurement of consumer demand in the absence of actual market

prices (as in my electric vehicle demand work and in my research with Clifford Winston on the value of avoiding congestion when commuting); the influence of regulation on health information in food advertising and on the content of pharmaceutical advertising; the impact of price regulation on research and development, and; the interactions between the pharmaceutical industry and the Food and Drug Administration. I have also testified in hearings before the U.S. House of Representatives and the U.S. Senate, and before the Food and Drug Administration.

I have considerable experience with survey research. This experience began with my Ph.D. dissertation, in which I designed and executed a consumer survey on potential demand for electric autos. It continued while I was with the FTC, where I worked in the consumer protection division of the Bureau of Economics, often reviewing consumer surveys. I later served a term on the board of the Association for Consumer Research, and my courses on market research and consumer behavior at the University of Maryland and Boston University included sections on survey research. My 1990 rebuttal testimony in *Colorado v. the May Department Stores d/b/a May D&F* focused on consumer surveys. In 1998 in *B. Sanfield v. Finlay Fine Jewelers*, I designed a consumer survey on price advertising that was accepted and relied upon by the judge in his decision, which was favorable to my client. While at the Brookings Institution, I designed two consumer surveys. One was on a consumers' willingness-to-pay to avoid highway congestion, and the other was on willingness-to-pay for insurance versus prevention of serious harms. The results were published in a series of papers with Clifford Winston. One of the papers (in the *Review of Economics and Statistics*) described econometric methods for analyzing certain kinds of survey data. In 1997 and again in 2008, I designed surveys of oncologists on cancer drug information and prescribing.

Finally, I provided written rebuttal testimony for the CCG in the 1990-1992 and 1998-1999 Cable Royalty Distribution Proceedings, and in the 2000-2003 Copyright Royalty Board proceedings. I was not called to provide oral testimony in the 1990-1992 and 1998-1999 hearings. In the 2000-2003 proceedings, I provided both written and oral testimony.

A copy of my CV is attached as Appendix A.



## **2. McLaughlin Testimony**

Linda McLaughlin's written direct testimony focused on adjusting the results of the Bortz survey. I discuss this in the section below on the Bortz survey results. Appended to McLaughlin's testimony, however, was her written testimony in the previous proceedings before the Copyright Royalty Judges on the allocation of 2000-2003 royalty fees. I have therefore attached as Appendix B, incorporated herein by reference, my written rebuttal from those proceedings, in which I addressed various issues raised by McLaughlin.

## **3. Gruen Testimony**

Arthur Gruen's testimony describes the results of a constant-sum survey whose central valuation question is similar to that of the Bortz survey (discussed below). The main difference is that the Gruen survey respondents are cable *subscribers*, rather than employees of a cable system. This is the wrong population to survey in order to assess the relative value of programming categories contained in distant signals. Subscribers face a very different situation from that faced by cable operators. Except when choosing among tiers, subscribers do not actually choose which distant signals to pay for. Thus, they do not allocate their cable payments toward various programming categories and have no reason to ponder the relative value of those categories. Given that the hypothetical marketplace at issue is one in which cable operators purchase bundles of programming, the results from the Gruen survey are too distant from cable system operator decision-making to provide a basis for estimating those operators' assessment of the relative value of programming bundles. If the survey is nonetheless used for this purpose, however, one would have to address a basic problem in the Bortz survey, as discussed below.

## **4. George S. Ford Testimony**

George S. Ford's testimony reports the results of a study assessing the relative value of various programming categories as advertising vehicles. This is of little use in assessing the relative value of distant signal programming categories. Because cable systems do not receive

advertising revenues from distant signals, there is no reason to think that cable system operators assess the relative value of distant signals, including those from the CCG, according to their value as advertising vehicles. Like the Gruen survey, George Ford's study relies on data too far removed from actual cable operator decision making to provide useful information about the relative value of programming categories to cable operators.

## **5. The Bortz Survey**

The Bortz survey of cable system operators was presented in the written testimony of James M. Trautman. Earlier versions have been used in several previous cable royalty proceedings. In the Bortz telephone surveys, cable system employees are asked to allocate a fixed sum among various programming categories, including the Canadian signals. In the 1998-1999 proceedings, I noted that the 1998 Bortz sample included only two systems that subscribed to Canadian signals, and the 1999 sample included only three. This was far too small a sample to support reliable estimates of the relative value of Canadian programming. I argued that the combination of "fee generation" with the Ford/Ringold survey of the relative value of programming on Canadian signals was far superior despite its imperfections.

The 2004 and 2005 Bortz samples contained larger subsamples of systems carrying Canadian signals. The 2004 sample included 12 systems, 11 that carried at least one Canadian distant signal along with at least one U.S. commercial distant signal, plus one system that carried only a Canadian signal. The 2005 sample included 16 systems, 13 that carried at least one Canadian distant signal along with at least one U.S. commercial distant signal, plus one system with only a Canadian signal, and two systems with only Canadian and PTV signals. In both years, the survey was not administered to systems with only Canadian and/or PTV signals.

The McLaughlin testimony provides the results of a simple adjustment of the Bortz survey to take account of the systems that were dropped from the sample. For 2004, the adjustment assumed that respondents would have allocated 100% of the constant sum to the Canadian signals, and this was combined with the rest of the Bortz survey results to obtain new

estimates of the Canadian share. This increased the Canadian signal share from 0.2% to 0.5%. For 2005, the increase was from 0.3% to the range of 1.5% to 1.8%.<sup>1</sup>

In this proceeding, I understand that the CCG has submitted the written rebuttal testimony of Gary Ford, which addresses the Bortz survey results from the perspective of survey methodology. Therefore, in this proceeding, I am focusing my testimony on the economic reasonableness of the actual survey results. Among these results are the CCG shares just noted: 0.2% in 2004 (0.5% after the McLaughlin adjustment); and 0.3% in 2005 (1.5%-1.8% after the adjustment). Although the Bortz results make sense for most programming categories, they do not make economic sense for Canadian signals. This is apparent when one examines the results for specific cable systems. Tables 1 and 2 present basic results from the 2004 and 2005 surveys (excluding the McLaughlin adjustments).<sup>2</sup>

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<sup>1</sup> The 2005 adjustment involved a range rather than a fixed number because two systems carried both PTV and Canadian signals. By first assuming that the entire allocation would go to PTV, and then assuming the opposite, a range of possibilities was generated.

<sup>2</sup> In these tables, the Bortz systems were traced through Statement of Accounts and redacted information provided in discovery (primarily through their signal carriage) back to the actual cable system so that royalty data could be retrieved for the systems. The minimum potential savings are based on the information provided in Jonda Martin's "Min-Max" analysis which is summarized in her rebuttal testimony, combined with the amount each cable system paid in 3.75% fees for its Canadian signals, as reported on the Statement of Account data compiled by CDC and the actual Statements of Account provided through discovery. The sum of the minimum basic royalties and the 3.75% royalties (if any) paid for Canadian signals was compared to the total royalties paid by the system to determine the "Cable system's minimum potential savings as a % of total royalties." In 2004, Bortz surveyed 11 systems carrying a Canadian distant signal. Table 1 shows 10 of those systems with relevant data for the first accounting period of 2004. One was omitted because the "Min-Max" data were not available for this comparison. In 2005, Bortz surveyed 13 systems carrying a Canadian distant signal and 12 are shown in Table 2, with relevant data for the first accounting period of 2005. The thirteenth system was omitted because the signal carriage information reported by Bortz for the system did not match the signal carriage information available from CDC and therefore this respondent could not be positively identified. In both tables, only the Bortz Survey ID is presented to avoid revealing the identity of the systems. Similarly, royalty savings have been presented as a percentage to further protect the respondent's identities.

**Table 1:  
Basic CCG Results from the Bortz Surveys, 2004-1**

From Bortz Data			Cable system's minimum potential savings as a % of total royalties	From Statements of Account	
Bortz ID	Tier	Canadian Share		Total Distant Signals	Canadian Distant Signals
319	3	0%	39%	2	1
363	4	0%	76%	8	4
301	3	0%	64%	6	1
309	4	5%	12%	20	1
374	3	5%	26%	6	1
312	3	5%	7%	6	1
426	2	5%	11%	4	1
427	2	5%	7%	5	1
314	4	5%	42%	9	1
382	3	5%	7%	8	1

Source: See Footnote 2.

**Table 2:  
Basic CCG Results from the Bortz Surveys, 2005-1**

From Bortz Data			Cable system's minimum potential savings as a % of total royalties	From Statements of Account	
Bortz ID	Tier	Canadian Share		Total Distant Signals	Canadian Distant Signals
632	4	1%	21%	23	3
653	3	2%	61%	8	1
694	2	5%	39%	2	1
578	3	5%	43%	8	1
641	3	5%	37%	8	1
573	3	10%	49%	5	3
566	3	10%	42%	8	1
567	1	10%	25%	4	1
673	3	10%	39%	2	1
574	3	20%	7%	6	1
671	2	0%	49%	6	2
612	1	0%	31%	5	1

Source: See Footnote 2.

In 2004, the number of distant signals carried by these 10 systems (in Table 1) ranged from 2 to 23 (most were between 2 and 8). Three systems, carrying 2, 6, and 8 signals, all allocated 0% to Canadian signals. The other systems all allocated only 5%. Thus system 319, for example, carried only two signals (one Canadian), yet allocated 100% of value to the non-Canadian signal and 0% to the Canadian signal.

The 2005 results were similar. For system 694, which carried only two distant signals (one Canadian), the Canadian signal was allocated only 5%. System 673, also with two distant signals (one Canadian), allocated just 10% to the Canadian signal. For systems 671 and 612, the allocation was 0%. In only one of the 12 systems was the percentage greater than 10% and in no case was it greater than 20%. One might expect the CCG percentage to be smallest where there are several distant signals, but there seems to be little relationship between the number of signals and the CCG share. For example, the percentage was 5% for systems 694 and 641, which had 2 and 8 distant signals, respectively.

Why are so many Bortz allocations so low for Canadian signals? One possibility is that the allocations actually reflect relative value. This defies basic economics, however. Recall that the Bortz survey attempted to assess the value of all the content on the Canadian signal and that these signals must be paid for. Systems were free to drop Canadian signals if their value was not worth its cost. The exact amount paid – which could be saved by dropping the signal -- depends on the total number of DSEs carried by the system, the number of Canadian signals, where the Canadian signal(s) is assumed to fit into the order of signals carried, whether it is carried throughout the system or only part of the system, and whether the cable system reports it as paying a 3.75% fee. When a system imported two distant signals with a DSE value of 1.0, such as WGN plus a Canadian signal (a common situation), or carried signals with a DSE value of more than 2.0, it paid a fee of 0.956% of its gross receipts for the first signal, 0.630% for the second through fourth signal, and 0.296% for each additional signal (in period 2005-2, the fees were increased to 1.013%, 0.668%, and 0.314%, respectively of gross receipts). Tables 1 and 2 indicate the *minimum* percentage of carriage fees that each system could have saved by dropping the Canadian signal or signals. This is calculated by assuming the Canadian signal was the last signal added; an assumption that substantially underestimates the actual savings because there is no reason to think that the Canadian signal is always treated by the system as the last signal to be

added.<sup>3</sup> The calculations also take account of whether eliminating Canadian signals would cause the system to pay the minimum fee.

The data in Tables 1 and 2 enable us to examine the plausibility of the survey results. In 2004, for example, system 319 valued the Canadian signal at 0%, but it could have saved at least 39% of carriage fees by dropping this signal and keeping the other one. System 314, with one Canadian signal, valued it at 5% and could have saved at least 42% of its fees by dropping that signal. In 2005, system 694, with two distant signals could have saved at least 39% by dropping the Canadian signal – valued at 5% – while still keeping the other distant signal. Some of these potential savings are quite large because the cable systems paid 3.75% fees to carry the Canadian signal or signals.

Tables 1 and 2 reveal other similar examples. In each case, it makes no sense for the system to retain a signal whose reported value according to the Bortz survey is almost trivial compared to its costs. Indeed, there seem to be few if any systems in which the Canadian signal allocation bears a reasonable economic relationship to the fees actually paid for distant signals. I think we can reject the hypothesis that the Bortz survey provides even a very rough estimate of the relative value of Canadian signals, let alone the Canadian content on those signals.

An alternative explanation for the Bortz results for Canadian signals lies in the survey's design. When respondents perform the fixed-sum exercise, they are asked to remove Canadian-specific content from basic program categories like movies and sports, and are then asked to consider that content to be part of the Canadian signal. In addition, respondents are asked to assess the relative value of movies, sports, and so on, but to do so only for the content that actually arrives from a group of distant signals. They must also distinguish between "network" and "non-network" programming. Further, they must perform another mental exclusion, this time excluding the same types of programming that arrive from cable stations such as TBS or USA. There seems to be little reason to think that respondents were successful in this difficult task. Far more likely is that they simply allocated shares to the various programming categories according to the general "big picture" content of those categories.

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<sup>3</sup> As noted earlier the minimum amount saved by dropping the Canadian distant signal(s) is based in part on the "Min-Max" analysis done by Cable Data Corporation along with the reported amounts paid for the Canadian signal(s) at the 3.75% rate. Again, actual fees are not shown to protect the identity of the Bortz respondents.

Such an allocation left nothing or only a trivial amount for all the programming on an entire distant Canadian signal. Essentially this same point was emphasized in the Gruen testimony at p. 5 and especially at p. 26: “As Bortz survey respondents get into the rhythm of the questionnaire, when thinking of program categories, it may be natural for them to focus on a program type as known by the general population, rather than to focus on the program categories at issue in this proceeding as they apply only to specific distant television signals.” This would explain why Canadian signal allocations are irrationally low (in the sense of being irreconcilable with the fact that the Canadian signals had to be paid for) and are relatively constant even as the number of distant signals varies. At the same time, the use of general program categories seems to explain why the Bortz study may be useful for large categories like sports, movies and series, and local commercial television programming.

Further evidence of the Bortz study’s deficiencies lies in the extraordinary effects of the McLaughlin adjustments, which should have had a minor effect because they added only one system to the 11 systems with Canadian signal carriage that were surveyed in 2004, and only 3 to the 13 systems surveyed in 2005. The problem of confusion among program categories could not exist in this adjustment because the allocations were performed manually (usually set at 100%). Adding that single unconfused observation to the 2004 sample more than doubled the estimated relative value (from 0.2% to 0.5%). Adding those three observations to the 2005 sample increased estimated relative value more than five-fold (from 0.3% to 1.5%-1.8%). That such small additions to the sample would have such large effects makes sense only if the sample results to which they were added were artificially low.

In my opinion, the Bortz survey does not provide plausible estimates of the CCG shares and should not be used for allocating fees to the CCG.

## **6. Various Estimates of Relative Value**

Several expert reports have provided estimates of relative value for program content from the CCG and other claimants. The basic results are presented in Tables 3 and 4, below. Note that the results reported by the Bortz, McLaughlin and Gruen studies for the “Canadian” share are actually attempts to measure the value of all the programming on the distant Canadian signals, while George Ford and Joel Waldfogel try to measure the value of just the CCG

programming on the Canadian signals. Thus, the numbers offered by Bortz, McLaughlin and Gruen would need to be reduced even further (for example, by application of the Ringold Study results) to reach the purported value of CCG programming using those three methodologies.

**Table 3**  
**Estimated Relative Values of CCG Shares, 2004**

<b>Study</b>	<b>Bortz Survey</b>	<b>McLaughlin Adjustment of Bortz</b>	<b>Gruen Subscriber Study</b>	<b>G.S. Ford Advertising Study</b>	<b>Waldfogel Regression Analysis</b>
Program suppliers	36.5%	35.4%	48.9%	68.3%	24.7%
Joint Sports	33.5%	32.4%	17.8%	13.8%	42.4%
Commercial TV	18.4%	17.9%	15.5%	6.5%	22.9%
Public TV	3.5%	6.2%	9.6%	8.2%	6.8%
Devotional	7.8%	7.6%	7.4%	1.2%	0%
Canadian	0.2%	0.5%	0.8%	1.9%	3.3%
Total*	99.9%	100.0%	100.0%	99.9%	100.0%

\*Total may not be exactly 100% due to rounding.

Source: **Bortz Survey**: JSC 04-05 Ex. 1, p. 14, Table II-1 - Distant Signal Programming Valuation Studies, 2004-05; **McLaughlin**: Testimony of Linda McLaughlin, June 1, 2009, corrected Sep. 30, 2009, p. 11, Chart 4 – Augmented Bortz Survey: Relative Value of Distant Signal Programming, By Category; **Gruen**: Testimony of Arthur C. Gruen, Ph.D., June 1, 2009, corrected Sept. 28, 2009, p. 23, Table 3 – Normalized Distant Signal Relative Values (Percent) ; **G.S. Ford**: Testimony of George S. Ford, June 1, 2009, corrected July 30, 2009, p. 39, Table 6 – Relative Market Values Based on Marketplace Evidence, Relative Market Value (%); **Waldfogel**: Statement of Joel Waldfogel, June 1, 2009, p. 15, Table 5 – Royalty Share Allocation Form 3 Cable Systems with Positive DSE 2004-2005, Using Compensable Minutes.



**Table 4**  
**Estimated Relative Values of CCG Shares, 2005**

<b>Study</b>	<b>Bortz Survey</b>	<b>McLaughlin Adjustment of Bortz</b>	<b>Gruen Subscriber Study</b>	<b>G.S. Ford Advertising Study</b>	<b>Waldfoegel Regression Analysis</b>
Program suppliers	37.6%	36.2%	46.6%	75.7%	24.7%
Joint Sports	36.9%	35.5%	17.1%	9.0%	42.4%
Commercial TV	14.8%	14.2%	19.5%	9.5%	22.9%
Public TV	3.7%	5.9-6.2%	6.8%	4.0%	6.8%
Devotional	6.6%	6.2%	8.2%	0.4%	0%
Canadian	0.3%	1.5-1.8%	1.8%	1.4%	3.3%
Total*	99.9%	100.0%	100.0%	100.0%	100.0%

\*Total may not be exactly 100% due to rounding.

Source: **Bortz Survey**: JSC 04-05 Ex. 1, p. 14, Table II-1 - Distant Signal Programming Valuation Studies, 2004-05; **McLaughlin**: Testimony of Linda McLaughlin, June 1, 2009, corrected Sept. 30, 2009, p. 11, Chart 4 – Augmented Bortz Survey: Relative Value of Distant Signal Programming, By Category; **Gruen**: Testimony of Arthur C. Gruen, Ph.D., June 1, 2009, corrected Sept. 28, 2009, p. 23, Table 3 – Normalized Distant Signal Relative Values (Percent) (Note: In 2005, this is the average of values that range from 1.44 to 2.10); **G.S. Ford**: Testimony of George S. Ford, June 1, 2009, corrected July 30, 2009, p. 39, Table 6 – Relative Market Values Based on Marketplace Evidence, Relative Market Value (%); **Waldfoegel**: Statement of Joel Waldfoegel, June 1, 2009, p. 15, Table 5 – Royalty Share Allocation Form 3 Cable Systems with Positive DSE 2004-2005, Using Compensable Minutes.

It is apparent that the results are highly diverse for most categories. In 2004, Program suppliers' shares range from 24.7% to 68.3%. Joint sports results vary from 13.8% to 42.4%, and Commercial TV, from 6.5% to 22.9%. For the CCG, the range is from 0.2% to 3.3%. Clearly, the diversity in estimates overwhelms the small share that is bound to be associated with a niche offering such as the CCG signals. More importantly, much of the diversity arises from the fact that the various studies do not all attempt to measure the same thing. As I have explained, the Gruen estimates should not be used because they reflect the views of subscribers rather than cable system operators, and the George S. Ford estimates should not be used because they measure the value of distant signals as advertising vehicles, which plays little, if any, role in cable system operators' evaluation of distant signals. The Bortz survey appears sound in its treatments of major program categories but has clearly provided useless results for the CCG programming value for reasons explained at length, above.

The econometric study of Joel Waldfogel, sponsored by Commercial Television addresses the right object (the value of distant signals to cable system operators) and does so in a reasonable way. It is similar in design to the Rosston study offered in the 1998-1999 Cable Royalty Distribution Proceedings.<sup>4</sup> Based upon a statistical examination, I criticized the Rosston study as providing negligible information about the value of the CCG content. I have not examined the Waldfogel study, but if it has surmounted the problems of the Rosston study, it should provide useful information on the CCG share.

There remains the fee generation method, which I described in some detail in my 2000-2003 testimony (which again, has been attached as an appendix to this testimony) and which was adopted by the CARP in awarding fees for the CCG content in the 1990-1992 and 1998-1999 proceedings. The fee generation approach, unlike the Bortz survey (as applied to the CCG content), directly reflects the basic economic process in which cable system operators decide which, if any, distant signals to purchase from a wide selection of hundreds of signals, all while paying attention to the costs and benefits of adding such signals. This transaction is a fundamental piece of economic information relevant to the core issue in these proceedings and should be the starting point for any attempt to allocate the CCG royalties. As I described in my 2000-2003 testimony, the fee generation method is not significantly compromised by the minimum fee requirement, the designation of DSE values, the sliding fee schedule for multiple signal carriage, or the designation of 3.5% signals. It remains a reasonably reliable and accurate means for allocating the CCG share of copyright royalties. In particular, the fee generation approach clearly supplies far more accurate information about the relative value of the CCG signals than do the Bortz survey results.

## **7. Conclusions**

Except for the fee generation data provided in the testimony by Jonda Martin of CDC, none of the expert reports on relative value have provided plausible measures for the relative value of Canadian signals. The Gruen study surveyed subscribers instead of cable system

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<sup>4</sup> Testimony of Gregory L. Rosston (submitted in 1998-1999 Cable Royalty Distribution Proceedings), at 16 and Appendix B.

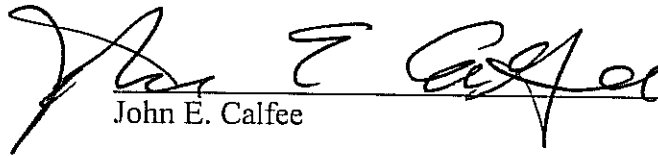
operators. The George S. Ford study examined the value of distant signals as advertising vehicles, which is not how distant signals are used by cable systems. The Bortz study did not provide economically plausible results for Canadian signals, probably because respondents failed to exclude the CCG programming from the program categories themselves. The fee generation method, on the other hand, directly reflects economic decisions made by cable system operators, and its results are economically reasonable.

**Declaration of John E. Calfee**

2004-2005 Cable Royalty Distribution Proceeding  
Docket No. 2007-03 CRB CD 2004-2005

I, John E. Calfee, declare under penalty of perjury under the laws of the United States of America that the foregoing written rebuttal testimony prepared for submission by the Canadian Claimants Group to the Copyright Royalty Judges is true and correct.

Feb. 1, 2010  
Date

  
John E. Calfee

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EDUCATION:

Ph.D. Economics, 1980, University of California, Berkeley  
M.A. International Relations, 1969, U. of Chicago  
B.A. Mathematics, 1963, Rice U., Houston, Texas

PROFESSIONAL AFFILIATIONS:

American Association for the Advancement of Science  
American Marketing Association  
American Public Health Association  
Association for Consumer Research (Director, 1988-90)  
*Journal of Public Policy and Marketing* (editorial review board, 1992-1999, 2002-present)

EMPLOYMENT:

January 1995 - present: Resident Scholar, American Enterprise Institute.  
July 1994 - December 1994: Adjunct Scholar, American Enterprise Institute.  
July 1993 - June 1994: Visiting Senior Fellow, Brookings Institution, Washington, D.C.  
August 1990 - June 1993: Associate Professor of Marketing, Graduate School of Management, Boston University  
Fall 1986 - June 1990: Assistant Professor of Marketing in the College of Business, University of Maryland.  
Sept. 1980 - February 1987 (part-time after Sept. 1986): Special Assistant to the Director, Bureau of Economics, Federal Trade Commission (previously Deputy Assistant Director and Staff Economist)  
Sept. 1975 - Sept. 1980: Graduate study, part-time teaching, U. California, Berkeley  
Oct. 1969 - Sept. 1975: Pacific Telephone and Telegraph, San Francisco, CA (statistical consulting, computer programming and operations).

AMERICAN ENTERPRISE INSTITUTE PAPERS:

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#### LEGISLATIVE AND ADMINISTRATIVE AGENCY TESTIMONY:

Invited testimony in hearings on FDA preemption of state tort liability lawsuits before the House Committee on Oversight and Government Reform, May 14, 2008.

Invited testimony in hearings on drug safety and the FDA, House Committee on Appropriations, Subcommittee on Agriculture and FDA, Feb. 27, 2008.

Testimony in public hearings before the FDA’s Peripheral and Central Nervous System Drugs Advisory Committee on whether to permit the drug Tysabri to re-enter the market, March 7, 2006.

Invited testimony in hearings on “Medicaid Prescription Drugs: Examining Options for Payment Reform, House Committee on Energy and Commerce, Subcommittee on Health, June 22, 2005.

Invited testimony in hearings on “The Roles of FDA and Pharmaceutical Companies in Ensuring the Safety of Approved Drugs, Like Vioxx,” House Government Reform Committee, May 5, 2005.

Invited testimony in hearings on “International Drug Prices,” before the United States Senate Committee on Finance, Joint Committee on International Trade and Health, April 27 2004.

Invited testimony before the Department of Health and Human Services Task Force in Drug Importation, held at the Food and Drug Administration on April 27 2004.

Invited testimony on pharmaceutical price controls before the House Committee on Industrial Relations for the State of Georgia, Feb. 11, 2004.

Invited testimony on direct-to-consumer advertising of prescription drugs in hearings before the Federal Trade Commission, Sept. 10, 2003.

Invited testimony on the role of pharmaceutical benefit managers in hearings before the Federal Trade Commission, June 26, 2003.

Invited testimony before the U.S. Senate Committee on Health, Education, Labor, and Pensions, in public hearings on “the National Immunization Program: Is It Prepared for the Public Health Challenges of the 21st Century?,” Tuesday, Nov. 27, 2001.

Invited testimony in hearings on “Direct-to-consumer Advertising of Prescription Drugs,” Before the U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Consumer Affairs, Tuesday, July 24, 2001.

Invited testimony in hearing on “Seniors’ Access to Prescription Drug Benefits,” before the Subcommittee on Health, Committee on Ways and Means, U.S. House of Representatives, February 15, 2000.

Expert testimony on alcoholic beverage advertising, before the Cleveland City Council, July 1997.

Expert testimony on alcoholic beverage advertising, before the New Zealand Advertising Standards Authority, April 1998.

Testimony on alcoholic beverage advertising, before the Baltimore City Council, December 9, 1993.

Invited testimony on the regulation of marketing and advertising; testimony and prepared statement printed in "Oversight of FTC's Shared Responsibilities," Hearing before the Subcommittee on Transportation and Hazardous Materials of the Committee on Energy and Commerce, House of Representatives, 102nd Congress, 1st Session, November 21, 1991. GPO: Serial No. 102-92, p. 165-178.

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Designated as an expert witness for Exxon on the economic effects of punitive damages, in the Exxon Valdez litigation; deposed December 1993, but did not testify.

Expert testimony on price advertising, for May Department Stores, *Colorado v. the May Department Stores d/b/a May D&F* (1990), District Court, City and County of Denver, Case No. 89 CV 9274.

REFEREEING ACTIVITIES: Addison-Wesley Publishing Co. (consumer behavior textbook); *Advances in Consumer Research*; *Advances in Marketing and Public Policy*; American Marketing Association *Proceedings*; American Marketing Association dissertation competition; *Economic Inquiry*; *Health Affairs*; Institute of Medicine; *International Journal of Pharmaceutical Medicine*; *International Review of Law and Economics*; *Journal of Advertising*; *Journal of Business Ethics*; *Journal of Business Research*; *Journal of Consumer Research*; *Journal of Health Politics, Policy and Law*; *Journal of Industrial Economics*; *Journal of Public Policy and Marketing* (editorial review board, 1992-1999); *Journal of Law, Economics, and Organization*; *Managerial and Decision Economics*; *Nature Reviews Drug Discovery*; *Personalized Medicine*; *Pharmacoeconomics*; *Quarterly Review of Economics and Business*; *Regulation*; Smith Richardson Foundation.





Rebuttal Testimony of John E. Calfee, Ph.D.

Submitted on Behalf of the Canadian Claimants Group  
Docket No. 2008-2 CRB CD 2000-2003

My name is John E. Calfee. I am submitting this testimony in the Rebuttal Phase of the Copyright Royalty Judges' proceedings in the matter of the Distribution of the 2000, 2001, 2002, and 2003 Cable Royalty Funds. I offer this testimony on behalf of the Canadian Claimants Group (CCG) and not as an employee of the American Enterprise Institute, which does not take institutional positions on specific legislation, litigation, or regulatory proceedings. I have been asked to address the written and oral direct testimonies of Linda M. McLaughlin and Harold Singer, with reference to other testimony when necessary.

**1. Qualifications**

I received my Ph.D. in economics in 1980 from the University of California at Berkeley. My dissertation was on potential demand for electric vehicles. The goal of that research was to estimate consumer demand for products that were not in the marketplace. To deal with the fact that the market could not provide prices and thus could not permit consumers to reveal their valuation of competing products, I used a combination of survey research and econometric methods developed by my thesis supervisor, Daniel McFadden. My first job after receiving my Ph.D. was at the Bureau of Economics at the Federal Trade Commission, where I was a staff economist and later a Deputy Assistant Director and Special Assistant to the Director of the Bureau of Economics. At the FTC, I became familiar with interactions between government and industry and observed the ways in which government regulators took account of the preferences and interests of various parties affected by their regulations, including the role of public comments in regulatory rulemaking. When at the FTC and since then, most of my research and publications have focused on the operation of regulated markets. Among the specific topics I have written on are: the measurement of consumer demand in the absence of actual market

prices (as in my research with Clifford Winston on the value of avoiding congestion when commuting), the influence of regulation on health information in food advertising and on the content of pharmaceutical advertising, the impact of price regulation on research and development, and the interactions between the pharmaceutical industry and the Food and Drug Administration. I have also testified in hearings before the U.S. House of Representatives and the U.S. Senate, and before the Food and Drug Administration.

Finally, I provided written rebuttal testimony for the Canadian Claimants Group in the 1990-1992 and 1998-1999 Cable Royalty Distribution Proceedings. I was not called to provide oral testimony in either hearing, however.

A copy of my CV is attached as Appendix A.

## **2. McLaughlin Testimony**

I address three main points in the McLaughlin testimony: (1) Whether the compulsory licensing system for distant signal fees is completely arbitrary; (2) The relationship between distant signal carriage fees and relative value; and (3) The value of Canadian distant signals carried by systems paying the minimum fee.

### **A. Is the compulsory licensing system for distant signal copyright royalties completely arbitrary?**

In her testimony, McLaughlin states that that “The payment rules [for distant signal fees] are arbitrary; they were established by legislative compromise, not relative market value.” (McLaughlin Written Direct at 3.) In support, she cites (Id. at 3, n. 4) the November 19, 1982 findings of the Copyright Royalty Tribunal: “The rates were established as a legislative compromise, they are arbitrary, and they were intended to require only a minimum payment on the part of cable operators [footnote in original omitted].” (*Copyright Royalty Tribunal Adjustment of the Royalty Rate for Cable Systems*, Docket No. CRT 81-2, Nov. 19, 1982, 47 FR 52146 at 54.) In general, her testimony suggests that the compulsory licensing plan generating the fees at issue in these hearings is arbitrary and therefore the fees cannot be related to relative value. The purpose of this compulsory licensing plan, however, is to avoid the huge transaction

costs that would be required for direct negotiations among a large number of buyers and sellers of programming content. The task is greatly complicated by the fact the systems must import entire signals (i.e., everything that is broadcast by a specific Canadian, Mexican or American distant station), rather than selecting specific programs for distant carriage. A recent report from the U.S. Copyright Office describes the plan's origins:

“At the time, it was not realistic for hundreds of relatively small cable operators to negotiate individual licenses with dozens of copyright owners, so a practical mechanism for clearing rights was needed. As a result, Congress created the Section 111 statutory license. Section 111 permits cable systems to carry distant broadcast signals, while compensating copyright owners for the public performance of their works, without the transaction costs associated with marketplace negotiations for the carriage of copyrighted programs.” (*Satellite Home Viewer Extension and Reauthorization Act Section 109: a Report of the Register of Copyrights, U.S. Copyright Office, June 2008, at 3.*)

Any such compulsory licensing system is bound to introduce anomalies (as explained in more detail below), including seemingly arbitrary fees. But the parties with the greatest interest in the compulsory licensing system at issue – including cable system owners and the diverse groups of owners of programming copyrights – were involved in creating these arrangements. (*See House Report No. 94-1476, 17 USC §111, at 8, below.*) These and other interested parties have been free to suggest modifications during the many years in which the system has been in force. As a result, it is most unlikely that the licensing fee arrangements being enforced by Copyright Royalty Judges are completely arbitrary and bear no relationship to the underlying economic forces or to the preferences of copyright owners and cable system operators. Indeed, it is clear from various sources that the compulsory licensing system is a creature of legislation informed by continued industry input (from both buyers and sellers of distant programming), and that the industry has adapted its practices to these rules. For example, the June 2008 report of the Register of Copyrights, “*Satellite Home Viewer Extension and Reauthorization Act Section 109 Report*,” notes that “Congress enacted Section 111 after years of industry input . . .” (at. i), and that “Any changes to the Section 111 statutory structure will disrupt settled expectations” (at. ix). The National Association of Broadcasters, in its July 2, 2007 comments to the U.S. Copyright Office (“*Comments of the National Association of Broadcasters*,” In re Section 109 Report to Congress, Docket No. 2007-1, at. 24-25), emphasized that historic FCC carriage rules, including carriage rates, “reflected market realities that continue to exist today, and have

produced longstanding carriage patterns upon which stations, cable operators, and cable subscribers have come to rely” (p. 25).

In fact, there are numerous ways in which essential features of the fee system reflect economic and institutional realities. An example is the assignment of DSE values to various classes of distant signals, something the McLaughlin testimony criticizes in some detail. (McLaughlin Written Direct at 6-7). On the whole, these assignments appear to reflect the nature of the programming carried by these classes when DSE values were assigned. Thus distant network-affiliated stations mainly carried programs that were also available locally, although not necessarily in the same time slots. Similarly, to varying degrees, the same would be true of public television stations to the extent they broadcast programming obtained through the Public Broadcasting Service. The Canadian stations, on the other hand, carried large amounts of unique programming that was not otherwise available to American systems. All this is consistent with the relative magnitude of DSE values.

Much of this reasoning is illustrated in the House of Representatives report on 17 U.S.C. § 111, the governing statute. That report states:

By contrast, their retransmission of distant non-network programming by cable systems causes damage to the copyright owner by distributing the program in an area beyond which it has been licensed. Such retransmission adversely affects the ability of the copyright owner to exploit the work in the distant market. It is also of direct benefit to the cable system by enhancing its ability to attract subscribers and increase revenues. For these reasons, the Committee has concluded that the copyright liability of cable television systems under the compulsory license should be limited to the retransmission of distant non-network programming.

In implementing this conclusion, the Committee generally followed a proposal submitted by the cable and motion picture industries, the two industries most directly affected by the establishment of copyright royalties for cable television systems. Under the proposal, the royalty fee is determined by a two step computation. First, a value called a “distant signal equivalent” is assigned to all “distant” signals. Distant signals are defined as signals retransmitted by a cable system, in whole or in part, outside the local service area of the primary transmitter. Different values are assigned to independent, network, and educational stations because of the different amounts of viewing of non-network programming carried by such stations. For example, the viewing of non-network programs on network stations is considered to approximate 25 percent. These values are then combined and a scale of percentages is applied to the cumulative total. (House Report No. 94-1476, 17 U.S.C. §111, p. 8.)

**B. The relationship between distant signal carriage fees and relative value.**

The fee generation system at issue in these proceedings can be broken into two components: (1) the determination of distant signal royalty fees to be paid by cable systems; and (2) the allocation of aggregate paid-in fees to various signal types. I address the pay-in structure first, and then turn to allocation. In both cases, the last Copyright Arbitration Royalty Panel (CARP) has emphasized that the goal is not to ascertain the actual market value of various programming, but only the relative value of programming. (CARP, *In the Matter of Distribution of 1998 and 1999 Cable Royalty Funds*, Oct. 21, 2003, at 10 ff.).

McLaughlin states that royalty fees for distant signals bear no relationship to relative value. Her first argument in support of this proposition is that fees are generated by a compulsory licensing system that was “established by legislative compromise, not relative market value.” (McLaughlin Written Direct at 3; Transcript of McLaughlin Oral Testimony at 628.) From this, she infers that fees must be unrelated to relative value. This conclusion is not warranted. The simple fact that fees arise from compulsory licensing law does not imply that fees are unrelated to relative value. As I described above, the compulsory licensing mechanism used for distant signal carriage fees was not constructed in a completely arbitrary fashion, but rather was the result of compromises among interested parties including those paying and those receiving royalties, all with the goal of eliminating unreasonably costly transactions in favor of a simple fee structure that is designed only to provide a reasonable relationship, on average, among the various interests.

McLaughlin also describes how the compulsory licensing system can create anomalous outcomes. For example, a higher-valued signal might generate a lower fee than a less-valued signal. (McLaughlin Written Direct at 3-4.) In her numerical example, she shows that if two signals provide different relative value (\$25 and \$75), but generate the same fees (\$20 each), there will either be a disparity between relative values and fee allocation, or a disparity between relative value and what is actually paid for the signals. But this anomaly is simply a result of setting equal fees for two signals in the same class. This kind of thing is unavoidable in a compulsory licensing mechanism, simply because fees are not separately negotiated for each distant signal.

To address McLaughlin's claim that fees and relative values are essentially unrelated, one has to examine how the fee system works in practice. Much of McLaughlin's testimony focuses on specific aspects of fee calculation for systems that subscribe to more than one distant signal. An examination of these aspects of compulsory licensing system reveals strong relationships between fees and the relative value of distant signals.

**i. Carriage fees and service tiers:** One aspect of the fee system addressed by McLaughlin is that royalties are calculated as a percentage of cable system revenues for the relevant service tiers. Because systems can exercise considerable discretion in arranging tiers, the effect is to alter royalties fees paid in even when distant signal carriage is unchanged. In particular, systems probably reduce carriage fees by placing distant signals in relatively low-priced tiers, which reduces copyright royalties because they are calculated as a percentage of tier revenues. This applies to all distant signals, however, and appears to have no bearing on the extent to which fees for various distant signals are correlated with relative value.

**ii. The designation of 3.75% signals:** McLaughlin also describes the arbitrariness of the designation of 3.75% signals. Under certain circumstances, when a system imports two or more distant signals, one or more of those signals must be paid for at the 3.75% rate, in which case the signal generates a fee of 3.75%, nearly four times the 0.956% for the first signal. When the cable operator can select which signal to treat as the 3.75% signal or signals by designating one or more signals as "permitted", the designation made by the cable system may be seen as arbitrary. The McLaughlin testimony emphasizes that this anomaly is "not minor" (McLaughlin Written Direct at 6). The testimony simply describes the 3.75% system, however. It does not provide any reason to think that the anomaly's practical effects would be significant, however, nor does it suggest how to deal with the anomaly. Suppose a system initially carries one distant signal and pays the minimum fee of 0.956%. Suppose it adds a second signal that triggers a 3.75% designation. That increases the fee from 0.956% to 4.706% (3.75% + 0.956%). But the system could simply drop the first signal and replace it with the second one, keeping the fee at 0.956%. By choosing to keep both signals, the system reveals that each one is worth at least the difference between the minimum fee and the new fee, i.e., 3.75%. For example, suppose a system is considering the carriage of two distant signals, one with a value to the system of 3.5% and the other, 2.5%. Either signal would be worth carrying while paying the minimum fee of

0.960%, but the first signal would provide more value (3.5%), yielding a net value after fees of 2.54% (3.50% minus 0.96%). If the system adds the second signal, total value would increase to 6.0%, but total fees would increase by 3.75%, from 0.96% to 4.706%, so that net value would decrease from 2.54% to 1.294% (6.0% minus 4.706%). The system would stick with just the first signal even though the two signals together would be worth substantially more than the total fee including the 3.75%. This reflects the fact that the first signal is a relative bargain, costing only the minimum fee, compared to the second signal, which costs 3.75%. If the system carries both signals, each must be worth at least 3.75%. If both signals were worth 3.5%, for example, carriage of just one would yield net value of  $3.5\% - 0.96\% = 2.54\%$ , while carriage of both would yield net value of  $7.0\% - 4.706\% = 2.29\%$ , which is less than the 2.54% yield from carrying only one signal.

