

1 Channel 20, in any local market, we must then also include
2 all the other local broadcast stations. We must display
3 them.

4 There is no precedent for this kind of
5 provision, your Honor, because the Copyright Clause power
6 purpose is to protect the property of copyright owners, to
7 be sure, for the benefit of the public, in order to
8 encourage that -- to reward them properly and to encourage
9 the production of good and useful works for the benefit of
10 the public.

11 That is not what is happening here. What is
12 happening, your Honor, is that works that are wanted by the
13 satellite carriers are being used to leverage works that
14 the government wants the satellite carriers to display.
15 That is a perversion of the copyright power. It is not a
16 legitimate use of copyright power.

17 And for the same -- effectively the same
18 reason, your Honor, it also falls independently under the
19 First Amendment, to which --

20 THE COURT: Well, before you go to the First
21 Amendment, let's stay with the Copyright Clause for a
22 second.

23 MR. COOPER: Yes.

24 THE COURT: Section 8 of the Constitution
25 says Congress may have the power, and it talks about an aid

1 to promote the progress of science and useful arts, and
2 then it says, by securing for limited times to authors and
3 inventors the exclusive right to have respective writings
4 and discoveries.

5 "Promote science and useful arts," it seems
6 to indicate they have some -- Congress is in the business
7 of encouraging innovation and encouraging writers as well.

8 MR. COOPER: Yes, that is absolutely right,
9 your Honor.

10 THE COURT: Well, the argument being made
11 here is that this is a proper exercise of the copyright
12 power, because Congress here is encouraging wide
13 dissemination of information, similar to what is stated in
14 the Turner case.

15 MR. COOPER: When, your Honor, what --

16 THE COURT: Being told you can carry more
17 channels, not less, by definition means a wider number,
18 wider quality, doesn't it?

19 MR. COOPER: Well, your Honor, if you're told
20 that you can do that, yes. But if you're told that you
21 must do that, that the satellite carrier must, if it
22 exercises the -- the copyright license to carry any, it
23 must also include that which it does not want to display,
24 your Honor, as I say, there is no -- let me give the Court
25 an example that I think may bring this into a little bit

1 sharper focus. And it is an example that I think applies
2 no less to the copyright power than to the First Amendment
3 analysis that I'll get to in a moment.

4 The Copyright Statute allows for fair use of
5 copyrighted materials. There is a license under the
6 statute itself that Congress has given everybody,
7 newspapers, most obviously, to quote for news and
8 commentary purposes and what have you, copyrighted material
9 in fair use. Teachers can copy copyrighted materials for
10 classroom use.

11 Now, Congress, under their view of the
12 Copyright Clause power, and under the First Amendment,
13 could condition the fair use license on the newspaper or
14 the teachers requirement to carry other things.

15 So, if you quote -- so, if the newspaper
16 quotes President Bush, then the newspaper must also quote
17 former President Clinton.

18 That would be precisely analogous to what Congress has
19 required in the "must carry" provisions of SHVIA.

20 THE COURT: Let's talk about that for a
21 second. The statute does not describe content, does it?

22 Where does it describe the content that must
23 be carried?

24 MR. COOPER: Your Honor, it -- this is a
25 speaker based, and this gets to the issue of the

1 distinction between this case and Turner --

2 THE COURT: No, if you answer my question
3 about the content, where is content in this statute?

4 Where does it say you've got to carry "A"
5 over "B"?

6 Where does it say content?

7 MR. COOPER: Your Honor, it says if you carry
8 any local station, you must carry all the local stations.
9 And if there is one thing that's clear --

10 THE COURT: Wait a minute. "Stations" is not
11 the same as saying "content." When I think of content --
12 and I think this is in Turner, the Court talks about
13 content being a message.

14 One of the questions the Court has to
15 determine is what -- whether there is some particular
16 message here that is favored over the other. Is there any
17 reference to ideas or views in the statute?

18 MR. COOPER: No, your Honor, there is not.
19 And if I may say why that just doesn't matter one bit --

20 THE COURT: Okay. Okay.

21 MR. COOPER: -- the Constitution protects not
22 just content-based distinctions required by the government,
23 but it protects against speaker-based distinctions as well.

24 THE COURT: Absolutely.

25 MR. COOPER: And the statute does clearly

1 make its "must carry" provision dependent upon the
2 satellite carrier's selection of a particular speaker, of
3 any local broadcast speaker, if a speaker is selected.