This logic carries through regardless of which signal is designated as the 3.75% signal. A reasonable way to deal with this situation is to split the royalties equally among the originators of the signals. I have been informed that in order to reflect these conditions, Cable Data Corporation (CDC) has examined the cable systems that carried a distant Canadian station and paid 3.75% royalties and reallocated the royalties so that both distant signals receive an equal allocation of the combined base and 3.75% royalty payments.

**iii. The impact of the declining fee scale for multiple distant signals:** A third aspect of the fee schedule for distant signals discussed by McLaughlin is the declining or “sliding” fee scale: 0.956% of the system’s gross receipts for the first DSE, 0.630% for the second through fourth, and 0.296% for the rest (these rates were slightly lower during period 2000-1). This sliding scale is the outcome of the legislative process discussed above as involving the parties with the greatest interest in constructing a reasonably efficient mechanism to eliminate the costs of multitudes of separate negotiations and transactions. The fee schedules in effect in 2000 through 2003, i.e., the actual royalty rates and the revenues required to be a Form 3 system, were the result of settlement of the inflation rate adjustment proceeding between cable operators and copyright owners. (See Library of Congress, *Adjustment of Cable Statutory License Royalty Rates*, 65 Fed Reg. 64622 (Oct 30, 2000).) The fee schedule is also a reasonable way to deal with the economic reality that not all distant signals are of equal value, so that systems tend to select the most valuable signals first when deciding which and how many signals to import. The



designation of which of two or more signal generates the initial, largest fee, is often arbitrary, however. McLaughlin argues that this is a significant flaw in the compulsory licensing system. But as she points out in her written testimony, "As a practical matter, during 2000-03 only a very small amount of importation occurred above one DSE. The average subscriber in Form 3 systems with distant signals received 1.2 DSEs." (McLaughlin Written Direct at 8.)

The declining fee schedule appears to be an example of how seemingly striking anomalies in compulsory licensing can turn out to be of little practical importance. This is illustrated in a series of calculations of fee data. The rebuttal testimony of David Bennett in the prior distribution proceedings over the 1998 and 1999 royalty pool testimony included the results of a "min/max" exercise in which Canadian base rate royalties were calculated twice, once with the Canadian distant signal designated to generate the highest possible fee (0.893% at the time, rather than 0.956% for the present proceedings), and again with a Canadian signal designated to generate the lowest possible fee (usually the 0.563% rate then used for 2<sup>nd</sup> through 4<sup>th</sup> signals), depending on the number of signals actually carried by each cable system carrying a Canadian distant signal. The results, based on the Bennett testimony, are reproduced in Table 1. (See Exhibit CDN-5, Tab C, at 4-5.) The difference was quite small. For period 1999-2, for example, the maximum amount of \$1,428,206 is only about 10% greater than the minimum amount of \$1,293,624.

**Table 1:**  
**Base Royalty Fee Min/Max Calculation,**  
**1991-2, 1992-2, 1998-2, and 1999-2**

<b>Accounting Period</b>	<b>Minimum Canadian Base Rate Royalties</b>	<b>Actual CDC Allocation of Base Rate Royalties</b>	<b>Maximum Canadian Base Rate Royalties</b>	<b>Min Base Fee As % of Actual</b>	<b>Min Base Fee As % of Actual</b>
1991-2	\$1,010,951	\$1,262,459	\$1,573,058	80.08%	124.60%
1992-2	\$1,072,095	\$1,337,176	\$1,654,633	80.18%	123.74%
1998-2	\$1,050,862	\$1,097,286	\$1,183,725	95.77%	107.88%
1999-2	\$1,293,624	\$1,317,249	\$1,428,206	98.21%	108.42%

In the present hearings, rebuttal testimony from Jonda Martin, President of the Cable Data Corporation, will provide a new min/max analysis for the years 2000 through 2003. The results of Ms. Martin's analysis are presented in Table 2. Just as in the prior proceeding, the differences are quite small. For the year 2003, for example, the maximum amount of \$4,109,290 is about 11% greater than the minimum amount of \$3,622,282.

**Table 2:  
Base Royalty Fee Min/ Max Calculation, 2000-2003**

<b>Year</b>	<b>Minimum Canadian Base Rate Royalties</b>	<b>Actual CDC Allocation of Base Rate Royalties</b>	<b>Maximum Canadian Base Rate Royalties</b>	<b>Min Base Fee As % of Actual</b>	<b>Max Base Fees As % of Actual</b>
2000	\$2,649,851	\$2,760,030	\$2,899,995	96.01%	105.07%
2001	\$2,712,491	\$2,815,634	\$2,955,502	96.50%	104.75%
2002	\$3,298,580	\$3,456,589	\$3,660,761	95.43%	105.91%
2003	\$3,622,282	\$3,800,001	\$4,019,290	95.32%	105.77%

As can be seen, the CDC fee allocation is roughly the mid-point, within about 5% in either direction, of the highest and lowest possible royalty allocation for Canadian signals. It is clear that during 2000-2003, as in 1998-1999, fee generation as reported by CDC is quite robust with respect to the assignment of the order of signals and their sliding fees.

iv. **The assignment of DSE values to classes of distant signals:** Finally, a fourth aspect of the distant signal fee schedule discussed by McLaughlin pertains to the assignment of 0.25 versus 1.0 DSE to various classes of distant signals. Her testimony argues that Canadian signals are 1.0 DSE even though they carry significant programming that is duplicative of local programming, as do network stations, which are only 0.25 DSE signals. The testimony does not indicate the extent of duplicative programming, however, and evidence produced in the CCG's direct case indicates that the bulk of Canadian distant signal programming is Canadian in origin. (See Testimony of Janice de Freitas, Exhibit CDN-1 at 6-8, and Tab CDN-1-Q.) In any event, this is essentially just a criticism of the legislative findings that led to the structure of the compulsory licensing system. In my earlier discussion of how the compulsory licensing was

created through legislation, it was clear that the determination of DSE weights was informed by discussion among the interested parties of such central issues as the extent of duplicative programming among distant and local signals.

**C. The value of Canadian distant signals carried by systems paying the minimum carriage fee.**

Cable systems that carry 1.0 DSE or less are required to pay as the minimum fee, the base rate fee for 1.0 DSE, equal to 0.956% of combined revenues from the highest tier including a distant signal plus lower tiers (i.e., gross receipts). McLaughlin states that when cable systems pay the minimum fee, there is no reason to think that the distant signals carried by those systems provide significant value to those systems (McLaughlin Written Direct at 7-8). In particular, McLaughlin argues that distant Canadian signals can be assumed to be of negligible value to systems that carry no other distant signal and therefore pay the minimum fee. The implication is that to extent that the pool of paid-in fees consists of minimum fees from systems that subscribe to one or more distant signals, there is no reasonable way to assign relative value to these distant signals.

There are several reasons why we can assume that even for minimum-fee systems, all or nearly all distant Canadian signals are of substantial value, often comparable to or exceeding the minimum fee. The switch of WTBS from a broadcast signal to a cable network in 1998 provides a useful natural experiment for assessing the value of Canadian distant signals. In my rebuttal testimony in the 1998-1999 proceedings, I briefly noted that many Canadian signals were carried by systems paying the minimum fee, but that many or most of the those systems had previously carried Canadian signals in addition to a 1.0 DSE signal. In that analysis, I relied partly upon data from the CDC. For the current proceedings, I requested more comprehensive data from CDC. One item I also initially reviewed was Settling Parties' Exhibit SP-7, which was a report titled CDINDEX, containing a printout of detailed data by cable system. However, the report was incomplete for several years leading up to the WTBS switch in 1998; in particular, Exhibit SP-7 lacked information on WTBS carriage in the relevant years. I have since been provided with an updated version of this report containing complete data sets including TBS carriage. The replacement CDINDEX list of detailed cable system data is provided as Exhibit CDN-R-2-A to

my testimony. CDC also provided me with the data for Table 3, below.

The CDC data show that in the period 1997-2, just before the WTBS switch, 95.2% of cable systems carried WTBS, which was a 1.0 DSE signal. Systems that also carried a Canadian distant signal had to pay at least the base fee of 0.956% plus 0.630% (the fee for a second DSE) of gross receipts. This indicates that for a typical system, the first Canadian distant signal was worth at least 0.630%. Canadian signals that were valued at less than 0.630% (which was also charged for the 3<sup>rd</sup> and 4<sup>th</sup> distant signal) would not have been carried.

Let us suppose, as the McLaughlin testimony suggests, that many of the Canadian signals carried after the WTBS switch were worth relatively little – say, 0.5% or less of gross receipts. If so, most of those signals would not have been carried before the WTBS switch because they would have incurred a fee of 0.63% after paying the basic fee for WTBS itself. McLaughlin’s argument therefore predicts that we should observe a disparity between Canadian signal carriage before and after the WTBS switch, with substantially fewer signals being carried before the switch. This can be tested with data. Table 3 presents data for periods 1990-1 (the first half of 1990) through 2003-2 (the second half of 2003) on Form 3 systems (which account for almost all royalties). The table displays the number of Form 3 systems, the number and percentage of Form 3 systems with zero DSEs, the number with 1 or more Canadian distant signals, the number with exactly one Canadian distant signal, the number with two or more, and the number of Form 3 systems for which a Canadian distant signal is the only distant signal carried. It can be seen that during 1990-1 through 1997-2, periods in which WTBS was classified as a distant signal, very few systems carried only a Canadian signal and no other distant signal (2 systems at the most) – reflecting the fact that nearly all systems already carried WTBS at 1.0 DSE. This means that practically all systems importing a Canadian distant signal incurred a fee of 0.630%. Between 61 and 68 systems carried one or more Canadian distant signal, along with one or more other distant signals. Of those, between 47 and 51 (48 in 1997-1, 51 in 1997-2) carried exactly one Canadian distant signal.

Additional information about the value of Canadian signals can be inferred from the facts that virtually no systems carried only a single Canadian signal and no other distant signal, and that many systems carried more than one Canadian signal (again, see Table 3). The value of individual Canadian signals is bound to vary greatly among the various cable systems, as

reflected in the frequent decision to carry more than one signal. It is most unlikely that each system importing a single signal happened to value it at exactly 0.63% or slightly more. Far more likely is that valuations, while all being at least 0.63%, ranged well beyond that. Similar reasoning, albeit with less force given the fewer number of signals involved, applies to the 2<sup>nd</sup> or 3<sup>rd</sup> or 4<sup>th</sup> signals in systems that imported more than one Canadian distant signal. The June 2008 report of the Register of Copyrights, "Satellite Home Viewer Extension and Reauthorization Act Section 109 Report," emphasized that "Section 111 has proven to be an efficient mechanism to clear copyrighted works at below-market rates" (at. vii). Also, in its July 2, 2007 comments to the U.S. Copyright Office ("Comments of the National Association of Broadcasters," In re Section 109 Report to Congress, Docket No. 2007-1) The National Association of Broadcasters pointed out that even the most expensive signals, 3.75% signals, provide copyrighted programming at "below market" rates (at 22). There seems to be no reason why Canadian signals would be an exception to this general observation.

In 1998-1, immediately after the switch, 51 systems carried a single Canadian signal. During 2000-2 through 2003-2, between 47 and 53 systems carried a single Canadian signal. Clearly, the WTBS switch had virtually no impact on cable operator's decision to carry Canadian distant signals— neither on the number of systems importing a single Canadian signal nor on the number importing more than one Canadian signal. These numbers strongly indicate that even in systems paying the minimum carriage fee, Canadian signals provided significant value equal to or exceeding the 0.63% fee. Moreover, recalling why most of these signals were probably worth substantially more than 0.63% before the switch, there are sound economic reasons to think the signals imported for minimum fee system were probably worth at least 0.63% and in most cases, substantially more. An alternative scenario, of course, is that Canadian signals simply declined substantially in value after the WTBS switch but happened to be picked at the same rate because of other, unknown factors. That scenario does not seem plausible. Certainly, the McLaughlin testimony provides no support for such a scenario.

**Table 3:  
Canadian Distant Signal Carriage, 1990-2003**

Accounting Period	Num. of Form 3 Systems	Form 3 Systems with 0 DSEs	0 DSE Systems as % of Total	Systems with 1 or more Canadian Distant Signals	Systems with 1 Canadian Distant Signals	Systems with 2 or more Canadian Distant Signals	Systems with only Canadian Distant Signals
1990-1	2,105	16	0.760%	68	50	18	0
1990-2	2,124	12	0.565%	67	48	19	0
1991-1	2,200	13	0.6%	68	48	20	0
1991-2	2,202	12	0.5%	63	46	17	0
1992-1	2,250	14	0.6%	65	47	18	0
1992-2	2,271	16	0.7%	66	48	18	1
1993-1	2,347	14	0.6%	66	47	19	1
1993-2	2,287	15	0.7%	68	49	19	2
1994-1	2,241	10	0.4%	66	49	17	2
1994-2	2,213	14	0.6%	63	49	14	1
1995-1	2,242	12	0.5%	64	50	14	1
1995-2	2,301	12	0.5%	63	49	14	2
1996-1	2,343	15	0.6%	61	47	14	2
1996-2	2,383	26	1.1%	61	48	13	2
1997-1	2,334	36	1.5%	62	48	14	2
1997-2	2,346	40	1.7%	65	51	14	2
1998-1	2,344	459	19.6%	66	51	15	25
1998-2	2,363	437	18.5%	65	51	14	25
1999-1	2,312	382	16.5%	59	45	14	20
1999-2	2,296	378	16.5%	62	48	14	22
2000-1	2,307	380	16.5%	63	48	15	22
2000-2	1,898	311	16.4%	58	47	11	22
2001-1	1,853	325	17.5%	60	49	11	21
2001-2	1,818	312	17.2%	65	53	12	20
2002-1	1,759	306	17.4%	62	50	12	17
2002-2	1,723	308	17.9%	65	48	17	18
2003-1	1,687	300	17.8%	63	50	13	21
2003-2	1,648	272	16.5%	62	49	13	22

Source: CDC.

### 3. Singer Testimony

Singer's testimony focuses on the role of "changed circumstances" between the copyright royalty proceedings for years 1990-1992, 1998-1999, and 2000-2003. When the CARP used the fee generation method to award an increased share of copyright royalties to the Canadian Claimants Group in the 1998-1999 distribution proceedings, compared to its share in the 1990-1992 proceedings, the CARP and the Canadian Claimants Group cited several changed circumstances – most of them triggered by the WTBS switch at the end of 1997 – to explain why the Canadian Claimants Group share should be larger and why the fee generation method calculated a larger share for the Canadian Claimants Group. Singer's argument is that if similar changed circumstances did not occur between the 1998-1999 and 2000-2003 periods, there is no reason to apply the fee generation method to data from 2000-2003. Rather, awards should be identical to the results of applying the fee generation to the 1998-1999 data.

I believe this reasoning is unsupported for three reasons. The first is that there is no reason to expect large, identifiable factors (particularly recurring factors) to be the prime causes of significant changes in relative values. The cumulative effects of relatively small changes can also be substantial, even if no large change can be identified. That is typical of markets generally.

The second problem with Singer's exclusive focus on large, identifiable factors is that relative values may be influenced by factors that cannot be identified at all, or if identified, are impossible to measure. For example, CBC programming has received numerous awards in recent years. Whether these awards reflected increased relative values, or even influenced those values, is probably impossible to determine. One can imagine many other potential factors – demographic changes in cable system communities, for example, or unexpected impact from DVD usage or even the altered fortunes of sports teams – which could exert substantial influence on cable system operators' choice of distant signals and the pricing of service tiers, without our being able to estimate the influence of those factors on relative values.

Third, there seems to be no reason why the fee generation results based on 1998-1999 data would be preferred over results using data for the years in which the royalties in question were actually collected. A chief virtue of the fee generation method is that despite its limitations,

it automatically takes account of whatever forces were at work during the relevant periods. This is clear from the CARP report of the distribution of 1998-1999 fees. After first discussing at length the impact of the WTBS switch, and then addressing the use of the fee generation method for the CCG award, the report noted, "Other than a substantial increase in relative shares of actual fees generated of both the Basic Fund and 3.75% Fund, the Panel does not discern any changed circumstances that would significantly affect the Canadians award." (CARP, *In the Matter of Distribution of 1998 and 1999 Cable Royalty Funds*, Oct. 21, 2003, at 74). And later, "An assessment of changed circumstance, based upon an approximate doubling of relative fees, implicates a substantial increase from the last award . . ." (CARP, *In the Matter of Distribution of 1998 and 1999 Cable Royalty Funds*, Oct. 21, 2003, at 74).

The function served by the fee generation method is similar to that of the successive Bortz surveys used in cable royalty distribution proceeding, which provided useful evidence on relative value without identifying any particular factors in the marketplace that might have affected those relative values. However, a new Bortz survey was required for each period for which the allocation of fees was at issue; previous survey results were bound to be less useful than those from a new survey conducted at the appropriate time. Thus, the CARP report of the distribution of 1998-1999 fees noted (CARP, *In the Matter of Distribution of 1998 and 1999 Cable Royalty Funds*, Oct. 21, 2003, at 31):

"We note here that JSC adduced substantial evidence of changed circumstances for the purpose of supporting an increase in JSC's 1990-92 award [n. 14 omitted]. See generally JSC PFFCL 174-83. The Panel need not address this evidence. The Bortz survey, which subsumes all conceivable relevant changes, provides a much more reliable and objective measure of relative value."

Thus, rather than use the 1998-1999 date for the fee generation method, it makes far more sense to use 2000-2003 data. These data reflect, albeit imperfectly, the course of events since 1998-1999, including the impact of changes in the number and variety of signals available for carriage, changes in perceived attractiveness of programming, and other factors too numerous or too little understood to be listed here. The virtues of using recent data are borne out by much of the data provided by Singer. His Figure 4 presents data on the number of subscribers to U.S. and Canadian distant signals for 1998-1999 and 2000-2003. Subscribers to United States signals increased by 2.7% (from 65,552,925 to 67,336,460) while subscribers to Canadian signals



increased by 16.7% (from 2,436,998 to 2,843,673). His Appendix 4 makes this case as well showing steady growth for subscribers to Canadian signals while subscribers to US signals decrease or remain constant. All else equal, this would suggest an increase in the CCG's royalty share. Singer's Table 2 provides data on the average number of U.S. and Canadian distant stations carried per cable system for 1998-1999 and 2000-2003. The average number of U.S. distant stations increased by 12.3% (from 1.78 to 2.00), while the average for Canadian distant stations increased by 25% (from 0.04 to 0.05). Again, this factor alone suggests an increase in the CCG's royalty share. Finally, the Singer notes between 1998-1999 and 2000-2003, the share of fees generated by distant Canadian signals increased from 3.48% to 4.34%. (Singer Written Direct at 17.) This means that demand for Canadian signals grew more rapidly than demand for U.S. signals: Again, this alone would suggest an increase in the CCG share of copyright royalties.

Taken together, these data reinforce the notion that the fee generation method should be applied to 2000-2003 data rather than repeating the use of 1998-1999 data. The CARP faced a similar issue in its consideration of the cable operator survey evidence, covering the years 1996 through 1999, presented by Dr. Ringold in its distribution of 1998-1999 royalties. The Panel concluded, "[T]he Panel is unpersuaded by Dr. Ringold's advocacy of a four-year survey average. Perhaps the Panel reposes more confidence in her survey than Dr. Ringold herself. But we see no reason *not* to focus exclusively on the survey responses for 1998 and 1999 – the years for which we are distributing royalties." (CARP, *In the Matter of Distribution of 1998 and 1999 Cable Royalty Funds*, Oct. 21, 2003, at 73.) Similar reasoning would apply to the fee generation method.

#### 4. Conclusions

I have examined the testimony of Linda McLaughlin and Harold Singer on whether to apply the fee generation method to 2000-2003 fees in order to allocate copyright royalties for Canadian distant signals carried by U.S. cable systems. McLaughlin argues that the compulsory licensing system that establishes the distant signal fee structure is arbitrary, causing fees to bear little or no coherent relationship with the relative value of distant signals. Singer notes that in

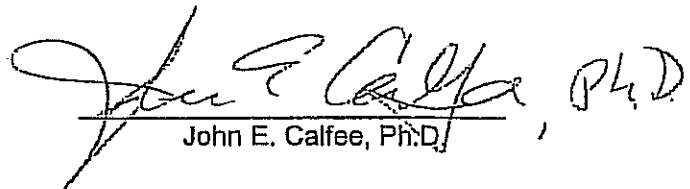
previous litigation over the 1998-1999 fees, CARP was satisfied that the fee generation method would take reasonable account of obvious changes in certain marketplace measures since the 1990-1992 fees were allocated. Singer states that those same measures changed much less between 1998-1999 and 2000-2003, so much less, in fact, that he concluded they did not amount to a material change in circumstances. He argues that rather than allocate 2000-2003 according to the results of the fee generation method for those years, fee should again be allocated according to the results of applying the fee generation method to 1998-1999 data.

I believe that both these broad arguments are mistaken. Fees arising from compulsory licensing inevitably appear arbitrary and generate numerous anomalies. But the compulsory licensing mechanism itself is a reasonable result of legislation closely watched and informed by the most interested buyers and sellers of programming provided through distant signals, and those same parties. The fee schedule largely coheres with basic economic principles despite its oddities, and there are compelling reasons to believe that fees paid bear a reasonable relationship with the relative value of the distant signals and the programming they contain. This applies specifically to Canadian fees paid by cable systems that pay minimum fees because they carry 1.0 DSE or less of distant signals. The natural experiment offered by the 1998 switch in the status of WTBS makes clear that rather than providing negligible value, Canadian signals carried by minimum-fee systems generally provide substantial value to those systems, probably exceeding the minimum fee itself. Moreover, repeated use of the fee generation method automatically takes account of the cumulative effect of large and small changes in market circumstances, including the data provided by Singer that suggest a continuing shift toward Canada programming. For all the reasons discussed above, my opinion is that the fee generation method reasonably measures relative value and that application of that method to the pool of year 2000-2003 fees makes far more economic sense than using the results of the fee generation method applied to year 1998-1999 fees.

DECLARATION OF JOHN E. CALFEE, Ph.D.

I, John E. Calfee, declare under penalty of perjury under the laws of the United States of America that the foregoing written rebuttal testimony prepared for submission by the Canadian Claimants Group to the Copyright Royalty Judges is true and Correct..

Executed on July 23, 2009

  
John E. Calfee, Ph.D.

## Appendix A

JOHN E. CALFEE

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July 22, 2009

EDUCATION:

Ph.D. Economics, 1980, University of California, Berkeley  
M.A. International Relations, 1969, U. of Chicago  
B.A. Mathematics, 1963, Rice U., Houston, Texas

PROFESSIONAL AFFILIATIONS:

American Association for the Advancement of Science  
American Marketing Association  
American Public Health Association  
Association for Consumer Research (Director, 1988-90)  
*Journal of Public Policy and Marketing* (editorial review board, 1992-1999, 2002-present)

EMPLOYMENT:

January 1995 - present: Resident Scholar, American Enterprise Institute.  
July 1994 - December 1994: Adjunct Scholar, American Enterprise Institute.  
July 1993 - June 1994: Visiting Senior Fellow, Brookings Institution, Washington, D.C.  
August 1990 - June 1993: Associate Professor of Marketing, Graduate School of Management, Boston University  
Fall 1986 - June 1990: Assistant Professor of Marketing in the College of Business, University of Maryland.  
Sept. 1980 - February 1987 (part-time after Sept. 1986): Special Assistant to the Director, Bureau of Economics, Federal Trade Commission (previously Deputy Assistant Director and Staff Economist)  
Sept. 1975 - Sept. 1980: Graduate study, part-time teaching, U. California, Berkeley  
Oct. 1969 - Sept. 1975: Pacific Telephone and Telegraph, San Francisco, CA (statistical consulting, computer programming and operations).

AMERICAN ENTERPRISE INSTITUTE PAPERS:

- John E. Calfee (2009) "And Now, a Few Words about Antivirals for Pandemic Flu," *Health Policy Outlook*, American Enterprise Institute, Washington, D.C., June. Available at <http://www.aei.org/outlook/100040>.
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Invited testimony in hearings on FDA preemption of state tort liability lawsuits before the House Committee on Oversight and Government Reform, May 14, 2008.

Invited testimony in hearings on drug safety and the FDA, House Committee on Appropriations, Subcommittee on Agriculture and FDA, Feb. 27, 2008.

Testimony in public hearings before the FDA's Peripheral and Central Nervous System Drugs Advisory Committee on whether to permit the drug Tysabri to re-enter the market, March 7, 2006.

Invited testimony in hearings on "Medicaid Prescription Drugs: Examining Options for Payment Reform, House Committee on Energy and Commerce, Subcommittee on Health, June 22, 2005.

Invited testimony in hearings on "The Roles of FDA and Pharmaceutical Companies in Ensuring the Safety of Approved Drugs, Like Vioxx," House Government Reform Committee, May 5, 2005.

Invited testimony in hearings on "International Drug Prices," before the United States Senate Committee on Finance, Joint Committee on International Trade and Health, April 27 2004.

Invited testimony before the Department of Health and Human Services Task Force in Drug Importation, held at the Food and Drug Administration on April 27 2004.

Invited testimony on pharmaceutical price controls before the House Committee on Industrial Relations for the State of Georgia, Feb. 11, 2004.

Invited testimony on direct-to-consumer advertising of prescription drugs in hearings before the Federal Trade Commission, Sept. 10, 2003.

Invited testimony on the role of pharmaceutical benefit managers in hearings before the Federal Trade Commission, June 26, 2003.

Invited testimony before the U.S. Senate Committee on Health, Education, Labor, and Pensions, in public hearings on "the National Immunization Program: Is It Prepared for the Public Health Challenges of the 21st Century?," Tuesday, Nov. 27, 2001.

Invited testimony in hearings on "Direct-to-consumer Advertising of Prescription Drugs," Before the U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Consumer Affairs, Tuesday, July 24, 2001.

Invited testimony in hearing on "Seniors' Access to Prescription Drug Benefits," before the Subcommittee on Health, Committee on Ways and Means, U.S. House of Representatives, February 15, 2000.

Expert testimony on alcoholic beverage advertising, before the Cleveland City Council, July 1997.

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Expert statement on the economic aspects of "Backdoor Rulemaking" at the Federal Trade Commission, on behalf of the Jenny Craig Corp., in connection with FTC litigation in the weight-loss industry, July 1994.

Designated as an expert witness for Exxon on the economic effects of punitive damages, in the Exxon Valdez litigation; deposed December 1993, but did not testify.

Expert testimony on price advertising, for May Department Stores, *Colorado v. the May Department Stores d/b/a May D&F* (1990), District Court, City and County of Denver, Case No. 89 CV 9274.

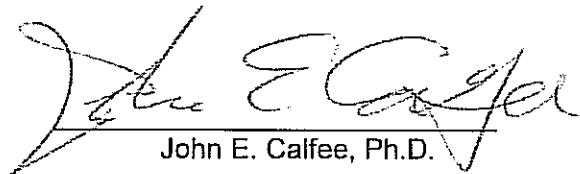
REFEREEING ACTIVITIES: Addison-Wesley Publishing Co. (consumer behavior textbook); *Advances in Consumer Research*; *Advances in Marketing and Public Policy*; American Marketing Association *Proceedings*; American Marketing Association dissertation competition; *Economic Inquiry*; *Health Affairs*; Institute of Medicine; *International Journal of Pharmaceutical Medicine*; *International Review of Law and Economics*; *Journal of Advertising*; *Journal of Business Ethics*; *Journal of Business Research*; *Journal of Consumer Research*; *Journal of Health Politics, Policy and Law*; *Journal of Industrial Economics*; *Journal of Public Policy and Marketing* (editorial review board, 1992-1999); *Journal of Law, Economics, and Organization*; *Managerial and Decision Economics*; *Nature Reviews Drug Discovery*; *Personalized Medicine*; *Pharmacoeconomics*; *Quarterly Review of Economics and Business*; *Regulation*; Smith Richardson Foundation.



DECLARATION OF JOHN E. CALFEE, Ph.D.

I, John E. Calfee, declare under penalty of perjury under the laws of the United States of America that the foregoing written rebuttal testimony prepared for submission by the Canadian Claimants Group to the Copyright Royalty Judges is true and Correct..

Executed on Aug. 31, 2009.

  
John E. Calfee, Ph.D.

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BEFORE THE COPYRIGHT ROYALTY JUDGES

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Washington, D.C.

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In the Matter of:	:	Docket No:
Distribution of the 2000,	:	2008-2 CRB CD
2000-2003	:	
2001, 2003, and 2003	:	Volume V
Cable Royalty Funds	:	(Pgs. 840 - 1055)

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Washington, D.C.

Tuesday, September 1, 2009

The following pages constitute the continued proceedings held in the above-captioned matter, held at the Library of Congress, Madison Building, 101 Independence Avenue, Southeast, Washington, D.C., before Cindy L. Sebo, RMR, CRR, CSR, RPR, of Capital Reporting Company, a Notary Public in and for the District of Columbia, beginning at approximately 9:32 a.m.

# Capital Reporting Company Hearing

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1 APPEARANCES	1 APPEARANCES (Continued):
2 Copyright Royalty Tribunal:	2 On behalf of DEVOTIONAL CLAIMANTS:
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4 JUDGE WILLIAM ROBERTS	4 Lutzker & Lutzker LLP
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1 APPEARANCES (Continued):	1 CONTENTS
2 On behalf of JOINT SPORTS CLAIMANTS:	2 REBUTTAL
3 ROBERT ALAN GARRETT, ESQUIRE	3 WITNESSES: PAGE
4 STEPHEN K. MARSH, ESQUIRE	4 JOHN E. CALFEE, PH.D.
5 Arnold & Porter, LLP	5 Voir Dire by Mr. Satterfield 855
6 555 Twelfth Street, N.W.	6 Voir Dire by Mr. Dove 869
7 Washington, D.C. 20004-1206	7 Direct Examination by Mr. Satterfield 877
8 (202) 942-5444	8 Cross-Examination by Mr. Dove 930
9	9
10 On behalf of NATIONAL ASSOCIATION OF	10 JONDA K. MARTIN
11 BROADCASTERS:	11 Direct Examination by Mr. Satterfield 993
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13 ANN MACE, ESQUIRE	13
14 JENNIFER BURDMAN, ESQUIRE	14 EXHIBITS RECEIVED
15 Crowell & Moring	15 Canadian Claimants Group R-1 1000
16 1001 Pennsylvania Avenue, N.W.	16 Canadian Claimants Group R-2 877
17 Washington, D.C. 20004-2595	17 Canadian Claimants Group R-2A 877
18 (202) 624-2685	18
19	19
20	20
21	21 (Exhibits Retained by Counsel.)
22	22

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1 PROCEEDINGS  
2 CHIEF JUDGE SLEDGE: Good morning.  
3 We'll come to order. Welcome back.  
4 This session we'll not have long enough  
5 to really get settled in, but we'll be able to wrap  
6 up what we have left pending before us.  
7 MR. SATTERFIELD: It seems long to me.  
8 CHIEF JUDGE SLEDGE: Our first witness  
9 scheduled today is Dr. Calfee. And this morning,  
10 we got a motion relating to that.  
11 Is that a matter that should be  
12 presented first?  
13 MR. MARSH: Your Honor, Stephen Marsh  
14 for Joint Sports Claimants. We would like to be  
15 heard on the motion before Mr. Calfee testifies.  
16 CHIEF JUDGE SLEDGE: All right.  
17 MR. MARSH: Your Honor, the essence of  
18 Dr. Calfee's testimony --  
19 CHIEF JUDGE SLEDGE: Why don't you come  
20 forward?  
21 MR. MARSH: Certainly.  
22 Your Honor, the portion of the

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1 testimony that is recounted in the motion, it  
2 relates to Pages 14 through 16 of Dr. Calfee's  
3 testimony. And that section of the testimony  
4 attempts to rebut Dr. Singer. And in so doing, the  
5 testimony essentially relies on prior CARP  
6 decisions for the foundation of the opinions in  
7 that section.  
8 Specifically, the essence of that  
9 section is that the -- the changed circumstances  
10 that they're trying to prove with the  
11 fee-generation method can be accounted for with fee  
12 generation. And the only evidence in support of  
13 fee-generation accounting for changed circumstances  
14 is the prior CARP decisions.  
15 There's no economic analysis of how fee  
16 generation accounts for changes in the marketplace,  
17 how it accounts for factors which have not been  
18 identified, and the only thing we have are a couple  
19 of citations to the CARP decision and then  
20 analogies to the board survey. And even the  
21 analogies to the board survey will -- are, again,  
22 cited to the prior CARP opinion.

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1 So, again, there's no economic  
2 analysis; it's just this is how the CARP treated  
3 the board survey; this is how the judges should  
4 treat the fee-generation methodology here. And  
5 that, Your Honors, is not economic analysis; it's  
6 simply legal opinion. It's argument about how  
7 precedent should be applied here.  
8 And for the reasons that Your Honors  
9 struck the Singer testimony, we believe that this  
10 testimony should be struck from the record as well.  
11 CHIEF JUDGE SLEDGE: Any questions?  
12 JUDGE ROBERTS: No.  
13 CHIEF JUDGE SLEDGE: Any response to  
14 the motion?  
15 MR. SATTERFIELD: Yes, Your Honor.  
16 First, I would just note that normally,  
17 with written motions, there's a period in which to  
18 file a written response. Obviously, under the  
19 circumstances, we won't have an opportunity to file  
20 a written response.  
21 With respect to -- to the substance of  
22 the motion, however, I think the -- the -- there's

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1 a distinction here. Dr. Singer's testimony with  
2 respect to that portion of his testimony that  
3 repeated or described the prior CARP opinion was --  
4 was removed; however, his testimony about the data  
5 was not removed.  
6 His testimony about that there was no  
7 large significant changed circumstance in 2003 as  
8 there had been in '98-'99 with respect to TBS, he  
9 testified about that. He covered that in his  
10 testimony.  
11 The idea that the essence that -- that  
12 it's somehow valid to look at the data that would  
13 have been in the record in '98-'99 rather than to  
14 look at the data that is available to us in 2000  
15 and 2003, that's in his -- that's part of his  
16 testimony.  
17 In essence, what Dr. Calfee is doing is  
18 saying that as an economist, small changes are  
19 important and I would look at current data, not old  
20 data, and that looking at current data is going to  
21 capture things that happened, these changed  
22 circumstances, whatever they may be, during that --

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1 those two time periods.  
2 And obviously, you know, from our  
3 standpoint, we have an economist saying it's okay  
4 to look at old data. And I don't want to have  
5 un rebutted testimony that says -- that doesn't say,  
6 no, you should look at current data.  
7 Otherwise, I think Dr. Calfee's  
8 citations to the -- to the last CARP opinion are  
9 more in the nature of, you know, the -- that in the  
10 prior CARP, where there were attempts to sort of  
11 look backwards in time, such as the -- our -- our  
12 regional study data, where we tried to argue an  
13 average over a period of four years.  
14 The CARP said, no, we would rather look  
15 at the data from the years that were actually  
16 covered by the -- that proceeding.  
17 That's -- his references are in  
18 passing; they're not -- they're not the basis for  
19 his opinion. They're not even significant to his  
20 testimony. They're in there by analogy.  
21 Thank you, Your Honor.  
22 CHIEF JUDGE SLEDGE: Let me ask you a

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1 few questions.  
2 MR. SATTERFIELD: Sure.  
3 CHIEF JUDGE SLEDGE: Now, the motion  
4 seeks to strike all of Section 3, therefore, it can  
5 be denied for being way overbroad for what the  
6 arguments are stated in support of the motion.  
7 But in the paragraph in the middle of  
8 Page 15, you're saying that that paragraph is not  
9 part of his testimony and not part of his opinion?  
10 MR. SATTERFIELD: No, Your Honor, I  
11 would not say that's not part of his testimony.  
12 I would say that he's analogizing the  
13 fact that in these proceedings -- he's -- he's  
14 expressing his opinion that that fee-generation  
15 data captures the -- the changes that have taken  
16 place or what was actually going on in the carriage  
17 of distant signals during the time -- during the  
18 relevant time period.  
19 And -- and I think the -- this  
20 reference to boards is, then, the analogy, and that  
21 is why Sports Claimants submit new board studies  
22 each year, because they couldn't rely on a board

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1 study from a prior proceeding.  
2 The board study is able to -- because  
3 it goes out and -- and asks questions of cable  
4 operators during the relevant time period that's  
5 being evaluated, that captures whatever is  
6 happening in the market during that time.  
7 CHIEF JUDGE SLEDGE: It sounds like you  
8 concede the motion on that paragraph.  
9 MR. SATTERFIELD: Pardon me?  
10 CHIEF JUDGE SLEDGE: It sounds like you  
11 concede the motion on that paragraph.  
12 MR. SATTERFIELD: I would certainly  
13 concede, from that standpoint, the last sentence,  
14 thus the CARP report of distribution noted -- I  
15 mean, that statement and the citation to the CARP  
16 report under the guise -- under a standard of --  
17 of -- of repeating legal opinion could be stricken,  
18 but it wouldn't change -- it would not change his  
19 statement about fee generation and analogizing it  
20 to how boards is able to evaluate what's going on  
21 by doing studies on a timely basis.  
22 JUDGE ROBERTS: Mr. Satterfield, would

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1 you agree that the last paragraph on the bottom of  
2 15, which carries over to 16, is the most important  
3 paragraph of Dr. Calfee's testimony on this point?  
4 MR. SATTERFIELD: Yes, Your Honor, I  
5 would.  
6 JUDGE ROBERTS: All right.  
7 CHIEF JUDGE SLEDGE: The last paragraph  
8 in the identified portion, which is the middle of  
9 Page 16, you concede the motion for that  
10 paragraph?  
11 (Counsel reviews the document.)  
12 MR. SATTERFIELD: Well, again, after  
13 the -- after the first sentence, I don't see any --  
14 I -- the first sentence doesn't depend upon a CARP  
15 ruling. Again, that's -- that's sort of a  
16 conclusion and a restatement of his opinion.  
17 CHIEF JUDGE SLEDGE: All right. Thank  
18 you. We'll discuss this briefly.  
19 (The Judges confer in Chambers.)  
20 CHIEF JUDGE SLEDGE: Thank you. We'll  
21 come to order.  
22 On review of the argument and the

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1 motion, the Court concludes that the motion, which  
2 is received one hour before the hearing begins and  
3 seeks to strike all of Page 14, 15 and two-thirds  
4 of 16, being all of Section 3, whereas the motion  
5 argues and the presentation of the motion argues  
6 that the support for the motion is the legal  
7 opinions cited, which was the basis of the motion  
8 striking portions of Dr. Singer's testimony, the  
9 motion is both tardy and overbroad, and the motion  
10 is denied.

11 JUDGE ROBERTS: Mr. Satterfield, you  
12 can come up. I had a question for you.

13 MR. SATTERFIELD: Okay.

14 JUDGE ROBERTS: Before you begin your  
15 direct examination, in the last phase, I had asked  
16 you about a particular case of the D.C. Circuit,  
17 specifically the NAB versus CRT from 1985, and a  
18 specific provision in that case dealing with  
19 changed circumstances and to what effect a  
20 decision can be made based solely on changed  
21 circumstances.

22 You had indicated that you weren't

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1 prepared that day to present your argument on that  
2 case.

3 Are you, today, or do you wish to hold  
4 that off until the closing argument?

5 MR. SATTERFIELD: I was anticipating  
6 briefing it in the proposed findings and  
7 conclusions of law.

8 JUDGE ROBERTS: Okay.

9 MR. SATTERFIELD: I -- I have an  
10 opinion about it, but if I -- I would really prefer  
11 to address it in writing.

12 JUDGE ROBERTS: That would be fine. I  
13 just wanted to make sure that that one didn't get  
14 kicked into the weeds.