4 And in this case, your Honor, I should say,
5 it is clear from the -- from the entire purpose of SHVIA,
6 and it's clear also from the legislative history of SHVIA,
7 that Congress' purpose was to insure, as we have heard
8 defendants already make known to the Court, and as their
9 briefs make a clean breast of, it was to insure that
10 independent local broadcast stations be carried over
11 satellite carriers.

12 It wasn't to protect network affiliated
13 stations. The network affiliated stations, they knew, we
14 would cherry pick. There is no doubt about that. That's
15 common ground, that we would exercise our editorial
16 discretion under the First Amendment, I should say, to
17 cherry pick.

18 So, Congress' purpose here was to attach a
19 burden to our -- our decision to select a speaker by
20 requiring us to also transmit the speech of speakers that
21 we didn't want.

22 THE COURT: That was the First Amendment
23 argument. What standard of review do you think is
24 applicable here?

25 And I think in your brief you argue for

1 stricture. In the end, the question I have has to do with
2 where the statute on its face selects a particular message
3 or prefers a particular speaker.

4 I think that the idea that a channel -- they
5 provide a channel, the Bowling Channel, the Golf Channel,
6 there are hundreds of them. I'm having trouble with the
7 idea that by requiring carrying a channel, that Congress is
8 somehow selecting a speaker.

9 MR. COOPER: Your Honor, each channel is a
10 speaker. I have no doubt that my friends --

11 THE COURT: By that, I mean in terms of the
12 message here, you seem to be saying that they prefer
13 independent local broadcasters over networks, and that this
14 is not an appropriate exercise of Congress' judgment, where
15 they -- where Congress claims that its purpose is to
16 promote free television and wide dissemination of
17 information.

18 MR. COOPER: Your Honor, I would just
19 reiterate that point number one is, it doesn't matter what
20 the message is, if Congress distinguishes and discriminates
21 with respect to speakers. The Constitution protects no
22 less our discretion to select a speaker, regardless of what
23 the speaker might say.

24 Congress couldn't say that if you select a
25 local religious station, any religious station, you must

1 also select, you must also carry all other religious
2 stations. That would be at least viewpoint neutral, and
3 Congress clearly couldn't do that.

4 In this context, your Honor, it is -- it just
5 doesn't matter that it -- that Congress was indifferent to
6 what the speaker that we selected would say. It still
7 requires strict scrutiny. Speaker-based distinctions
8 require strict scrutiny.

9 Rosenburger and a number of cases recognize
10 that, that they are no less subject to heightened strict
11 scrutiny under the Fifth Amendment than is a palpable
12 content-based.

13 But my second point, your Honor, is this:
14 This is content-based, because there is no doubt that there
15 is a particular message that Congress wants to make sure
16 that satellite carriers display.

17 It is the unpopular message that would not
18 warrant, in the market place, the satellite carriers to
19 give up a channel for, as against the popular messages that
20 the satellite carriers will supply to their subscribers and
21 their consumers. So, your Honor, it is quite definitely
22 content-based. It's based upon the popularity of the
23 message.

24 THE COURT: But where is the coercion here?

25 What does the government force here on

1 satellite broadcasters?

2 Everyone agrees that this is a license that
3 is available. You don't have to participate in this
4 license if you choose not to.

5 And indeed, there is no right to broadcast
6 copyrighted works of others, is there?

7 MR. COOPER: Your Honor, that question does
8 come to the heart of this dispute. Precisely.
9 And your Honor, as you have earlier noted in your
10 discussions with my friends for the defendants, this is an
11 unconstitutional -- we say this is an unconstitutional
12 conditions case.

13 And your Honor, that doctrine is premised on
14 the notion that the individual has a choice, has an option,
15 doesn't have to accept the benefit from the government, but
16 if that individual does accept the benefit, it must also
17 accept the burden.

18 And your Honor, I want -- if the Court will
19 bear with me, I want to actually share the language that I
20 believe -- from the Supreme Court that addresses every
21 central point that the defendants have made in their briefs
22 and to the Court.

23 Your Honor, it's from our brief at page 18,
24 and it's from Perry against Cinderman, and it captures the
25 Unconstitutional Condition Doctrine:

1 For at least a quarter century, this
2 Court has made clear that even though a person
3 has no right to a valuable government benefit,
4 and even though the government may deny him the
5 benefit for any number of reasons, there are some
6 reasons upon which the government may not rely --
7 let me interrupt. I have more to share, but the point is,
8 they're right. We don't have a right to carry copyrighted
9 speech. That is not a right that we have. And the
10 statutory license that SHVIA creates does give us that
11 right, but it's at a cost.