15 MR. SATTERFIELD: Oh, I haven't  
16 forgotten about that.

17 JUDGE ROBERTS: Okay. Very good.  
18 Thank you.

19 MR. SATTERFIELD: The Canadian  
20 Claimants call Dr. John Calfee to the stand.  
21  
22

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1 WHEREUPON,  
2 JOHN E. CALFEE, PH.D.  
3 was called as a witness and, having been first  
4 duly sworn, was examined and testified  
5 as follows:  
6 CHIEF JUDGE SLEDGE: Please be seated.  
7 MR. SATTERFIELD: To begin the  
8 proceeding -- or to begin the direct, I have a  
9 housekeeping matter.  
10 We filed a corrected -- we filed some  
11 corrections to Mrs. Martin's testimony, and one of  
12 those tables actually gets reprinted in  
13 Dr. Calfee's.  
14 So may I approach the witness?  
15 We have a corrected copy, a correction  
16 to his testimony that we are -- that we brought  
17 corrected copies of his testimony to be distributed  
18 to the Judges and to the parties.  
19 CHIEF JUDGE SLEDGE: You may.  
20 VOIR DIRE  
21 BY MR. SATTERFIELD:  
22 Q. Dr. Calfee, could I please direct your

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1 attention to the document in front of you?  
2 What is the title of that document?  
3 A. Rebuttal Testimony of John E. Calfee,  
4 Ph.D.  
5 Q. And is it corrected as of August 31,  
6 2009?  
7 A. Yes, it is.  
8 Q. And is this -- has this document been  
9 previously marked as CDN-R-2 -- R being for  
10 rebuttal -- -2?  
11 A. It is marked as CDN-R-2.  
12 Q. Okay. Can I ask you to turn to the --  
13 to the back of the -- of that testimony to the last  
14 page? There's a declaration?  
15 A. Yes, the last page is a signed  
16 declaration dated August 31st, 2009.  
17 Q. And this is with respect to your  
18 corrected testimony?  
19 A. Yes. It doesn't say corrected  
20 testimony, but, yes, that is what it's for.  
21 Q. Okay. And may I ask you to turn to  
22 Page 9? And what -- can you just briefly summarize

5 (Pages 853 to 856)

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1 the correction that was made on Page 9?  
2 A. The corrections are for the year 2001  
3 in Table 2. And it involves three numbers, the  
4 minimum -- the minimum Canadian base rate  
5 royalties, the actual CDC allocation of base rate  
6 royalties, and maximum Canadian base rate  
7 royalties.  
8 Those three numbers for 2001 are  
9 slightly different from the numbers in the earlier  
10 version. The rest of the table is unchanged.  
11 Q. Well, was -- was there also a misprint  
12 in the sentence above the table with a maximum  
13 amount that was slightly --  
14 A. Yes. And -- in the fourth line on this  
15 page, the earlier version, instead of saying  
16 401290, I think it says 4109290 or something like  
17 that. It was a typo.  
18 Q. Okay. And may I ask you to turn your  
19 attention to the -- to the exhibit that's attached  
20 to your testimony?  
21 A. Yes.  
22 Q. Could you just identify -- could you

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1 identify that exhibit?  
2 A. That is Appendix -- oh, I'm sorry.  
3 Appendix A.  
4 Q. Just for clarification, the --  
5 A. Appendix A is my CV.  
6 Q. And that is not -- that was not  
7 reprinted as part of your corrected testimony,  
8 correct?  
9 A. That's right.  
10 Q. The exhibit that is attached to your  
11 testimony under Tab A, could you please identify  
12 that document?  
13 A. Yes.  
14 That is a document usually referred to  
15 as -- as CD index or CD i-n-d-e-x, and it was  
16 produced by Cable Data Corporation.  
17 Q. Okay. Dr. Calfee, can you please state  
18 your -- your full name and place of employment for  
19 the record?  
20 A. My name is John E. Calfee, and I am a  
21 resident scholar at the American Enterprise  
22 Institute in Washington, D.C.

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1 Q. Dr. Calfee, what's your educational  
2 background?  
3 A. Well, I have a Bachelor's degree in --  
4 in mathematics and a Master's degree in  
5 international relations and a Ph.D. in economics.  
6 And the Ph.D. is from the University of California  
7 at Berkeley.  
8 Q. And what has -- what have been your  
9 places of employment since you've attained your  
10 Ph.D.?  
11 A. Well, my first job out after I got my  
12 Ph.D. was in the Bureau of Economics at the  
13 Federal Trade Commission, where I worked for  
14 approximately six or seven years. The last year or  
15 so was as -- as a consultant.  
16 And then I taught for three years at  
17 the University of Maryland School of Business, and  
18 then I -- excuse me -- four years at the University  
19 of Maryland and three years at the  
20 Boston University School of Business. In both  
21 cases, I was in the departments of marketing.  
22 I spent a year as a visiting senior

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1 fellow at the Brookings Institution in  
2 Washington, D.C., and then since January 1995, I  
3 have been at the American Enterprise Institute.  
4 Q. What type of -- of -- of activities  
5 have you been engaged in as an economist?  
6 A. Well, my original research, which is my  
7 dissertation research, was on assessing consumer  
8 demand.  
9 In my particular case, it was consumer  
10 demand for products that didn't actually exist on  
11 the market. And so I used survey research and  
12 econometric methods. And that was my introduction  
13 to survey research as a discipline.  
14 At the Federal Trade Commission, I  
15 continued doing some work on survey research,  
16 especially examining surveys that were submitted to  
17 the FTC.  
18 I routinely was involved in the  
19 analysis of particular situations and particular  
20 markets in connection with either proposed  
21 litigation at the FTC or litigation that was --  
22 that was underway. Or sometimes, I and other

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1 economists were asked to look at -- at particular  
2 situations in particular markets, because, for some  
3 reason or another, they had attracted the attention  
4 of the FTC.

5 During part of that time, I supervised  
6 a group of economists who did, more or less, the  
7 same kind of work.

8 I spent a year or two as a special  
9 assistant to the director of the Bureau of  
10 Economics specializing on consumer protection  
11 matters.

12 Since then, I've done research in a  
13 number of areas. Much of that research is focused  
14 on highly regulated markets, such as the  
15 pharmaceutical market and healthcare markets.

16 And I've done both empirical research  
17 and research that is more conceptual, obviously a  
18 lot of policy-related research, published in  
19 various outlets, including a number of scholarly  
20 journals.

21 JUDGE ROBERTS: Dr. Calfee, your  
22 dissertation involved likely consumer demand for

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1 electric cars; is that correct?

2 THE WITNESS: That's right.

3 JUDGE ROBERTS: I'm just curious to  
4 know how the results and your conclusions that you  
5 reach are being borne out now that we have somewhat  
6 electric cars and soon to have a full electric car?

7 THE WITNESS: Well, this was 30 years  
8 ago.

9 JUDGE ROBERTS: Understood.

10 THE WITNESS: And the purpose of the  
11 research was to find out whether there was some  
12 kind of a niche market where there was a relatively  
13 small group of consumers who might feel strongly  
14 about purchasing electric vehicles given the  
15 tradeoffs that were involved.

16 And I was unable to uncover such a  
17 niche market. And I concluded that at least until  
18 there were drastic changes in -- in the technology  
19 of basically batteries for electric vehicles, that  
20 there would not be a significant market for  
21 electric vehicles.

22 It's 30 years later. Battery

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1 technology has gotten better. It's still a niche  
2 market, I think.

3 BY MR. SATTERFIELD:

4 Q. What type of -- in your more recent  
5 research in the pharmaceutical or healthcare  
6 industries, what type of -- of parties has been the  
7 focus -- what has been the focus of that research?

8 A. Well, a fair amount has been on -- on  
9 pharmaceutical markets, which are interesting  
10 because it's -- it's a market where the product  
11 being sold is usually not paid for directly by  
12 the -- by the person who uses it. There are  
13 various intervening groups.

14 And in healthcare markets, again, the  
15 product being sold is usually paid mainly by some  
16 other party. And what is actually being purchased,  
17 in many cases, is kind of a package of services,  
18 such as an insurance policy, rather than one  
19 individual item.

20 And -- you know, and so what I  
21 frequently run into in analyzing the -- these  
22 markets is that competitors, that is, buyers and

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1 sellers and so on, you know, they do things that  
2 are different from ordinary markets because they  
3 are taking into account the specific regulatory  
4 environment, et cetera.

5 So a lot of my research has been on  
6 markets in which you have usually competitors,  
7 sometimes you have organizations that are -- are  
8 fairly close to being a monopoly.

9 You observe their behavior in response  
10 to various things that happen in the market and  
11 especially in the context of regulations, and then  
12 one tries to figure out, you know, what the results  
13 are for consumers, for healthcare, generally,  
14 et cetera.

15 Q. What would you characterize your area  
16 of expertise in economics?

17 A. Well, I think it's -- at least as far  
18 as, you know, the kind of work we're talking about  
19 today, it would be the economics of competitive  
20 behavior in highly regulated markets.

21 And I would add the caveat that in  
22 econospeak, competitive behavior includes the



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1 extreme case of monopolies along with the extreme  
2 case of perfect competition; so, in general, the  
3 analysis of competitive behavior and outcomes in  
4 highly regulated markets.  
5 Q. And what has been your past  
6 participation in these proceedings?  
7 A. I was twice asked to provide rebuttal  
8 testimony in 1996 and in 2003, which I did for the  
9 Canadian Claimant Group.  
10 And in 1996, I focused on the board  
11 survey; and then, in 2003, I focused on, again, the  
12 board survey, but also an econometric analysis of  
13 carriage fees. And that analysis was performed by  
14 Greg Rosston. And so I analyzed both of those  
15 studies.  
16 Q. In this proceeding, what is the --  
17 CHIEF JUDGE SLEDGE: I'm sorry. Your  
18 last answer confuses me.  
19 Your last paragraph on the top of  
20 Page 2 in your introductory qualifications say you  
21 did not provide testimony in either of those  
22 hearings.

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1 THE WITNESS: I did not provide oral  
2 testimony. I provided written testimony. I'm  
3 sorry for the confusion.  
4 I provided written testimony, but the  
5 other parties chose not to request oral testimony  
6 or cross-examination.  
7 CHIEF JUDGE SLEDGE: So you testified  
8 by stipulation of the parties?  
9 THE WITNESS: Well, I provided written  
10 testimony, and the written testimony was accepted  
11 and put into the -- is that right?  
12 I don't know exactly legally what --  
13 what happened. I know that I was not asked to  
14 provide oral testimony, that my written testimony  
15 was simply accepted and used and was cited, as I  
16 recall.  
17 BY MR. SATTERFIELD:  
18 Q. In the procedures used in the prior  
19 proceedings, the rebuttal testimony --  
20 CHIEF JUDGE SLEDGE: Mr. Satterfield,  
21 are you answering the question?  
22 MR. SATTERFIELD: I'm sorry.

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1 THE WITNESS: My understanding at the  
2 time was that there were two stages, sort of like  
3 in these proceedings; that is, in the first stage,  
4 rebuttal -- written rebuttal testimony was -- was  
5 provided, and then the various parties would decide  
6 amongst themselves whether they wanted to  
7 cross-examine the witnesses who had provided that  
8 rebuttal testimony.  
9 And in my case, the attorneys for the  
10 other parties decided they did not want to  
11 cross-examine me. And so my testimony was entered  
12 into the record, and, I believe in both cases, the  
13 CARP opinions cited my testimony.  
14 It was simply unrebutted. My own  
15 testimony was unchallenged.  
16 CHIEF JUDGE SLEDGE: All right.  
17 BY MR. SATTERFIELD:  
18 Q. And in this proceeding, you prepared  
19 the rebuttal testimony that's been identified as  
20 CDN-R-2?  
21 A. Yes.  
22 Q. And you are offering this testimony

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1 in -- in what capacity?  
2 A. I'm -- I was asked to provide this  
3 testimony by the Canadian Claimants Group. And the  
4 testimony is in rebuttal to the testimony of  
5 Linda McLaughlin and Hal Singer.  
6 Q. And what is the -- what is the area of  
7 economic expertise for which you are providing this  
8 testimony?  
9 A. Well, my expertise, in general, is in  
10 the economics of, you know, competitive behavior in  
11 highly regulated markets. And this is certainly  
12 one of those -- of those markets.  
13 And in doing that, of course, I drew  
14 upon, you know, the reading in connection with --  
15 with this litigation, and also the reading I've  
16 done in prior testimonies for earlier hearings.  
17 MR. SATTERFIELD: The Canadian  
18 Claimants would proffer Dr. Calfee as an expert  
19 in -- in the competition in highly -- the economics  
20 of competition in highly regulated markets.  
21 CHIEF JUDGE SLEDGE: Any objection?  
22 MR. DOVE: Your Honor, may I voir dire

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1 the witness?  
2 CHIEF JUDGE SLEDGE: Yes.  
3 VOIR DIRE  
4 BY MR. DOVE:  
5 Q. Good morning, Dr. Calfee.  
6 A. Good morning.  
7 Q. My name is Ron Dove, and I am counsel  
8 for the Public Television Claimants. And I'm going  
9 to be asking you some questions on behalf of the  
10 Settling Parties.  
11 Sir, if I might direct your attention  
12 to your CV, at the back of your testimony.  
13 A. Yes.  
14 Q. And my question for you, sir, is  
15 whether -- is, other than your prior work for the  
16 Canadian Claimants, is there anything listed on  
17 these 20 pages of your CV that specifically  
18 involves the entertainment or media industries?  
19 A. No.  
20 Q. Is there anything listed that  
21 specifically involves cable television?  
22 A. No.

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1 Q. Would you agree that most of the  
2 articles, papers and testimony listed on your CV  
3 relate to the pharmaceutical and tobacco  
4 industries?  
5 A. Well, I'm not sure that most of them  
6 do. I've done quite a bit work on other markets.  
7 Those are probably the two topics on which I've  
8 written more, although it's been a while since I've  
9 written on tobacco, as you know.  
10 Q. And just -- just as an example, looking  
11 at -- at Page 2, the first page on your  
12 American Enterprise Institute papers, I note that  
13 the -- the first entry there references antivirals  
14 for pandemic flu.  
15 That's pharmaceutical, correct?  
16 A. Yes.  
17 Q. And the second one references  
18 pharmaceuticals, correct?  
19 A. Yes.  
20 Q. And the third one references drug  
21 companies, correct?  
22 A. Yes.

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1 Q. And the fourth one represents -- talks  
2 about Wyeth, which is a pharmaceutical company,  
3 correct?  
4 A. Yes.  
5 Q. And the fifth one talks about  
6 biologics, which is in the pharmaceutical area,  
7 correct?  
8 A. Yes.  
9 Q. The third one is about someone's  
10 brilliant career, but it seems to be  
11 Medicine's Miracle Man, so it must relate to the  
12 pharmaceutical industry, correct?  
13 A. It does.  
14 Q. And I -- just going through the rest of  
15 this page, in particular, it seems to me that it  
16 relates -- all these papers relate to the -- the  
17 pharmaceutical industry in one way or another,  
18 correct?  
19 A. Yes. This is the recent work published  
20 by the American Enterprise Institute.  
21 Q. And I don't want to belabor the point,  
22 but we can go through each page of your CV and --

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1 and, you know, I wouldn't say all, but virtually  
2 all of the papers you have written and the work  
3 you've done that's been published does relate to  
4 either the pharmaceutical industry, tobacco  
5 industry or perhaps, more broadly, the food and  
6 drug industry, correct?  
7 A. Well, I've done a fair amount of work  
8 on -- on tort liability and related issues, and  
9 that was my -- my original research, and also, a  
10 fair amount of advertising on -- I mean of research  
11 on advertising, generally.  
12 But -- but the two areas in which I've  
13 published more than any other area have been  
14 certainly advertising, especially pharmaceutical  
15 advertising, and a fair number of articles on one  
16 aspect or another of -- of the cigarette industry.  
17 Q. Dr. Calfee, other than your work for  
18 the Canadian Claimants, have you done any  
19 research or analysis regarding the pricing of  
20 copyrighted works in the entertainment and media  
21 industries?  
22 A. No.

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<p>1 Q. Have you done any research or analysis 2 regarding marketplace prices paid for copyright 3 licenses? 4 A. For copyright licenses? 5 Q. Yes. 6 A. No. 7 Q. Have you done any research or 8 analysis regarding reasonable rates for copyright 9 licenses? 10 A. No. 11 Q. Have you done any research or 12 analysis regarding distribution of fees collected 13 to individual rights owners in the media and 14 entertainment industries? 15 A. No. 16 Q. Other than your work for the 17 Canadian Claimants, have you done any research or 18 analysis in the context of compulsory copyright 19 licenses? 20 A. No. 21 Q. Did you testify in the 22 Copyright Office's Section 109 proceeding?</p>	<p>1 A. You mean other than my -- my prior 2 written testimony in connection with these 3 copyright royalties? 4 Q. That's correct, sir. 5 A. Okay. 6 No. 7 Q. Were you involved in any way in the 8 enactment of the cable compulsory license? 9 A. No. 10 Q. And were you involved in any way in the 11 drafting of Section 111 or any other section of the 12 Copyright Act? 13 A. No. 14 Q. And were you involved in any way in the 15 drafting of any regulations relating to the cable 16 compulsory license? 17 A. No. 18 MR. DOVE: Your Honors, may I consult 19 for a moment with my colleagues? 20 CHIEF JUDGE SLEDGE: Yes. 21 (Pause.) 22 MR. DOVE: Your Honor, the</p>
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<p>1 A. No. 2 Q. And did you draft any comments for any 3 party in that proceeding? 4 A. No. 5 Q. Have you submitted any reports to or 6 testified before Congress or any regulatory agency 7 regarding the economic attributes of the 8 entertainment or media industries? 9 A. No. 10 Q. Have you submitted reports to or 11 testified before Congress or any regulatory agency 12 regarding the economic attributes of the cable or 13 satellite industries? 14 A. No. 15 Q. Have you submitted any reports to or 16 testified before Congress or any regulatory agency 17 regarding any aspect of copyright licensing? 18 A. No. 19 Q. Prior to today, have you ever appeared 20 as an expert witness on the economic attributes of 21 any aspect of the entertainment and media 22 industries?</p>	<p>1 Settling Parties have no objection to Mr. Calfee 2 testifying in the narrow area of expertise that 3 he's been proffered, the economics of competitive 4 behavior in highly regulated markets. 5 CHIEF JUDGE SLEDGE: Without objection, 6 the proffer is accepted. 7 MR. SATTERFIELD: I would move that 8 Exhibit CDN-R-2 and CDN-R-2A be moved into the 9 record at this time as corrected on August 31, 10 2009. 11 CHIEF JUDGE SLEDGE: Any objection to 12 the exhibit? 13 MR. DOVE: Your Honor, I guess we're 14 going to object to the extent testimony kind of 15 falls outside the witness' area of expertise and 16 touches on things, such as, you know, legislative 17 history; the intent of the parties in this 18 litigation; the kind of interpretation of the cable 19 compulsory license provisions; and the regulations 20 under those provisions. 21 But we'll -- you know, I guess we'll 22 raise those objections individually as -- as the</p>

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1 witness is asked questions about those topics.  
2 CHIEF JUDGE SLEDGE: Without objection  
3 to the exhibits, they're admitted.  
4 (Canadian Claimants Group Exhibit Nos.  
5 CDN-R-2 and CDN-R-2A were received in  
6 evidence.)  
7 DIRECT EXAMINATION  
8 BY MR. SATTERFIELD:  
9 Q. Dr. Calfee, what were the issues that  
10 you -- that you were asked to examine with respect  
11 to the testimony of Ms. McLaughlin?  
12 A. Well, the initial issue was whether or  
13 not the fees and the fee system, the compulsory  
14 license system, generally, was completely arbitrary  
15 so that the fees revealed nothing about the  
16 relative value of the various distant signals.  
17 And there were particular subtopics,  
18 such as the workings of the 3.75 percent fees;  
19 sliding scale of -- of fees; the designation of  
20 distant signal equivalents; and one or two other  
21 items, which I could identify by glancing at my  
22 testimony.

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1 All items which she testified indicate  
2 that there's essentially no relationship between  
3 how the system works and the relative value of the  
4 various distant signals.  
5 Q. In your opinion, is the compulsory  
6 license system for distant signal copyright  
7 royalties completely arbitrary?  
8 A. It is not.  
9 Q. And what is the basis for that  
10 statement?  
11 A. Well, the record clearly shows that it  
12 was designed to solve a problem, the problem being  
13 that there were so many buyers and sellers of  
14 copyrighted material in connection with cable --  
15 the cable systems that it was infeasible to leave  
16 all those negotiations up to the market, that the  
17 transactions cost would be -- would be onerous and,  
18 therefore, in -- in place of those negotiations --  
19 negotiations should be a compulsory licensing  
20 system.  
21 And that system had various elements  
22 which were designed and, I think, succeeded in

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1 establishing a rough relationship, far from  
2 perfect, but a rough relationship between the fees  
3 and the allocation of fees and the relative value  
4 of the various signals.  
5 Q. Well, is there a relationship between  
6 the distant signal fees and relative value?  
7 A. Yes, there is.  
8 I mean, to begin with, a system has to  
9 decide whether to choose a particular signal and,  
10 when they do that, they generally reveal that the  
11 signal that they choose is worth more than the  
12 signal that they do not choose.  
13 If they choose two or three or more  
14 signals, they were revealing more about the  
15 relative value of various signals.  
16 When they choose whether or not to  
17 carry a signal with a DSE value of 0.25 versus one  
18 with 1.0, again, they are revealing something about  
19 relative value, and the fees reflect that.  
20 And the same applies when they enter a  
21 situation in which one of the signals generates a  
22 3.75 fee. Again, because of the construction of

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1 the system, the resulting fees bear a rough  
2 relationship with the relative value of the  
3 signals.  
4 It is certainly not true that there is  
5 no relationship at all between the fees and the  
6 relative value of the signals.  
7 Q. Does the -- what aspects of the -- what  
8 aspects of the -- of the pay-in of the royalties  
9 did you examine in preparing your testimony?  
10 A. Well, in general, I examined the  
11 testimony itself and the exhibits to that  
12 testimony. And then there were a number of reports  
13 that have been produced over the years by various  
14 copyright entities, including CARP, the Copyright  
15 Royalty Tribunal, the Register of Copyrights and  
16 a -- and a report, Section 11 -- 111 report that  
17 included a report from the House of Representatives  
18 in 1994 that provided some details in the way of  
19 legislative history.  
20 Those are the reports that -- that come  
21 to mind.  
22 Like I said, it was a series of

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1 reports. I believe the most recent one was the one  
2 from last year from the Register of Copyrights.  
3 There have been some other material,  
4 some appeals court decisions, for example, the  
5 various distribution reports that came out of CARP.  
6 And so there are the reports that were specifically  
7 related to particular distributions, and then there  
8 were a series of reports that were related to  
9 the -- the entire compulsory licensing system  
10 that's involved in this litigation.  
11 MR. DOVE: Your Honor, we're going to  
12 object to the extent this witness is relying on  
13 prior CARP decisions, prior cases, legislative  
14 history and interpretation.  
15 I believe that's outside of his area of  
16 expertise. And to the extent he's using that just  
17 for background context, that's one thing, but to  
18 the extent he's relying on that information for his  
19 underlying opinions in this case, the  
20 Settling Parties would object.  
21 CHIEF JUDGE SLEDGE: Nothing for the  
22 Court to rule on because there's no objection to

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1 any -- to his last answer.  
2 What are you objecting to?  
3 MR. DOVE: That the testimony that I  
4 believe is likely to come, Your Honor. So I'll  
5 withdraw the objection at this point.  
6 My sense is he was testifying about the  
7 material that he relied on, and I'll --  
8 CHIEF JUDGE SLEDGE: He's just telling  
9 you what he relied on.  
10 MR. DOVE: Fair enough.  
11 BY MR. SATTERFIELD:  
12 Q. Do you agree with Mrs. McLaughlin's  
13 statement that a compulsory licensing system that's  
14 established by legislative compromise, not relative  
15 market value, is completely arbitrary?  
16 A. I disagree with her conclusion that --  
17 that the compulsory licensing system and its  
18 results are unrelated to relative value of distant  
19 signals.  
20 JUDGE ROBERTS: Dr. Calfee, maybe you  
21 can help me understand a little bit better your  
22 last statement.

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1 With respect to what the fees are, what  
2 a cable operator pays for a particular distant  
3 signal, as you know, those fees were set by the  
4 Congress in 1976. Now, they have been adjusted on  
5 some occasion to mostly account for inflation, in a  
6 couple of instances, to account for changes in FCC  
7 regulation.  
8 But my question to you is, that bargain  
9 that was struck in 1976 with respect to what the  
10 fees should be, what, if anything, does that say  
11 about what relative value of distant signals are in  
12 the period of 2000 to 2003?  
13 THE WITNESS: Well, the system has been  
14 reviewed extensively and has been perpetuated.  
15 There have been more than one occasion on which the  
16 interest -- interested parties have been invited to  
17 provide comments and, I believe, testimony on  
18 whether this system is working well, whether it  
19 should be replaced by something else, such as a  
20 flat licensing fee or -- or even a flat per  
21 subscriber fee, something more similar to the  
22 satellite TV arrangement.

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1 And on each occasion, the -- the  
2 various parties -- I'm sure there have been, you  
3 know, some dissents from some parties at least to  
4 some extent. But on the whole, the various parties  
5 have been reasonably content to see the system  
6 continue in place, rather than seeking vigorously  
7 for Congress to either abolish the system or to  
8 change it in radical ways.  
9 And, in particular, there has been  
10 testimony, such as from the National Association of  
11 Broadcasters, that has explicitly stated  
12 essentially that the system has lots of  
13 imperfections. But we've been living it -- with it  
14 now for several decades, and it looks like the cost  
15 of radically changing the system would be greater  
16 than whatever benefits might be obtained from --  
17 from changing the system.  
18 So it strikes me as one of those  
19 systems where, if people were designing something  
20 today, they might well do it differently. But when  
21 it comes to whether or not to keep the system with  
22 modest changes over the years, that's what the

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1 various parties have -- have pretty much chosen to  
2 do or chosen to -- to support.  
3 JUDGE ROBERTS: Okay. So you're saying  
4 that by the fact that there has not been  
5 legislative change, any significant legislative  
6 change with respect to 111 in the period from 1976  
7 to the period in this proceeding, 2000-2003,  
8 suggest that the values that were attached, the  
9 distant signals, the fees for the signals, in 1976  
10 are still relevant and -- and still somewhat in  
11 force in the 2000 to 2003 period?  
12 THE WITNESS: I'm really saying two  
13 things, that the various fees, the way they were  
14 established and the way they've been perpetuated,  
15 that those fees do provide a rough reflection of  
16 relative value. That's one thing I'm saying.  
17 The other thing I'm saying is that --  
18 JUDGE ROBERTS: And that's because  
19 nobody's been successful in getting it changed?  
20 THE WITNESS: Well, that's the second  
21 thing, which is that the various parties seem to be  
22 at least reasonably content with the perpetuation

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1 of that system. But those two points are very  
2 different.  
3 I'm not saying that we can infer  
4 something about relative value because the system  
5 hasn't been changed.  
6 I'm saying we can infer something about  
7 relative value because of the way the compulsory  
8 license system actually works in practice. I mean,  
9 you can look at its practice.  
10 And I should add, as a regulatory  
11 economist, of course, the first thing I would do  
12 would be to examine the regulations in this market  
13 through time and to figure out how the parties  
14 adapt themselves to those regulations.  
15 JUDGE ROBERTS: If you knew, in that  
16 period, from 1976 to 2000-2003, that there were, on  
17 more than one occasion, bills in the Congress, both  
18 in the House and the Senate, to change the fee, to  
19 change the fee structure and to change the fees,  
20 therefore, themselves, but, for a variety of  
21 reasons, those bills did not pass, does that change  
22 your conclusion at all?

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1 THE WITNESS: No. I would have been  
2 very surprised if there had not been such bills  
3 introduced in the past 30 years or so.  
4 But it -- but, again, you know, the  
5 observation that the system has been perpetuated  
6 says something about, you know, how the parties  
7 have adapted to this system and whether or not --  
8 and whether or not most of the parties feel  
9 aggrieved about this system.  
10 But the question of whether or not the  
11 fee system reveals something about relative value  
12 is a different question. There, I think you have  
13 to look directly at the compulsory licensing system  
14 itself and the outcomes from that system.  
15 JUDGE ROBERTS: So in that instance,  
16 that's where you're talking about a particular  
17 operator chooses one signal over another, right,  
18 and --  
19 THE WITNESS: That's right.  
20 JUDGE ROBERTS: -- and suggests  
21 relative value?  
22 THE WITNESS: Yeah, things --

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1 JUDGE ROBERTS: Okay.  
2 BY MR. SATTERFIELD:  
3 Q. Mrs. McLaughlin talks about anomalous  
4 outcomes with respect to the application of the  
5 compulsory license.  
6 Did you examine these issues raised by  
7 Mrs. McLaughlin, for instance, the care -- the  
8 payment of carriage fees and service tiers?  
9 A. Yes, in -- in the sense that she  
10 describes some anomalous results in which, if you  
11 assume that -- that -- that certain signals have a  
12 certain relative value, well, then when the fees  
13 are -- are assessed and allocated, that the results  
14 would -- would not be in close accord with the  
15 relative values that are assumed to be there. And  
16 I'm sure that happens all the time.  
17 I think it's impossible to design a  
18 compulsory licensing system that would not have  
19 anomalous results like that. After all, the whole  
20 purpose is to -- is to force the parties to pay a  
21 certain fee regardless of -- you know, of -- of  
22 certain circumstances, which might generate

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1 different values if they were freely negotiated.  
2 But they're not freely negotiated.  
3 And the numerical example that -- that  
4 she provided, essentially, that -- that -- that  
5 demonstrated that if you have fees fixed by laws  
6 and if you have relative values that are not  
7 directly established or not directly taken account  
8 of in the fee system, then you're going to get  
9 some -- some odd results. And I think that's  
10 inevitable.  
11 Q. Mrs. McLaughlin described the  
12 designation of signals as a 3.75 -- as permitted  
13 for purposes of 3.75 as being arbitrary.  
14 Do you agree with her -- with her  
15 testimony?  
16 A. No, I don't. I think it's clear  
17 from -- from their record that there were -- that  
18 there were some established economic realities that  
19 underlay the designation of the DSEs. I'm sure  
20 there could be a lot of debate as to why it should  
21 be 0.25 versus 1.0 instead of .3 or something like  
22 that.

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1 Q. I'm sorry. I -- that's not the  
2 question I asked.  
3 A. Okay.  
4 Q. I asked about the 3.75.  
5 A. Oh, is that right? I'm sorry.  
6 Q. My voice must have been too low. I  
7 apologize.  
8 A. Can you just repeat the question, since  
9 I was answering the wrong question?  
10 Q. Sure. Sure.  
11 I was asking about the arbitrariness of  
12 the designation of the signal as being permitted  
13 where 3.75 payments are being paid.  
14 Do you -- do you agree that that  
15 designation, in and of itself, could be arbitrary?  
16 A. I guess you can say the designation  
17 is -- the designation itself is arbitrary. The  
18 question is whether or not that has much in the way  
19 of practical consequences.  
20 In my view, it really doesn't matter.  
21 If there are two signals that are being subscribed  
22 to, one is a 3.75 and the other one isn't, I don't

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1 think it matters which one is designated. We know  
2 that each of those two signals is worth more than  
3 3.75 percent or the -- the system would not carry  
4 both signals.  
5 And so the sensible solution is simply  
6 to add up the fees and then allocate them equally  
7 amongst these two signals, both of which are worth  
8 at least 3.75 percent.  
9 Q. And how do you determine that they're  
10 both worth at least 3.75?  
11 A. Well, the system has a choice of  
12 whether to carry both signals or just one or no  
13 signal whatsoever.  
14 If they have one signal, they're  
15 getting it for slightly less than 1 percent fee.  
16 If they know that adding a second signal is going  
17 to involve a 3.75 fee, it makes no sense for them  
18 to add that second signal.  
19 If the first signal is -- is worth less  
20 than 3.75 percent, they would be better off if they  
21 dropped the first signal and replace it by the  
22 second signal if the second one really is worth

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1 more than 3.75 percent.  
2 So that, in general, I think we have to  
3 bear in mind that -- that the cable system is not  
4 choosing whether or not to carry two signals or a  
5 total fee of 3.75 plus 0.96, as opposed to no  
6 signals whatsoever. They're choosing whether to  
7 carry one signal -- zero signals, one signal or  
8 both signals.  
9 And as long as they have that choice, I  
10 think we can be reasonably confident that if they  
11 are carrying a second signal, the 3.75 percent fee,  
12 they must think that the other signal that they are  
13 continuing to carry must also be worth at least  
14 3.75 percent. Otherwise, they could save money by  
15 dropping one of those two signals.  
16 Q. Mrs. McLaughlin also addressed the  
17 declining fee scale and the base rate for multiple  
18 distant signals.  
19 Did you examine that issue?  
20 A. I did -- I did address that issue. Her  
21 objection was partly that the sliding scales are  
22 fixed; it goes down by a certain amount to the

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<p style="text-align: right;">Page 893</p> <p>1 second signal, to the third signal, and then it's 2 flat for a few signals and so on.</p> <p>3 Eventually, it doesn't matter very much 4 because there aren't very many systems that take a 5 lot of signals. But her point was those amounts 6 are arbitrary, which is true. They are fixed by a 7 compulsory licensing law.</p> <p>8 But the larger question is whether or 9 not it matters which signal is designated as the 10 first one and receives the highest fee and which 11 one is designated the second at a somewhat lower 12 fee, et cetera.</p> <p>13 And that issue has been addressed in 14 prior proceedings. And it was addressed again in 15 these proceedings by Jonda Martin of the Cable Data 16 Corporation, because, using her database, she can 17 perform a very simple exercise, which is to go 18 through the various systems that include a Canadian 19 signal, plus other signals, and see what happens if 20 you -- if you designate the Canadian signal as the 21 highest value signal, that is, the first one, as 22 opposed to what happens if -- if in every system --</p>	<p style="text-align: right;">Page 895</p> <p>1 signal is the first signal or the last signal 2 listed by a particular cable operator is not 3 particularly arbitrary because we're comfortable 4 it's within that range?</p> <p>5 THE WITNESS: I guess you could say it 6 is arbitrary, but it's -- but it doesn't matter 7 very much --</p> <p>8 JUDGE ROBERTS: I see.</p> <p>9 THE WITNESS: -- how this arbitrary 10 decision is made.</p> <p>11 JUDGE ROBERTS: Because it slots into 12 the --</p> <p>13 THE WITNESS: That's right. That's 14 right.</p> <p>15 BY MR. SATTERFIELD:</p> <p>16 Q. And this is the information set out in 17 Table 2 of Page 9 of your testimony that 18 establishes these ranges by year?</p> <p>19 A. In my testimony, there are two min/max 20 tables, Table 1 and Table 2. And Table 1 just 21 reproduces the results of what was done in an 22 earlier proceeding. And that involved the rebuttal</p>
<p style="text-align: right;">Page 894</p> <p>1 in every case, you designate the Canadian system as 2 the lowest value signal.</p> <p>3 And what she found was that doesn't 4 matter a whole lot, that -- that the total fees 5 received for the Canadian signals would be -- vary 6 by a few percentage points in each direction, 7 depending upon whether the Canadian signal was the 8 highest rated or the lowest rated.</p> <p>9 And, in fact, if you look at the CDC's 10 actual allocations, they tend to be kind of in the 11 middle of that range.</p> <p>12 So it's one of those things that looks 13 a little bit odd, but I think the practical 14 significance is pretty small.</p> <p>15 JUDGE ROBERTS: Again, just to clarify, 16 Dr. Calfee, are you saying that by looking at the 17 CDC testimony, that we are presented with a range, 18 the max to the min, and knowing that we can fit the 19 valuation attached to Canadian programming 20 somewhere in that range, and, as you say, it's not 21 a great range, but knowing that we can put it in 22 there suggests that selection of whether a Canadian</p>	<p style="text-align: right;">Page 896</p> <p>1 testimony of David Bennett.</p> <p>2 And then Table 2 reproduces what I 3 understand is being provided by Jonda Martin in 4 these -- these proceedings.</p> <p>5 Q. And Ms. McLaughlin also addressed the 6 issue of the assignment of DSE values.</p> <p>7 Did you examine this issue?</p> <p>8 A. Yes, I did.</p> <p>9 Q. And do you find the assignment of DSE 10 values to be completely arbitrary?</p> <p>11 A. No, they're not completely arbitrary. 12 I'm sure there are lots of ways that 13 people could object to the exact values, but those 14 values were constructed in order to reflect the 15 fact that some distant signals have a lot of 16 overprogramming that overlaps with what's already 17 being shown in local signals, and some distant 18 signals have far less programming that overlaps 19 with -- with local signals.</p> <p>20 And the distant signals that tended to 21 have a lot of overlap were assigned a 0.25 22 designation, and the ones with relatively little</p>



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1 overlap were assigned a 1.0 designation. It was  
2 done by -- by legislation, but it -- it has a  
3 reasonable relationship with the relative value of  
4 those signals.  
5 Q. Let's turn to the issue of the payment  
6 of the minimum fee.  
7 With respect to the Canadian --  
8 carriage of Canadian signals, where the system --  
9 they're the only distant signal carried and,  
10 therefore, the system pays the minimum fee, does  
11 that carriage provide any useful information for  
12 purposes of determining the value of the Canadian  
13 programming on that signal?  
14 A. Well, the mere fact that a signal is  
15 carried in a minimum fee system indicates that the  
16 signal has some value, because they could -- in  
17 general, they could save money by not carrying any  
18 signal at all. And that's what some -- some  
19 systems do.  
20 In connection -- in the case of the  
21 Canadian signals, the -- the real question is  
22 whether or not we have any reason to think that

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1 those signals have significant value rather than  
2 de minimus value.  
3 And I think there are compelling  
4 reasons to think that they have quite substantial  
5 value. And that lies in a very simply natural  
6 experiment that occurred because of the WTBS  
7 switch.  
8 If most of the Canadian signals in 2000  
9 through 2003 had -- had little value to the  
10 systems, say, 0.5 percent or less, then we -- we  
11 would've expected those -- the cable systems not  
12 to've carried those Canadian signals before the TBS  
13 switch, because almost all of them carried WTBS  
14 before the switch, in which case, if they also  
15 carried the Canadian signal, they would have had to  
16 pay that sliding fee rate of roughly 0.6 percent or  
17 whatever.  
18 And so we can look and see whether --  
19 whether -- you know, whether the carriage after  
20 the -- of Canadian signals after the switch was  
21 much greater than carriage before.  
22 And that's what Table 3 -- that's the

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1 data -- the data provided by -- by Table 3, which,  
2 again, came from the -- the Cable Data Corporation.  
3 And we can see that -- that the switch  
4 of WTBS had almost no impact whatsoever on the  
5 number of Canadian signals being carried, the  
6 number of systems carrying one signal, the number  
7 of systems carrying two or more signals, et cetera.  
8 And so it's clear to me that,  
9 historically, those signals have had considerable  
10 value to the cable systems. It certainly looks as  
11 if they continue to have roughly the same value.  
12 There's very little reason that I can discern for  
13 thinking that those -- those signals suddenly lost  
14 all of their value after the -- the WTBS switch and  
15 then just happened to be picked up anyway.  
16 Q. So even without examining on a  
17 system-by-system basis the specific dynamics of  
18 that system, your -- your testimony is you can look  
19 at this historical carriage data and see that  
20 the -- the -- because the Canadian systems were  
21 previously carried as a distant signal and their  
22 continued carriage reflects that the -- the -- the

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1 system placed value on the signal before it became  
2 the sole distant signal?  
3 A. Yes.  
4 What they -- they revealed by the  
5 earlier decisions that these -- that these signals  
6 had considerable value. There's no reason to think  
7 that those systems ceased to have considerable  
8 value after the WTBS switch.  
9 It's much more reasonable to assume  
10 that they continue to have substantial value. If a  
11 minimum fee system is carrying only one Canadian  
12 signal, probably, it carried that signal before the  
13 switch, probably, that signal provides considerable  
14 value.  
15 JUDGE WISNIEWSKI: Is there any reason  
16 to conclude they might carry increased value?  
17 THE WITNESS: I'm not sure the data  
18 tells me that right off -- right off the hand. I  
19 mean, there's been -- it's a pretty dynamic -- as  
20 you know, a pretty dynamic industry.  
21 So the cable systems, they have a lot  
22 more choices now than they did even 10 years ago,

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1 not distant channels, but various cable channels,  
2 et cetera.

3 And so I guess there might be an  
4 argument that -- that the CZ -- that the Canadian  
5 signals face somewhat more competition than they  
6 did 10 years ago. But I'm not sure I can, you  
7 know, make that argument in terms of the value.

8 BY MR. SATTERFIELD:

9 Q. Well, let me direct your attention to  
10 Table 3, the third column, Form 3 systems with the  
11 zero DSEs.

12 Is this evidence that some cable  
13 systems have opted to -- to carry signals not  
14 subject to the compulsory license rather than to  
15 avail themselves of the -- of the compulsory  
16 license?

17 A. I'm not sure I understand your  
18 question.

19 I mean, we do know that before 1998,  
20 that there were a few systems, not very many, that  
21 carried no distant signals at all.

22 As I indicate in the text of my -- of

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1 my testimony, although not in this table, more than  
2 95 percent of cable systems were carrying WTBS back  
3 in those days, but there were a few that didn't  
4 carry any at all.

5 TBS disappeared and, now, there are  
6 quite a few, on the order of 15 to 20 percent of  
7 systems, that carry no distant signals whatsoever.  
8 But the number that carry Canadian signals seems  
9 to've changed very little.

10 Q. My question is really directed at, does  
11 the fact that systems that -- that -- according to  
12 the fourth column, which shows the percentage of  
13 systems with zero DSEs, that ranging from 2001,  
14 16.5 percent of systems had no distant signals,  
15 down to 2003, again, 16.5 percent of all Form 3  
16 systems carry no distant signals, is that some  
17 evidence that these cable systems have excess --  
18 have looked at the choices available to them of  
19 other carriage choices and opted not to carry a  
20 distant signal?

21 MR. DOVE: Your Honor, I'm going to  
22 object. That's a leading question.

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1 CHIEF JUDGE SLEDGE: Sustained.  
2 BY MR. SATTERFIELD:

3 Q. Dr. Calfee, what is the purpose for  
4 submitting the document, CDN-R-2A?

5 JUDGE ROBERTS: Before you go on to  
6 that, Mr. Satterfield, and before we leave Table 3,  
7 I'm still struggling a little bit here, Dr. Calfee,  
8 with the discussion surrounding the third column of  
9 Table 3.

10 As you point out, the jump in 1998 from  
11 a relatively few systems that were carrying a  
12 distant signal to quite a few systems that were  
13 carrying a distant signal was because of the  
14 disappearance of WTBS, which suggests that probably  
15 most of their cable systems, their one DSE was  
16 WTBS, correct?

17 THE WITNESS: Yes. I mean, this is  
18 just a reminder -- and I believe I -- I probably  
19 stated in my -- in my written testimony that  
20 there's a cost of carrying a signal, even if you  
21 don't pay a fee at all.

22 And so these are, like, in -- in 1998,

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1 one, the 19.6 percent of systems decided not to  
2 carry a DSE, even though they essentially had to  
3 pay for it anyway. And that illustrates the  
4 general point, which these -- carrying a distant  
5 signal is not costless; it involves a significant  
6 amount of expense for the system to coordinate with  
7 their other offerings, et cetera, et cetera.

8 And so --

9 JUDGE ROBERTS: Of course, that's a  
10 matter that's outside the compulsory license?

11 But if we look at Column 3 --

12 THE WITNESS: That's right.

13 JUDGE ROBERTS: -- we have, through  
14 these years, carriage of Canadian signals which  
15 must have been on a local basis. These were local  
16 Canadian signals because they didn't generate any  
17 DSE value. And a decision has been made to carry a  
18 local Canadian signal.

19 I don't see, though, where that -- any  
20 change that is reflected by the disappearance of  
21 WTBS for the compulsory license purposes suggests  
22 that there is any impact on a decision of a cable

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<p>1 operator to carry a local Canadian signal. 2 THE WITNESS: No, I'm not -- the title 3 of this table, it says Canadian distant signal 4 carriage, 1990 to 2003 -- 5 JUDGE ROBERTS: Yes. 6 THE WITNESS: -- this is a little bit 7 misleading in the sense that -- 8 JUDGE ROBERTS: I agree with that. 9 THE WITNESS: -- that the second and 10 third columns, that provides a number of systems 11 that provide zero DSEs. Well, then, by definition, 12 they don't have a Canadian distant signal, but they 13 don't have any distant signal at all. 14 But I -- 15 JUDGE ROBERTS: When you're saying -- 16 when you were talking about that the minimum fee 17 systems still, nevertheless, show a -- a value 18 attached to Canadian programming, are you meaning 19 by that the systems -- all systems, of course, have 20 to pay the minimum fee, whether they carry one 21 distant signal equivalent or they carry none. 22 Are you -- are you suggesting, then,</p>	<p>1 license structure that is set up that if you don't 2 carry any distant signals, you pay the same fee as 3 you carry -- as you pay if you carry one, where the 4 cable operator has said, well, I'm going to get 5 stuck with this fee no matter what, therefore, I 6 might as well carry one distant Canadian station, 7 because I'm going to have to pay that fee anyway 8 for all the programming that I'm carrying. 9 What -- what does that tell us about 10 what value the cable operator has attached to the 11 Canadian program? 12 THE WITNESS: It doesn't tell us very 13 much at all, unless we know something about what 14 went on in an earlier era in which the -- the 15 system was already carrying WTBS. So, therefore, 16 any other signals put it beyond the minimum fee. 17 And so if, in 1998, a system is 18 carrying one distant signal and is a Canadian 19 signal, you could say I don't know whether that 20 signal was worth very much. But if you go back a 21 year earlier and that same system was carrying WTBS 22 plus the Canadian signal, then we know they were</p>
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<p>1 that it is -- it is a fact that whether they're 2 carrying it on a local basis or it's the one DSE 3 value, they're paying the same fee, but it suggests 4 that there is value there? 5 THE WITNESS: Essentially, yes. 6 I mean, McLaughlin's testimony argued 7 that in recent years, a lot of systems that carry a 8 Canadian signal are also minimum fee systems, which 9 means that that is their only distant signal. And 10 she says, because they are a minimum fee system and 11 have to pay the minimum fee anyway, we don't know 12 whether that signal has any value to them at all. 13 All I'm saying here is that as a 14 general rule, those systems carried a Canadian 15 signal before the TBS switch when they had to pay a 16 substantial fee for those signals. 17 So we can reasonably infer that those 18 signals provided -- provided, in the past, 19 significant value to those systems, and there's no 20 reason to think that they don't continue to provide 21 considerable value. 22 JUDGE ROBERTS: We have a compulsory</p>	<p>1 paying on the order of .6 percent for that Canadian 2 signal. 3 And so it obviously had value the 4 year -- the year before. 5 All I'm saying is that -- 6 JUDGE ROBERTS: And is that what this 7 chart is trying to tell us? 8 THE WITNESS: Yes, yes. 9 And that's what we're saying, is 10 that -- that what we find consistently, you know, 11 throughout the -- the systems is that as a general 12 rule, the systems that were carrying a Canadian 13 signal in the minimum -- when they were minimum fee 14 systems, that is, 1998, et. al, as a general rule, 15 those same systems were carrying a Canadian system 16 earlier when they actually had to pay a significant 17 fee for those Canadian signals. 18 So history tells us that those signals 19 had value to those systems and they probably 20 continue to have value to those systems. It's 21 really inferring -- it's basically making a 22 reasonable inference about the value of systems</p>

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1 based upon earlier times when the systems had to  
2 pay a substantial amount for those very same  
3 signals.  
4 JUDGE ROBERTS: Okay.  
5 BY MR. SATTERFIELD:  
6 Q. May I direct -- on Table 3, may I ask  
7 you, how do you ascertain this historical carriage  
8 of the Canadian stations from -- as -- as the -- as  
9 the second signal from this chart?  
10 A. I'm not sure I understand your  
11 question. I mean, CDC --  
12 Q. Let me -- I'm sorry.  
13 Let me ask you to direct your attention  
14 to 1997-2.  
15 A. Okay.  
16 Q. And then to read across to the -- one,  
17 two, three, four -- fourth column.  
18 How many -- and that column header is  
19 Systems with more than one Canadian distant  
20 signals.  
21 How many cable systems carried one or  
22 more Canadian distant signals in 1997-2?

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1 A. Carried one or more?  
2 Q. Yeah.  
3 A. Sixty-five, according to this.  
4 Q. Now, let me direct your attention over  
5 to the last column, Systems with only Canadian  
6 distant signals.  
7 How many cable -- of that 65, how many  
8 cable systems carried only Canadians as their  
9 distant signal?  
10 A. Two.  
11 Q. Now, dropping down one line to '98-1,  
12 under the column, Systems with one or more Canadian  
13 signals -- distant signals, how many cable systems  
14 carried one or more distant Canadian signals?  
15 A. Now we're in 1998-1?  
16 Q. Yes.  
17 A. Sixty-six carried one or more signals.  
18 Q. And how -- and going over to the final  
19 column, Systems with only Canadian distant signals,  
20 how many cable systems carried only a Canadian as  
21 their sole distant signal in '98-1?  
22 A. Twenty-five.

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1 Q. So unless -- unless --  
2 CHIEF JUDGE SLEDGE: Wait a minute.  
3 Your question didn't respond to the chart. Your  
4 question said how many systems carried only -- I've  
5 forgotten. It wasn't the way the chart reads.  
6 Ask your question again.  
7 MR. SATTERFIELD: I'm sorry.  
8 BY MR. SATTERFIELD:  
9 Q. In 1998-1 --  
10 A. '98-1.  
11 Q. Yes, '98-1 -- how many systems were  
12 there that were under the column header, Systems  
13 with only Canadian distant signals?  
14 A. Twenty-five.  
15 Q. And are you drawing the inference that  
16 the -- of these 25, 23 of them would have been a  
17 second distant signal in prior years?  
18 MR. DOVE: Objection; leading question.  
19 THE WITNESS: Well, I mean --  
20 CHIEF JUDGE SLEDGE: Just a moment.  
21 THE WITNESS: -- I mean, there are  
22 certain numbers here --

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1 BY MR. SATTERFIELD:  
2 Q. I'm sorry. He hasn't ruled on the  
3 objection.  
4 A. I'm sorry.  
5 CHIEF JUDGE SLEDGE: Mr. Dove.  
6 MR. DOVE: I believe he's suggesting  
7 the answer to the question by -- instead of asking  
8 is there an inference, he's suggesting what the  
9 inference is.  
10 (The Judges confer.)  
11 CHIEF JUDGE SLEDGE: On the objection  
12 raised, it's overruled.  
13 You may answer the question.  
14 BY MR. SATTERFIELD:  
15 Q. You can answer.  
16 A. Okay.  
17 I think -- what we're looking at here,  
18 when you go for 1997-2 to 1998-1, you're going from  
19 before the TBS switch to after the TBS switch. And  
20 before the switch, there were very few systems for  
21 which the Canadian distant signals were the only  
22 distant signals, and that's not surprising since

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1 the vast majority of systems carried WTBS.  
2 In 1998, with WTBS gone, there were now  
3 25 systems in which the only distant signal was a  
4 Canadian signal. And so those are minimum fee  
5 systems that carried the Canadian system.  
6 And my general testimony is, if those  
7 25 signals --  
8 CHIEF JUDGE SLEDGE: Wait a minute.  
9 You said those are minimum fee stations.  
10 Why do you say that?  
11 THE WITNESS: Well, these are systems  
12 by -- in the last column, these are systems that  
13 have -- I'm sorry. I say only Canadian distant  
14 signals, but you're right. If they're carrying two  
15 or more distant signals, then they would not be  
16 minimum fee.  
17 CHIEF JUDGE SLEDGE: You  
18 mischaracterized the chart?  
19 THE WITNESS: That's right. That's  
20 right.  
21 So I don't know how many of those 25  
22 only carried one Canadian signal.

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1 BY MR. SATTERFIELD:  
2 Q. Isn't the -- but isn't the -- the  
3 header on the last column, Systems with only  
4 Canadian distant signals?  
5 A. It is, but it doesn't indicate whether  
6 or not they carry only one signal. They might  
7 carry more than one.  
8 Now, obviously, there are only  
9 systems -- there are only 15 systems with two or  
10 more Canadian distant signals, and those systems  
11 might have other signals in addition.  
12 So at least 10 -- 10 of those 25 in the  
13 last column represent systems in which they have  
14 only -- only one distant signal, and that is a  
15 Canadian distant signal.  
16 There might be more. I can't tell  
17 from -- from these numbers.  
18 Q. Well, was it your understanding that  
19 this last column reflects systems where there was  
20 only a distant Canadian -- one distant Canadian  
21 station?  
22 A. No. The last column --

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1 CHIEF JUDGE SLEDGE: He can't answer  
2 that question. The objection is sustained.  
3 THE WITNESS: Okay.  
4 BY MR. SATTERFIELD:  
5 Q. You did discuss this in your written  
6 testimony also, is that correct, Dr. Calfee?  
7 A. I discussed the table in the written  
8 testimony. I'm not sure that I discussed exactly  
9 that last -- the last column. I'd have to look at  
10 my written testimony.  
11 Q. Could the carriage history of -- well,  
12 let me direct your attention to your -- to the  
13 exhibit at Tab A of your testimony, CDN-R-2A.  
14 A. Yes.  
15 Q. What is -- what is that exhibit?  
16 A. This is CD INDEX, CD index, from  
17 Cable Data Corporation dated July 18th, 2009.  
18 Q. And why are you attaching that -- that  
19 exhibit to your written testimony?  
20 A. I was provided with an earlier exhibit.  
21 I believe it was SP-7. And I think I discussed  
22 this in my written testimony. So that was an

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1 exhibit that came from the Settling Parties.  
2 Essentially, you had the same name. It  
3 was a CD index.  
4 And in looking at it -- I've forgotten  
5 now exactly how it came up, but in looking at it, I  
6 noticed that WTBS -- that this did not indicate  
7 systems that carried WTBS before the switch.  
8 As I recall, I inquired about this, and  
9 I learned that that's right, that, in fact, what  
10 was produced for SP-7, that version of the CD index  
11 presented data only for systems -- I mean, it --  
12 it -- it ignored systems that carried -- how do I  
13 say? -- it excluded TBS carriage data, because for  
14 some reason, it was looking at -- it was focusing  
15 on data since -- since 1998 --  
16 Q. Okay.  
17 A. -- and so I requested a new version of  
18 CD index, which did reflect WTBS carriage. And I  
19 believe that is either the main or the only  
20 difference between those two exhibits.  
21 Q. And why did you want to include WTBS  
22 carriage on this exhibit?

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1 A. Well, for this particular exhibit,  
2 obviously, I wasn't combing through all the numbers  
3 in here, but I -- I was just trying to get a  
4 general feel of what was happening in this -- in  
5 this particular market.  
6 And then, for the -- for the exact  
7 numbers, I requested a -- a spreadsheet, which was  
8 provided by the attorneys, but had been obtained  
9 from -- from CDC. And that spreadsheet underlay  
10 the data in -- in Table 3.  
11 That spreadsheet was not derived  
12 directly -- was not derived from this (indicating)  
13 particular printout, but rather, from the CDC files  
14 directly. And so the spreadsheet underlying  
15 Table 3 obviously was -- was accurate. It did  
16 reflect TBS carriage, et cetera.  
17 But the printed CD index that I had  
18 originally been given excluded WTBS carriage, and  
19 so I asked for one that -- that included it.  
20 Q. And this one now reflects TBS' historic  
21 carriage on each of these systems?  
22 A. Yes, although I can't say that I've

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1 gone through it in detail to verify that.  
2 Q. Okay. Let's turn to Dr. Singer's  
3 testimony.  
4 What issues did you examine with  
5 respect to Dr. Singer's prior testimony in these  
6 proceedings?  
7 A. Dr. Singer argued that -- in the prior  
8 proceedings, that the fee-generation system had  
9 been -- had been used to -- as the basis for  
10 allocating funds to the -- to the  
11 Canadian Claimants Group and that, in doing that,  
12 CARP had relied upon or had paid special attention  
13 to large identifiable changed circumstances, most  
14 of which had some connection with the WTBS switch.  
15 In his testimony, he argued that those  
16 changed circumstances no longer applied to the 2000  
17 to 2003 period, as compared with the 1998 to 1999  
18 years, nor could he identify any other large  
19 obvious changed circumstances, and, therefore, in  
20 the absence of similar or the same changed  
21 circumstances, that the allocation should be based  
22 upon the results of the fee-generation method using

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1 year-end 1998-'99 data, rather than fee-generation  
2 results using years 2000 and 2003 data.  
3 That was the argument which I  
4 addressed.  
5 Q. And what is your -- your opinion with  
6 respect to Dr. Singer's testimony?  
7 A. Well, my basic opinion is that there  
8 are a lot of things that can cause a market to  
9 change over -- over the period of five years or so,  
10 as in this particular case. And sometimes you can  
11 identify, you know, large factors that obviously  
12 make a difference and sometimes you can't.  
13 Sometimes you can identify one or two, but there  
14 may be other factors at work.  
15 There may even be factors that are --  
16 that are pretty important that -- that you may be  
17 able to identify in concept, but you can't actually  
18 measure.  
19 And, therefore, you know, the absence  
20 of -- of large identifiable factors should not be  
21 interpreted as meaning that nothing really has  
22 changed very much in terms of the relative value of

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1 the distant signals.  
2 There may be other factors at work that  
3 you can't identify or you can't -- you can't  
4 measure and, therefore, you need to adopt some kind  
5 of an approach that, however crudely, does take  
6 into account whatever factors may be at work during  
7 those intervening years.  
8 And then my final argument was that --  
9 I -- I -- how should I put it?  
10 It makes sense to me, economically, to  
11 rely upon fee-generation method using the data  
12 that's -- that's relevant to the -- you know, to  
13 the years for which we are allocating funds.  
14 And Dr. Singer didn't really provide a  
15 substantial argument as to why it is that the older  
16 results would actually be preferred to the newer  
17 results, quite aside from whether or not you can  
18 identify, you know, large factors that are -- are  
19 driving the results.  
20 Q. So is it your opinion that the -- that  
21 the annual fee-generation data captures the change  
22 of relative value in the market for these

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1 proceedings?  
2 A. The fee-gen method certainly reflects  
3 events that have taken place during those years.  
4 I'm not in a position to argue that it  
5 does so with great accuracy, but intervening events  
6 are likely to have an effect on how fees are  
7 generated and -- and -- and whether fees are larger  
8 for -- you know, for one kind of signal versus  
9 another, et cetera.  
10 So to the extent that the  
11 fee-generation method captures anything else at  
12 all, and I think it captures a fair amount, then  
13 fee-generation results for later periods are going  
14 to reflect whatever has been taking place in those  
15 intervening years. And that could be all sorts of  
16 things.  
17 And I mentioned some of the  
18 possibilities in my written testimony. I mean, it  
19 could be, you know, just like which sports teams  
20 happen to be especially popular; whether or not  
21 there are some people who are quite taken with some  
22 particular new TV series that arrives; or have lost

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1 interest in another TV series or something like  
2 that.  
3 There are a lot of things that are  
4 going on that, you know -- that could have  
5 constant, cumulative effects, and we don't know  
6 what those are.  
7 So, yes, the -- the fee generation  
8 using the later results are likely to reflect all  
9 those various factors better than simply repeating  
10 the results from an earlier period.  
11 JUDGE WISNIEWSKI: I'm not sure I  
12 completely follow where you've gone with this in a  
13 sense.  
14 If -- if we can't identify the factors  
15 or measure any of the factors, then how do we know  
16 that it actually occurred or been responsible for  
17 any change in relative value?  
18 THE WITNESS: I don't think we do. I  
19 think that if -- if, for example, certain TV  
20 programs became very popular with audiences in  
21 Boston, you know, or maybe lost popularity in  
22 Seattle or something like that, you know, there may

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1 be someone who could try to dig into that and find  
2 something useful.  
3 But, in general, I think that's  
4 a -- you know, it's a difficult, if not impossible,  
5 task, you know.  
6 All we know is after a few years, we  
7 observed that the Canadian signals are generating a  
8 larger proportion of fees than they used to. We  
9 don't know exactly why, but the fact that they are  
10 tells us something about the relative value of  
11 these signals.  
12 JUDGE WISNIEWSKI: My question is, why  
13 does it have to tell you something about the  
14 relative value? Couldn't those changes come from  
15 factors other than any change in relative value?  
16 THE WITNESS: So your question is if we  
17 compare results later on with results earlier on  
18 and we see that there's been a -- a change in the  
19 pattern of fees, might that change in pattern of  
20 fees be the result of something other than -- other  
21 than relative value?  
22 It's hard to, you know, reject that --

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1 that possibility, but it's the nature of the  
2 compulsory licensing system that the systems have  
3 to pay more if they get more of a certain kind of  
4 signals. They can save money by taking fewer  
5 signals or taking -- at least down to one signal,  
6 et cetera. And those choices reveal something  
7 about the relative value of those signals, and  
8 those choices will be reflected in the amount of  
9 fees that are -- that are generated.  
10 JUDGE WISNIEWSKI: But you, yourself,  
11 have said that the fees-gen method, at best, is a  
12 crude method --  
13 THE WITNESS: Yes.  
14 JUDGE WISNIEWSKI: -- for ascertaining  
15 those changes?  
16 And I guess the question becomes, well,  
17 where -- where's the cutoff point? Where can one  
18 delineate where the method actually shows a  
19 change and where it's just a completely spurious  
20 result?  
21 THE WITNESS: I would be challenged to  
22 provide that -- that cutoff point. But I do think

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1 that there are compelling reasons to think, however  
2 that works out in practice, that the fee-gen  
3 results from 2000 to 2003 are probably -- are  
4 likely to be a better representation of relative  
5 value than the fee-generation results from an  
6 earlier period.

7 JUDGE WISNIEWSKI: I guess we're going  
8 in circles, because I'm coming back to the why,  
9 given the conversation we've just had.

10 THE WITNESS: Well -- okay.

11 My answer is to the extent that the  
12 fee-generation results reflect relative value, to  
13 the extent that they do, then I don't see any  
14 reason to prefer the results from an earlier period  
15 than the later period. We don't know how far they  
16 go in that direction.

17 JUDGE WISNIEWSKI: Okay. Thank you.

18 CHIEF JUDGE SLEDGE: So if you assume  
19 it's true, therefore, it's true; but if you don't  
20 assume it's true, therefore, it's not true?

21 THE WITNESS: I think that's an  
22 overbroad interpretation of what I'm saying.

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1 When I -- if we assume that the  
2 fee-generation system is useless, that -- that fees  
3 have no relationship whatsoever to relative value,  
4 then we're in a difficult situation.

5 I think there are pretty compelling  
6 reasons to think that fees do have a relationship  
7 to relative value. The relationship is far from  
8 perfect, but I think that there is a relationship.

9 And that when you have an allocation  
10 method that relies upon the fees-generation -- the  
11 fees generated, that that will give you a better  
12 idea of relative value than a system that ignores  
13 the fees that are -- that are -- that have been  
14 generated.

15 And then the secondary point is that to  
16 the extent the fees tell you something about  
17 relative fees, to the extent that they do, then the  
18 fees for the period where the allocation is -- is  
19 actually taking place will provide a better  
20 indication of relative value than the fees from an  
21 earlier period would.

22 BY MR. SATTERFIELD:

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1 Q. Dr. Calfee, can I sort of step back and  
2 refer you to Table 3 again? And I would direct  
3 your attention to the -- to the fifth column  
4 header.

5 And what is -- what is that column  
6 heading?

7 A. I'm sorry? Which part of Table 3?

8 Q. The column heading.

9 A. Which column are you --

10 Q. I'm sorry. The fifth one.

11 A. Oh, the Systems with one or more  
12 Canadian distant signals?

13 Q. Correct.

14 So would that be -- that would be any  
15 system carrying a distant Canadian signal -- the  
16 total systems carrying distant Canadian signals; is  
17 that right?

18 A. That's right.

19 Q. And then the -- the next column,  
20 Systems with one Canadian distant signal, would  
21 that be a subset of that prior column?

22 A. Yes, the fifth column should equal the

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1 sum of the next two columns.

2 Q. And then the next column is Systems  
3 with two or more Canadian distant signals.

4 So that's a different subset of  
5 Column 5; is that correct?

6 A. Yes.

7 Q. And if I add Column 6 -- I'm sorry. If  
8 I add Column 6 and the next column, the systems  
9 with two or more, what does that add to?

10 A. That should add to Column 5.

11 Q. So then would it -- would it -- would  
12 it appear that the last column, Column 8, which is  
13 Systems with only a distant Canadian signal, is --  
14 is actually a subset of Column 6, that is, the  
15 Systems with one Canadian distant signal?

16 A. No. It is a subset, obviously, of  
17 Column 5, the systems with one or more, but in the  
18 last column, that includes systems that have only  
19 one Canadian distant signal, but it might also  
20 include systems that include two or more Canadian  
21 distant signals.

22 That's what Judge Sledge caught me on



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1 before.  
2 Q. I see. Thank you.  
3 I just wanted to make sure it was clear  
4 for the record.  
5 MR. SATTERFIELD: I have no further  
6 questions.  
7 CHIEF JUDGE SLEDGE: I guess it's  
8 early, but this seems to be a break in the  
9 testimony. We're somewhat close to the noon hour.  
10 Would anybody's schedule be interfered  
11 if we start our -- our one-hour break now?  
12 All right. We'll recess for one hour.  
13 (Whereupon, at 11:23 a.m., a  
14 luncheon recess was taken.)  
15  
16  
17  
18  
19  
20  
21  
22

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1 AFTERNOON SESSION  
2 (12:29 p.m.)  
3 WHEREUPON,  
4 JOHN E. CALFEE, PH.D.  
5 was called for continued examination and, having been  
6 previously duly sworn, was examined and testified  
7 further as follows:  
8 CHIEF JUDGE SLEDGE: Thank you. We'll  
9 come to order.  
10 Mr. Dove, are you going to begin the  
11 cross?  
12 MR. DOVE: I am, sir.  
13 CHIEF JUDGE SLEDGE: All right.  
14 CROSS-EXAMINATION  
15 BY MR. DOVE:  
16 Q. Good afternoon, Dr. Calfee.  
17 Dr. Calfee, would you agree that the  
18 royalty fees set by Congress are generally below --  
19 below market and could be substantially less than  
20 what the cable operator is willing to pay to import  
21 a distant signal?  
22 A. On the whole, yes.

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1 Q. In fact, it could well be possible that  
2 for every type of distant signal carried, the  
3 royalties understate their value; isn't that right?  
4 A. It's possible. I would hesitate to  
5 make a statement quite that broad.  
6 Q. But on the whole, your view is that the  
7 royalty fees set by Congress, generally, are below  
8 market, correct?  
9 A. Again, on the whole. There may be  
10 exceptions to that pattern.  
11 Q. And you would agree that the cable  
12 operator could also place substantially different  
13 values on different distant signals even if they  
14 are subject to the same statutory compulsory  
15 license fee, correct?  
16 A. Yes.  
17 Q. And, for example, the value of  
18 individual Canadian signals is bound to vary  
19 greatly among the various cable systems even  
20 though, under the fee structure, each signal is  
21 assigned the same DSE value of one, correct?  
22 A. Yes, with -- with the caveat that the

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1 only systems that are eligible to import Canadian  
2 signals are the ones close to the Canadian signals.  
3 So the variance within that group is less than it  
4 would be if you looked at the entire U.S. cable  
5 system.  
6 Q. But the value of those signals, you  
7 know, could vary greatly across those cable  
8 systems, correct?  
9 A. Yes, bearing in mind the word "greatly"  
10 covers a lot of territory. But yes.  
11 Q. I'm actually reading directly from your  
12 written testimony.  
13 A. I agree with it.  
14 Q. Okay. And the reason for that is  
15 because the signals might be -- you know, might  
16 provide a different benefit to the cable operator  
17 in terms of attracting and retaining subscribers.  
18 Is that fair?  
19 A. Yes.  
20 Q. And as I understand it, it's your  
21 opinion that the disparity between relative values  
22 and fee allocation is unavoidable under the

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1 compulsory license system, correct?  
2 A. Can you repeat that again, please?  
3 Q. Sure. Sure.  
4 It's my understanding that it's your  
5 opinion that disparity between relative values and  
6 fee allocation is unavoidable under the compulsory  
7 license system?  
8 A. Yes.  
9 Q. And the fact that two signals can  
10 generate the same fees but have a different  
11 relative value is an unavoidable consequence of the  
12 way the system is set up, correct?  
13 A. Yes.  
14 Q. And so for a particular system, a  
15 Canadian signal may generate the same fee as an  
16 independent signal, say, WGN, but have a different  
17 relative value, correct?  
18 A. Yes.  
19 Q. And that's an unavoidable result,  
20 correct?  
21 A. Yes.  
22 Q. And the reason it's an unavoidable

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1 result is systemic. By its very nature, a  
2 compulsory licensing system is bound to introduce  
3 numerous anomalies, including seemingly arbitrary  
4 fees; isn't that right?  
5 A. Yes.  
6 Q. Now, turning to the issue of 3.75 fees,  
7 as a matter of basic economic theory, the first  
8 distant signal that a cable system chooses to carry  
9 is worth the most, and the second somewhat less; is  
10 that correct?  
11 A. In general, yes. I mean, it depends on  
12 the -- on the circumstances. They may choose a  
13 signal at one time and, later on, another signal  
14 may become more valuable. And they may switch  
15 signals, for example, or they might add a second  
16 signal that happens to be worth more than the  
17 original signal. It can certainly happen.  
18 JUDGE ROBERTS: What time period,  
19 Mr. Dove, are we talking here? Are we talking  
20 about that the first signal is the most valuable in  
21 each accounting period? Are we talking about a  
22 longer period of time?

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1 MR. DOVE: I guess what my question was  
2 directed at, you know, when a cable operator sits  
3 down to make a choice of what -- you know, what  
4 signals am I -- am I going to carry, the first  
5 distant signal that a cable system chooses to carry  
6 is worth the most, and a second, somewhat less as a  
7 matter of economic theory. I guess I really  
8 wasn't --  
9 JUDGE ROBERTS: So you're focusing on  
10 when the cable system starts operation and picks  
11 that first signal for the first time?  
12 BY MR. DOVE:  
13 Q. Well, let's start with Judge Roberts'  
14 question.  
15 When the cable operators --  
16 JUDGE ROBERTS: That's my question to  
17 you, actually. Is that what -- what -- is that  
18 what you're asking or are you --  
19 BY MR. DOVE:  
20 Q. Well, at this point, I'm trying to just  
21 establish some basic economic theoretical points  
22 that, generally, the -- the first thing that you

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1 choose is more valuable than the second thing that  
2 you choose.  
3 And you can probably say it better in  
4 terms of economic knowledge.  
5 A. Well, the broad principle certainly --  
6 certainly makes sense. It's a little bit difficult  
7 to translate that into ordinary practice, because  
8 in many situations, a party is choosing more than  
9 just one item.  
10 It is true that if a cable -- and I'm  
11 not an expert on the internal workings of cable  
12 systems, but if a cable system is in a position to  
13 decide what signals to import and it decides to  
14 import a particular signal, I think we can assume  
15 that that's a signal that provides the greatest  
16 benefit compared to whatever they have to pay for  
17 that particular signal.  
18 If they then decide to add a second  
19 signal and it's a signal they could have chosen  
20 before, then, ordinarily, that second signal would  
21 be worth less than or no more than the first  
22 signal, again, assuming the circumstances haven't

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1 changed, that the second signal doesn't have some  
2 feature that makes it more attractive than was the  
3 case a year or two ago.  
4       What I'm hesitant to say is if you have  
5 a system that is subscribing to two or three or  
6 four signals, I'm a little bit hesitant to say  
7 that -- that it will be clear to anyone except,  
8 perhaps, someone inside the cable system itself as  
9 to which of those signals is the most valuable,  
10 which is the second most valuable and so on.  
11       You don't usually observe, you know,  
12 the systematic accretion of one signal to another  
13 over time.  
14       Q. But the cable operator knows which  
15 signal is more valuable than another, correct?  
16       A. Presumably, they do. If they know they  
17 want to carry both signals, they're not going to  
18 spend a whole lot of time trying to figure out  
19 which one is more valuable.  
20       Q. And I guess what I'm getting at is to  
21 try to -- and -- and I think you may have answered  
22 my question, but on Page 7 of your testimony, you

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1 state that it is an economic reality that not all  
2 distant signals are of equal value, so that systems  
3 tend to select the most valuable signals first when  
4 deciding which and how many signals to import.  
5       And I take it that your basis for that  
6 statement is what you just described?  
7       A. Yes.  
8       Q. Okay. So if a cable system decides to  
9 carry two distant, independent signals, the  
10 likelihood that the relative value of those signals  
11 to the cable operator is exactly the same is  
12 extreme low, correct?  
13       A. I'm only hesitating because of the  
14 words "exactly the same" and "extremely low."  
15       I mean, it's very unlikely that those  
16 two signals have the same value. I'll certainly  
17 say that.  
18       Q. I mean, it's far more likely that the  
19 two signals would be valued differently, with the  
20 first chosen being more valuable than the second,  
21 correct?  
22       A. Again, with the previous caveats about

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1 what it means to refer to the first signal that's  
2 chosen. But, in general, yes.  
3       Q. And I think we said before the extent  
4 of that difference in value might vary widely,  
5 correct?  
6       A. Yes.  
7       JUDGE ROBERTS: Dr. Calfee, are you  
8 just saying this as a matter of economic principle,  
9 or are you attempting to say this with respect to  
10 what cable systems do?  
11       THE WITNESS: Well, certainly with  
12 respect to economic principle.  
13       With respect to what cable systems  
14 actually do, that's where, earlier, I was  
15 expressing a little bit of hesitation.  
16       If they're carrying two signals, I'm  
17 not sure anyone knows which of those two is more  
18 valuable. Maybe someone does, but I'm not sure we  
19 would know. The cable system may not spend a lot  
20 of time figuring out which one is more valuable if  
21 they know they're going to carry both of them.  
22       I mean, I don't have any problem with

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1 the general principle, but I'm a little bit  
2 hesitant as to how far you can carry that to reach  
3 some kind of conclusion. I'll find out --  
4       BY MR. DOVE:  
5       Q. You say that the cable operator would  
6 probably know the relative valuations.  
7       Did you make any effort to ask the  
8 cable operator -- cable operators what relative  
9 valuations of their signals were?  
10       A. No.  
11       So I guess the answer to Judge Roberts'  
12 question is it's economic reasoning, and it's  
13 applied to a cable system situation.  
14       Q. Now, Ms. McLaughlin, in her testimony,  
15 describes the arbitrariness of the designation of  
16 3.75 signals, correct?  
17       A. Yes.  
18       Q. And she is referring to the fact that  
19 under the market quota standard, any one of two or  
20 more signals could have been designated as the  
21 permitted signal, right?  
22       A. That's my understanding, yes.

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1 Q. And as I understand it, you respond to  
2 her, in part, by endorsing a new allocation method  
3 submitted by Cable Data Corporation in which the  
4 royalties are split equally among the originators  
5 of the signal, correct?  
6 A. Yes, I suggest that is a reasonable way  
7 to address the situation.  
8 Q. And when you say in your testimony that  
9 a reasonable way to deal with the 3.75 situation is  
10 to split the royalties equally among the  
11 originators of the signals, you are referring to  
12 the arbitrariness of allocating all of the 3.75  
13 signal -- royalties to one signal rather than  
14 another under the market quota criterion,  
15 correct?  
16 A. Yes. Essentially, I'm saying that --  
17 we know that each of those signals is worth at  
18 least 3.75 percent. It probably doesn't make sense  
19 to try to figure out which one of those signals  
20 merits more -- a larger portion of the fee than the  
21 other ones do.  
22 Q. Well, isn't the only way then, though,

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1 to deal with Ms. McLaughlin's other point regarding  
2 the -- the economic reality that -- that you also  
3 mention, you know, in your testimony, that not all  
4 distant signals are of equal value, isn't the only  
5 way to deal with that would be to allocate more to  
6 one 3.75 signal than the other?  
7 A. No. No, not -- not when you have -- it  
8 depends on how much information is revealed by the  
9 cable system.  
10 When they add a signal that triggers a  
11 3.75 designation, they reveal something about their  
12 valuation of both signals. They reveal that both  
13 signals are worth at least 3.75 percent.  
14 I mean, they haven't even told us for  
15 sure which one is worth the most. What they have  
16 done is tell us that -- that the original first  
17 signal was a real bargain. They were getting that  
18 for 1 percent, and, in fact, it was worth at least  
19 3.75 percent.  
20 Q. But you do know that both signals are  
21 not worth the same, correct?  
22 A. They're probably not worth the same,

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1 yes.  
2 Q. That's precisely what the Cable Data  
3 Corporation allocation method proposes to do; it --  
4 it equates the two signals rather than give one a  
5 higher value than the other, correct?  
6 A. That is correct. I mean, we have no  
7 reason to think that the first signal, for example,  
8 is worth almost four times as much as the second  
9 signal or the other way around.  
10 We know they're both worth at least  
11 3.75 percent. We know very little about which one  
12 is worth -- worth more. And even if we think the  
13 first one is worth more, we know very little about  
14 how much more it is worth.  
15 And 3.75 percent compared to roughly  
16 1 percent is a pretty big disparity in fee  
17 allocation. That's why it seems to me it makes  
18 more sense to do it equally.  
19 Q. But, you know, to summarize, I mean, we  
20 really have no direct evidence, you know, to  
21 quantify the difference in value between the two  
22 signals.

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1 So I take it it's your conclusion that  
2 when you have no direct evidence to quantify the  
3 difference between the two signals, the most  
4 reasonable way to allocate them is -- is an even  
5 split?  
6 A. It depends on the context. In this  
7 particular context, that is, where one of the  
8 signals is designated as 3.75 percent, then, yes, I  
9 think the most reasonable thing to do is to split  
10 them equally, split the fees equally.  
11 Q. Even though you know with an almost  
12 certainty that one of those signals has a relative  
13 value that's greater than the other, correct?  
14 A. It's -- it's certainly more likely than  
15 not that one of those signals has more relative  
16 value than the other, but we really know very  
17 little how much greater the relative value is.  
18 I think it's unlikely that the first  
19 signal is worth almost four times as much as the  
20 second signal, but I'm not a cable system  
21 operator.  
22 Q. Dr. Calfee, would you please describe

27 (Pages 941 to 944)

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1 what types of programming on distant signals are  
2 compensable in these proceedings and what types of  
3 programming are not compensable?  
4 A. Only in a very rough -- rough sense.  
5 When they import signals, my  
6 understanding is that basically what's compensable  
7 is copyright -- is material that's copyrighted and  
8 where Congress has concluded that it would be  
9 unfair not to compensate those copyrights  
10 separately, that is, through the importation of a  
11 separate signal.  
12 In certain situations, Congress has  
13 concluded that it doesn't matter whether you  
14 provide copyrights for distant signals -- for  
15 certain distant programming because they're already  
16 getting compensated through local programming.  
17 But in other situations, where you have  
18 original programming -- movies, sports and so on --  
19 that are coming in a distant signal, my  
20 understanding is, as a general rule, those things  
21 are compensable and that this is set up in such a  
22 situation so that it pretty much avoids

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1 compensating suppliers for material that's already  
2 being presented locally.  
3 Q. So -- so is network-affiliated  
4 programming compensable?  
5 A. You're getting into -- well, my  
6 understanding is that it's compensable, but because  
7 of the 0.25 DSE, the compensation is -- is  
8 automatically less than it would be for a distant  
9 signal.  
10 Maybe I'm -- maybe I confused the  
11 question. Were you asking me about a distant  
12 independent signal or a distant network signal?  
13 Q. I'm just asking you about, you know,  
14 the programming -- we're trying to get at what  
15 aspects of the programming on a distant signal  
16 are compensable and what aspects are not  
17 compensable.  
18 And my question is, is  
19 network-affiliated programming compensable?  
20 A. Network-affiliated programming being  
21 Desperate Housewives coming in off of a distant  
22 signal, as opposed to Desperate Housewives being

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1 shown on a local signal? Is that an example of  
2 what you're referring to?  
3 Q. If that -- if that example is  
4 network-affiliated, yes.  
5 A. Okay. Okay.  
6 I'm not sure exactly what  
7 network-affiliated programs are compensable.  
8 As a general rule, the programming that  
9 comes in from a distant signal is compensable  
10 because they pay royalty fees. There may be some  
11 exceptions to that relating to programming that is  
12 duplicative of what's in local stations, and I'm  
13 not sure exactly how those exceptions apply.  
14 Q. How about programming that is  
15 duplicated on U.S. local stations? Is that  
16 programming compensable in these proceedings?  
17 A. You mean a program that is shown both  
18 in a local station and from -- on a distant station  
19 that's being imported?  
20 Q. Yes.  
21 A. I'm not sure. It may be compensable,  
22 but, again, it's compensable at a limited rate

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1 because of the 0.25 DSE designation.  
2 Q. How about programming that is  
3 duplicated on U.S. cable networks? Is that type of  
4 programming compensable?  
5 A. A U.S. cable network like the  
6 USA Network or whatever?  
7 Q. That's correct.  
8 If -- if there's a program on, say, a  
9 Canadian distant signal that is also on  
10 USA Network, cable network, is that programming  
11 compensable that's on the Canadian distant  
12 signal?  
13 A. My sense is there isn't a lot of  
14 programming on there and that -- that by use of the  
15 Ringold survey, the compensation to the Canadian  
16 signals is -- is -- is adjusted to the best extent  
17 possible so that it reflects original Canadian  
18 programming.  
19 Other than that, I'm not sure that  
20 there's anything that keeps -- that prevents  
21 compensation for programming that happens to appear  
22 both in a Canadian signal and on something like

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1 the USA Network.  
2 The USA Network, of course, is that --  
3 all that compensation is contracted for separately.  
4 Q. Now, Canadian distant signals contain  
5 Canadian programming that is also shown in the  
6 United States, correct?  
7 A. You mean it's shown in the  
8 United States by virtue of it being imported to a  
9 Canadian -- I mean to a U.S. cable system?  
10 Q. That's a fair question. Let me clarify  
11 it.  
12 Canadian -- isn't it true that Canadian  
13 distant signals contain Canadian-originated  
14 programming that is also shown in the United States  
15 on network television or cable networks?  
16 A. Occasionally; but my sense is that most  
17 of the Canadian original programming on Canadian  
18 distant signals is not shown in the U.S. through  
19 other means, most of it. But there may be some  
20 overlap.  
21 MR. DOVE: Can I have CDN-1-C?  
22 May I approach the witness, Your Honor?