12 It may not deny --
13 again from Perry:

14 Government may not deny a benefit to a
15 person on a basis that infringes his
16 constitutionally protected interest, especially
17 his interest in freedom of speech. For if the
18 government could deny a benefit to a person
19 because of his constitutionally protected speech
20 or associations, his exercise of those freedoms
21 would, in effect, be penalized and inhibited.
22 This would allow the government to produce a
23 result which it could not command directly.

24 THE COURT: Is this the case involving the
25 teacher who was discharged because he complained about the

1 administration?

2 Is this --

3 MR. COOPER: Yes, your Honor.

4 THE COURT: That's not this situation, is it?

5 We're not talking about the government
6 deciding to punish someone because they've exercised their
7 First Amendment rights here. We are talking about whether
8 a broadcaster can or should take advantage of a license.
9 And a license, by definition, is the privilege to use the
10 right of another.

11 I am trying to determine how there's coercion
12 here by the government forcing the broadcasters to do
13 anything, such that I even need to reach the First
14 Amendment question.

15 Do I have to reach it here?

16 MR. COOPER: Your Honor, there is only the
17 coercion that flows from conditioning the benefit. It is
18 the benefit that the government uses to essentially coerce
19 acceptance of the condition.

20 And yes, the -- all of the constitutional
21 conditions cases recognize that you don't have to take the
22 money. Let's --

23 THE COURT: Well --

24 MR. COOPER: You don't have to take the
25 benefit.

1 THE COURT: Well, help me distinguish Turner,
2 because in Turner the cable operators were forced to carry
3 everything. And that withstood this First Amendment issue
4 here.

5 And here, you're not required to take
6 everything. You're only required to take -- partake of all
7 the local channels in the particular locations that you
8 select, and you're not required to select every location in
9 the country. Why is this governed by Turner 1?

10 MR. COOPER: Your Honor, Turner 1 was not a
11 constitutional condition case. It's certainly true that it
12 was not -- at issue in Turner 1 was a mandate. It did not
13 condition a government license on the agreement to accept a
14 government requirement. That was -- the Turner case is not
15 at all in the line of this case.

16 And just to address your specific question
17 about Turner, your Honor, the central flaw in this case
18 gets back to what -- and the reason it is distinguishable
19 from Turner -- gets back to what I was previously
20 discussing, that in this case, your Honor, the requirement
21 to carry additional stations that the satellite carrier
22 does not want to carry is triggered by a First Amendment
23 exercise. It is a condition based upon the satellite
24 carrier's decision to display the speech of a speaker.
25 And that is its constitutional flaw, your Honor.

1 THE COURT: You're saying that for -- for
2 example, if this were a newspaper case, that Congress could
3 not condition a grant of a copyright license to a newspaper
4 on the requirement that the newspaper editor select a
5 government price list for inclusion in the newspaper?

6 MR. COOPER: Precisely, your Honor. It's
7 precisely -- it's precisely on point. And we know that the
8 government couldn't do that from the Supreme Court's
9 decided cases.

10 What we are submitting, respectfully, to the
11 Court is that the government couldn't do that with respect
12 to my friend's clients, the local broadcast stations, who
13 themselves every day cherry pick that which will go into
14 their program day.

15 They decide this will go in and this will go
16 out, and that is at the essence of what they do. That
17 editorial discretion is at the very essence of the First
18 Amendment. And the same is true of us.

19 If Turner doesn't do anything else that we
20 agree on, I assume we will recognize that cable carriers
21 have First Amendment rights that must be protected. They
22 are speakers. It is no less true of us. We are speakers,
23 just like cable companies, just like newspaper.

24 And in this particular respect, the editorial
25 discretion, it is what we all three are about. Local

1 broadcasters, newspapers and satellite carriers, they are
2 all three about, at their core, selecting and refusing to
3 select, deciding what will be said and what will be not
4 said, no less than a parade organizer in Hurley.

5 Deciding what will not be said is no less
6 constitutionally protected than deciding what will be said,
7 your Honor. And that's the key problem.

8 THE COURT: Well, I understand that's your
9 rationale and I understand that argument. I think that the
10 difficulty I have -- and I think that you've addressed that
11 in your brief, and I think you've addressed here in
12 court -- is that unlike Turner, there is no force here, and
13 you're saying that if Congress is going to grant this
14 limited statutory license, they not burden it with a
15 condition that impinges upon your First Amendment right.

16 The complexity as it relates to so-called
17 First Amendment questions is: Well, does it really
18 implicate your First Amendment rights, to the extent it
19 requires you to choose a particular message? That's the
20 first question.