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1 CHIEF JUDGE SLEDGE: Yes.  
2 MR. DOVE: I'm handing a copy to the  
3 witness of what has been designated as CDN-1C.  
4 It's a document entitled, Canadian Claimant Group  
5 Members Selection of Properties Licensed to U.S.  
6 TV Services Within The Years 2000 to 2003.  
7 I'll ask the witness --  
8 BY MR. DOVE:  
9 Q. Have you seen this document before?  
10 A. Not that I recall. I may have briefly  
11 reviewed it in the context of going through a  
12 number of exhibits. But this one does not stand  
13 out in my memory.  
14 Q. I can represent to you that this is an  
15 exhibit introduced by the Canadian Claimants in  
16 this case, and it lists Canadian programming that  
17 is also shown, but licensed to U.S. television  
18 services within the time period in question.  
19 Do you see this list of programming?  
20 A. Yes.  
21 MR. SATTERFIELD: I object.  
22 CHIEF JUDGE SLEDGE: Mr. Satterfield?

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1 MR. SATTERFIELD: This -- this -- these  
2 questions about licensing of programming to other  
3 sources in the U.S. is beyond the scope of his  
4 direct testimony.  
5 CHIEF JUDGE SLEDGE: Mr. Dove?  
6 MR. DOVE: Dr. Calfee has testified  
7 how -- how the -- there's very little duplication  
8 in the programming that is -- that is retransmitted  
9 from Canadian into the United States and that  
10 that's a justification for why the Canadian distant  
11 signal should get a 1.0 DSE instead of a 2.5 DSE.  
12 And so the reason for this line of  
13 questioning in this document is to demonstrate  
14 that, in fact, there is Canadian programming that  
15 is duplicated on U.S. cable networks and U.S. local  
16 stations.  
17 CHIEF JUDGE SLEDGE: Is that in his  
18 written testimony?  
19 MR. DOVE: I believe it is in his  
20 written testimony.  
21 CHIEF JUDGE SLEDGE: Where?  
22 MR. DOVE: I can -- let me just point

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1 that to you.  
2 (Pause.)  
3 MR. DOVE: On Page 9 in his written  
4 testimony, in Section IV, about five or six lines  
5 down, there's some testimony that states that  
6 evidence produced in the Canadian Claimants direct  
7 case indicates that the bulk of Canadian distant  
8 signal programming is Canadian in origin. And  
9 then -- let's see here.  
10 And if you look up a couple of lines  
11 before that, it talks about how Ms. McLaughlin's  
12 testimony argues that Canadian signals are 1.0 DSE  
13 even though they carry significant programming that  
14 is duplicative of local programming, as do network  
15 stations, which are only 0.25 DSE signals.  
16 Next sentence, The testimony does not  
17 indicate the extent of duplicative programming,  
18 however, and evidence produced in the CCG's direct  
19 case indicates that the bulk of Canadian distant  
20 signal programming is Canadian in origin.  
21 And what I'm trying to show here is  
22 that, in fact, you know, through the Canadians' own

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1 evidence, there is a -- you know, a large amount of  
2 programming that is Canadian in origin, but, yet,  
3 duplicates U.S. programming.  
4 CHIEF JUDGE SLEDGE: Mr. Satterfield?  
5 MR. SATTERFIELD: Yes. The section in  
6 his testimony referring to -- this is McLaughlin's  
7 testimony, is where she cites as an example a  
8 private Canadian station, CFTO, and cites some U.S.  
9 network programs that were on CFTO.  
10 So this is -- this testimony is  
11 directed to that. And it was U.S. network  
12 programming carried on Canadian stations back into  
13 the United States and -- as opposed to -- as  
14 opposed to Canadian programming being licensed into  
15 the United States to other services for  
16 distribution.  
17 But my recollection -- that's what he's  
18 addressing here was the situation with the example  
19 of CFTO, which is very different than this  
20 (indicating).  
21 CHIEF JUDGE SLEDGE: The objection is  
22 overruled.

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1 BY MR. DOVE:  
2 Q. Dr. Calfee, you know, based on this  
3 document, is it fair to say that -- that Canadian  
4 programming can be found on U.S. public television  
5 stations, on U.S. independent stations, such as  
6 WGN, and on numerous U.S. cable networks? Is that  
7 fair to say?  
8 A. Are you asking me whether the  
9 programming can be found?  
10 Q. Yes.  
11 A. Yes, it is sometimes found.  
12 Q. But you made no effort to quantify the  
13 extent to which it's found on -- on -- on  
14 U.S. network stations and U.S. cable networks,  
15 correct?  
16 A. That's correct --  
17 Q. Okay.  
18 A. -- other than reviewing the testimony  
19 of Janice de Freitas.  
20 Q. And you would agree, I take it, that  
21 Canadian programming contained on Canadian distant  
22 signals is compensable in these proceedings, even

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1 though it might duplicate programming on U.S.  
2 stations or cable networks, correct?  
3 A. That's my understanding. I'm not an  
4 expert on -- on exactly how this compensation  
5 works, just exactly what the exceptions are as to  
6 what is compensable and what is not.  
7 My -- my general understanding, as I've  
8 stated in my -- in my testimony, is that the  
9 designation of DSE values is the primary tool for  
10 taking into account the overlap between programming  
11 in distant signals and programming on local  
12 stations.  
13 And then, in the case of the Canadian  
14 signals, that the bulk of the programming, but by  
15 no means all of it, on the Canadian distant signals  
16 is of Canadian origin and is not available to the  
17 subscribers of the -- of the U.S. cable systems in  
18 question.  
19 Q. And what's the basis -- when you say  
20 the bulk of Canadian programming is available in  
21 that way, what's your basis for that statement,  
22 since you made no independent effort to quantify

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1 it?  
2 A. The testimony of de Freitas.  
3 And I should add that there is some  
4 mention of this in -- in the various reports that  
5 have emanated from CARP, CRT, et cetera.  
6 But in those reports, I believe it --  
7 it -- it treats the question of -- of overlap  
8 between signals in a fairly general way. And I  
9 don't recall that it specifically addresses  
10 Canadian signals, at least not in any detail.  
11 The de Freitas testimony is my main  
12 source on that.  
13 Q. Well, were you aware that  
14 Ms. de Freitas testified that -- that private  
15 television networks in Canada carry much more  
16 American programming, particularly American  
17 dramas, than they do unique Canadian programming?  
18 A. I was aware that she said that the  
19 private stations in Canada do carry much more U.S.  
20 programming than the -- than the CBC stations, that  
21 is, the public stations.  
22 I don't recall the balance between U.S.

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1 and Canadian programming and private stations, but  
2 I wouldn't be surprised to learn that at least in  
3 some private stations, that they carry at least as  
4 much U.S. programming. But I don't know that for  
5 sure.  
6 CHIEF JUDGE SLEDGE: We'll recess five  
7 minutes.  
8 (Whereupon, a brief recess was taken  
9 from 12:57 p.m. to 1:08 p.m.)  
10 CHIEF JUDGE SLEDGE: Thank you. We'll  
11 come to order.  
12 BY MR. DOVE:  
13 Q. Dr. Calfee, could I direct your  
14 attention, please, to Pages 11 and 12 of your  
15 testimony. And, specifically, I'd like to direct  
16 your attention to where you reference the fee for a  
17 second DSE as 0.63 percent.  
18 Do you see that?  
19 A. On Line 4?  
20 Q. On Line 4 is the first time that that  
21 occurs --  
22 A. Yes.

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1 Q. -- yes.  
2 A. Yes.  
3 Q. Okay. Isn't it true that the fee for a  
4 second DSE was actually .563 percent during the  
5 time period that we're talking about, 1990 to 1998?  
6 A. That may be true.  
7 Looking at it now, I suspect that I  
8 failed to -- to make sure as to whether I'm not --  
9 as to whether I was using more recent  
10 inflation-adjusted fees rather than earlier  
11 inflation-adjusted fees.  
12 Of course, the general point is they  
13 were paying a significant fee, and, you know, it's  
14 in the same order of magnitude. But I cannot say  
15 that -- what you are -- what you are saying, I --  
16 I -- I assume is factually correct and that I was  
17 wrong in that respect.  
18 Q. Would you like to take this opportunity  
19 to correct your testimony in this regard on  
20 Pages 11 and 12?  
21 A. Replacing the 0.63 with the correct  
22 preinflation-adjusted amount?

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1 Q. Yes, if that's what you wish to do.  
2 A. If I have the power to do that, that's  
3 fine with me. I don't know what the procedures are  
4 here for correcting testimony on the fly like this.  
5 JUDGE ROBERTS: Are you sure,  
6 Dr. Calfee, by the way, that that's the correct  
7 number, the one that counsel just told you?  
8 MR. DOVE: I hope so.  
9 JUDGE ROBERTS: Do you know that?  
10 The question is to you, Dr. Calfee.  
11 THE WITNESS: Oh, I'm sorry. I thought  
12 you were looking --  
13 JUDGE ROBERTS: No. The question to  
14 you is --  
15 THE WITNESS: No, I do not for sure. I  
16 do not remember. I know the number was changed. I  
17 don't know for sure.  
18 JUDGE ROBERTS: So you don't know what  
19 that number is?  
20 THE WITNESS: That's right.  
21 JUDGE ROBERTS: All right.  
22 BY MR. DOVE:

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1 Q. So I take it, then, you do not wish to  
2 correct your testimony in this regard?  
3 A. No, I don't, not if I can't use a  
4 number provided by someone else. I do not have the  
5 right number myself, so, in that sense, I cannot  
6 correct the testimony.  
7 Q. Dr. Calfee, I'd like to now turn your  
8 attention to -- I guess it's Exhibit -- it's the  
9 exhibit to your testimony from Cable Data  
10 Corporation.  
11 A. Yes.  
12 Q. It's called cdindex.dopc.  
13 A. Yes.  
14 Q. And, specifically, I'd like to direct  
15 your attention to System ID MEM350.  
16 A. FrontierVision Operating?  
17 Q. FrontierVision Operating, yes. And  
18 from Rumford.  
19 A. Okay.  
20 Q. And as I understand it, Dr. Calfee,  
21 this is an example of a cable system that had a  
22 Canadian signal for a while after the conversion



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1 of WTBS, but then decided to drop it; is that  
2 correct?  
3 A. I would have to remind myself of what  
4 some of these call letters represent --  
5 Q. So do you know --  
6 A. -- it's -- I mean, at one point, I went  
7 through some of these. I had some guidance from an  
8 attorney as to which signals were Canadian signals,  
9 et cetera, but that was, I don't know, a month or  
10 so ago, something like that.  
11 And I would have to refresh my  
12 memory -- perhaps, you could refresh my memory --  
13 as to which of these signals are, in fact, Canadian  
14 signals.  
15 CHIEF JUDGE SLEDGE: Dr. Calfee, I  
16 would encourage, rather than seeking someone to  
17 tell you what to say, to say simply I don't know if  
18 you don't know.  
19 THE WITNESS: Okay.  
20 No, I don't know.  
21 BY MR. DOVE:  
22 Q. So, for example, Dr. Calfee, you don't

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1 know whether CKSH -- you don't know whether that's  
2 a Canadian signal or a U.S. signal?  
3 A. I now recall that that is a Canadian  
4 signal, that that is the point of the C.  
5 Q. And do you know what a D means on these  
6 charts?  
7 A. I believe that's a distant signal.  
8 Q. And do you know what an L means on  
9 these charts?  
10 A. I believe that's a local signal.  
11 Q. Do you know what an I means on these  
12 charts? And in particular, I'll direct your  
13 attention to the -- the row of letters directly  
14 underneath the station identifiers.  
15 Do you know what an I means?  
16 A. I think it means independent, but I'm  
17 not sure about that.  
18 Q. Do you know what an N means?  
19 A. Network affiliate, I think.  
20 Q. But you're not sure?  
21 A. I'm almost certain that is a network  
22 affiliate, but, no, I'm not absolutely certain.

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1 Q. Would that be a U.S. network affiliate  
2 or a Canadian network affiliate?  
3 A. We're talking about WAB?  
4 Q. That would be one example, yes, WABI.  
5 A. Yes.  
6 My -- my recollection is that that is  
7 the U.S. network affiliate, but -- but, again, I  
8 would have to refresh my memory on -- on a number  
9 of these -- these symbols.  
10 Q. Do you know what an E means in this  
11 chart?  
12 A. Oh, the E being like WGNE?  
13 Q. Like a WCBB, underneath there is an E.  
14 Do you see that? That's the fourth  
15 one -- the fourth station over.  
16 A. I thought you were asking me about an  
17 E.  
18 Q. Yes, an E.  
19 The fourth station over, there's an E  
20 underneath the WCBB. Do you see that?  
21 A. Oh, I'm sorry. I was looking at a  
22 different place for an E.

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1 Yes, I do.  
2 Q. And do you know what that E  
3 represents?  
4 A. I don't recall what that means.  
5 Q. I'm going to represent to you that the  
6 call letters, CKSH, stand for the Canadian signal  
7 CKSH.  
8 Okay?  
9 A. Okay.  
10 Q. Now, with that representation in mind,  
11 would you agree with me that this is an example of  
12 a cable system that had a Canadian signal for a  
13 while after the conversion of WTBS, but then  
14 decided to drop it?  
15 A. Yes.  
16 Q. As I read this chart, the cable  
17 system -- this cable system kept the Canadian  
18 signal, CKSH, after WTBS converted to a cable  
19 network in 1998, correct?  
20 A. Yes.  
21 Q. And then the Canadian signal, CKSH, was  
22 dropped in the first accounting period of 2002,

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1 correct?  
2 A. Yes.  
3 Q. And in 2002 and 2003, this system is  
4 still paying a minimum fee, but it's not carrying  
5 any distant signals; is that correct?  
6 A. That's my understanding, that the  
7 absence of a D anywhere means that it is not  
8 carrying any distant signal. But, of course, it  
9 has to pay a minimum fee anyway.  
10 Q. So the Canadian signal here, this CKSH,  
11 was of such low value that the cable operator  
12 preferred to drop it, even though he still had to  
13 pay the same amount in royalties; is that correct?  
14 A. Yes.  
15 And the reason I hesitate with my  
16 answer, I notice, looking over at the left, that  
17 some of the names change here. And I'm not sure  
18 exactly what that -- what that means, whether  
19 there's been some kind of change in the -- in  
20 exactly what constitutes this -- the system.  
21 But whatever this system is, yes, it  
22 dropped a Canadian signal even though it was still

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1 paying the minimum fee, and that would -- and I  
2 would agree that that indicates that the signal was  
3 of relatively small value to the system at that  
4 point.  
5 Q. Indeed, if you look at it closely, this  
6 system actually paid more money in royalties  
7 without the Canadian signal in 2002 than it did  
8 with the Canadian signal in 2001; is that correct?  
9 A. It paid more royalties in 2002?  
10 Q. Yes --  
11 A. Well --  
12 Q. -- than it did in 2001 when it was  
13 carrying the Canadian signal.  
14 A. I'm sorry. I don't know why it would  
15 have paid more royalty.  
16 Was the royalty rate changed between  
17 those two periods?  
18 Q. I guess I'm asking you to look at  
19 the -- look at the chart and look at the royalty --  
20 the royalties paid column.  
21 A. Oh. Oh. Oh. Oh. Oh.  
22 Q. And -- and I guess -- and my question

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1 is, isn't it true that this system paid more money  
2 in royalties without the Canadian signal in 2002  
3 than it did with the Canadian signal in 2001?  
4 A. Yes. It increased from 4184 to 4236,  
5 presumably thousands of dollars.  
6 Q. So, in your view, is this a  
7 circumstance where the Canadian signal declined  
8 substantially in value after the WTBS switch?  
9 A. It seems to be that, yes.  
10 Q. So just because a system carried a  
11 distant Canadian signal before and immediately  
12 after the conversion of WTBS does not necessarily  
13 mean that that signal will always be of value to  
14 the cable operator, correct?  
15 A. That's correct.  
16 Q. And, indeed, demand for a particular  
17 signal may vary from year to year, correct?  
18 A. Yes.  
19 Q. And a signal might be valuable enough  
20 to carry one year but not valuable enough to carry  
21 the next, regardless of whether it was carried  
22 prior to the WTBS conversion, correct?

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1 A. Yes, that can happen.  
2 Q. And even when the same signal is  
3 carried from one year to the next, the value that a  
4 cable operator places on that signal may well  
5 change over time, correct?  
6 A. Yes.  
7 Q. All right. Dr. Calfee, I'd like to now  
8 turn to another chart in this collection. This is  
9 the WAS050 system. This is a Seattle system.  
10 A. Comcast of Washington, and it is a  
11 Seattle system.  
12 Q. Right. This is Comcast of Washington  
13 in Seattle.  
14 A. Yes.  
15 Q. Now, would you agree with me,  
16 Dr. Calfee, that this system, for most of the  
17 period represented on this chart, carried the  
18 Canadian signal CBUT?  
19 A. Yes.  
20 Q. And would you agree with me that in the  
21 first accounting period of the year 2000, the  
22 royalty for this system was \$552,348?

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1 A. Yes.  
2 Q. And this cable system has just one DSE,  
3 and that's the DSE -- DSE attributable to CBUT,  
4 correct?  
5 A. Yes.  
6 Q. In other words, this cable system  
7 carried only one distant signal, correct?  
8 A. Yes.  
9 Q. And if -- and if a system carries just  
10 one Canadian station, that cable operator still  
11 pays the minimum fee, correct?  
12 A. Yes.  
13 Q. And it's only when a cable operator  
14 brings in enough distant signals that are more than  
15 one DSE that the cable operator pays something more  
16 than the minimum fee, correct?  
17 A. Yes.  
18 Q. And so this cable system would've paid  
19 the \$552,348 even if it did not carry CBUT,  
20 correct?  
21 A. Yes.  
22 Q. And the same would hold true in the

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1 second accounting period of 2000, the first and the  
2 second accounting periods of 2001, and then, also,  
3 dropping down to the first and second accounting  
4 periods of 2003, correct?  
5 A. Yes.  
6 Q. And each of those accounting periods,  
7 the cable operators' royalty would have been the  
8 same regardless of where it -- whether it carried  
9 the Canadian signal or not, correct?  
10 A. Yes.  
11 Q. And although the cable system pays  
12 1.0 DSE, it -- it does not necessarily value CBUT  
13 at one DSE, correct?  
14 A. That is correct.  
15 Q. And you could not determine, just based  
16 on that cable operator -- or this cable operator's  
17 payment of one DSE, whether that cable operator  
18 really valued that Canadian signal at that full  
19 value, correct?  
20 A. Again, you're talking about the period  
21 starting in 2001 through 2003-2; is that right?  
22 Q. Yes, that's correct.

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1 A. Yes.  
2 Q. I mean, it's possible that the cable  
3 system may've valued this signal at less than  
4 552,000, correct?  
5 A. Yes.  
6 Q. Now, this system carried CBUT from 1987  
7 through 1994, then dropped it from 1996 through  
8 1998, correct?  
9 A. Yes.  
10 Q. Doesn't the fact that this system drops  
11 CBUT between 1996 and through 1998 indicate that  
12 the system -- that the cable system valued it at  
13 less than 0.56 percent DSE?  
14 A. Yes. Again, assuming 0.56 is what they  
15 were paying, but, yes.  
16 Q. Now, when WTBS converted to a cable  
17 network in 1998, this system did not immediately  
18 pick up CBUT, but instead, continued to pay the  
19 minimum fee without any distant signals, correct?  
20 A. Yes.  
21 Q. So in this particular instance, because  
22 CBUT was not carried prior to or immediately after

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1 the conversion of WTBS, one cannot infer any  
2 particular value to CBUT based on those facts,  
3 correct?  
4 A. I think that's -- that's generally  
5 true.  
6 Naturally, I'm curious as to why they  
7 carried that signal so long when they had to pay  
8 the fee of a second signal and then -- and then  
9 dropped it. But, in general, what you say is true.  
10 I mean, one -- when one looks at one particular  
11 signal, you know, questions pop up.  
12 For example, I'm curious as to why the  
13 royalties suddenly increased so much between 1998-2  
14 and 1999 -- 1999-1. Something was obviously  
15 happening with this cable system. I don't know  
16 what it was.  
17 Q. All right. I will actually get to that  
18 in a minute.  
19 A. Okay.  
20 Q. But to close out this line of  
21 questioning, wouldn't you agree that it's likely  
22 that CBUT has a value of less than 0.56 percent DSE

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1 given its past history?  
2 A. You're asking about what time period?  
3 Q. I'm asking about the time period  
4 1998 -- you know, I guess it -- I guess it would  
5 be -- right, 1990 -- 1998.  
6 A. You're talking about the year 1998 when  
7 it was not carrying the signal?  
8 Q. That's correct.  
9 A. And after WTBS had been -- was no  
10 longer a distant signal?  
11 Q. That's correct.  
12 A. Right.  
13 Q. In that time period, it's likely that  
14 CBUT had a value of less than 0.56 percent,  
15 correct?  
16 A. Yes.  
17 Q. Okay. Now, you mentioned the  
18 increases in the royalties and, I guess by  
19 extension, the number of subscribers -- I forget  
20 which one of those you mentioned, but in any event,  
21 the number of subscribers increased dramatically  
22 between 1998 and 1999, correct?

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1 A. Yes.  
2 Q. And -- and as I read the numbers, they  
3 increased -- the number of subscribers increased  
4 from about 208,000 to about 774,000, correct?  
5 A. Yes.  
6 Q. And my next question was, do you know  
7 why that happened?  
8 A. No.  
9 Q. Were you aware, sir, that in 1999,  
10 eight other Washington State systems merged with  
11 this system?  
12 A. I was not aware of that, but I'm not  
13 surprised at that fact.  
14 Q. Are you familiar, Dr. Calfee, with what  
15 cable operators call the phantom signal issue?  
16 A. Yes.  
17 Q. Were you aware that when systems gained  
18 subscribers due to mergers, the Copyright Office's  
19 rules require royalties to be calculated on the  
20 revenues from all subscriber fees for basic service  
21 tiers even if the additional subscribers do not  
22 receive the distant signals after the merger?

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1 A. Yes.  
2 Q. You were aware of that?  
3 A. Yes.  
4 Q. And do you know, based on this table,  
5 whether all the subscribers in this cable system  
6 received CBUT in 2000 to 2003 or whether only a  
7 portion did?  
8 A. No, I cannot tell from this table  
9 whether it was all or a portion -- or at least I  
10 don't think I can. Maybe there's something in this  
11 table that tells me that and I don't know how to  
12 read it correctly.  
13 But, no, I don't think you can tell  
14 from this table whether everyone got it or not.  
15 Q. But you would agree it's possible that  
16 everybody did not get it, correct?  
17 A. Yes.  
18 Q. Just one more of these, Dr. Calfee.  
19 I'd like you now to turn to the chart that's  
20 labeled MES200.  
21 A. MES200 MetroCast CB of -- in  
22 New Hampshire, Sanford?

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1 Q. Yes, that's correct.  
2 Now, Dr. Calfee, between 19-- -- the  
3 second accounting period of 1999 and the second  
4 accounting period of 2003, this system carried the  
5 Canadian signal, CKSH, as well as W -- WGBH, which  
6 I'll represent to you is a -- a public  
7 television -- a U.S. public television signal.  
8 A. I should be looking first at what  
9 period? 19 --  
10 Q. This is from second accounting period  
11 of 1999 through second accounting period of 2003.  
12 A. Okay.  
13 And they're carrying CKSH and WGBH,  
14 which is the Boston PBS station as I recall?  
15 Q. That's correct.  
16 A. Yes, I do see that.  
17 Q. And under the way fees generated are  
18 allocated, if you have one educational station and  
19 one Canadian distant signal, the Canadian distant  
20 signal would get a 1.0 DSE and the public  
21 television signal would get a 0.25 DSE; is that  
22 correct?

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1 A. Yes.

2 Q. And so the ratio between those two

3 DSE values is such that the Canadian signal, CKSH,

4 would be allocated 80 percent of the fees and the

5 public television signal, WGBH, would be allocated

6 20 percent of the fees; is that correct?

7 A. That's my understanding, yes.

8 Q. Now, for this system, between

9 the years, second accounting period 1999 and the

10 second accounting period of 2003, would you agree

11 that the -- the rate increased during that time

12 period?

13 A. What rate?

14 Q. Well, see the column that says rate?

15 A. Oh, yes.

16 Q. Would you agree that the rate increased

17 during that time period?

18 A. Yes; but I do not recall what rate is

19 in this particular context.

20 Q. Do you see that the number of

21 subscribers increased during this time period?

22 A. Yes, not dramatically, but, yes,

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1 increased from 8,403 to 9,134.

2 Q. And do you see that the gross receipts

3 increased during this same time period between 1999

4 and 2003?

5 A. Yes, I do. I do.

6 Q. Yes, sir?

7 A. Yes.

8 Q. And do you see that the royalties for

9 this system, you know, more than doubled between

10 the second accounting period in 1999 and the second

11 accounting period in 2003.

12 Do you see that?

13 A. Yes.

14 Q. And, therefore, since the royalties

15 more than doubled, the fees generated would have

16 more than doubled for this particular system,

17 correct?

18 A. Yes, because they are proportional to

19 the royalties.

20 Q. So under the way that fees generated

21 are allocated, the Canadian signal, CKSH, would get

22 credit for 80 percent of that increase, while WGBH

Page 979

1 would get credit for 20 percent; is that correct?

2 A. Yes, they would receive those

3 proportions of the increased fees, yes.

4 Q. Now, you would agree with me that there

5 are a variety of -- a variety of reasons why, you

6 know, the number of subscribers, for example, could

7 increase on a given cable system, correct?

8 A. Yes.

9 Q. Maybe could you list -- could you list

10 off for us, you know, the different reasons that

11 you can think of why the number of subscribers

12 might increase in a cable system?

13 A. Mergers; they might still be extending

14 the cable system to previously unwired parts of

15 town; there might be new construction in the area,

16 so there are new places to be -- to be hooked up.

17 There might be some competition. Maybe

18 there are some areas that have more than one cable

19 system; that would tend to reduce subscribers. On

20 the other hand, you can get some fairly vigorous

21 price wars. There might be competition between the

22 cable system and a satellite system or more than

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1 one satellite provider that might result in some --

2 in some price decreases and so on.

3 There are a number of factors -- I'm

4 sure there are others -- that, you know -- that

5 might eventually come to mind. Those are the ones

6 that come to mind right at the top of the -- the

7 top of my head.

8 Q. How about the rate, the rate that the

9 cable system charges its subscribers? Are there a

10 variety of reasons why that rate might increase

11 over the time period 1999 to 2003?

12 A. Now, the rate, here, is this for --

13 this is for the tiers that are involved with

14 distant signals? Is that what these rates -- this

15 rate represents?

16 Q. I'll -- I'll represent to you that

17 that's my understanding of what -- of what that

18 rate represents.

19 A. Okay.

20 So in principle, if they moved a

21 distant signal from one tier to another, then the

22 rate would switch from being the rate for the --

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1 for the first tier to the rate for whatever tier  
2 they switched to.  
3 So if they moved it from the bottom  
4 tier to the next tier up, then the rate in this  
5 thing would be the rate for that higher tier; is  
6 that right?  
7 That's my understanding of how -- of  
8 how it works.  
9 Q. And I guess my question for you is,  
10 given the increase in the rate between 1999 and  
11 2003, are there a variety of reasons why a cable  
12 system might increase its rates to its subscribers,  
13 you know, from year to year?  
14 A. Yes, there are.  
15 Q. And what are some reasons that a cable  
16 system might increase its rates?  
17 A. It -- well -- well, one reason is that  
18 the cable system might be essentially beefing up  
19 its offering, offering more channels than it did  
20 before, offering much more in the way of downloads,  
21 On Demand, those kinds of things.  
22 Cable systems have come to provide a

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1 variety of services, you know, much more than the  
2 original idea, simply retransmitting broadcast  
3 signals.  
4 So they might be expanding,  
5 essentially, the offerings that it provides. It  
6 may be -- they may be moving from digital -- from  
7 analog to digital cable boxes, signals, et cetera.  
8 So they may think that's more attractive to their  
9 customers, and they may, therefore, raise prices.  
10 They may be changing some of the tiers.  
11 And so you may get big price changes for some  
12 tiers, but not for other tiers depending on how  
13 they're pushing signals around amongst the  
14 different tiers.  
15 It could be that at one point, a system  
16 was facing vigorous competition from satellite TV.  
17 Maybe after a few years, the system decided that  
18 the satellite TV threat wasn't as strong as they  
19 realized and they might test the market by  
20 increasing the prices and see whether that works  
21 well.  
22 They may be offering Internet access

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1 through their system. They may have some bundled  
2 prices involving TV offerings and Internet  
3 offerings and so on. Those bundled prices may be  
4 broken down in various ways between the TV portion  
5 and the Internet portion. That might, you know, at  
6 least look like -- and, in fact, be -- increased  
7 prices for the TV part of it.  
8 So, yeah, there are quite a few things  
9 that could be going on that would cause rates to go  
10 up.  
11 Q. So as I understand your testimony,  
12 there are a lot of reasons why rates -- a lot of  
13 reasons why rates might increase, correct?  
14 A. Yes.  
15 Q. And there are a lot of reasons why  
16 subscribers might increase, correct?  
17 A. Yes.  
18 Q. And of those reasons, there are  
19 certainly a lot of reasons why either rates or  
20 subscribers increase that would have really nothing  
21 to do with a perception that -- among subscribers  
22 that -- or perception with the cable operator that

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1 either WGBH or CKSH was, you know, increasing in  
2 value.  
3 Is that fair to say?  
4 A. Yes.  
5 Q. And, I mean, I suppose it's also  
6 possible that -- you'd agree it's also possible  
7 that maybe the increase would be due to, you know,  
8 programming changes on either WGBH or CKSH that  
9 made those program -- that programming more  
10 valuable, correct?  
11 A. Well, there are changes that can make  
12 that programming more valuable, but are you asking  
13 me whether that might translate into other higher  
14 rates for the cable system as a whole?  
15 Q. Yes.  
16 A. That's -- that strikes me as -- as  
17 unlikely.  
18 Q. In any event, though, regardless of the  
19 reason for the increase in rate or the increase in  
20 subscribers, the resulting increase in fees  
21 generated that comes about as a result of -- of  
22 those increases would be split at 20 percent for

37 (Pages 981 to 984)

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1 WGBH and 80 percent for the Canadian signal,  
2 correct?  
3 A. Yes.  
4 Q. Even though, again, the reason for that  
5 increase had nothing to do with, if any -- could  
6 very well have nothing to do with the increase in  
7 the perception of value of those two signals,  
8 correct?  
9 A. Yes.  
10 Q. Now, it's not possible to know, just by  
11 looking at the fees-generated allocations, what the  
12 relative value of these two signals are to the  
13 cable operator in terms of attracting and retaining  
14 subscribers.  
15 Is that fair to say when we're looking  
16 at these two signals here, WGBH and CKSH?  
17 A. No, you cannot infer, directly, the  
18 relative value of those two signals to either the  
19 system or to their subscribers.  
20 Q. Now, one could ask the cable operator  
21 to assign relative values to the two stations,  
22 correct? A person could go out and ask the cable

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1 operator that question, correct?  
2 A. Yes.  
3 Q. And -- and I believe you may have  
4 testified to this earlier, but just to make sure,  
5 did you go out and ask cable operators what the  
6 relative values of Canadian and U.S. signals were  
7 in 2000 and 2003?  
8 A. No.  
9 Q. And did anyone do so on behalf of the  
10 Canadian Claimants, to your knowledge?  
11 A. Not that I'm aware of.  
12 MR. DOVE: Your Honors, may I have a  
13 few moments to confer with my colleagues? I think  
14 we're almost done.  
15 Thank you.  
16 (Pause.)  
17 BY MR. DOVE:  
18 Q. Dr. Calfee, we're almost done. I just  
19 have one more short line of questioning on this  
20 same exhibit that we've been working off of,  
21 MES200.  
22 Now, during this same time period we've

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1 been talking about, second accounting period 1999  
2 through second accounting period of 2003, this  
3 system carried the equivalent of 1.25 DSEs; is that  
4 correct?  
5 A. Yes, the -- the Canadian signal plus  
6 WGBH.  
7 Q. Right.  
8 And under my understanding of your  
9 methodology when you talked about the 3.75 fee  
10 structure, my understanding is that WGBH and CKSH  
11 effectively cost the cable operator the same  
12 amount. And let me try to explain that a little  
13 bit more.  
14 I mean, because of the -- as I  
15 understand your economic rationale as you laid out  
16 in the -- laid it out in the 3.75 analysis in your  
17 testimony, because of the minimum fee, this system  
18 would save the same amount, 0.25 DSEs, regardless  
19 of whether it dropped WGBH or dropped the Canadian  
20 signal, it would save 0.25 DSEs, correct?  
21 A. I think that's right.  
22 If it dropped either signal, then its

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1 DSE would go from 1.25 to either 1.0 or something  
2 less than that. And so it would move from paying  
3 1.25 signals to paying the minimum fee, which is  
4 equal to 1.0 signals. So, yes, I think that is  
5 true.  
6 Q. So under that rationale, shouldn't both  
7 of these signals be valued equally?  
8 A. No, I don't see why it -- it -- it -- I  
9 don't see why that -- that applies.  
10 The reason that I made that argument  
11 regarding 3.75 is because when the station adds a  
12 second signal and invokes the 3.75, we know that  
13 the first one is worth at least 3.75, okay?  
14 Here, when the station adds a signal,  
15 it tells us a little bit about what it's worth, but  
16 I don't think the addition of that second signal  
17 tells us much about what the first signal was  
18 worth.  
19 No, I don't think that logic carries  
20 through here.  
21 Q. Well, I guess maybe I'm not  
22 understanding it, but -- but my understanding is

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1 that the -- that --  
2 A. If I could interrupt?  
3 Q. Sure.  
4 A. Bear in mind that the situation is very  
5 different. With the 3.75 signals, the situation  
6 for the system was that they were getting the first  
7 signal, more or less, essentially at a bargain  
8 price, roughly 1 percent. And then when they go to  
9 two signals, they no longer get a signal at a  
10 bargain price. They've got to pay a full 3.75.  
11 And if they choose to add that second  
12 signal, then we know they were getting a real  
13 bargain on that first signal, because they didn't  
14 drop it.  
15 Here, it's almost the opposite. That  
16 first signal costs them 1 percent regardless of how  
17 much it is worth to them. So there's no reason to  
18 think, right off the bat, that it was worth a lot  
19 more than that original 1 percent.  
20 So maybe we can, for a little bit  
21 about -- you know, when they add that second signal  
22 and then add 0.24 -- 0.25, but I don't think we can

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1 infer -- in fact, I don't see any way that we can  
2 infer that the two signals are worth roughly the  
3 same amount or even that we can infer what their --  
4 I guess you could argue they're both worth at least  
5 0.25, but that doesn't really tell us that that  
6 Canadian signal is worth only 0.25.  
7 Q. You know, I guess what I'm -- what I'm  
8 getting at is that we don't really know, as you  
9 testified earlier, the relative value between the  
10 CKSH signal and the -- the WGBH signal, correct?  
11 A. We don't know that directly from these  
12 carriage decisions.  
13 We do know the Canadian signal is  
14 likely to have much more in the way of unique  
15 programming than the WGBS signal exactly has,  
16 assuming they have a local PBS station.  
17 Q. But we don't know, in this particular  
18 instance to this cable operator, what the relative  
19 value of those two signals are to that cable  
20 operator, correct?  
21 A. Not directly from the carriage  
22 information, right.

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1 Q. But what we do know -- the one thing we  
2 do know is that if the cable operator dropped the  
3 WGBH signal, it would cost that cable operator --  
4 or that cable operator would save .25 DSE, correct?  
5 A. Right.  
6 Q. And if the cable operator dropped the  
7 Canadian signal, that cable operator would save the  
8 .25 DSE, correct?  
9 A. That's right.  
10 Q. And that those -- so there really -- in  
11 terms of savings to the cable operator, it wouldn't  
12 make any difference which signal that the cable  
13 operator dropped?  
14 A. In terms of the fees, that's true. It  
15 may make a big difference in terms of, you know,  
16 the -- how much value subscribers put on their  
17 offerings.  
18 MR. DOVE: I have no further questions.  
19 Thank you, Dr. Calfee.  
20 CHIEF JUDGE SLEDGE: Any redirect?  
21 MR. SATTERFIELD: May I have about  
22 10 minute, sir? I didn't have a copy of CDN index,

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1 2-RA, with me. I had to give mine to Dr. Calfee.  
2 He didn't have his with him today. So I would like  
3 to just review those sheets.  
4 CHIEF JUDGE SLEDGE: All right. We'll  
5 recess five minutes.  
6 MR. SATTERFIELD: Thank you.  
7 (Whereupon, a brief recess was taken  
8 from 1:46 p.m. to 1:55 p.m.)  
9 CHIEF JUDGE SLEDGE: We'll come to  
10 order.  
11 Mr. Satterfield.  
12 MR. SATTERFIELD: No redirect.  
13 CHIEF JUDGE SLEDGE: Any questions from  
14 the Bench?  
15 JUDGE ROBERTS: No.  
16 CHIEF JUDGE SLEDGE: All right. Thank  
17 you, sir.  
18 THE WITNESS: Thank you.  
19 (Pause.)  
20 MR. SATTERFIELD: Canadian Claimants  
21 call Ms. Jonda Martin to be our next witness.  
22



BEFORE THE COPYRIGHT ROYALTY JUDGES

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In the Matter of:	)	Docket No:
Distribution of the 2000,	)	2008-2 CRB CD 2000-2003
2001, 2003, and 2003	)	Volume III
Cable Royalty Funds	)	(Pgs. 513 - 814)

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Washington, D.C.

Monday, June 15, 2009

The following pages constitute the continued proceedings held in the above-captioned matter, held at the Library of Congress, Madison Building, 101 Independence Avenue, Southeast, Washington, D.C., before Cindy L. Sebo, RMR, CRR, CSR, RPR, of Capital Reporting Company, a Notary Public in and for the District of Columbia, beginning at approximately 9:33 a.m.

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1 like to call our next witness, Linda McLaughlin.  
 2 CHIEF JUDGE SLEDGE: All right.  
 3 WHEREUPON,  
 4 LINDA McLAUGHLIN  
 5 was called as a witness and, having been first  
 6 duly sworn, was examined and testified  
 7 as follows:  
 8 CHIEF JUDGE SLEDGE: Thank you,  
 9 ma'am. Please be seated.  
 10 DIRECT EXAMINATION  
 11 BY MR. STEWART:  
 12 Q. Would you state your name, please?  
 13 Would you state your name, please?  
 14 A. Linda McLaughlin.  
 15 Q. And what is your business address?  
 16 A. 1166 Avenue of the Americas,  
 17 New York, New York.  
 18 Q. And could you make sure you keep  
 19 your voice up?  
 20 A. Okay.  
 21 Q. Thanks.  
 22 What's your current position?

1 kind of disputed matter, like this one.  
 2 Q. Are there particular areas in which  
 3 you concentrate?  
 4 A. Yes.  
 5 Q. What are they?  
 6 A. The industries I've done the most  
 7 work is entertainment and media.  
 8 Q. All right. And have you done  
 9 research and analysis regarding the economic  
 10 attributes of entertainment and media industries?  
 11 A. Yes.  
 12 Q. Would you provide a few examples?  
 13 A. Sure.  
 14 In an FCC inquiry case, I looked at  
 15 the relative bargaining power of cable operators  
 16 and cable networks in the context of a preceding  
 17 to decide whether to set limits on the size of  
 18 cable operators.  
 19 In another FCC inquiry, I looked at  
 20 the relative power of network affiliates and the  
 21 networks over time and how that changed in the  
 22 context of trying to -- of the FCC considering

1 A. I'm a special consultant to NERA,  
 2 that's National Economic Research Associates, also  
 3 known as NERA Economic Consulting.  
 4 Q. When did you begin in that position?  
 5 A. I have that title as of February of  
 6 this year.  
 7 Q. How long have you been with NERA?  
 8 A. Since -- well, for 35 years.  
 9 Q. And what's your educational  
 10 background?  
 11 A. I have a Bachelor's degree of  
 12 Science from Marquette University. I majored in  
 13 math. And I have a Master's degree in economics  
 14 from the University of Pennsylvania.  
 15 While I was at Penn, I got what's  
 16 informally known as an ABD, that is, I completed  
 17 all the coursework for my doctorate, but did not  
 18 write my thesis.  
 19 Q. And, in general, what kinds of work  
 20 do you do at NERA?  
 21 A. I do microeconomic analysis and  
 22 research and -- usually in the context of some

1 changing the -- the network affiliate rules.  
 2 In a merger, I looked at the way the  
 3 Internet companies affect each other in  
 4 advertising, how Web sites and advertisers get  
 5 together and the role that -- that Google and  
 6 Yahoo and others play in -- in that, not  
 7 technically how you get it, but in terms of  
 8 determining prices and -- and -- and access.  
 9 Q. So have you done research and  
 10 analysis regarding the pricing of copyrighted  
 11 works in the entertainment and media industries?  
 12 A. Yes.  
 13 Q. And would you give us examples of  
 14 that?  
 15 A. Well, I looked at the pricing of  
 16 syndicated television programming. This was in  
 17 the context of a network inquiry also that had to  
 18 do with whether the networks could own syndicated  
 19 programming.  
 20 Q. By "inquiry," you mean an FCC  
 21 proceeding?  
 22 A. An FCC -- yes, an FCC inquiry.

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1 Q. Okay.  
 2 A. And then I looked at music rights,  
 3 both -- in the context of a merger where two music  
 4 rights publishers were merging. And one of the  
 5 issues that the Federal Trade Commission had in  
 6 examining the merger is what would happen to the  
 7 price of the sync rights of music on TV shows.  
 8 And so I analyzed that -- that question.  
 9 And then, in another -- in a lawsuit  
 10 on -- involving music rights, I looked at the  
 11 reason -- in the context of the rate court that  
 12 governs ASCAP's pricing, I looked at the -- at a  
 13 reasonable rate for the cable performance rights  
 14 that ASCAP held.  
 15 Q. And have you presented testimony  
 16 regarding the economic attributes of entertainment  
 17 and media markets and copyright licensing?  
 18 A. Yes.  
 19 Q. And before we go to that, have you  
 20 also done analyses and research in the context of  
 21 compulsory copyright licenses?  
 22 A. Yes.

1 a case involving HBO and pay-per-view rights  
 2 and -- and also in a lawsuit that was, again,  
 3 before, this time, just one arbitrator between NBC  
 4 and Paxon over advertising and audience  
 5 competition.  
 6 Q. And you've appeared as an expert  
 7 witness on analysis of the economic attributes of  
 8 entertainment and media industries; is that  
 9 correct?  
 10 A. Yes.  
 11 Q. And in what contexts?  
 12 A. Well, for example, in the  
 13 Cablevision and HBO context, both times, I was an  
 14 economic expert with expertise in that particular  
 15 area, pay-per-view rights in the one case and  
 16 cable advertising in the other.  
 17 MR. STEWART: May I approach the  
 18 witness, Your Honor?  
 19 I'm handing the witness a document  
 20 I've had marked as SP Exhibit 12, which is, on the  
 21 cover, Testimony of Linda McLaughlin, January 30,  
 22 2009.

1 Q. And would you tell us about that?  
 2 A. I did two analyses on compulsory  
 3 copyrights. They were both in the satellite area,  
 4 so satellite retransmitted broadcast stations.  
 5 One concerned the fee that the  
 6 satellite distributor should pay, and the other  
 7 concerned splitting up the money that the  
 8 satellite distributors paid between two groups.  
 9 Q. All right. And back to the  
 10 testimony on issues related to markets and  
 11 copyright licensing.  
 12 In what cases have you testified?  
 13 A. Well, one of them was that satellite  
 14 fee case, not the distribution, but the fee case.  
 15 That was before the CARP.  
 16 And then I've also testified in a  
 17 lawsuit between Cablevision and YES, which is the  
 18 Yankees Sports Network, and that was before a  
 19 panel of arbitrators. And it was -- the main  
 20 issue was the tiering, what tier of cable service  
 21 the sports network would be carried on.  
 22 And I testified in Federal Court in

1 I would note that this document  
 2 differs from the testimony in the written direct  
 3 testimony exchanged with the parties on -- earlier  
 4 this year in one respect, which I'm going to ask  
 5 the witness about. But I'm handing her the  
 6 corrected version.  
 7 (Settling Parties Exhibit  
 8 No. 12 was marked for  
 9 identification.)  
 10 MR. STEWART: And I'm providing  
 11 copies for the Bench as well.  
 12 BY MR. STEWART:  
 13 Q. Now, Ms. McLaughlin, is this  
 14 Exhibit 12 your testimony?  
 15 A. Yes, it is.  
 16 Q. And would you identify the  
 17 correction that has been made on Page 2 -- I'm  
 18 sorry, Page 1 of the document?  
 19 A. Right. It's the second page, but  
 20 it's called Page 1.  
 21 The end of the first paragraph, it  
 22 refers to the detailed statement of my

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1 qualifications as Appendix A, which is what is  
2 written on the detailed statement of my  
3 qualifications, Appendix A. But originally, it  
4 said -- in the text, it said Exhibit 1.  
5 Q. So you changed the word "exhibit" to  
6 "appendix"?  
7 A. And the I to the A.  
8 Q. I see. Thank you.  
9 Now, turning to Appendix A -- the  
10 aforesaid Appendix A, is this a description -- a  
11 further detailed description of your experience  
12 and qualifications as of January 30, 2009?  
13 A. Yes.  
14 Q. Do you have any corrections to this  
15 SP Exhibit 12?  
16 A. No.  
17 MR. STEWART: Your Honor, we would  
18 offer Ms. McLaughlin an as expert economist with  
19 experience in the economic attributes of  
20 entertainment and media markets and -- including  
21 the cable television industry, and in the  
22 valuation of copyrighted works in those markets.

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1 CHIEF JUDGE SLEDGE: Repeat  
2 yourself.  
3 MR. STEWART: Yes. We are offering  
4 Ms. McLaughlin as an expert economist with  
5 experience in, first, the economic attributes of  
6 entertainment and media markets, including the  
7 cable television industry, and second, evaluation  
8 of copyrighted works in those markets.  
9 CHIEF JUDGE SLEDGE: Any objection  
10 to the proffer?  
11 MR. SATTERFIELD: No, Your Honor.  
12 CHIEF JUDGE SLEDGE: Any questions?  
13 Without objection, the proffer is  
14 accepted.  
15 MR. STEWART: Your Honor, I would  
16 move for the admission of SP Exhibit 12.  
17 CHIEF JUDGE SLEDGE: Any objection  
18 to Exhibit 12?  
19 MR. SATTERFIELD: No, Your Honor.  
20 CHIEF JUDGE SLEDGE: When was this  
21 exhibit signed and verified?  
22 MR. STEWART: I'm sorry, Your Honor.

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1 The exhibit, in its original form, included an  
2 original signature and verification, but -- may I  
3 consult with my colleague?  
4 CHIEF JUDGE SLEDGE: As it's  
5 presented, it will not be admissible. I'm used to  
6 seeing that before the attachments.  
7 MR. STEWART: I'm sorry, Your Honor.  
8 CHIEF JUDGE SLEDGE: Mr. Stewart,  
9 this is not an acceptable declaration.  
10 MR. STEWART: I'm sorry, Your Honor.  
11 I had believed that it comported with the  
12 requirements of the -- the Rules, and I'm not  
13 certain in what aspect it's not acceptable.  
14 CHIEF JUDGE SLEDGE: You qualified  
15 her statement at the end of the sentence. That  
16 qualification is not acceptable.  
17 MR. STEWART: May we have leave to  
18 have her modify the qualification -- or eliminate  
19 the qualification through testimony?  
20 CHIEF JUDGE SLEDGE: Yes, sir.  
21 MR. STEWART: May I proceed to do so  
22 now?

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1 BY MR. STEWART:  
2 Q. Ms. McLaughlin, do you see the very  
3 last page of SP Exhibit 12?  
4 A. Yes, I do.  
5 Q. And do you see that the Judge's  
6 reference is to the language following true and  
7 correct? It says, to the best of my knowledge,  
8 information and belief.  
9 A. I do see that.  
10 Q. Do you affirm and declare that this  
11 document is true and correct, absent that  
12 qualification?  
13 A. Yes, I do.  
14 CHIEF JUDGE SLEDGE: With this  
15 testimony correcting the declaration, the  
16 exhibit's admitted.  
17 MR. STEWART: Thank you, Your Honor.  
18 (Settling Parties Exhibit  
19 No. 12 was received in  
20 evidence.)  
21 BY MR. STEWART:  
22 Q. Ms. McLaughlin, on whose behalf are

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1 you appearing here?  
 2 A. The National Association of  
 3 Broadcasters and Public Broadcasting Service.  
 4 Q. And what was the principal question  
 5 you were asked to address?  
 6 CHIEF JUDGE SLEDGE: I'm sorry,  
 7 Public Broadcasting Service?  
 8 THE WITNESS: Yes.  
 9 CHIEF JUDGE SLEDGE: Not Public  
 10 Broadcasting Corporation?  
 11 THE WITNESS: No.  
 12 CHIEF JUDGE SLEDGE: What is Public  
 13 Broadcasting Service?  
 14 MR. STEWART: I can refer the  
 15 question to PBS' counsel.  
 16 MR. DOVE: PBS, Your Honor.  
 17 CHIEF JUDGE SLEDGE: PBS.  
 18 BY MR. STEWART:  
 19 Q. Ms. McLaughlin, what was the  
 20 principal question you were asked to address for  
 21 this proceeding?  
 22 A. Whether the fees generated by the

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1 cable retransmission of broadcast stations was in  
 2 line with the relative marketplace demand for the  
 3 programming on those stations.  
 4 Q. In general, what did you review and  
 5 consider in approaching this question?  
 6 A. I began with the background material  
 7 that -- that -- that discussed the standard and --  
 8 and also discussed the fees generated.  
 9 So that would include the -- the  
 10 '90-92 CARP decision and -- as -- as well as the  
 11 librarian and appeals decision.  
 12 The '98-'99 decision also talked  
 13 about the standard together with the librarian and  
 14 appeals decision.  
 15 The law itself that set out the  
 16 framework for -- for the rules for the fees  
 17 generated, as well as the statement of account  
 18 that sort of shows how it's calculated, and there  
 19 was some prior testimony in a prior proceeding,  
 20 would be the '98-'99 proceeding, of Ms. Kessler  
 21 and Ms. Martin that explained both how the systems  
 22 fill out the forms to pay the fees and how CDC,

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1 the Corporation -- Cable Data Corporation,  
 2 allocates the fees generated.  
 3 I also looked at some of the older  
 4 decisions that had to do with the fees themselves  
 5 and how they got there -- I -- I -- the -- from  
 6 the early '80s. And -- and then I got some data  
 7 from CDC that may explain certain things, how big  
 8 Form 3 systems are, things of that nature.  
 9 And then I did some research myself  
 10 on programming and cable -- and cable rate, tier  
 11 rates.  
 12 Q. When you mentioned "CDC," what did  
 13 you mean to refer to?  
 14 A. They -- I got data from CDC that  
 15 would --  
 16 Q. Is that Cable Data Corporation?  
 17 A. Cable Data Corp, I'm sorry, yes. I  
 18 was using that as a shorthand for Cable Data Corp.  
 19 Q. Thanks.  
 20 Now, again, what was the question  
 21 again that you were asked to address?  
 22 A. I'm sorry. I thought you meant what

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1 question was that an answer to.  
 2 Q. No.  
 3 A. I was trying to address whether fees  
 4 generated by the cable retransmission reflected  
 5 the relative market price of the -- of the -- the  
 6 relative market value of the programming on the --  
 7 on the signals that were retransmitted.  
 8 Q. And did you reach a conclusion as to  
 9 that question?  
 10 A. Yes.  
 11 Q. What was your conclusion?  
 12 A. That the fees generated don't  
 13 reflect the relative marketplace value; instead,  
 14 they reflect the structure of the fees and the  
 15 allocation system.  
 16 Q. Okay. Now, what steps did you take  
 17 to begin with in addressing this question?  
 18 A. I took, basically, two -- two steps.  
 19 One was to look at the concept of relative market  
 20 value and -- so how would you get that. And the  
 21 second was to look at the fees-generated part;  
 22 that is, how the fees are calculated and then how

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1 they're allocated.  
2 Q. Now, what does relative market value  
3 mean to an economist?  
4 A. Well, just put the relative term  
5 aside for a moment. The market value would be the  
6 price that people would pay without a compulsory  
7 license in a -- in a free market.  
8 And the relative is -- if you were  
9 to say that, well, one was a dollar per subscriber  
10 and the other was 50 cents for different kinds of  
11 programming, then the one would be two to one.  
12 Q. The dollar would be twice as --  
13 A. Twice as large --  
14 Q. -- twice the relative market value?  
15 A. -- yes.  
16 Q. Is there any aspect -- is there any  
17 aspect of the cable distant signal marketplace  
18 that affects your investigation into relative  
19 market value?  
20 A. Yes.  
21 Q. What is that?  
22 A. That it's a secondary market.

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1 Q. And what does a secondary market  
2 mean?  
3 A. Well, let me start with explaining a  
4 primary market is when the product is produced in  
5 the first place, so when the programming is  
6 produced in this case.  
7 And a second market, the product is  
8 already produced. And, in this case, because of  
9 the kind of product, it's not consumed with use,  
10 so it's just available for -- for retransmission.  
11 It already exists.  
12 Q. So it's -- it's a market for sales  
13 of something that have -- of assets that have  
14 already been sold to begin with?  
15 A. That's right.  
16 So -- that's right. And this is  
17 common in entertainment.  
18 Q. Okay. And could you give us an  
19 example of that?  
20 A. Well, let's say with movies. All  
21 right. So movies are produced for theatrical  
22 exhibition and -- here and abroad, and now, the

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1 movies are available to be shown -- to be sold to  
2 broadcast stations in various markets across the  
3 country. And so the broadcast stations are buying  
4 a product that already exists in a secondary  
5 market.  
6 Syndicated programming, that is,  
7 reruns, as opposed to first-run syndication,  
8 like -- like Wheel of Fortune or Jeopardy, the  
9 reruns of the older programs, that's also a  
10 secondary market.  
11 Q. How does the fact that the distant  
12 signal marketplace is a secondary market affect  
13 how you look at relative marketplace value?  
14 A. In a secondary market, the only  
15 thing that's important is demand, not the supply.  
16 The supply already exists, so the cost of the  
17 programming is -- isn't relevant, only the demand  
18 for the programming, in this case, the demand by  
19 the cable operators.  
20 Q. And is demand for a particular  
21 distant signal uniform across all cable systems?  
22 A. No.

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1 Q. Why not?  
2 A. Well, it depends on -- if the --  
3 even if the distant signal is the same, it depends  
4 on what the alternatives are in a particular cable  
5 system.  
6 So the cable operator is -- in  
7 thinking of bringing a distant signal in, is  
8 saying, well, can I get my existing consumers to  
9 pay more and can I get new subscribers as a result  
10 of this?  
11 And so the answer to that question  
12 is -- in part, is going to depend on what are the  
13 local stations that are in that market and, also,  
14 what are the other options that this -- that this  
15 cable operator has.  
16 Some cable operators have, you know,  
17 500 channels, and so maybe the only other channels  
18 that they would consider adding is some very  
19 obscure cable network, where others are smaller  
20 and so it would be a pretty popular cable network  
21 that they could put on in place of this distant  
22 signal.

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1 So they will have different  
 2 alternatives at the different cable systems, plus  
 3 the consumers are different in the different cable  
 4 systems. So they might like certain kinds of  
 5 programming in one place more than in another.  
 6 Q. And looking, now, just at a single  
 7 cable system, might the cable operators value the  
 8 different -- the relative valuation of program  
 9 types be different as between one distant signal  
 10 it carries and a different distant signal that it  
 11 also carries?  
 12 A. Sure. Sure. As an example, if you  
 13 think of -- let's say you have a -- a cable system  
 14 that is nearby a city where people commute, but  
 15 it's distant as far as the signals go.  
 16 It might very well be highly  
 17 desirable to have a signal from the distant  
 18 market. You know, I'm from New York, so I would  
 19 think sort of Connecticut people might -- that are  
 20 near the border of New York might be very  
 21 interested in New York City stations, even if  
 22 those are distant to them, because they're very

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1 New York-oriented.  
 2 They commute there, they go out  
 3 there, and so, given that orientation, would be  
 4 particularly interested in, say, that signal.  
 5 But another signal that might be  
 6 imported by a similar -- in the same -- in the  
 7 same cable system maybe is just -- it's local to  
 8 part of the system -- system, but distant to the  
 9 rest. And so the cable operator might just want  
 10 to have the same signal throughout for marketing  
 11 purposes so he can just say this is our program  
 12 lineup wherever you are.  
 13 Q. Let's turn, now, to what begins at  
 14 the bottom of Page 3 of SP Exhibit 12. And this  
 15 is your analysis of the fee-generated approach.  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. What is it about the overall  
 19 structure of the cable royalties that leads you to  
 20 conclude that the fees generated do not measure  
 21 relative marketplace value?  
 22 A. Well, to start with, the fees

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1 generated -- the fees, themselves, are not -- were  
 2 not put out with the idea of measuring the  
 3 relative value of different stations or -- they  
 4 were, instead, developed as part of a compromise  
 5 to say, well, here's -- we want cable systems to  
 6 flourish, we want programmers to get paid. Let's  
 7 come up with some way for that to happen.  
 8 And so the particular rules weren't  
 9 really developed trying to mimic what the market  
 10 value would be for a signal.  
 11 Q. Well, but isn't it sort of a basic  
 12 economic principle about relative market value  
 13 that if you know exactly how much was paid for a  
 14 particular signal, you know what the relative  
 15 market value of the signal was?  
 16 A. No, because -- suppose you have a  
 17 cable system that's paying the same price for two  
 18 signals and one of them they like a lot more than  
 19 the other. So let's say the -- the relative  
 20 market value is 75/25, but they're charging -- the  
 21 fee they pay is 20 each.  
 22 In that case, you shouldn't be

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1 giving each 20. You should be giving 110 and the  
 2 other 30 to keep it in line with the relative  
 3 market value, the 25/75.  
 4 And it's not just if they like one  
 5 cable -- one signal more and -- and the fees are  
 6 the same. It also works in reverse.  
 7 Suppose the two signals are  
 8 approximately the same value to them and -- and  
 9 they pay 20 for one and 5 for the other.  
 10 In that case, then they shouldn't  
 11 be -- the -- you wouldn't say the relative market  
 12 value of the two signals is 20 and 5. They should  
 13 be along the lines of 12.50 a piece.  
 14 CHIEF JUDGE SLEDGE: I heard your  
 15 answer be different than the question asked you.  
 16 I don't think you have listened to the question  
 17 very carefully.  
 18 As I heard the question, it was if  
 19 you pay so much for a signal, then you can compare  
 20 the prices of those signals to get relative market  
 21 value.  
 22 THE WITNESS: Right.

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1 CHIEF JUDGE SLEDGE: And your answer  
2 dealt with the way that the pricing of signals is  
3 done. It didn't address the question as presented  
4 to you.  
5 THE WITNESS: Well, I --  
6 CHIEF JUDGE SLEDGE: Didn't you  
7 answer something differently than you were asked?  
8 And that confuses me.  
9 THE WITNESS: Well, maybe I'm  
10 confused.  
11 I was looking at it in the context  
12 of the amount people are paying for the compulsory  
13 license under the current rules.  
14 CHIEF JUDGE SLEDGE: All right. You  
15 weren't asked that.  
16 THE WITNESS: Oh, I'm sorry.  
17 CHIEF JUDGE SLEDGE: I see.  
18 THE WITNESS: I was thinking how  
19 much are they paying and versus how much is their  
20 value.  
21 If it was in a free market place,  
22 then, of course, it would be the relative value.

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1 CHIEF JUDGE SLEDGE: That's what I  
2 thought the answer would be, and that's the way  
3 the question was -- was presented to you.  
4 MR. STEWART: I apologize.  
5 BY MR. STEWART:  
6 Q. But let's talk then about how the  
7 fees-generated system or the royalty structure  
8 makes that usual way of looking at relative prices  
9 in a free market not work here.  
10 That's -- that was the -- the gist  
11 of your answer?  
12 A. That's -- that's the answer that I  
13 gave you, in other words, saying that -- because I  
14 was just -- my mind was on the fees-generated  
15 system.  
16 If the -- because the fees-generated  
17 system doesn't relate the fee that you have to pay  
18 as the cable operator to the value of the signal  
19 to you, rather, it just is -- it depends on a  
20 particular rule, which could be -- give you the  
21 same price for two signals, it could give you  
22 slightly different prices for two signals, or it

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1 could give you quite different prices for two  
2 signals.  
3 Like the example I used about the 5  
4 and the 20, that's a realistic example from the  
5 way the fees-generated fee works, at what the  
6 cable operator actually pays.  
7 Q. Okay. And let's -- let's turn to  
8 the testimony that begins at Page 4 and runs for  
9 several pages.  
10 There are several specific aspects  
11 of the compulsory license royalty formulas that  
12 you focus on in your testimony here today; is that  
13 correct?  
14 A. Yes.  
15 Q. And can you tell me what they are?  
16 I'll write them down here on the easel.  
17 A. The first is the -- the tier rate;  
18 that is, the cable systems rate that they charge  
19 for the tier where the distant signal is carried.  
20 Q. Okay.  
21 A. The second one could be the 3.75  
22 rate, which is for signals that were not

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1 previously permitted.  
2 The third is the DSE designation.  
3 It stands for distant signal equivalent, and it's  
4 not the same as a distant signal.  
5 The fourth is the step-down rate  
6 structure of a permitted signal, and the fifth and  
7 last is the minimum fee.  
8 Q. All right. I've written down here  
9 3.75 and DSE, step down and minimum fee to remind  
10 us of those points.  
11 First, let's talk about the tiers.  
12 How does that affect the usability  
13 of fees generated to reflect a relative market  
14 value?  
15 A. Let me begin by explaining how it  
16 would work if it wasn't tiers.  
17 If each cable operator said to their  
18 subscribers, here are the channels we have, here  
19 are the prices of each channel, pick the channels  
20 you want and -- you know, at these prices and --  
21 so if you take the first distant signal, it will  
22 cost you a dollar, and so many people take it; if



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1 you take the second one, it'll cost whatever,  
2 75 cents, and so many people take it.  
3 In that case, the fees would  
4 actually be generated by the demand for the signal  
5 by the subscribers. But, instead, the way cable  
6 pricing is done is in a tier structure.  
7 All cable systems have at least two  
8 tiers. The first is a broadcast tier, basic  
9 service tier, and that is required for anybody who  
10 wants to subscribe to cable service has to take  
11 that tier.  
12 It includes the local broadcast  
13 stations, and then it could include other things.  
14 It often includes the distant signals and  
15 sometimes it includes some cable network  
16 programming, like ESPN or Discovery or TBS.  
17 JUDGE WISNIEWSKI: When you say  
18 "local stations," are you simply referring to the  
19 network stations?  
20 THE WITNESS: No. I mean any of the  
21 stations that are local to that market. So  
22 whether it was a network, an ABC station or it

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1 could be --  
2 JUDGE WISNIEWSKI: How about the PBS  
3 station?  
4 THE WITNESS: It could be a PBS  
5 station, or it could be a -- it could be an  
6 independent station which, now, would probably be  
7 an affiliate of something, but -- like an  
8 affiliate of the CW.  
9 JUDGE WISNIEWSKI: I ask you the  
10 that question because my local cable provider has  
11 eliminated the local PBS station.  
12 THE WITNESS: I thought that it was  
13 a requirement that -- that under -- not under this  
14 rule, but under another, that the local PBS  
15 station is carried. And it may be a definitional  
16 that has to do with what's local versus not.  
17 JUDGE WISNIEWSKI: I thought so,  
18 too.  
19 BY MR. STEWART:  
20 Q. First, you've talked about  
21 something -- I've written BST for basic service  
22 tier --

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1 A. Right. The second is expanded  
2 basic, or sometimes they call it CPST for cable  
3 program service tier. This is FCC lingo.  
4 And people who subscribe to cable  
5 usually get both -- 90 percent of the subscribers  
6 take both of these, and they think of it as -- as  
7 the price they're paying for the combined package  
8 as the cable service. It doesn't matter to them  
9 since everybody takes the first and 90 percent of  
10 them are taking the second.  
11 There are maybe 60 channels in the  
12 two combined, and they could be split up in  
13 various ways, but perhaps, say, 15, on average --  
14 average 15 in the first tier and -- and 45 in the  
15 second.  
16 The prices are pretty much divided  
17 on a per channel basis. And if you have more  
18 channels in the basic service tier, you're going  
19 to be paying, you know, a higher fee for that  
20 tier.  
21 So now you have -- let's say  
22 you're -- you have your distant signal and the

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1 distant signal is in a tier that has 15 channels  
2 and it has a certain cost to it. If it had 25  
3 channels, it would likely have a higher cost to  
4 it.  
5 So the basic building block, the  
6 very starting point of tier pricing isn't the  
7 price for the distant signal; it's the price for  
8 an aggregation of signals.  
9 And there's quite a bit of  
10 difference, especially in the basic service tier,  
11 in what's included. About -- I think maybe about  
12 half of the cable systems have TBS in the basic  
13 tier or -- around the time that we're looking at  
14 in the early 2000s and about a quarter have  
15 channels like CNN or ESPN or Discovery or some  
16 combination of them, also in that basic tier.  
17 So the ones that have more things in  
18 that tier would be charging more for that tier.  
19 Q. So let's just use this little BST  
20 and CPST as an example, the basic service tier and  
21 the cable programming service tier.  
22 Assume that the only distant signals

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1 are in the basic service tier.  
 2 Okay?  
 3 A. Okay.  
 4 Q. Now -- and what does that mean about  
 5 how the royalty -- how the fees are calculated?  
 6 A. Then whatever the price is of the  
 7 basic service tier, that's the starting point, the  
 8 first part of the formula for how much you have to  
 9 pay.  
 10 Q. Okay. So if -- and so you've been  
 11 discussing cases in which the BST might have 10  
 12 channels or 15 or 20 channels, and the price of  
 13 the BST might differ even though there are no  
 14 differences in the distant signals?  
 15 A. Right.  
 16 Q. What if there's a distant signal in  
 17 the CPST as well?  
 18 A. So for that signal, then the formula  
 19 that's calculated in terms of the fee the cable  
 20 operator has to pay is for the -- is the tier  
 21 price for the CPST, just whatever they charge for  
 22 that tier.

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1 So if they moved a channel from the  
 2 basic service tier to the CPST, it would -- it  
 3 would have a different starting point --  
 4 Q. So --  
 5 A. -- probably a higher starting point,  
 6 because usually, the second part of it is -- is  
 7 more expensive and has more channels in it.  
 8 Q. Well -- and the cable operators'  
 9 royalty fees are calculated on the basis of the  
 10 receipts, gross receipts from the BST, because  
 11 that's where broadcast stations are; is that  
 12 correct?  
 13 A. If they have -- but if they have a  
 14 channel -- a distant signal in a higher tier, they  
 15 would have to pay for that channel based on the --  
 16 on the higher tier rate.  
 17 Q. So what you're saying is they would  
 18 add the receipts not just from the BST, but to --  
 19 that they receive from the CPST in calculating  
 20 their royalties?  
 21 A. Yes.  
 22 Q. Secondly, the 3.75 rate, would you

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1 explain why the structure or existence of the  
 2 3.75 rate does not allow fees generated to measure  
 3 a relative market value?  
 4 A. Sure.  
 5 The 3.75 rate applies to signals  
 6 that weren't permitted at one time and, for the  
 7 most part, this means more signals. At one time,  
 8 you were limited to only having one or two or  
 9 three, depending on how big your market is, and  
 10 now, you can have more.  
 11 So when they amended the rules to  
 12 allow you to have more, they said, but we want to  
 13 charge a price that -- and this is in the early  
 14 '80s -- we want to charge a price that is  
 15 reflective of the value of the -- of the distant  
 16 signals at that time. And we think, as the -- as  
 17 the Copyright Tribunal at that time determined,  
 18 that that should be 3.75 percent of the tier  
 19 price.  
 20 Well, the economic theory would say  
 21 the first theory would be worth the most, the  
 22 second a little less, and the third less and so

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1 forth. But here, you have a case where the  
 2 permitted signals, the first group, you are  
 3 allowed to pay a price that is less than 1 percent  
 4 of the -- of the tier rate.  
 5 But an additional signal is going to  
 6 be almost four times that at 3.75 percent. So  
 7 you're going to wind up with a higher price for  
 8 the extra signal and a lower price for the -- for  
 9 the first signal. So if you only had one, the  
 10 signal you would pick is getting a lower rate than  
 11 the second one.  
 12 And it's actually -- that's in how  
 13 the fees themselves are set, but in the allocation  
 14 that's done by Cable Data Corp., they look to what  
 15 the cable system puts on its statement of account  
 16 as the first station.  
 17 Let's say this is a case where you  
 18 could only have one. So whatever they put as the  
 19 permitted station, that one they will give the  
 20 less than 1 percent rate and then the other  
 21 station, they will give the 3.75 rate to.  
 22 But it's not really the rate for

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1 this -- it's just for the second. It's not  
 2 necessarily in the order that that cable operator  
 3 put it down. And the cable operator could even  
 4 switch the order. It doesn't affect the rate that  
 5 the cable operator pays.  
 6 Q. So from your perspective or from the  
 7 perspective of basic economic theory --  
 8 A. You wind up with a higher price.  
 9 Q. For a signal that is -- would it be  
 10 expected to be of lower value?  
 11 A. Exactly.  
 12 Q. Let's look next at the DSE  
 13 assignments.  
 14 How, in your view, does that affect  
 15 the ability of fees generated to reflect relative  
 16 marketplace value?  
 17 A. Well, the DSE is a distant signal  
 18 equivalent. It's given a value of 1 for  
 19 independent stations and a value of a quarter for  
 20 public television stations and also for network  
 21 affiliates.  
 22 Now, just because -- that

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1 automatically means that any public television  
 2 station that's brought in or any affiliate station  
 3 that's brought in is going to be generating a  
 4 quarter of the fees of a station that isn't,  
 5 putting aside the 3.75. You know, it's just going  
 6 to -- or even if it was in that -- in that  
 7 category, which doesn't apply to public  
 8 television, but it applies to network affiliates,  
 9 you start with a quarter, instead of -- for one  
 10 kind of a station, you start for one -- with 1 for  
 11 another. So it's the same kind of 1-to-4  
 12 difference.  
 13 For network affiliates, I understand  
 14 that some of the programming is not compensable,  
 15 so if you import the station, it doesn't -- you  
 16 don't want to be giving any money for that  
 17 programming. And that programming is the network  
 18 programming.  
 19 But that -- just having the network  
 20 programming of NBC, ABC or CBS is not enough to  
 21 get you the .2 -- it -- it is not enough to get  
 22 you a .25. You actually have to be a network

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1 affiliate.  
 2 So there's some Canadian stations  
 3 that carry network affiliate programming and have  
 4 a substantial amount of time devoted to that, but  
 5 those stations get a 1 because they're considered  
 6 to be an independent station; they're not  
 7 technically an affiliate.  
 8 And if -- you could think of it  
 9 as -- of course, that doesn't apply to PBS, which  
 10 is -- which all its programming is compensable.  
 11 But you could think of it -- instead of looking at  
 12 compensable versus noncompensable, you could think  
 13 of it in terms of duplicated versus nonduplicated.  
 14 You could think, well, if you  
 15 already have a network affiliate or you already  
 16 have a public television station and you're  
 17 bringing in a second, some of the programming is  
 18 going to be duplicated.  
 19 But this .25 applies whether or not  
 20 you have a local public station or not or whether  
 21 you have the local network. And not only that,  
 22 what it doesn't apply to what's called an

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1 independent station, Fox, Fox programming also has  
 2 a lot of network-affiliated programming,  
 3 Fox-affiliated programming, but it -- it still  
 4 gets a 1.  
 5 The same thing with stations that  
 6 have a lot of syndicated programming, that's  
 7 duplicated as well. So I don't think under either  
 8 consideration of duplicated programming or under  
 9 consideration of noncompensable programming that  
 10 there's -- would lead you to believe that the  
 11 market value of public television and network  
 12 affiliates would only be a quarter of any  
 13 independent station, that would be 1.  
 14 Q. How does this -- the duplicated  
 15 programming analysis you just went through relate  
 16 to the sort of fundamental way of looking at  
 17 demand and -- in the cable network -- the cable  
 18 system environment that you talked about earlier?  
 19 A. What the cable system is trying to  
 20 do is get an array of programming to satisfy the  
 21 consumers and bring new consumers in.  
 22 And so presumably, they would want

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1 to have programming that's different or at least  
 2 on it at a different time period.  
 3 Q. And the DSE schedule doesn't reflect  
 4 those schedules in programming?  
 5 A. No, it doesn't reflect those  
 6 distinct differences at all, either you're an  
 7 independent or you're not. If you're a network  
 8 affiliate and -- or public television station, you  
 9 get a quarter.  
 10 Q. Next you mentioned the step-down  
 11 structure under the basic royalty rates structure;  
 12 is that correct?  
 13 A. Yes.  
 14 Q. And how does that affect the ability  
 15 of fees-generated evidence to reflect actual  
 16 relative marketplace value?  
 17 A. This is a much less important --  
 18 it's not a 4-to-1. There's no 4-to-1 difference  
 19 like in the 3.75 rule or the DSE, it's just that  
 20 there are different rates and they're kind of  
 21 arbitrarily picked for the subsequent signals.  
 22 So the first signal is 9.56; and the

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1 second, third and fourth is .63 percent; and then  
 2 after that, it's .296 percent. And, in fact, the  
 3 CDC averages them together, if you were -- if you  
 4 had two signals, they would take the -- for both  
 5 signals, they would say, well, one was at .9 and  
 6 the other is at .6. We'll just give the same  
 7 average, .7 something, to both of them.  
 8 But it doesn't -- but it's also  
 9 giving the same value to any signal that is an --  
 10 say, an independent station, or the same value to  
 11 any public television station.  
 12 If you had -- if you had a cable  
 13 system that imported as its one signal a public  
 14 television station in a place where there was no  
 15 local one, that would be worth more than in a  
 16 place where there were one or more local ones.  
 17 So even the step-down rate itself  
 18 doesn't really consider what the value of the  
 19 programming particularly is.  
 20 Q. And the last element that you  
 21 investigated was the minimum fee rule.  
 22 First, tell us what's your

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1 understanding of what the minimum fee rule  
 2 requires.  
 3 A. All of the cable systems have to pay  
 4 a minimum fee, whether or not they import any  
 5 stations. And that is the equivalent of one DSE  
 6 on the -- at the rate that's the .956 rate. So --  
 7 times their basis -- their basic service tier.  
 8 This is not a -- just a  
 9 technicality. About a quarter of the systems only  
 10 pay the minimum rate. So they've decided that  
 11 they'll pay the rate and take no signals.  
 12 Now, I don't want to mislead you.  
 13 That has nothing to do with the fees generated.  
 14 They put that money aside and they don't count it,  
 15 and it's part of the fees-generated formula.  
 16 I'm just saying that there are a lot  
 17 of systems that say I'll just pay the minimum rate  
 18 and I won't take a signal.  
 19 So let's look at the systems that do  
 20 take a signal, the other 75 percent. Of that  
 21 group, 50 of the 75, or two-thirds, by  
 22 subscribers, take no more than having to pay the

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1 minimum fee. They either have a fractional signal  
 2 or one signal.  
 3 In the case of fees generated, CDC,  
 4 says, well, if you take one signal, we'll give the  
 5 whole fee to that signal. If you take a quarter  
 6 of the signal, we'll give a quarter of the amount  
 7 you pay to that signal, but the system has to pay  
 8 a minimum fee anyway.  
 9 You don't know that it's taking that  
 10 one signal that's generating the fee. They have  
 11 to pay the fee whether they take that one signal  
 12 or not.  
 13 So it's -- it's -- and it's a very  
 14 large group, two-thirds by subscribers, of the  
 15 people who are generating fees in the CDC system.  
 16 Q. So how does that structure and the  
 17 numbers of systems that actually don't carry a  
 18 full DSE affect the ability of the fees generated  
 19 allocated by CDC to measure relative marketplace  
 20 value?  
 21 A. Well, if you didn't -- if you didn't  
 22 have that, you could at least say -- no cable

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1 system is going to incur costs unless they would  
2 pay at least that much for the signal that they're  
3 bringing in.  
4 So if you didn't have that minimum  
5 fee, you could say, well, this -- this system paid  
6 so much for this signal. The signal is worth at  
7 least that much.  
8 But now, you can't say that, because  
9 it could just be the minimum fee and the signal  
10 isn't worth that much, but it's worth something to  
11 them, so they'd rather carry it than not carry it.  
12 Q. Okay. Based on your analysis --  
13 JUDGE ROBERTS: Before you advance,  
14 Ms. McLaughlin, have you spoken to any cable  
15 operators or cable executives to know whether  
16 that's a common dilemma for them, that they're  
17 faced with a minimum fee, so they say, what the  
18 heck, we'll carry some distant signals?  
19 THE WITNESS: I -- I -- I have not  
20 talked to any cable operators about this issue  
21 since -- in the time period that we're talking  
22 about, from 2000 forward.

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1 JUDGE ROBERTS: So it's really your  
2 speculation that that could happen?  
3 THE WITNESS: Well -- right -- well,  
4 I'm just looking at it from the point of view of  
5 what we would say in economics is revealed  
6 preferences. If something wasn't worth so much to  
7 you, would you pay that much for it?  
8 I'm saying you can't say that here  
9 because it's not the extra amount that you're  
10 paying. You can't -- you can't conclude that the  
11 person is paying that for that signal since they  
12 would have to pay it in any event.  
13 JUDGE ROBERTS: Okay. So if there  
14 are additional considerations for cable operators  
15 and whether or not to carry a distant signal,  
16 you're not aware of those?  
17 THE WITNESS: That's right.  
18 BY MR. STEWART:  
19 Q. Ms. McLaughlin, are changes in the  
20 relative portion of fees generated by particular  
21 signals or program types, if you could measure  
22 them that way, a useful measure of changes in the

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1 relative market value of the programs?  
2 A. No.  
3 Q. Why not?  
4 A. Because you could get changes in  
5 fees generated simply by having more other  
6 channels than the distant signal in the tier and  
7 the tier price going up, or by having a signal  
8 flipped by which signal was 3.75 and which was the  
9 permitted on the form.  
10 Q. So those would be examples of --  
11 A. Of things that would cause a change  
12 in the fees generated, but would not really cause  
13 any change in the demand for the programming.  
14 MR. STEWART: Thank you.  
15 I have no further questions for this  
16 witness.  
17 CHIEF JUDGE SLEDGE:  
18 Cross-examination.  
19 CROSS-EXAMINATION  
20 BY MR. SATTERFIELD:  
21 Q. Good afternoon, Mrs. McLaughlin. My  
22 name is Kendall Satterfield. I'm the attorney for

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1 the Canadian Claimants Group.  
2 A. Good afternoon.  
3 Q. Congratulations. You've covered a  
4 lot of material very quickly.  
5 Let me start with what was towards  
6 the end of your discussion about the minimum fees.  
7 Isn't it true that the -- that the  
8 dramatic increase in the -- in the minimum fee  
9 pool happened when TBS converted to a cable  
10 network?  
11 A. Now, you're talking -- that was not  
12 quite the end of my testimony. You're talking  
13 about the part where I said about a quarter of the  
14 people have minimum -- pay only the minimum fee  
15 and don't take anything?  
16 Q. Or the 50 percent that carry one DSE  
17 or less.  
18 A. I don't know about the second part,  
19 but I do know about the first part; that is, it  
20 was very unusual -- it was unusual, before the  
21 conversion of TBS, for there to be stations that  
22 paid only the minimum fee -- systems. Excuse me.