21 And then second: Does it do so in ways that
22 would not survive intermediate scrutiny if you were to
23 accept the -- both sides have cited to me from the
24 legislative history and the purposes of the statute, and
25 that is the purpose being to afford and to promote free

1 television, and to promote wide dissemination of ideas.

2 Isn't that provided for in this statute?

3 MR. COOPER: Your Honor, it is provided for
4 to the extent that, yes, the government has said if you
5 carry the -- on your -- your medium of communication, your
6 First Amendment vehicle, the speech that you want to carry,
7 you must also carry the speech that the government wants
8 you to carry.

9 THE COURT: If you want the license.

10 MR. COOPER: Yes, if you want the license.

11 THE COURT: If you don't want the license,
12 you can negotiate with whoever you want.

13 MR. COOPER: You certainly can, and that's
14 the condition. That's the unconstitutional condition.

15 THE COURT: No, you have choice. You have
16 choice here.

17 MR. COOPER: In every unconstitutional
18 condition case, the teacher in Perry, the League of Women
19 Voters and Pacifica. In FCC versus League of Women Voters,
20 had a choice. They didn't have to take the money, the
21 federal funding. But if they did take the federal funding,
22 they couldn't editorialize. And the Supreme Court said you
23 can't do that. They had a choice. Nobody forced the money
24 down Pacifica's throat.

25 THE COURT: You see, the problem I'm having

1 again -- and this is -- let's go to the technology
2 argument. You criticize and you say we should not apply
3 Red Lion here. And I think that as it relates to 12(b)(6),
4 that I have to accept your well-pled allegations as true
5 about the technology limitations.

6 If there are technology limitations on the
7 availability of satellite space, then why wouldn't Red Lion
8 apply here, and a relaxed standard of scrutiny be
9 applicable?

10 (Pause)

11 THE COURT: If Red Lion talks about there
12 being technology limits as being a reason to afford a
13 relaxed standard of scrutiny, and you say that there is a
14 limited space availability to satellite broadcasters, why
15 shouldn't Red Lion apply here?

16 MR. COOPER: I'm sorry. I'm with you now.

17 Your Honor, counsel for, I guess the public's,
18 has advanced the Red Lion point, and he relies upon the
19 D.C. Circuit case which did, indeed, apply Red Lion.

20 We have two points to make in response to
21 that. One is Judge Williams' dissent from denial of
22 rehearing en banc, along, I believe, with four other
23 judges, which we submit to the Court is the sound analysis
24 as to why that is not the case.

25 The so called scarcity rationale simply does

1 not apply with the same force and factual substance as it
2 does with respect to broadcast.

3 But the real point is, if Red Lion were ever
4 challenged in the Supreme Court today, there seems to be no
5 doubt how that case could come out. And in the Fourth
6 Circuit, your Honor, in a case that we have cited to the
7 Court called Chesapeake and Potomac Telephone against the
8 United States, in 1994, which did not apply to a -- to a
9 satellite case, excuse me, to a common carrier case, a
10 telephone company, the Red Lion standard, but rather,
11 applied instead the intermediate scrutiny standard.

12 But not even the FCC believes, your Honor,
13 that the scarcity rationale continues to justify Red Lion,
14 even with respect to broadcast medium. And throughout
15 their briefs they have attempted to analogize the satellite
16 carriers to the cable companies. And the Court rejected
17 Red Lion with respect to the cable company.

18 THE COURT: Okay.

19 MR. COOPER: Your Honor, I would like to
20 address especially this notion on which all of the
21 defendants rely very heavily, this line of cases I think
22 best exemplified by Russ --

23 THE COURT: I'll ask you to address Russ.

24 MR. COOPER: Yes.

25 THE COURT: Thank you, please.

1 MR. COOPER: Your Honor, in their effort to
2 avoid the Unconstitutional Condition Doctrine, they rely
3 upon this narrow line of cases dealing with federal funding
4 restrictions enacted by Congress under the Congress'
5 spending power.

6 These are spending power cases, your Honor,
7 all of them dealing with federal funds. And the cases hold
8 a simple proposition, one that is completely inapplicable
9 here, and that is, the government is entitled to determine
10 how public money will be spent.

11 Congress is entitled to do that, and is
12 entitled to insist that those public monies will be spent
13 on no purpose other than the ones for which they've been
14 authorized. That's Russ.

15 So, in Russ, Congress was entitled to say, in
16 Title -- in Title 10, the Family Planning Program, that
17 this money will be used for family planning purposes, but
18 not abortion related family planning purposes. It could
19 not be used in connection with that, and Congress was
20 entitled to do that.