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1 Q. It's stations and systems. We all  
2 muddy up the record the same way.  
3 So you have not undertaken an  
4 analysis to examine what percentages of systems  
5 that now carry one DSE or less formerly carried  
6 TBS and an additional distant signal?  
7 A. I have not undertaken that  
8 analysis.  
9 Q. But you would agree that if a system  
10 formerly carried TBS and an additional distant  
11 signal, that the prior carriage would at least  
12 provide information that they value that second  
13 signal at least the second DSE rate.  
14 Would that be true?  
15 A. At the time that they carried it at  
16 that rate. Things change. That doesn't mean that  
17 they would value it the same after -- afterward.  
18 Q. So we should ignore that they've  
19 continued to carry the second signal as now -- as  
20 their only signal since the conversion of TBS?  
21 A. I don't know that it tells you what  
22 they were willing to do before. I don't think it

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1 tells you what they're willing to do today.  
2 At the beginning of the 2000s, there  
3 was a real explosion in the number of cable  
4 networks that were available and -- and there was  
5 an increased size in cable systems.  
6 So I think that the alternatives  
7 were changing over time. I think you would have  
8 to look at that when you're -- when you're -- when  
9 you're comparing two time periods.  
10 Q. So with the explosion of the number  
11 of cable networks available or being carried since  
12 2000, would that -- how would that impact the  
13 decisionmaking process of a cable operator?  
14 A. Well, I think that when you're  
15 considering what -- as I said earlier in my  
16 testimony, at the demand for a particular signal,  
17 you want to consider what the alternatives are and  
18 what that signal is adding. All right?  
19 At one time, back in, you know, the  
20 late '70s and -- and early '80s, there was not  
21 very much at all in -- in terms of cable  
22 programming other than the premium program HBO or

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1 movie service.  
2 There were cable channels that  
3 existed. There was Family Network and there were  
4 channels, but they weren't very attractive. Their  
5 programming was very old.  
6 And so, at that particular time,  
7 broadcast signals were extremely attractive for  
8 the -- for the cable operator, because the  
9 alternatives were not very attractive.  
10 And over time, cable networks have  
11 become more attractive, spent a lot more on  
12 programming, and so cable operators have more  
13 alternatives.  
14 Q. And so systems representing --  
15 systems with 25 percent of all the subscribers  
16 apparently have reached the conclusion that they  
17 would rather use that cable -- that slot for  
18 alternative programming rather than a distant  
19 station?  
20 A. Right, either alternative  
21 programming or, now, cable systems offer broadband  
22 service and telephone service.

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1 So using -- they used to talk about  
2 how many channels cable systems have, and now they  
3 talking about using up the bandwidth of the cable  
4 systems. So they could be using it for some other  
5 service that they're offering and not just another  
6 cable network.  
7 Q. You would agree this is evidence  
8 that cable operators make a conscious business  
9 decision about what -- what channels they choose  
10 to carry in the constraints -- within the  
11 constraints of the -- of the marketplace?  
12 A. Yes. I think that deciding to carry  
13 a channel, since a lot of them don't carry a  
14 distant signal, does matter. I'm just saying you  
15 can't necessarily say that the value of it is at  
16 least the minimum fee since they would have to pay  
17 the minimum fee anyway.  
18 Q. Although, at least in theory, if  
19 they had a second distant station and dropped one  
20 and one station was left on the system, it would  
21 appear that the second -- that the -- that the  
22 station was at least -- had been valued at least

1 at the second DSE level?  
 2 A. You mean instead of a .9 percent,  
 3 like .6 percent or something?  
 4 Q. Correct, if the signal had been  
 5 carried as the second DSE.  
 6 A. As long as you take into account  
 7 other changes that happened at the time. And  
 8 that's what I was trying to say is there have been  
 9 changes over time in the cable -- in the whole  
 10 cable marketplace that you would have to take into  
 11 account.  
 12 You can't just say just because I  
 13 valued it this way in a former year, that I would  
 14 still value it this way in a year in this time  
 15 period.  
 16 Q. But the changes you describe  
 17 would -- would tend to indicate that cable  
 18 operators have a lesser reason to carry distant  
 19 signals than they had in the past?  
 20 A. But at the -- at the same time, they  
 21 have more -- may have more capacity on their  
 22 system. So it's sort of a -- a both sides.

1 valued at only a quarter of the independent  
 2 station, especially in this context.  
 3 You know, they have to pay the  
 4 minimum fee anyway, they're bringing in a quarter  
 5 of a station -- a quarter of a DSE. You don't  
 6 know whether they value it -- you don't know  
 7 anything about the value, but you don't know that  
 8 it should necessarily only be a quarter.  
 9 JUDGE WISNIEWSKI: Well, you know  
 10 it's greater than zero, right?  
 11 THE WITNESS: Yes, right.  
 12 BY MR. SATTERFIELD:  
 13 Q. In light of the obligation to pay  
 14 the fee, they chose to -- they chose to exercise  
 15 their -- their decision to carry just the one  
 16 public television station?  
 17 A. Right.  
 18 Q. Although they could have carried an  
 19 independent station and a public television and  
 20 only paid 1.25 percent -- or 1. -- 1.25 DSE?  
 21 A. Yes, but they didn't choose to carry  
 22 the independent station.

1 MR. SATTERFIELD: I apologize for  
 2 the delay. This is what I get for starting at the  
 3 end.  
 4 BY MR. SATTERFIELD:  
 5 Q. One other question about the minimum  
 6 fee.  
 7 Would it be -- would it be your --  
 8 or what opinion, I guess, would you have of a  
 9 cable system that paid the minimum fee but chose  
 10 to carry a single public television station? What  
 11 evidence would that indicate of the value of that  
 12 station to the cable operator?  
 13 A. Well, I think it's -- I think it's  
 14 the same thing of whether it was a -- a single  
 15 public television station or it was a -- an  
 16 independent station. You can't tell from the fee  
 17 that they would have to pay anyway whether they  
 18 valued it as much as the fee.  
 19 Or as -- and as to the public  
 20 television station, I think I explained on the  
 21 .25, I don't -- I don't think that the .25  
 22 compared to a 1 necessarily means that it would be

1 Q. Let me ask you about the 3.75 rate.  
 2 I think you criticized the CDC's  
 3 allocation of those royalties because they use  
 4 the -- the signal -- they allocate the 3.75  
 5 royalties to the station that the cable operator  
 6 designated as the nonpermitted signal on the  
 7 statement of account.  
 8 Is that true?  
 9 A. I actually thought it was -- I could  
 10 be wrong, but I thought the statement of account  
 11 just asked for the permitted and then the other  
 12 one became the nonpermitted. And the nonpermitted  
 13 is -- you know, but -- is the .75, but, at any  
 14 rate, based on the designation that the -- that  
 15 the cable operator puts on it.  
 16 And when I say criticized them, I'm  
 17 just saying -- it's an allocation. It's -- it's  
 18 not necessarily saying that the particular station  
 19 is what generated the fee, that it's the -- the  
 20 fee was generated by having two stations and if --  
 21 where only one was previously permitted. And the  
 22 decision by CDC to -- to allocate the whole 3.75

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1 fee to the one station, it -- it is one way to do  
2 it.  
3 And it's -- they could have just  
4 added them together and -- and given them each  
5 half of it. That would be another way to do it,  
6 like they do with the step-down rate.  
7 Q. So they would look at it from the  
8 standpoint of they could have avoided the 3.75 fee  
9 by having dropped one of the independent stations?  
10 A. Well, right. You know that they're  
11 paying extra -- in this case, you do know the  
12 cable system is paying extra and they're paying  
13 this 3.75 fee and it's -- it's more than they  
14 would otherwise have to pay because they're  
15 bringing in a second station and they were --  
16 where only one was formally permitted. So they  
17 have to pay 3.75. You just don't know which  
18 station is the extra station.  
19 Q. So the -- your criticism of the --  
20 of the CDC allocation method could be corrected by  
21 allocating the royalties among the -- the stations  
22 that may have been designated permitted?

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1 A. No. I think you're -- I was talking  
2 about two separate things. One is that it's  
3 first -- first, there's a criticism of 3.75.  
4 Let's just put that aside for a moment, and I'll  
5 come back to it in a minute.  
6 Then there's the -- this sort of  
7 misnomer that the fees are generated in a  
8 particular way, the fees are allocated in this  
9 particular way.  
10 So that's all I was talking about  
11 what CDC was doing. It's an allocation. It's  
12 trying to decide how much money to give to the one  
13 signal and how much money to give to the other  
14 signal.  
15 Now, moving back to the general  
16 criticism, my general criticism of 3.75, which  
17 could not be fixed by however the CDC allocation  
18 would be decided, is that the -- the -- if it were  
19 true that 3.75 was the correct value of a distant  
20 signal, if the first signal is valued at less than  
21 1, why would the second signal be valued at 3.75?  
22 They would -- the first signal would be valued at

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1 more than 3.75.  
2 And so the -- the value to the cable  
3 operator would not be corrected by allocating a  
4 combination of the 1 and the 3.75; it would be by  
5 raising the value of the first one -- of the -- of  
6 the first signal.  
7 Q. Are you aware that the  
8 Copyright Royalty Tribunal decided to allocate the  
9 royalties to the system -- to the signals that  
10 could have been eligible for the 3.75 royalty such  
11 that where a signal could have been dropped and  
12 the cable system avoided paying the royalties,  
13 that the proper method was to allocate the  
14 royalties across those -- to each of those  
15 signals?  
16 A. I'm not sure that I got your  
17 question.  
18 I am aware that for the -- for the  
19 3.75 fund, let's say, going back to the '98-'99  
20 decision, that all of the stations that were --  
21 that the 3.75 fund could apply to, which is  
22 basically all of the stations except PBS, that the

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1 fund got allocated to all of that -- all of that  
2 programming and that it wasn't really based on how  
3 much money was paid in to the 3.75 fund for  
4 particular stations.  
5 The -- the -- what I was talking  
6 about here (indicating) is the -- the fees  
7 generated by the Canadian stations, which are, as  
8 I understand it, because that's a category by  
9 itself, if the Canadian station were the  
10 nonpermitted station on the form, it would get  
11 calculated as a 3.75 station, and the fee that  
12 would be generated for that station in the CDC  
13 system would be based on the 3.75.  
14 Q. Well, there are other types of  
15 signals that -- that are exempt from the 3.75  
16 royalty, aren't there?  
17 A. Other -- other than the public  
18 television?  
19 Q. Yes. Speciality stations, are they  
20 exempt?  
21 A. Now that you say that, that  
22 sounds -- that sounds somewhat familiar to me, but



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1 I really couldn't -- I couldn't say they were or  
2 they weren't.  
3 Q. I'm not trying to trick you. French  
4 language stations are except from 3.75. You can  
5 take my representation on that.  
6 A. Okay.  
7 Q. But your basic criticism, then, of  
8 the -- of the -- of the allocation of 3.75  
9 royalties to the Canadians -- for the  
10 Canadian Claimants is that we relied on the CDC's  
11 allocation method?  
12 That's my question. I'm sorry.  
13 A. Yes. In other words, so -- in other  
14 words, you're saying that in filling out the form  
15 as to the French language stations, that a cable  
16 operator system would always list the French  
17 language Canadian station as a permitted station,  
18 but if they were carrying two stations and a  
19 second wasn't permitted and it was an English  
20 language Canadian station, then they would put  
21 that -- they could -- that could have been put in  
22 the nonpermitted category instead of the permitted

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1 or vice versa, it could have been split either  
2 way?  
3 Q. Right.  
4 So, for example, if you had a cable  
5 system that could carry, on a permitted basis, one  
6 independent station and they carried a Canadian --  
7 a Canadian English station and an American  
8 station, it would be -- it's arbitrary to  
9 designate the American station as the permitted  
10 station and credit all of the 3.75 royalties to  
11 the Canadian station?  
12 A. Or vice versa, yes. Either one is  
13 arbitrary.  
14 Q. Right. But one could go back and --  
15 and examine the data and allocate that 3.75  
16 royalty to both of those signals -- to split it  
17 amongst both of those signals to accurately  
18 reflect the choice that a cable operator made by  
19 not dropping one of those signals?  
20 A. Yes, in terms of the curing the  
21 allocation problem, but not really in terms of  
22 curing the 3.75 problem.

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1 Q. And you have -- and this is because  
2 of the statement about the first independent being  
3 the most valuable?  
4 A. Yes. Well, when I say the  
5 statement -- when you say "the statement," the  
6 economic principle that, you know, if you're going  
7 to carry certain -- if you have some limits,  
8 you're going to pick the ones that are more  
9 valuable first.  
10 If you think about cable systems,  
11 very small cable systems that don't have many  
12 channels carry the most popular cable networks and  
13 not -- and then the bigger ones carry -- in  
14 general, carry, you know, somewhat less popular,  
15 and still bigger ones, quite obscure cable  
16 networks.  
17 So it's just a general economic  
18 principle that doesn't necessarily apply to just  
19 cable or -- or broadcast. It could apply to  
20 anything.  
21 Q. The danger of asking an open-ended  
22 question.

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1 How do you determine which is the  
2 first station?  
3 A. That's what comes down to the  
4 allocation -- that's what comes down to the  
5 allocation issue.  
6 But my point is, since the -- the  
7 higher rate is applied to additional ones,  
8 that's -- that is suggesting that the ones before  
9 the -- even though you don't know which one it is,  
10 that the other one wasn't valued only at 1, but  
11 was valued at more than 1, at more than 3.75.  
12 So they're willing to take a second  
13 station for 3.75, the first station would have  
14 been valued at more than 3.75.  
15 So, together, they're not valued at  
16 1 plus 3.75, but something bigger than that.  
17 Q. Now, have you -- I mean, this is  
18 based upon sort of an economic opinion about the  
19 way this -- the way this selection process would  
20 work --  
21 A. Well, when you say "economic  
22 opinion," a sort of fundamental principle of

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1 economics is this whole idea of marginal. You  
 2 know, in -- in a basic economics class, they would  
 3 say, well, how much is water worth and how much is  
 4 a diamond worth and things like that.  
 5 But the idea is, yes, you have many  
 6 bottles of water, but if -- you know, the first  
 7 small amount of water is worth a very great deal  
 8 to people. And it's just when you have so much of  
 9 it that you're drinking it here that it's -- it's  
 10 not worth so much.  
 11 And so this -- this idea of -- of  
 12 additional products being worth less, it's the  
 13 whole concept behind a downward sloping demand  
 14 curve behind, you know, general economic  
 15 principles.  
 16 Q. So in the instance where they're  
 17 paying the 3.75 fees, that's actual evidence that  
 18 that cable operator placed a value on that first  
 19 station and that second station of at least 3.75?  
 20 A. At least twice that -- at least the  
 21 3.75 or at least a little bit more for the first  
 22 station, yes.

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1 Q. Or at least more than the -- the  
 2 addition of the two -- of the first DSE and the  
 3 3.75 fee combined?  
 4 A. Yes.  
 5 Q. All right. And then by systems that  
 6 carry no distant signals and pay the minimum fee,  
 7 we have evidence of cable systems that did not  
 8 value the distant signals enough in light of their  
 9 other opportunities to carry distant signal?  
 10 A. Right, that's correct.  
 11 Q. The compulsory license for cable has  
 12 been in place since 1976, and most of the claimant  
 13 groups in this room are comprised of fairly  
 14 significant participants in the media marketplace.  
 15 You have the National Association of  
 16 Broadcasters; you have Public -- the  
 17 Public Broadcasting Service; you have Major League  
 18 Baseball; the National Basketball Association;  
 19 NFL; the NBA -- or the -- yeah, I left out a  
 20 Sports League. I don't want to run afoul of Bob.  
 21 You've got the music societies,  
 22 ASCAP, BMI, CSAC.

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1 You've got the program suppliers,  
 2 Hollywood Studio, Motion Picture Association of  
 3 America.  
 4 Isn't the continued existence of  
 5 this compulsory license an indication of -- of  
 6 ongoing negotiation or exchange of views with the  
 7 counterparties, the cable industry?  
 8 A. I don't think I understand your  
 9 question. You're just saying these are major  
 10 people who deal with the cable industry in other  
 11 ways?  
 12 Q. Well, in this instance of a  
 13 compulsory license, isn't the only place to  
 14 negotiate in Congress?  
 15 A. If the compulsory license is in  
 16 place and you wanted to -- are you saying could  
 17 you grant a license outside the compulsory  
 18 system?  
 19 Q. No. I'm asking isn't it true that  
 20 these parties, if they were -- they would do --  
 21 they would have used their best efforts in  
 22 Congress to change the compulsory license absent

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1 the counternegotiations on the part of the cable  
 2 television industry?  
 3 MR. STEWART: Objection, Your Honor.  
 4 This seems wildly outside the scope of the direct  
 5 testimony and is asking this witness about somehow  
 6 the motivations of trade associations or -- it's  
 7 not entirely clear to me, but it seems to me this  
 8 is beyond the scope of direct and not an  
 9 appropriate line of question.  
 10 CHIEF JUDGE SLEDGE: Mr. Satterfield?  
 11 MR. SATTERFIELD: Well, I'll  
 12 withdraw the question.  
 13 CHIEF JUDGE SLEDGE: All right.  
 14 BY MR. SATTERFIELD:  
 15 Q. I think you said you reviewed -- in  
 16 preparing your testimony, you reviewed the CARP  
 17 opinion from 1990-1992; is that correct?  
 18 A. Yes.  
 19 Q. Okay. So is it your opinion that  
 20 the CARP in the 1990-1992 proceeding erred in  
 21 relying on fee-generation data and the  
 22 Ford/Ringold study in making allocations to the

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1 Canadian Claimants?  
 2 A. It's my opinion that fees generated  
 3 don't tell you about relative market value. That  
 4 doesn't say that the Panel erred in relying on it,  
 5 depending on what they had in front of them and  
 6 what else they used.  
 7 I wouldn't have, but that doesn't  
 8 mean that -- maybe I -- I say I wouldn't have  
 9 sitting here. I would have asked somebody, well,  
 10 give me some more information that goes directly  
 11 to the question.  
 12 Maybe that wasn't a choice that they  
 13 had. I'm not sure about the way that they are  
 14 allowed to operate.  
 15 Q. And I'll ask you -- you reviewed the  
 16 opinion of the 1998-1999 CARP.  
 17 Is it your opinion that the CARP at  
 18 that proceeding erred by relying on fee-generation  
 19 data and Ford/Ringold study in making the  
 20 allocation to the Canadian Claimants Group?  
 21 A. I think I have just a slightly  
 22 different answer about '98-'99, because I know

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1 that there was a big change between those two  
 2 periods. And in -- because of TBS converting from  
 3 broadcast station to a cable network.  
 4 And so, at that time, the whole  
 5 money paid in went down and so everyone's, you  
 6 know, share that had nothing to do with the  
 7 programming that's on TBS, like would have been  
 8 true of Canada -- Canadian programming, would --  
 9 or at least the Canadian programming of the --  
 10 when you put the Ringold study on top of it, you  
 11 know, would have gone up.  
 12 So I could certainly see why the  
 13 Panel at that time would've increased the Canadian  
 14 amount.  
 15 And if one of the things that they  
 16 could have relied on for that could have been the  
 17 idea of fee generation, but there -- because there  
 18 was such a change in the fees, the total fees, and  
 19 the shares no matter how you measured them,  
 20 whether it would be -- any measure, for Canada  
 21 would have taken a big jump up at that time  
 22 because you took this giant that almost everybody

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1 had out of the pool, both in terms of the -- you  
 2 know, in terms of the paying in.  
 3 Q. And are you offering any evidence in  
 4 this proceeding as to the relative marketplace  
 5 valuation of the Canadian programming in  
 6 2000-2003?  
 7 A. As to what that value is?  
 8 Q. Yes.  
 9 A. No.  
 10 MR. SATTERFIELD: Thank you.  
 11 I have no further questions.  
 12 CHIEF JUDGE SLEDGE: Thank you,  
 13 Mr. Satterfield.  
 14 Any redirect?  
 15 MR. STEWART: No redirect,  
 16 Your Honor.  
 17 CHIEF JUDGE SLEDGE: Any questions?  
 18 JUDGE WISNIEWSKI: No, thank you.  
 19 CHIEF JUDGE SLEDGE: When you were  
 20 describing earlier your fee-generated factors, you  
 21 were talking about the tier structure, and you  
 22 talked about the number of cables -- the number of

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1 stations that one system might offer in their  
 2 basic fee and another system might offer in their  
 3 expanded basic and that the number would affect  
 4 the price of those tiers.  
 5 You did not mention whether two  
 6 systems might be competing and that that  
 7 competition would affect the pricing of the tiers.  
 8 Is that not a factor at that level?  
 9 THE WITNESS: It could be, but not  
 10 at the -- at -- let me just go back to a time when  
 11 this issue was particularly discussed at the FCC  
 12 and they ruled that competition was a factor --  
 13 CHIEF JUDGE SLEDGE: I'm frankly not  
 14 interested in that.  
 15 THE WITNESS: No, no, I'm just  
 16 saying how the numbers go.  
 17 The -- if there were competition, it  
 18 would affect the combined price of the two tiers,  
 19 the -- the BST and the CPST, because that's what  
 20 most people are taking, not the split between the  
 21 two prices.  
 22 CHIEF JUDGE SLEDGE: Why do the

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1 cable systems advertise so extensively for their  
2 expanded systems or premium systems or whatever  
3 they call it if, as you say, most people are  
4 taking everything they offer?  
5 THE WITNESS: When they're -- when  
6 they're advertising it -- and when I say  
7 "everything," I just mean of these two. There are  
8 more offerings on top of that as well, a premium  
9 service like HBO, for example, and sometimes  
10 extra -- a third tier of service that not  
11 everybody takes, like digital cable packages.  
12 But when they advertise a tier  
13 price, they're advertising the combined price of  
14 the BST and the CPST. That's -- that's what  
15 they're offering, not just the price of the bottom  
16 or just the price of the second.  
17 They talk about the two of them  
18 together. It's kind of hard to find out even that  
19 you could just subscribe to the bottom level tier.  
20 CHIEF JUDGE SLEDGE: That surprises  
21 me. I thought that that's what they were trying  
22 to sell was the -- what you were describing as the

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1 expanded basic.  
2 THE WITNESS: Yes, they are trying  
3 to sell it, but in order for you to buy it as a  
4 consumer, you have to take the bottom level.  
5 CHIEF JUDGE SLEDGE: That doesn't  
6 surprise me.  
7 THE WITNESS: That's why they were  
8 considering it together.  
9 CHIEF JUDGE SLEDGE: That doesn't  
10 follow. The fact that you have to take the bottom  
11 level to get the next level doesn't follow that  
12 they're advertising the two of them.  
13 Why aren't people just buying the  
14 basic? And so they're trying to entice you to get  
15 something above that?  
16 THE WITNESS: Exactly, they're  
17 trying to entice you to get something above it.  
18 And most people don't even know that you could get  
19 just the bottom level. They don't even realize  
20 that you can get it -- the bottom level.  
21 And so they don't want it in their  
22 advertising to let you know that you could pay

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1 less money and get this smaller group of channels.  
2 They would like you to take the sort of combined  
3 60-channel package. And they just tell you how  
4 much that combined costs.  
5 CHIEF JUDGE SLEDGE: You're saying  
6 that's true, but it sure seems strange.  
7 So when you get cable systems  
8 competing with each other based on price, it's  
9 these two tiers that they're competing for;  
10 they're not -- no one is trying to sell the basic  
11 level tier?  
12 THE WITNESS: Right.  
13 And let me explain why. Because it  
14 is -- it costs a lot of money to get a cable  
15 system to cover the town, you know, stringing the  
16 wires and so forth.  
17 So they want to -- I don't think  
18 that a cable system would do that if they were  
19 just trying to sell this bottom level tier that  
20 is -- whose price is partly influenced by -- by  
21 regulation that might cost only \$12. They -- or  
22 \$15.

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1 They are trying to sell you  
2 something that's more like \$60. That's what --  
3 how they built their system, to have a lot of  
4 channels and -- at a big expense in order to do  
5 that.  
6 And so that's why, in competition,  
7 even when -- I don't know if you have down here  
8 the phone companies that are selling it, the FIOS  
9 system. They're always talking about getting lots  
10 and lots of channels because they would actually  
11 like to sign you up as a -- even in competition,  
12 as a big channel customer who is going to be  
13 paying a relatively large amount, because they  
14 have costs of laying the system that they're  
15 trying to get back by your subscribing.  
16 CHIEF JUDGE SLEDGE: So it's based  
17 on your conclusion that cable systems do not  
18 compete with each other at the two tiers that  
19 you've described, the basic tier and the expanded  
20 basic tier, is the reason that that is not  
21 indicative or reflective of market price?  
22 THE WITNESS: Right. The market

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1 price is the combined of the two, not the separate  
2 prices. Exactly.  
3 CHIEF JUDGE SLEDGE: If you are  
4 wrong in that statement and they are competing  
5 among each other --  
6 THE WITNESS: Just to get you to  
7 take the basic?  
8 CHIEF JUDGE SLEDGE: -- then it  
9 would reflect a market price?  
10 THE WITNESS: But it would be a  
11 market price for a group of channels of, say, 15  
12 or 20 channels that are offered in that BST, not  
13 just the -- not just the distant signal.  
14 CHIEF JUDGE SLEDGE: Why are you  
15 assuming that there are no distant signals in the  
16 basic service?  
17 THE WITNESS: No, no. I'm saying  
18 if -- they are -- I'm not saying there are no  
19 basic signals. I'm just saying the price is  
20 reflecting the distant signal and the other things  
21 that are included in the basic service, not  
22 just -- not just the distant signal, but the

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1 distant signal and the other things together.  
2 Because it's a combined price for this BST package  
3 of channels.  
4 CHIEF JUDGE SLEDGE: Based on your  
5 assumption that it includes the two, that it is a  
6 combined price?  
7 THE WITNESS: Even -- even if it  
8 weren't a combined price, just for people who only  
9 bought the basic service tier, they pay a certain  
10 price, and that price includes, say, 15 channels,  
11 not just the distant signal that is offered by  
12 their cable system, but local stations, public  
13 education and Government channels and maybe some  
14 cable networks.  
15 So a group of channels, not just --  
16 not just the one or two, say, distant signals.  
17 CHIEF JUDGE SLEDGE: Any follow-up  
18 from my questions?  
19 MR. STEWART: Yes, Your Honor. May  
20 I?  
21 CHIEF JUDGE SLEDGE: All right,  
22 Mr. Stewart.

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1 REDIRECT EXAMINATION  
2 BY MR. STEWART:  
3 Q. So, Ms. McLaughlin, just going to  
4 the BST price, okay, cable operators do identify a  
5 price that applies to the basic service tier; is  
6 that correct?  
7 A. Yes. I think they're required to,  
8 and it would appear on your bill.  
9 Q. And you were suggesting that they  
10 don't widely disseminate that because they want  
11 people to think that in order to subscribe to the  
12 cable system, they've got to buy basic cable  
13 packages?  
14 A. They want to sell more -- let's put  
15 it that way. It would be like if you went to a  
16 store and they had the stripped down version,  
17 they're not necessarily going to advertise the  
18 stripped down version. They might, you know, be  
19 wanting to advertise the -- you know, the fancier  
20 version.  
21 Q. So -- and let's now look just at the  
22 BST. If we had a Cable System A and a

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1 Cable System B and their BSTs were as follows:  
2 They had one distant signal -- I'll put a circle  
3 around them -- each of them carried one and it was  
4 the same one. And then the package that was their  
5 BST in the first case, you had nine other signals  
6 for a total of 10 channels as part of the BST  
7 package for A.  
8 A. Right.  
9 Q. Does that seem like a reasonable  
10 assumption?  
11 A. Yes, you could have 10.  
12 Q. And for -- and the channels -- the  
13 nine in addition to the distant signal, you said  
14 before, can include the local stations?  
15 A. It must include all the local ones,  
16 with the exception of how they define "local."  
17 But, yes, it must include all the local ones.  
18 Q. And let me posit for the other one  
19 that we've got, the second Cable System B adding  
20 19 channels to the distant signal channel there  
21 for a total of 20. As we were saying, the  
22 nondistant signals could include local signals.

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1 But what else could they include?  
 2 A. They could includes cable  
 3 networks --  
 4 Q. Cable networks.  
 5 A. -- they could include a local cable  
 6 news channel. And where I live, we have  
 7 News Channel 1 from Time Warner Cable that gives  
 8 very local news about -- about New York City. So  
 9 it can include something like that.  
 10 And it could include the kinds of  
 11 public educational and Government channels that  
 12 would show maybe the local hearings or, you know,  
 13 a -- something that a local citizens group might  
 14 program.  
 15 Q. So let's now look at the price  
 16 that's likely to be charged by Cable System A and  
 17 Cable System B.  
 18 Is there likely to be a difference  
 19 in the price they charge for the BST?  
 20 A. Yes -- without knowing any more  
 21 information, you couldn't say that B would charge  
 22 more than A, but it likely would. Because one of

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1 the things that we've learned from lots of studies  
 2 of cable pricing is that the more channels are  
 3 related to a higher price for the tier.  
 4 Q. And let's just make an assumption  
 5 that the first one charges \$10 for its tier and  
 6 the second one charges \$20 for its tier. Okay?  
 7 And that's in proportion to the  
 8 number of channels they have, so that would be  
 9 fair from your perspective?  
 10 A. Yes. It would certainly not be  
 11 unreasonable.  
 12 CHIEF JUDGE SLEDGE: Fair isn't the  
 13 question. The question is whether that's what  
 14 channels do, what cable systems do.  
 15 THE WITNESS: Yes. I'm not saying  
 16 it's -- it would be \$10 and \$20, but it would be  
 17 more for the one that has the more channels in it.  
 18 BY MR. STEWART:  
 19 Q. Okay. Then let's come all the way  
 20 back to fee -- cable royalty fees.  
 21 If this distant signal were the only  
 22 one carried by System A and the only one -- and

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1 the same signal is the only one carried by  
 2 System B, would they have the same royalty --  
 3 royalty payments?  
 4 A. No. The System B would have twice  
 5 the royalty payments, because A would be -- would  
 6 begin their calculation with a fee of \$20 -- I  
 7 mean, assuming they had the same subscribers and  
 8 so forth, but they would begin with \$20 in B and  
 9 they would begin with \$10 in A.  
 10 Q. So that's because you apply the  
 11 royalty rate times the gross receipts, which is  
 12 based on the \$10 or the \$20, right?  
 13 A. That's correct.  
 14 Q. So one would assume that System B  
 15 would have twice as -- royalties twice as high --  
 16 fees generated twice as high for this signal  
 17 because of the fact that it's got more other stuff  
 18 in the basic tier?  
 19 A. Right. Per subscriber, it would  
 20 have a twice -- twice as high a fee generated for  
 21 that -- for the channel on B compared to A.  
 22 Q. I just wanted to ask one other

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1 question based on Judge Sledge's questions.  
 2 Are there many cases in which there  
 3 are actually two cable systems competing against  
 4 each other in the same community?  
 5 A. There are more of them now than  
 6 there used to be, but it's more common that the --  
 7 that the cable operator is competing with  
 8 satellite, which is pretty much everywhere.  
 9 There are many places where there's  
 10 only one provider of cable. There are some places  
 11 where there are two.  
 12 Q. Okay. And as far as you know -- or  
 13 do you know whether satellite carriers are  
 14 required to provide a basic service tier to  
 15 subscribers?  
 16 A. It -- the -- the rules for satellite  
 17 are different. This -- there, it's a question of  
 18 if they can bring the local station -- stations  
 19 in, that would tend to be separate, but they would  
 20 usually be by themselves.  
 21 Q. Okay. So competition -- the  
 22 competition that existed mostly in the marketplace

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1 may have -- may have been between multichannel  
 2 video providers who had different tiering  
 3 structures all together?  
 4 A. Yes, satellite versus cable.  
 5 MR. STEWART: Okay. I have no  
 6 further questions at this time.  
 7 CHIEF JUDGE SLEDGE:  
 8 Mr. Satterfield, any questions based on that?  
 9 MR. SATTERFIELD: No, Your Honor.  
 10 CHIEF JUDGE SLEDGE: Thank you,  
 11 ma'am.  
 12 THE WITNESS: You're welcome.  
 13 CHIEF JUDGE SLEDGE: Is our next  
 14 witness ready?  
 15 MR. MARSH: Your Honor, he is.  
 16 Mr. Singer is available.  
 17 CHIEF JUDGE SLEDGE: All right.  
 18 We'll recess 10 minutes.  
 19 (Recess taken from 3:25 p.m. to  
 20 3:39 p.m.)  
 21 CHIEF JUDGE SLEDGE: Thank you.  
 22 We'll come to order.

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1 MR. MARSH: Your Honor, Joint Sports  
 2 Claimants present Hal Singer.  
 3 Mr. Singer, will you stand, please?  
 4 WHEREUPON,  
 5 HAL J. SINGER  
 6 was called as a witness and, having been first  
 7 duly sworn, was examined and testified  
 8 as follows:  
 9 CHIEF JUDGE SLEDGE: Thank you.  
 10 Please be seated.  
 11 DIRECT EXAMINATION  
 12 BY MR. MARSH:  
 13 Q. Dr. Singer, can you state your name  
 14 for the record?  
 15 A. Sure. Hal J. Singer.  
 16 Q. Can you give the Judges a little  
 17 background about your education?  
 18 JUDGE WISNIEWSKI: Counsel, can you  
 19 state your name for the record, please?  
 20 MR. MARSH: Certainly, Your Honor.  
 21 Stephen Marsh for Joint Sports Claimants.  
 22 JUDGE WISNIEWSKI: Thank you.

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1 THE WITNESS: I have a Bachelor's in  
 2 economics from Tulane University and a Master's  
 3 and Ph.D. in economics from Johns Hopkins.  
 4 BY MR. MARSH:  
 5 Q. What's your current position?  
 6 A. I'm currently president of a  
 7 Washington-based consulting firm called Empiris.  
 8 I'm also a managing partner.  
 9 Q. What sort of work does Empiris do?  
 10 A. Empiris provides its clients  
 11 consulting in the areas of strategic services,  
 12 strategic consulting, regulatory consultation and  
 13 litigation consulting.  
 14 Q. Do you, yourself, have any  
 15 particular areas of specialty?  
 16 A. Yes, I specialize in the area of  
 17 competition economics. I do a lot of work in  
 18 antitrust, regulatory economics and a fair amount  
 19 of valuation and damages.  
 20 Q. Have you ever given expert testimony  
 21 before as an economist?  
 22 A. Yes, I have.

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1 Q. Can you describe a little bit some  
 2 of the types of cases that you've given expert  
 3 economic testimony in?  
 4 A. Sure.  
 5 A lot of the cases, as I said  
 6 earlier, are in the area of antitrust. I've  
 7 served as a liability expert in cases, the damages  
 8 expert in other cases. Sometimes I served as  
 9 both.  
 10 Q. As a damages expert, what would you  
 11 look at?  
 12 A. A damages expert is often asked to  
 13 estimate what prices would look like in a  
 14 but-for world using various metrics of commonly --  
 15 damages expert would use benchmarks, but sometimes  
 16 you have to design an economic model to project --  
 17 they're called but-for prices.  
 18 Q. Have you ever given any testimony  
 19 related to the cable industry?  
 20 A. Yes, I have. I've been involved in  
 21 several proceedings before the  
 22 Federal Communications Commission.

**Oral Rebuttal Testimony Correction To The Written Rebuttal Testimony**

**Of Dr. Brian T. Ratchford**

The CCG respectfully seeks to inform the judges of a correction made by Dr. Brian T. Ratchford while testifying before the Copyright Arbitration Royalty Panel on February 4, 2010 in present proceeding. As reflected on pages 3153-54 on the transcript for that date, Dr. Ratchford made a correction to the first line on page 10 of his written rebuttal testimony. Dr. Ratchford requested that the word “anywhere” be struck and replaced with the words “in the allocation questions.” The corrected sentence on page 10 should read “is no reference to any specific time period in the allocation questions in the questionnaire.” As Dr. Ratchford did not formally submit this written correction, his testimony contained on the following pages does not reflect this change.



**An Evaluation of the  
2004 and 2005 Cable Subscriber Surveys  
Originally Sponsored by Arthur C. Gruen, Ph.D.**

by

Brian T. Ratchford  
Charles and Nancy Davidson Professor of Marketing  
University of Texas at Dallas

December 2009

CDN-R-6

My name is Brian T. Ratchford. I am submitting this testimony in the Rebuttal Phase of the Copyright Royalty Judges' proceedings in the matter of the Distribution of the 2004 and 2005 Cable Royalty Funds. I offer this testimony on behalf of the Canadian Claimants Group (CCG).

### **1. Background & Experience**

Since 2006, I have been the Charles and Nancy Davidson Professor of Marketing at the University of Texas at Dallas. From 1999-2006, I was the Pepsico Chair in Consumer Research at the University of Maryland. From 1971-1999, I held various academic positions at the State University of New York at Buffalo. I have M.B.A. and Ph.D. degrees from the University of Rochester. I have published over 70 articles in marketing and related fields, including articles in *Marketing Science*, *Management Science*, *Journal of Consumer Research* and *Journal of Marketing Research*. I was Editor of *Marketing Science* from 1998-2002. I am currently an associate editor of the *Journal of Consumer Research* and on the editorial review boards of the *Journal of Marketing Research*, *Journal of Marketing*, *Journal of Retailing*, *Journal of Interactive Marketing*, *Journal of Public Policy and Marketing* and *Journal of Service Research*. I am on the Advisory Editorial Board of *Marketing Science*.

Most of my research involves theories and empirical analysis of consumer search for information and choice, and most of the empirical analysis employs consumer survey data. I generally collaborate on the design and implementation of the surveys. Three of my recent papers employ a technique known as conjoint analysis, which measures consumer preferences for product attributes and product bundles. Two recent collaborations with Lan Luo and P.K. Kannan that used this approach have won prestigious awards: the paper "New Product

Development under Channel Acceptance,” *Marketing Science*, 26 (March/April 2007), won the Little Award for best marketing paper in an INFORMS journal in 2007; the paper “Incorporating Subjective Characteristics in Product Design and Evaluations,” *Journal of Marketing Research*, 45 (April 2008) – which was based on Lan Luo’s dissertation that P. K. Kannan and I supervised at the University of Maryland – won the 2009 Lehmann Award for best dissertation-based article published in the *Journal of Marketing* or *Journal of Marketing Research* in the previous two years.

I have done consulting for many years, usually on projects requiring surveys and/or data analysis. As a consultant to Inforte Corp., a research supplier to Cox Communications, I developed models to predict customer churn on the Cox Communications customer database in 2006. As a consultant to Anasight Corp., a research supplier to Knology, I developed models to predict customer churn and advertising response on the Knology database in 2007-2009. This work has given me an appreciation of the importance of customer retention in the cable industry, and a working knowledge of different pricing and promotional schemes employed in the industry to attract and retain customers.

A copy of my CV is attached hereto as Appendix A.

## **2. Summary and Introduction**

There were two surveys of cable subscribers conducted on behalf of the Program Suppliers Claimants as described in the testimony of Arthur Gruen, dated June 1, 2009. The main question in these surveys asked subscribers to allocate \$10 between 6 sets of programming types and two station types (PBS and Canadian) according to how the respondents value these types.

These data were ultimately used to calculate a weighted national average of the proportion of the \$10 allocated to each of the eight categories.

My testimony will focus on the ability of these cable subscribers surveys to portray an accurate picture of the value of Canadian distant signals.<sup>1</sup> I offer three primary criticisms of the surveys.

The first criticism is that no survey questions addressed whether, and to what extent, respondents actually viewed distant signals carried by their cable systems during the time period covering the royalty payments in question. This has two effects: (1) non-viewers cannot respond accurately to the survey questions; and, (2) non-viewers are given the same weight in the survey value calculations although they are unlikely to value the stations in question as much as viewers. As explained below, this equal weighting creates a downward bias in the Canadian share of value for a given cable system. This matters because cable systems cater to market segments; thus, systems will carry a station if a segment values it enough to make doing so profitable for the cable system. Therefore, it is the valuation of this segment of users, and not the average valuation of all customers, that is relevant.

The second criticism is that the framing of the survey questions works against the proportion of value allocated to the Canadian signals. This is especially true if all viewer types – ranging from non-users to those who view a distant signal all the time – are given equal weight in the value calculations. Likewise, the design of the questionnaire tends to create response errors, which will be discussed in more detail below.

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<sup>1</sup> The CCG's claim is limited to only the Canadian programming, and not the U.S. team sports and movies and syndicated series, appearing on Canadian distant signals. The Gruen survey purports to capture the value of the entire Canadian signal.