21 That didn't visit this kind of a penalty on
22 speech in connection with anything outside the Title 10
23 program. It simply limited the support by the government
24 for abortion related activities within the Title 10
25 program.

1 They say Russ controls in this case, because
2 this principle in this spending power line of cases,
3 federal money line of cases, applies equally when Congress
4 exercises its regulatory power, such as its commerce --
5 excuse me -- it's Copyright Clause power. That is a
6 regulatory power, and that's what's at issue here, not the
7 spending power.

8 We contest their theory that that applies,
9 with a simple construct, and we can dispose of their theory
10 by simply recasting Russ in terms of a regulatory power
11 case.

12 Suppose that the government had conditioned
13 the license for the family planning clinic or the license
14 for the family planning doctor, on the family planning
15 clinic or doctors so-called agreement not to engage in
16 abortion related activity, your Honor. That condition
17 would not last 30 seconds in any Federal Court.

18 It would be plainly unconstitutional, and
19 plainly unconstitutional under the Supreme Court
20 unconstitutional condition cases, even though the doctor
21 and the clinic were perfectly free to say, "We'll just walk
22 away from the license. It's valuable. We would like to
23 have it, but we can't live with that condition, and we're
24 free to do that."

25 No, they would be free to do that, no less

1 than we are free to do what my friends for the defendant
2 say is the only thing available to the satellite carriers.

3 THE COURT: All right.

4 MR. COOPER: Your Honor, all of the cases
5 they rely upon are spending power cases, and all of the
6 regulatory power cases dealing with unconstitutional
7 conditions go my way in Bolatti, in Pacific Gas and
8 Electric.

9 In both of those cases, your Honor, the
10 dissent in those cases accepted the defendant's script.
11 They said:

12 Look, you've got a corporate charter, and
13 in return, or you've got a monopoly license in
14 the case of the utility and Pacific Gas Electric,
15 and if you want it, you'll accept this condition,
16 this condition with respect to Pacific Gas and
17 Electric, where you have to put your
18 philosophical opponents newsletters in your
19 billing envelope.

20 Your Honor, they could have always -- Pacific Gas and
21 Electric, the utility, could have said "no" to monopoly
22 license.

23 You know, there are other cases, well, the
24 Newsrack cases --

25 THE COURT: You don't have to repeat

1 everything in your brief. I think you've addressed that
2 aspect of it for me.

3 If you would briefly address the taking here,
4 what is the taking here?

5 MR. COOPER: Yes, your Honor.

6 Your Honor, it boils down to the proposition
7 that the property that we have is -- is effectively
8 intellectual property, but it's just like real property in
9 that one of the essential sticks in the bundle is the right
10 to exclude.

11 We have the right to exclude those local
12 broadcast stations, those informations, in our programming
13 menu, in our channel capacity, that we don't want. That is
14 a property right, no less than our First Amendment right.

15 Now, the "must carry" provision effectively
16 turns the satellite carriers' programming menu, its channel
17 menu, into the government's bulletin board, the
18 government's bulletin board to insist upon the carriage of
19 the messages, whether they be content based insistence or
20 not, insist upon messages that the government believes
21 should be carried, despite the fact that the satellite
22 carriers believe they should not be -- they should not be
23 carried.

24 And your Honor, the Unconstitutional
25 Condition Doctrine applies no less to our property, and

1 real property, than it does to First Amendment rights.
2 As the Noland case, which we've discussed in our brief, and
3 I know the Court is well familiar with, and the Doland
4 case, both of which say that the government cannot
5 condition, for example, a zoning approval, a valuable
6 benefit, valuable government benefit, that the land owner
7 has no right to insist on, the government cannot condition
8 that zoning approval to build on beach front property with
9 the requirement that the land owner allow a lateral
10 easement across his beach. Because that is using
11 governmental regulatory power to coerce a concession from
12 the land owner, rather than to protect some particular
13 public interest.

14 And so, your Honor, our takings clause case
15 boils down to a very similar construct to our First
16 Amendment case, and it relies upon Noland and Doland.
17 And beyond that, there is a physical occupation of our
18 channel capacity by this stuff, these local broadcast
19 stations, that we don't want, but the government does.

20 THE COURT: All right.

21 MR. COOPER: Your Honor, there is one -- I
22 think there is one point that -- one of the counsel,
23 perhaps more than one of counsel, for the defendants made
24 that I would like to address --

25 THE COURT: Okay.

1 MR. COOPER: -- if the Court will indulge me
2 just a moment, and that is the construct that they're
3 suggesting to the Court that, which is designed to try to
4 bring this case again within the Russ analysis.

5 They make the point, and I agree with it,
6 that Russ and the other federal spending power cases
7 permitted conditions on discreet programs, so long as the
8 recipient of that federal money was free, outside of the
9 federally funded program, to engage in the protected
10 activity.

11 So, in Russ, the condition only applied to
12 Title 10 family planning. All of the other family planning
13 activity that the recipient did could involve abortion
14 related, because it wasn't supported by federal money. It
15 was outside that program.

16 That is the correct construct, and I think
17 everybody -- everybody has agreed on that. They want to
18 suggest, however, that -- that our markets are analogous to
19 the different programs in Russ, and that's not the case.

20 In other words, they say:

21 Look, if we accept the benefit of
22 statutory license in one market, we're free in
23 the other markets, in the other programs, to
24 exercise our editorial discretion and go out and
25 negotiate deals for these copyright licenses.

1 I've got to mention an aside here. They
2 know, and Congress knew -- and your Honor, the Court, I
3 submit to you, can take judicial notice of the fact -- that
4 this option is theoretical only.

5 The reason we had the statutory license both
6 in cable and in satellite was because it is a virtual, and
7 in all practical respects an impossibility for anyone to
8 negotiate all these copyrights in the free market. Well,
9 that is an aside.

10 They say that each one of these markets is a
11 discreet program, and we can go -- we're not affected by
12 the "must carry" condition in markets that we don't accept
13 the license.

14 Your Honor, each one of our markets is
15 analogous to the Title 10 program in Russ. Each one of
16 them, we have to make the decision whether or not to accept
17 the government beneficial license, statutory copyright
18 license, or reject it. And so we don't have a program
19 outside of each market that we can exercise our editorial
20 discretion.

21 It's just like FCC against the League of
22 Women Voters. The Court will recall that in that case, it
23 was a spending power case, again, that the Supreme Court
24 said that the spending condition, no editorializing by a
25 publicly supported television or radio station, that

1 that -- that condition attached to the federal monies was
2 unconstitutional, an unconstitutional condition, because
3 there was no way outside of the station, the individual
4 station, for the station owner to engage in editorializing.

5 Pacifica had at least -- I think I'm
6 correct -- nine individual stations. Those individual
7 stations, each one, was subject to the federal funding and
8 to the condition. So, there was nowhere for Pacifica to
9 go.

10 The same is true here. Each market is
11 analogous to each station in Pacifica, each satellite or
12 television broadcast market. And for that reason, your
13 Honor, it's an entirely false construct. We can't escape
14 this infringement on our editorial discretion. It will
15 follow us from market to market to market.

16 And your Honor, I appreciate the time that
17 the Court has allowed me to cope with the arguments.

18 THE COURT: You know, it's a very important
19 case. Both sides have briefed this extensively, and a
20 facial challenge to the constitutionality of a statute does
21 deserve additional consideration.

22 I appreciate the thoughtful preparation that
23 both sides have devoted to it. Thank you.

24 MR. COOPER: Thank you very much.

25 THE COURT: I was very generous in the first

1 round. You're going to -- you're speaking for everybody.

2 MR. LOBUE: I'll do that.

3 ARGUMENT BY THE DEFENDANTS/INTERVENORS

4 MR. LOBUE: I would just like to address a
5 couple of points.

6 First, I would like to correct an issue of
7 law that the plaintiff spoke to. And I'm quoting from
8 *Leathers versus Medlock*, the Supreme Court case, which
9 says:

10 The differential burden on speakers is
11 insufficient by itself to raise First Amendment
12 concerns.

13 And in *Turner*, at page 658 of the opinion, *Turner 1*, they
14 go further and they say:

15 Speaker-based laws demand strict scrutiny
16 when they reflect the government's preference for
17 the substance of what the favored speakers have
18 to say or aversion to what the disfavored
19 speakers have to say.

20 So, the fact that this law has some
21 differential impact on different groups of speakers does
22 not, in and of itself, raise any First Amendment issues.
23 Only if it reflects a preference for a particular viewpoint
24 or something of that character does it raise the need for
25 strict scrutiny.

1 Secondly, I want to make clear that this
2 statute is most definitely not designed to insure that
3 independent broadcasters be carried. That is not its
4 purpose. It could not possibly accomplish that purpose.
5 It's simply because if plaintiffs choose not to invoke the
6 license, there is no carriage obligation.