A third criticism relates to sampling and non-response. I will show that response rates are actually much lower than portrayed in Gruen's testimony. Moreover, the sample size of respondents in areas covered by the Canadian signals is not large enough to provide reliable information about viewers of these signals. This is especially true because it is likely that only a fraction of the respondents in these areas are actually viewers of the Canadian signals. For example, the 2005 survey sampled only 31 respondents with access to Canadian distant signals, 16 of which were subscribers to cable systems where the Canadian stations were carried in only a small portion of the system. Similarly, the 2004 survey sampled only 55 respondents with access to Canadian distant signals. I will expand on these issues and explain my conclusions in the following sections.

### **3. Qualifying Respondents as Viewers**

There are no questions in the Gruen survey aimed at determining whether and to what extent respondents actually view the programming on the distant signals provided by their cable systems, or even whether they are aware of the signals and their program offerings. Given the likelihood, described below, that many respondents had little or no experience with the stations in the survey, their responses become difficult to interpret, let alone useful as the basis for valuing Canadian programming.

Existing evidence indicates that the average household limited its TV viewing to 17 channels around the time of the surveys, and that only 20-30 percent of subscribers accounted for 60-80 percent of total viewing for most program networks at this time.<sup>2</sup> At the same time, the

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<sup>2</sup> Federal Communications Commission, Media Bureau, *Report on the Packaging and Sale of Video Programming Services to the Public*, rel. Nov. 18, 2004, at 48.

average cable system had approximately 70 channels in their basic and expanded basic tiers, and 84 percent of all cable subscribers subscribed to both tiers.<sup>3</sup> Thus, at the time of the surveys, consumers tended to specialize their viewing among roughly a quarter of the available channels and, because all viewers did not focus their viewing on all the same channels, the majority of channels tended to attract a relatively small share of all subscribers. As a consequence, it seems unlikely that all survey respondents would have a great deal of experience with the programming on distant signals, and it is quite possible that some had never viewed the programming or even been aware of the signals.

Interpreting survey responses is further complicated because the surveys failed to define or require a specific set of criteria on which respondents rely when answering the valuation questions. As a result, even truthful responses could have been based on criteria other than viewership or familiarity with the programs cited in the survey as examples of program types.

As an example, take the question about series programs, which stated:

This category includes sitcoms such as *Seinfeld*, dramas such as *Star Trek: Enterprise*, reality shows such as *American Idol*, game shows such as *Jeopardy*, and talk shows such as the *Oprah Winfrey Show* shown only on [STATION] from [CITY].

Of the TEN dollars, what is the value to you, if any, of all **series** programs shown on the station for this category? (Gruen Written Direct, App. D, at 61 (emphasis in original).)

Given the framing of the question, the respondent is forced to allocate the \$10 between categories, but can base this decision on any criterion. There is nothing in a truthful answer that required the respondent to have watched a program in the category on that station. A respondent who liked the programs in question could have allocated most or all of the \$10 to that category in the hope that the station will carry that program type.

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<sup>3</sup> Federal Communications Commission, *Report on Cable Industry Prices*, rel. December 27, 2006, at 10 and 14.

Further compounding the survey's deficiency on this point, the question about the Canadian station required a much greater degree of familiarity. The question for the Canadian stations was as follows:

This category includes programs such as *Back of the House*, *Canada Now* and *Magic School Bus* shown only on [STATION(S)] from [CITY(IES)].

Of the TEN dollars, what is the value to you, if any, of all **programs shown on Canadian stations?** (Gruen Written Direct, App. D, at 63 (emphasis in original).)

*Back of the House* is a comedy that was aired for only one 30-minute episode in 2004, and was not shown at all in 2005. *Canada Now* is a weekday news program produced by the CBC network. *Magic School Bus* is a children's program that had 28 hours of re-runs on CBC in 2004, and was not shown at all in 2005.<sup>4</sup> These programs would be unfamiliar to non-viewers of Canadian television. Indeed, since *Back of the House* and *Magic School Bus* were not shown at all in 2005, and only infrequently in 2004, such programs may not even have been familiar to *frequent* viewers of Canadian television.

Respondents, many of whom are likely unfamiliar with the programs provided as examples of Canadian television, would have no basis for making an allocation of points to the Canadian stations. However, because of their likely familiarity with the program types listed as examples for the other programming categories, even if they never viewed the stations airing the programming, those types of programming with well known shows as examples would have gained an advantage in attracting points. Again, there was nothing in the wording of the survey questions which required these program types to be actually viewed on the distant signal in question.

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<sup>4</sup> Information on the programs in the question on Canadian television is contained in a document entitled "MPAA Cable Op Survey Canadian Titles Detail" supplied to me by the Canadian Broadcasting Corporation.

Differences across respondents in viewing distant signal programming create implications for the proper way to calculate the basic results of the study – implications which are ignored or improperly accounted for by the Gruen study. Most notably, as illustrated below, the allocation rule used in the Gruen study assigns the same weight to all responses in a market area, improperly diluting valuations by small segments of very committed viewers.

One would expect to see differences in the *overall* valuation of the stations across respondents: not all respondents are likely to have exactly the same \$10 monthly valuation of all distant signals on their cable system. However, in the Gruen study, the share of each programming type in a given market is calculated as a simple average of the *proportion* of dollars allocated to each program type across all respondents. All respondents within a single cable system are implicitly assumed to place *the same overall valuation* on distant signals. Yet, depending on their level of viewing and the overall strength of their preferences for the program offerings on those distant signals, one would expect to see differences in overall valuations across those respondents. Those with the highest valuation should receive most of the weight in the calculations.

A hypothetical example will illustrate the problem. Suppose Respondent A watched a movie on distant station XXXX three years ago, and therefore truthfully allocates \$10 to the movie. However, she places no value on station XXXX: if the cable system dropped it she would not be worse off. By contrast, Respondent B watches local news twice a day on distant station XXXX, and nothing else. This respondent allocates the entirety of her \$10 to local news. Unlike Respondent A, Respondent B relies on station XXXX to keep up with news of her former hometown, and therefore values the distant station to the point where she would not subscribe to the cable service if it were not available.



The Gruen study would assign equal weight to both respondents, and therefore conclude that movies and local news on the station are both valued at 50%. However, because Respondent A does not care whether station XXXX is retained by the cable system whereas Respondent B bases her entire decision to subscribe to the cable system on the carriage of station XXXX, a better allocation would be 100% to local news. In summary, by assigning the same weight to all responses in a market area, the allocation rule used in the Gruen study works against small segments of very committed viewers: it works against the 20-30 percent of subscribers who are likely to account for 60-80 percent of total viewing noted above.

This failure is a major issue for Canadian stations (and PBS stations) included in the surveys. The majority of respondents are likely to be non-users or light users, and therefore allocate no dollars, or a small amount, to these stations. Those who are committed to the station may allocate a high proportion of their \$10 budget to it, but constitute a small share of the surveys' respondents. Averaging the different groups will create a small overall share, and fail to adequately represent the strong preferences of those who actually watch the station and value it.

Finally, this last point serves to further highlight the difference between the perspective of cable subscribers and cable operators. Cable subscribers' assessment of the value of programming is limited to knowledge about only those segments of available programming that actually interest them. In contrast, cable operators are attempting to select and value signals according to their utility in appealing to as many of those segments as possible.

#### **4. Questionnaire Problems**

There are a number of questionnaire design issues that are likely to affect the quality of the data in general and the responses about Canadian stations in particular.

- Only one respondent is asked to answer for the entire household, regardless of whether that respondent is familiar with the viewing behavior or preferences of other household members. Specifically, the instructions indicate that \$10 is to be allocated according to “how valuable you feel each program category was in your own home.” Approximately two-thirds of the households in the surveys had two or more members. Households typically have several TV sets located in different parts of the home. These sets may be viewed at the same time by different household members. In this case, it is unlikely that the respondent would know exactly what the other members are viewing at a given time. Similarly, the respondent may do something else (work, shop, prepare dinner), while other members of the household are watching TV. Again, it is unlikely in this case that the respondent would know what the others were watching. Thus, there is a question about how well the respondent knows the viewing behavior of other household members and, more importantly, the strength of preferences of other household members.
- Though viewing behavior is likely to be related to gender, there is no question in the survey asking the gender of the respondent. If one gender is represented more frequently than another in the surveys, and members of that gender skew responses toward providing their own preferences, the results will be biased. For example, if females are more prevalent among respondents, the results are likely to be biased in favor of programs watched predominately by females. Unfortunately, since the gender of respondents is not available, there is no way to check for such biases in the survey data.
- Though the surveys are meant to apply to royalty proceedings for 2004 and 2005, they took place more than a year after the royalties in question were incurred. Moreover, there

is no reference to any specific time period ~~anywhere~~ in the questionnaire. Behavior may have changed during this interim. *in the allocation questions*

- As noted above, many respondents will likely have limited or no experience with the distant signals and their programming, requiring them to respond to the \$10 allocation question based on other criteria. The promised \$25 payment gives them ample incentive to provide some response. The result is that many respondents may have supplied data of questionable validity. There is abundant research establishing evidence that respondents to a survey will answer questions even though they have no knowledge of the information sought in the question.<sup>5</sup> The obvious solution to the problem would have been to qualify respondents by asking whether they view the distant signal stations in the survey, or at least asking a question referring to extent of viewership. This is in line with the recommendation of Churchill and Iacobucci to ask such filter questions to determine the ability of the respondent to answer accurately.<sup>6</sup>
- Many respondents may not be familiar with the distant stations covered in the survey or the precise program type definitions, making the \$10 dollar allocation exercise difficult. Constant sum scales of the type employed in the surveys are useful for determining relative importance, but can be taxing for respondents because of the large number of

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<sup>5</sup> As noted in a leading marketing research text “most questions will get answers but the real concern is whether the answers mean anything.” (Gilbert A. Churchill and Dawn Iacobucci, *Marketing Research: Methodological Foundations*, 8 ed. New York: Harcourt College Publishers 2002, at 323.) There are many examples of studies that asked questions on fictitious issues and obtained responses. See e.g., Daniel T. Seymour, “Numbers Don’t Lie—Do They?” *Business Horizons* 27 (November/December 1984), at 36-37; Del I. Hawkins and Kenneth A. Coney, “Uninformed Response Error in Survey Research,” *Journal of Marketing Research*, 18 (August 1981), at 370-374.

<sup>6</sup> Gilbert A. Churchill and Dawn Iacobucci, *Marketing Research: Methodological Foundations*, 8 ed. New York: Harcourt College Publishers 2002, at 324.

comparisons involved.<sup>7</sup> The complexity might lead respondents to use a subset of dimensions, especially when the categories are not independent.<sup>8</sup> Given that category definitions are likely to present some ambiguity to respondents, lack of independence is an issue in the Gruen surveys. For example, the distinction between live team sports and non-team sports in the surveys, which appears to be an artifact of royalty proceedings, is likely to be fuzzy to many respondents. Another possible source of overlap is that PBS and Canadian stations offer programs in many of the listed program categories.<sup>9</sup> Lack of consumer experience with the program definitions, the inclusion of programs and stations in the same allocation exercise, and the need to make comparisons across eight categories are all likely to make it difficult to respond to the central allocation question, and is likely to trigger response errors.

In sum, there are a number of design aspects of the surveys that invite response error: (1) respondents are unlikely to have complete knowledge of the viewing behavior or preferences of others in their household; (2) a skew of responses toward preferences of one gender is possible, as gender is unknown and impossible to measure and correct for possible bias; (3) respondents are likely to be unfamiliar with the distant stations in question, and; (4) respondents are likely to be unfamiliar with the distinctions between program categories that are employed in the surveys.

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<sup>7</sup> Naresh Malhotra, *Marketing Research: An Applied Orientation*, Englewood Cliffs, N.J.: Prentice Hall 1993, at 287.

<sup>8</sup> Hanjoon Lee, Linda Delene, Mary Anne Bunda and Chankon Kim, "Methods of Measuring Health-Care Service Quality," *Journal of Business Research*, 48 (2000), at 236.

<sup>9</sup> Because different stations are referred to in the survey between program types and PBS and Canadian stations, the categories are actually mutually exclusive. But respondents are likely to have trouble making the distinction in the context of a phone survey when they have no prior background with questions of this type.

## 5. Sampling

While the sampling design for the Gruen study was rigorous, there is a strong possibility that non-response bias, combined with the small sample size of Canadian stations and respondents, may have skewed the composition of the sample to the detriment of the CCG.

In his written testimony about the 2004 survey, Gruen indicated that “of 1,497 respondents who were known to be qualified for the survey, only 10 refused to do so and only 48 were unavailable to complete the survey.” (Gruen Written Direct at 16.) Similarly, in his testimony about the 2005 survey, Gruen indicated that only one respondent who was known to be qualified to take the survey refused to do so, and only 15 were not available to complete the survey. (*Id.* at 18.)

Given the condition “known to be qualified to complete the survey,” these statements are probably correct. However, they do not provide a complete picture of non-response to the surveys. In Table 1, below, I tabulated a summary of the disposition of the calls in the survey obtained from two spreadsheets that provided this information. As shown in the table, there were 5,267 refusals prior to qualification in 2004 and 1,065 in 2005. There were another 1,805 “do not call” refusals in 2004 and 1,284 in 2005. There were also 1,429 instances of non-contact due to language barriers in 2004 and 1,027 in 2005. Finally, there were 29,849 cases where there was no answer on 7 attempts in 2004 and 12,317 cases in 2005. Thus, Gruen’s testimony may give a misleading picture of non-response, and there is possible bias that might result from this.

**Table 1**  
**Gruen Survey Calling Statistics**

<b>Category</b>	<b>Survey 2004</b>	<b>Survey 2005</b>
<b>Completed Interview</b>	1439	1510
<b>Disqualified</b>		
Did not have cable TV in home 2004	3672	3145
Respondent reports incorrect cable TV provider	2138	1671
DK/RF/NA at Q6 or Q7 series	4	1
Over Quota	6	0
<b>Total Disqualified</b>	5820	4817
<b>Refusals</b>		
R1 Initial Refusal (soft)	0	0
R2 2nd Refusal (hard)	5267	1065
R3 "Do not call" refusal	1805	1284
Q1 Qualified Refusal/Terminated	0	0
Q2 2nd time Qualified Refusal/Terminated	10	1
<b>Total Refusals</b>	7082	2350
<b>Could Not Contact</b>		
NV Not available during study	48	15
BC Blocked call/Privacy manager	50	1235
LB Language barrier	1429	1027
N1 Max Attempt Met (7 Attempts)	29849	12317
<b>Total Could Not Contact</b>	31376	14594
<b>Bad Numbers</b>		
DC Disconnect	30078	25457
FX Fax Machine/Computer Tone	4057	2508
GB Business/Residential number	4150	3711
DU Duplicate number	10	5
WN Wrong Number	0	8
<b>Total Bad Number</b>	38295	31689
<b>Total Sample Used</b>	84012	54960

Source: Program Suppliers responses to discovery: ps\_15588.xls (2004), ps\_15597.xls (2005).

A standard way of calculating response rates would be as the product of (contact/working numbers) x (cooperate/contact) x (completion/eligible).<sup>10</sup> Gruen measures only the last of these - completion/eligible. (Gruen Written Direct at 16.) Table 2, below, summarizes the survey statistics in Table 1 to provide a more complete picture of response rates to the surveys. This indicates that contact rates (the ratio of contacts to working numbers) were 31.37 percent in 2004 and 37.29 percent in 2005. The table also indicates that cooperation rates (one minus the ratio of refusals to contacts) were 50.62 percent in 2004 and 72.92 percent in 2005. Because those who could not be contacted or who refused could be different from the final respondents, it is important to measure their numbers. Multiplying the contact rate by the cooperation rate by the completion rate gives a response rate of 15.83% in 2004 and 27.17 % in 2004.

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<sup>10</sup> See e.g., Dr. John B. Horrigan, "Peer Review of Nielsen's 'How People Get News and Information' Survey Pursuant to FCC Rulemaking MB Docket No. 06-121," [www.fcc.gov/mb/peer\\_review/prstudy1.pdf](http://www.fcc.gov/mb/peer_review/prstudy1.pdf). Dr. Horrigan is Associate Director for Research, Pew Internet & American Life Project.

**Table 2**  
**Survey Response Summary**

	<b>Survey 2004</b>	<b>Survey 2005</b>
Total Sample Used (1)	84012	54960
Total Bad Number (2)	38295	31689
Working Numbers (3 = 1-2)	45717	23271
Working Rate (3/1)	54.42%	42.34%
Total Could Not Contact (4)	31376	14594
Contacted (5 = 3 -4)	14341	8677
Contact Rate (5/3)	31.37%	37.29%
Total Refusals (6)	7082	2350
Cooperate (7 = 5-6)	7259	6327
Cooperation Rate (7/5)	50.62%	72.92%
No cable/ wrong provider/over quota (8)	5816	4816
Eligible (9 = 7-8)	1443	1511
Eligibility Rate (9/7)	19.88%	23.88%
Interrupted or Over Quota (10)	4	1
Completed Interviews (11 = 9-10)	1439	1510
Completion Rate (11/9)	99.72%	99.93%
Response =		
Contact Rate*Cooperation Rate*Completion Rate	15.83%	27.17%

Source: Program Suppliers responses to discovery: ps\_15588.xls (2004), ps\_15597.xls (2005).

The calculations in Table 2 follow a standard method for estimating response rates. An implicit assumption in the calculations is that the same proportion of non-contacts and refusals would be eligible for the surveys as those who indicated a willingness to cooperate. Because response rates vary with the characteristics of respondents, the topic and length of the survey, difficulty of responding to it, and the skill of the interviewers, it is hard to say whether the



response rates indicated in Table 2 are abnormally high or low.<sup>11</sup> The sampling design for the study was rigorous. However, there is still plenty of room for bias due to non-response, defined as systematic differences in response between how non-respondents would have responded, and the actual responses.

There is evidence that non-response skewed the demographic composition of the sample. Appendix H of the Gruen testimony indicates that the 50+ age group was over-represented in the surveys, indicating that the surveys were more successful at reaching the older group. While this issue of over-representation of the 50+ group can be corrected by weighting, what we do not know is the extent to which non-respondents in each age group would have given different answers than the respondents.

The representation of respondents with access (let alone knowledge) of Canadian distant stations in the surveys is sparse. In 2004, five systems carrying Canadian distant signals out of a population of 60 systems were selected for surveys, and four of these were surveyed while one was treated as “virtual” because the system’s only distant signal was Canadian. In 2005, four systems carrying Canadian distant signals out of a population of 49 systems were selected for surveys, and two of these were surveyed while the other two were treated as “virtual.” There were a total of 55 survey respondents in communities served by systems with a Canadian distant signal in 2004, and there were 31 such survey respondents in 2005. However, 16 of the 31 responses to the 2005 survey were subscribers to a system where the three Canadian stations

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<sup>11</sup> In Dr. John B. Horrigan’s, “Peer Review of Nielsen’s ‘How People Get News and Information’ Survey Pursuant to FCC Rulemaking MB Docket No. 06-121,” [www.fcc.gov/mb/peer\\_review/prstudy1.pdf](http://www.fcc.gov/mb/peer_review/prstudy1.pdf), Dr. Horrigan notes that response rates to surveys commissioned by the Pew Internet & American Life Project typically vary from 25 percent to 30 percent. Since these surveys are directed at a representative sample of the U.S. population, and relate to media, they might be regarded as comparable in audience and content to the Gruen survey. This suggests that the response rate to Gruen’s 2004 survey was relatively low, and response to the 2005 survey was more or less in line with expectations.

were only carried in a very small portion of the system. Given the remote possibility that these subscribers even receive the distant Canadian signals, it is hard to conceive that they could provide an accurate picture of the value of the Canadian stations. Therefore, there are only 15 effective responses that include a full Canadian distant signal in the 2005 survey. These come from only one cable system. Especially given the fact that the number of viewers of the relevant Canadian programs is likely to be a fraction of those sampled, these sample sizes become too small to allow inferences about the whole population of viewers of these programs.

## **6. Conclusions**

I have outlined a number of reasons why the Gruen survey does not portray an accurate picture of the value of Canadian distant signals. The most important of these are:

- Respondents were not qualified as viewers of the stations in question, which creates the possibility that many responses to the allocation question were based on criteria other than the actual valuation of the programs and stations in question.
- Respondents were all implicitly assumed to value the stations in the survey equally, whether they were viewers or not. One would expect viewers to have a higher valuation than non-viewers, and frequent viewers to have a higher valuation than sporadic or occasional viewers.
- Survey questions required respondents to have knowledge that they may not possess, including the viewing behavior and preferences of others in their household. Survey questions also required knowledge of program categories that respondents may not grasp. The surveys also make an implicit assumption that preferences did not change in the year since the relevant royalty period.

- Though not necessarily outside the normal range for phone surveys, possible non-response error is present to a greater degree than Gruen's original report may imply.
- The sample sizes of Canadian stations and respondents are too small to allow firm conclusions to be drawn.

**Declaration of Brian T. Ratchford**

2004-2005 Cable Royalty Distribution Proceeding  
Docket No. 2007-03 CRB CD 2004-2005

I, Brian T. Ratchford, declare under penalty of perjury under the laws of the United States of America that the foregoing written rebuttal testimony prepared for submission by the Canadian Claimants Group to the Copyright Royalty Judges is true and correct.

12/19/09

Date

Brian T. Ratchford

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- 1966 - 1969 University of Rochester, Teaching Assistant.
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52. Robert J. Meyer, Joachim Vosgerau, Vishal Singh, Joel E. Urbany, Gal Zauberman, Michael I. Norton, Tony H. Cui, Brian T. Ratchford, Alessandro Acquisti, David R. Bell, Barbara E. Kahn, "Behavioral Research and Empirical Modeling of Marketing Channels: Implications for both Fields and a Call for Future Research," Marketing Letters, forthcoming.

Published in Books

1. Robert Crow and Brian T. Ratchford, "An Econometric Approach to Forecasting the Market Potential of Electric Automobiles," in William D. Nordhaus, ed., International Studies of Energy Demand (Amsterdam: North Holland Press, 1977), pp. 45-64.
2. Arun Jain, Vijay Mahajan, and Brian T. Ratchford, "Implications of a Company Work Force's Perceptions on Work Force Mix and Macro Manpower Plans," in Donald T. Bryant and Richard I. Niehaus, eds., Manpower Planning and Organization (New York and London: Plenum Press, 1978), pp. 653-666.
3. Andre Boyer, Kristian S. Palda, and Brian T. Ratchford, "The Hedonic Approach to Price-Quality Relationships and its Potential Application in Marketing," in J.N. Sheth, ed., Research in Marketing, Vol. 7 (Greenwich, CT: JAI Press, 1984), pp. 1-40.
4. Brian T. Ratchford, "Forecasting Success on Failure of Proposed New Technologies: A Case of Electric Automobiles," in John R. Callahan and George H. Haines, Jr., eds., Managing High Technology (Ottawa, Ontario: Research Centre for High Technology Management, Carleton University, 1986), pp. 105-126.
5. Brian T. Ratchford, "The Economics of Information: The Views of a Marketing Economist," in Scott. Maynes, ed., The Frontier of Research in the Consumer Interest (Columbia, MO: American Council on Consumer Interest, 1988), pp. 265-269.
6. Brian T. Ratchford, "Introduction to Part IV: Competitive Behavior," in Timothy M. Devinney, ed., Issues in Pricing: Theory and Research (Lexington, MA: D.C. Heath and Company, 1988), pp. 193-196.
7. Banwari Mittal, Brian T. Ratchford and Paul Prabhaker, "Functional and Expressive Attributes as Determinants of Brand Attitude," in J.N. Sheth, ed., Research in Marketing, Vol. 10 (Greenwich, CT: JAI Press, 1990), pp. 135-156.
8. Brian T. Ratchford, Wagner A. Kamakura and Siva Balasubramanian, "Diffusion Models with Replacement and Multiple Purchases," in Vijay Mahajan, Eitan Muller and Yoram Wind, New Product Diffusion Models, (Boston: Kluwer Academic Publishers, 2000), pp. 123-140.
9. Xing Pan, Venkatesh Shankar and Brian T. Ratchford, "Price Competition Between Pure Play vs. Bricks-and-Clicks e-Tailers: Analytical Model and Empirical Analysis," of Advances in Applied Microeconomics: The Economics of the Internet and E-Commerce, Vol. 11 (Oxford, UK, Elsevier Science Ltd., 2002), pp. 29-61.

10. Xing Pan, Venkatesh Shankar, and Brian Ratchford, " The Evolution of Price Dispersion in Internet Retail Markets" Advances in Applied Microeconomics: Organizing the New Industrial Economy, Vol. 12 (Oxford, UK, Elsevier Science Ltd., 2003), pp. 85-106.
11. Brian T. Ratchford, Myung-Soo Lee and Debabrata Talukdar, "Consumer Use of the Internet in Search for Automobiles: Literature Review, a Conceptual Framework, and an Empirical Investigation," Review of Marketing Research, Vol. 2 (Armonk, N.Y., M.E. Sharpe, 2005).
12. Koukova, Nevena T., P. K. Kannan, and Brian T. Ratchford, "Bundling and Unbundling of Electronic Content," in Electronic Commerce and the Digital Economy, Advances in Management Information Systems Series, Michael J. Shaw, Ed. (Armonk, N.Y., M.E. Sharpe, 2006).
13. Brian T. Ratchford, "Consumer Search and Pricing" Handbook on Research on Pricing, ed. Vithala Rao, (Northampton, MA: Edward Elgar, 2009), 91-107.

#### Books Edited

1. Arun K. Jain, Christian Pinson, and Brian T. Ratchford, eds., Marketing Research: Applications and Problems (John Wiley and Sons, England, 1982).

#### Refereed Papers Published in Conference Proceedings

1. Brian T. Ratchford and Alan Andreasen, "A Study of Consumer Perceptions of Decisions," in Scott Ward and Peter Wright, eds., Advances in Consumer Research, Vol. 1 (Urbana: Association for Consumer Research, 1974), pp. 334-345.
2. Brian T. Ratchford, "A Simple Technique for Measuring Differences in Product Quality," in Thomas V. Greer, ed., 1973 Combined Proceedings (Chicago: American Marketing Association, 1974), pp. 356-359.
3. Michael Etgar and Brian T. Ratchford, "Marketing Management and Marketing Concept: Their Conflict in Non-Profit Organizations," in Ronald C. Curhan, ed., 1974 Combined Proceedings (Chicago: American Marketing Association, 1975), pp. 258-261.
4. Gary T. Ford and Brian T. Ratchford, "Public Policy, The Sherman Act, and the IBM Anti-Trust Case," in Edward M. Mazze, ed., 1975 Combined Proceedings (Chicago: American Marketing Association, 1976), pp. 593-596.

5. Brian T. Ratchford, "Banning Unsafe Products: A Framework for Policy Analysis," in Barnett Greenberg and Danny Bellinger, eds., 1977 Combined Proceedings (Chicago: American Marketing Association, 1977), pp. 362-365.
6. Brian T. Ratchford and Piet Van den Abeele, "Attitudes, Perceptions and the Marketing of Mass Transit," Proceedings, The Fifth International Research Conference in Marketing (Gordes, France, 1978), pp. 47-62.
7. Brian T. Ratchford and Manoj K. Agarwal, "The Value of Information on Automobile Characteristics," in Neil Beckwith, et al., eds., 1979 Educators' Conference Proceedings (Chicago: American Marketing Association, 1979), pp. 200-204.
8. Brian T. Ratchford and W. Fred Van Raaij, "The Relation Between Information Acquisition Strategy and Monetary Losses due to Incorrect Choices," in Richard P. Bagozzi, et al., eds., Marketing in the 80's: Challenges and Changes (Chicago: American Marketing Association, 1980), pp. 168-171.
9. Brian T. Ratchford, "The Flow of Capital Services and Productivity of Capital of Retail Food Stores," in R. Lusch, et.al., eds., 1985 Educators' Conference Proceedings (Chicago American Marketing Association, 1985), pp. 223-228.
10. Brian T. Ratchford and Pola Gupta, "On Measuring the Informational Efficiency of Consumer Markets," in Advances in Consumer Research, Vol. 14 (Provo, UT: Association for Consumer Research, 1987), pp. 309-313.
11. Brian T. Ratchford and Richard Vaughn, "On The Relationship Between Motives and Purchase Decisions: Some Empirical Approaches," in Advances in Consumer Research, Vol. 16 (Provo, UT: Association for Consumer Research, 1989), pp. 293-299.

#### Invited Papers Published in Conference Proceedings

1. Brian T. Ratchford, "An Attribute Approach to Measuring Differences in Product Quality," Proceedings, American Institute for Decision Sciences Northeast Regional Meeting (Kingston, Rhode Island, 1973), pp. 82-85.
2. Manoj K. Agarwal and Brian T. Ratchford, "A Comparison of Alternative Approaches to Forecasting Brand Choice," in David B. Montgomery and Dick R. Wittink, eds., Proceedings of the First ORSA/TIMS Special Interest Conference on Market Measurement and Analysis, MSI Report No. 80-13 (Cambridge, Massachusetts: Marketing Science Institute), pp. 102-119.
3. Brian T. Ratchford, "Economic Approaches to the Study of Market Structure and Their Implications for Marketing Analysis," in Alan Shocker and R. Srivastava, eds., Analytic Approaches to Product and Marketing Planning: The

Second Conference (Cambridge, Massachusetts: Marketing Science Institute, 1983), pp. 60-78.

4. George H. Haines, Jr. and Brian T. Ratchford, "A Theory of How Intransitive People Make Decisions," in Fred Zufryden, ed., Advances and Practices of Marketing Science 1983 (Providence, RI: The Institute of Management Science, 1984), pp. 101-114.

#### Book Reviews Published

1. Brian T. Ratchford, "Review of Harvey Leibenstein: Beyond Economic Man: A New Foundation for Microeconomics," Journal of Consumer Policy, Vol. 2, No. 4 (1978), pp. 364-367.

#### Papers in Review Process

1. Dinesh Gauri, Debabrata Talukdar and Brian T. Ratchford, "Do Loss Leader Promotions Affect Store Profits? An Empirical Investigation for Grocery Industry," Journal of Marketing Research, revision invited.
2. Xing Pan, Brian T. Ratchford and Venkatesh Shankar, "Drivers of Price Dispersion among E-Tailers during the Boom, Shakeout, Restructuring, and Mature Periods of e-Commerce," Journal of Marketing Research, submitted.
3. Ernan Haruvy, Brian T. Ratchford and Yu Tian, "The Importance of Store Assortment to Time Constrained Consumers," International Journal of Research in Marketing, submitted.

#### Grants

1. Brian T. Ratchford and George H. Haines, Jr., "Approaches to Forecasting the Demand for New Goods: Modeling the Nature of Underlying Behavior in Markets," National Science Foundation, 9/15/82 to 2/29/84, \$48949.
2. K. Sridhar Moorthy, Brian T. Ratchford and Debabrata Talukdar, "Consumer Information Search Revisited: Theory and Empirical Analysis." Marketing Science Institute, February, 1993, \$2200.
3. Pepsico Corporation, "Forecasting Project," 2001-2002, \$35000 to R.H. Smith School of Business, University of Maryland.

#### TEACHING

##### Courses Taught

Marketing Management, Marketing Research, Consumer Behavior, Distribution Strategy, Channels and Retailing, Product and Promotion Management, Marketing Engineering, Microeconomics, Statistics, various Ph.D. Seminars on special topics.

### Dissertations Supervised

Committee Chairman: Manoj Agarwal, "Prediction of Consumer Choice and Demand Forecasting: A Comparison of Alternative Approaches," SUNY Buffalo, 1978.

Committee Chairman: Gary Young, "An Experimental Investigation of the Effects of Power Lawn Mower Safety Standards," SUNY Buffalo, 1981.

Committee Chairman: Guy Gessner, "A Study of Advertising Regulations in the Market for Legal Services," SUNY Buffalo, 1983.

Committee Chairman: Barry Rosen, "A Field Experiment to Test the Applicability of Involvement Theory to the Segmentation of Markets for Social Goods," SUNY Buffalo, 1984.

Committee Chairman: Glenn Stoops, "An Aggregate Level Analysis of the Effects of Retailing Mix Variables on Retail Store Patronage," SUNY Buffalo, 1984.

Committee Chairman: Siva Balasubramanian, "The Processing of Verbal/ Nonverbal Content in Television Advertisements: A Theory and Its Empirical Investigation," SUNY Buffalo, 1986.

Committee Chairman: Narasimhan Srinivasan, "A Causal Model of External Search for Information for Durables: A Particular Investigation in the Case of New Automobiles," SUNY Buffalo 1987.

Committee Chairman: Pola Gupta, "A Model of Estimation of Informational Efficiency for New Automobiles," SUNY Buffalo, 1988.

Committee Chairman, Ben Liu, "An Integrated Model of Bargaining Behavior and Outcomes," SUNY Buffalo, 1991.

Committee Chairman, Chung-Koo Kim, "An Empirical Study of Marketing Competition In A Car Market: An Econometric and Time Series Approach," SUNY Buffalo, 1991.

Committee Chairman, Myung Soo Lee, "Consumer Search and Choice Patterns and New Automobile Brand and Dealer Choice," SUNY Buffalo, 1992.

Committee Chairman, Pamela Grimm, "Determinants of Brand Preference," SUNY Buffalo, April 1993.

Committee Chairman, Uday Kumar, "A Theoretical and Empirical Analysis of Intertemporal Brand and Quantity Choice Behavior," SUNY Buffalo, November 1993.

Committee Chairman, Arindam Banerjee, "Consumer Decision Rules Regarding Quantity to be Purchased in a Promotion Intensive Environment: Implications to Retail Pricing Policies," SUNY Buffalo, December 1994.

Committee Chairman, Rajan Sambandam, "An Examination of Theoretical Issues in Consumer Satisfaction Using Prospect Theory and Consumer Purchase Motives," SUNY Buffalo, May 1995.

Committee Chairman, Pankaj Kumar, "Dynamic Hierarchical Bayesian Models of Consideration and Choice: Issues and Estimation," SUNY Buffalo, July 1997.

Committee Chairman, Peggy Choong, "An Investigation of Information Search in the Mutual Fund Industry," SUNY Buffalo, August 1997.

Committee Chairman, Amit Bhatnagar, "An Inquiry into the Determinants of Store Assortments, Retail Formats, and Patronage Patterns," SUNY Buffalo, June 1998.

Committee Chairman, Sanjog Misra, "Compensation and Selling Effort," SUNY Buffalo, June 1999.

Co-chair (with Venkatesh Shankar), Xing Pan, "Price Dispersion and Price Competition in Online Retail Markets," University of Maryland, August 2003.

Co-chair (with P.K. Kannan), Lan Luo, University of Maryland, May 2005.

Co-chair (with P.K. Kannan), Nevena Koukova, University of Maryland, May 2005.

Co-chair (with Andrei Strijnev), Dongling Huang, "Three Essays in Marketing," University of Texas at Dallas, May 2008.

Chair, Jung Seek Kim, "Consumer Search for Automobiles in the Digital Era," University of Texas at Dallas, June 2009.

Member of Dissertation Committees: Gary Ford, John Cady, Jonathan Goodrich, A-Abu-Ayyash (Geography), Robert Allen, Michael Berkowitz, Daniel Hamblin, Naresh Malhotra, Prem Purwar, Zahid Khairullah, Mark Renne, Jagdish Agrawal, Ambuj Jain, Scott Kinzey, Janice Sargent, Sanjay Putrevu, Glen Brodowsky, Dinesh Gauri all graduates of SUNY Buffalo, 1973-2007; Kristian Muller, graduate of Helsinki School of Economics, Finland, 1979; Rita Martenson, graduate of Goteborg University Sweden; Bharadhwaj Sivakumaran, Debora Thompson, Shweta Oza, Ashwin Aravindhakshan, all graduates of University of Maryland,



2002-2007; Howard Dover, Shweta Singh, Manish Gangwar, graduates of University of Texas at Dallas

Chair of Committees of current students at University of Texas at Dallas: Chao-Ying Yu, Sonika Singh, Marina Girju.

### Independent Studies and Student Projects

My records show that I have supervised approximately 130 independent study/supervised research projects since 1971.

### PROFESSIONAL CONTRIBUTIONS TO RESEARCH

Editor, Marketing Science, 1998-2001.  
Associate Editor, Management Science, 1988-1997.  
Area Editor, Marketing Science, 1988-1997.  
Associate Editor, Journal of Consumer Research, 1996-1998, 2005-.  
Member, Editorial Board, Journal of Consumer Research, 1980-.  
Member, Editorial Board, Marketing Science, 1981-1997, 2002- .  
Member, Editorial Board, Journal of Economic Psychology, 1981-1991.  
Member, Editorial Board, Journal of Marketing, 1980-83, 2002-.  
Member, Editorial Board, Journal of Public Policy and Marketing, 1992-99.  
Member, Editorial Board, Journal of Retailing, 1992-.  
Member, Editorial Board, Journal of Marketing Research, 1994-.  
Member, Editorial Board, Journal of Consumer Policy, 1995-.2007  
Member, Editorial Board, Journal of Service Research, 2001-.  
Member, Editorial Board, Journal of Interactive Marketing, 2005-.

Have refereed manuscripts for Review of Economics and Statistics, Transportation Research, Journal of Industrial Economics, Quarterly Journal of Economics, Journal of Consumer Affairs, International Economic Review, Rand Journal of Economics, American Economic Review, Journal of Political Economy, Quantitative Marketing and Economics.

Elected Outstanding Reviewer by Marketing Science, 1985-87.  
Elected Outstanding Reviewer by Journal of Consumer Research, 1990.

### PROFESSIONAL ORGANIZATIONS

American Economic Association  
American Marketing Association  
INFORMS  
Association for Consumer Research

### HONORS

Lehmann Award for best dissertation-based article, Journal of Marketing Research, 2009  
Finalist for Paul Green Award, Journal of Marketing Research, 2008.  
Little Award for best marketing article in an INFORMS journal in 2007.  
Honorable Mention, Krowe Teaching Award, University of Maryland, 2003.  
3rd place in competition for best article in Journal of Retailing, 1997.  
William R. Davidson award for best article in Journal of Retailing, 1996.  
Outstanding Article in Journal of Public Policy and Marketing, 1995-1997.  
Fellowship, European Institute for Advanced Studies in Management, Brussels, 1978.  
Beta Gamma Sigma, University of Rochester, 1972.  
Earhart Foundation Fellowship, University of Rochester, 1968-69.  
University Fellowship, University of Rochester, 1964-66.  
Cum Laude graduate of Canisius College, 1964.  
State Regents Scholarship, 1959-64.

## UNIVERSITY SERVICE

### SUNY Buffalo School of Management

Undergraduate Committee, 1973-74, 1984-86.  
Library Committee, 1973-74.  
MBA Committee, 1974-75.  
Area Coordinator, Marketing, 1973-77.  
and graduate enrollments, Fall 1974, as a policy committee assignment.  
Ph.D. program Chairman, 1976-77, 1989-92.  
Internship Coordinator, Marketing 1978-87.  
Ph.D. Committee, 1979-81.  
Faculty Advisor, Student Chapter of American Marketing Association, 1979-82.  
President, SUNY Buffalo Chapter of Beta Gamma Sigma, 1979-80,  
Acting Chairman, Department of Operations Analysis, 1981-1982.  
Chairman, Department of Operations Analysis, 1982-1983.  
MBA Program Chairman, 1986-89, 1995-1999.  
Search Committee for Dean, 1990-1992, 1997-1998.  
Chairman, Personnel Committee, 1992-1994.

### SUNY Buffalo University-Wide

Faculty Senate Executive Committee, 1976-77.  
Graduate School Executive Committee, 1976-77.  
Chairman, Senate Admissions Committee, 1978-80.  
Member, Subcommittee on Implementation of Springer Report, 1979-80.  
Member, University Committee on Operational Processes, 1979-81, and Chairman of this committee's Task Force on Admissions and Records, 1980.  
Supervised a study of perceptions and interests in MFC, which was undertaken as a student project, 1979-80.

Member, Faculty Senate Committee on Millard Fillmore College, 1982.  
Member, Faculty Senate, 1983-85.  
Member, Ad-hoc Committee on Statistics, 1987-89.  
Member, Graduate School Executive Committee, 1990-1992.  
Member, Advisory Board of WBFO (radio station run by the university), 1993-95.  
Performed major market research projects for WBFO, pro bono, 1994-95, 1999.

University of Maryland RH Smith School

Faculty Research Grants Committee 1999-2005.  
Ph.D. Coordinator, Marketing, 1999-2005.

University of Maryland University-Wide

Elected R.H. Smith School representative to the Graduate Council.

University of Texas at Dallas

Faculty Senate 2006-2007  
Ph.D. Program Director, 2007 – 2009  
Ph.D. Coordinator, Marketing, 2007 -  
University Committee on Qualifications, 2008-2009.