7 It's not -- it's designed to make sure that
8 the statutory licensing scheme does not have an adverse
9 impact upon independent broadcasters or any other
10 broadcasters, in that circumstance where they do invoke the
11 license, to carry half the stations, and the other half are
12 left out in the cold, that's what this statute is concerned
13 with.

14 THE COURT: All right.

15 MR. LOBUE: On the question of whether they
16 can exercise editorial discretion outside the scope of the
17 program, I just want to make clear here that plaintiffs
18 obviously have the alternative of exercising editorial
19 discretion in markets where the license is not even
20 invoked.

21 But even in markets where it is invoked,
22 whatever message they wish to get across, they can carry
23 any channels they wish, over and above the local broadcast
24 stations, to get whatever message across that they wish to
25 get across by exercising the editorial discretion. The

1 obligation here applies in a very, very limited context.
2 It is not a deprivation of right.

3 THE COURT: Would you respond to his argument
4 that Russ and the spending power cases are not applicable,
5 and why should I apply them here?

6 MR. LOBUE: I think, your Honor, they rely
7 upon an employment case, Perry versus Cinderman, for that
8 proposition.

9 We, in our brief, cited Connick versus
10 Meyers, which is a subsequent employment case, which makes
11 clear that an employee may be fired for criticizing his
12 supervisor.

13 A person who is not an employee cannot be --
14 the government can take no adverse action against him,
15 simply for criticizing the government official. The
16 ability to limit speech in that circumstance is tied in to
17 their acceptance of a position.

18 Secondly, I would point to Cornelius, which
19 is a case involving the combined federal campaign and
20 whether charities would have the opportunity to
21 participate, in effect to solicit from federal employees,
22 solicit contributions.

23 In Cornelius, there was a limitation imposed
24 by the government. They were not prepared to allow those
25 groups that attempted to influence legislation to

1 participate in the combined federal campaign. The Supreme
2 Court upheld that restriction on basically the same
3 grounds. Participation is voluntary.

4 This is not a restriction on the speech.
5 They're free to attempt to influence legislation, but this
6 particular benefit was a benefit package for a different
7 group of recipients, those that did not attempt to
8 influence legislation, and upheld that requirement.
9 That is not a pending clause case, and neither is Connick
10 versus Meyers.

11 Thank you, your Honor.

12 THE COURT: Well, I believe you all have
13 briefed this as extensively as you're going to, and now my
14 task is to digest your very well-prepared briefs and give
15 the matter greater reflection. And I will render a ruling
16 in due course, and that means that you'll receive it as
17 soon as I'm able to render it.

18 And please don't call chambers asking when
19 that will be. It may be within the next 60 to 90 days.

20 Thank you. Thank you again for the quality
21 of your preparation. We're in recess.

22 (Court recessed at 12:54 p.m.)

23 ---

CERTIFICATE OF REPORTER

1
2
3
4 I, Renecia Wilson, an official court reporter
5 for the United State District Court of Virginia, Alexandria
6 Division, do hereby certify that I reported by machine
7 shorthand, in my official capacity, the proceedings had
8 upon the motions hearing in the case of SATELLITE
9 BROADCASTING & COMMUNICATIONS ASSOCIATION OF AMERICA, et
10 al., v. FEDERAL COMMUNICATIONS COMMISSION, et al.

11 I further certify that I was authorized and
12 did report by stenotype the proceedings and evidence in
13 said motions hearing, and that the foregoing pages,
14 numbered 1 to 65, inclusive, constitute the official
15 transcript of said proceedings as taken from my shorthand
16 notes.

17 IN WITNESS WHEREOF, I have hereto subscribed
18 my name this 25th day of February, 2001.

19
20 Renecia Wilson
21 Renecia Wilson, RPR/CP
22 Official Court Reporter
23
24
25

RECEIVED

JUL 19 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TELQUEST VENTURES, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

Case No. 01-1384

REPLY OF DIRECTV, INC.

Pursuant to Rule 27(a)(4) of the Federal Rules of Appellate Procedure, DIRECTV, Inc. ("DIRECTV") hereby replies to the October 10, 2001 Response ("TelQuest Response") of TelQuest Ventures, Inc. ("TelQuest").

TelQuest has argued that DIRECTV's motion for leave to intervene in this appeal should be denied because DIRECTV allegedly has not demonstrated the likelihood of an imminent, concrete and particularized injury sufficient to constitute "injury in fact" for purposes of Communications Act and Article III standing requirements. See TelQuest Response; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992); see also *City of Cleveland v. Nuclear Regulatory Comm'n*, 17 F.3d 1515 (D.C. Cir. 1994) (movant for leave to intervene must have Article III standing). That argument is nonsense.

DIRECTV is one of two direct broadcast satellite ("DBS") operators in the United States that competes in the market for multichannel video programming distribution. It is difficult to imagine any entity with a more tangible, direct interest in (i) TelQuest's bid to enter the United States multichannel video programming marketplace as a directly competing satellite provider using a Canadian DBS orbital location, and (ii) the Federal Communications Commission's fair

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and consistent application of its licensing procedures to all actual and potential satellite television providers. DIRECTV plainly has standing to participate as a party in this appeal.

I. COMPETITOR STANDING

In *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 477 (1940), the Supreme Court held that "one likely to be financially injured" by agency action (or in this case, a reversal or modification of agency action) has standing to participate as a party. In *Clarke v. Securities Industry Ass'n*, 479 U.S. 388, 403, 397 & n.13 (1987), the Court similarly recognized that the alteration of competitive conditions has probable economic impact which satisfies Article III "injury-in-fact" standing requirements. See also *Comm. for Effective Cellular Rules v. FCC*, 53 F.3d 1309, 1315-16 (D.C. Cir. 1995); *Investment Company Institute v. FDIC*, 815 F.2d 1540, 1543-44 (D.C. Cir. 1987). It is the potential economic harm suffered by actual and potential competitors that leads courts to accord them "a rather generous attitude toward standing," in order

to enable a competitor to bring to the Commission's attention matters bearing upon the public interest of which the Commission might otherwise be unaware. . . . This assistance to the Commission is permitted not to protect a competitor from competition . . . but because its position qualifies it in a special manner to advance matters bearing upon the public interest.

Broadcast Enterprises, Inc. v. FCC, 390 F.2d 483, 485 (D.C. Cir. 1968) (citations omitted).

Thus, this Court has recognized that competitors' "seemingly unbroken record of success in securing standing to challenge decisions involving agency licensing" stems from the fact that their interests in enforcing licensing barriers are "generally congruent with a statutory purpose to restrict entry," *Panhandle Producers & Royalty Owners Ass'n v. Economic Regulatory Admin.*, 822 F.2d 1105, 1109 (D.C. Cir. 1987) -- here, to licensees whose operations will comport with the Communications Act's licensing requirements and otherwise serve the public interest, convenience and necessity. See 47 U.S.C. § 310.

In this case, the genesis of the FCC proceeding under review was TelQuest's proposal to use transponders on a Canadian satellite to "provide Direct Broadcast Satellite ('DBS') service to the U.S. domestic market and Canada." TelQuest Application, Exhibit 1, at 1 (attached hereto as Exhibit 1). The primary public interest justification that TelQuest provided to the FCC for granting its application was as follows:

The grant of TelQuest's applications will expand the availability of innovative video programming services to more members of the public and at more competitive prices. The competition that TelQuest will bring to the U.S. domestic market will benefit all consumers generally, and residential consumers specifically, by offering the public a greater choice and a more reliable and diversified supply of video programming services with enhanced quality and at lower prices. Such competition will provide the incentive for other DBS operators to offer their services at lower prices resulting in significant cost savings for U.S. consumers, and will spur the development of innovative service and equipment offerings as new competitors attempt to attract new subscribers.

TelQuest Application, Exhibit 1. Similarly, in the Order under review, the Commission noted:

For example, TelQuest argues that granting its earth station application would increase the number of DBS providers in the market, and so increase competition. TelQuest argues further that this increased competition helps to "make service available so far as possible, at reasonable charges," and that, therefore, Section 1 of the Act requires us to grant its application. Similarly, TelQuest maintains that authorizing an additional DBS provider, by itself, would further the public interest, convenience, and necessity, and so Section 309(a) "mandates" us to grant its earth station application. Granting any new earth station license, or any existing licensee authority to operate an additional earth station, would increase the number of licenses providing service, and so would "increase competition."

Order at ¶ 29.

As is abundantly clear from the above, TelQuest's *primary policy justification* for the grant of its earth station application has been that doing so would establish its proposed DBS service as a *direct competitor* to DIRECTV in the United States. In light of its arguments before the FCC, TelQuest's effort to dismiss DIRECTV's concern with the grant of its earth station application as "unduly remote" and too attenuated to establish [DIRECTV's] standing,"

TelQuest Response at 3 (citation omitted), is absurd. Having trumpeted its status as a potential direct competitor to U.S. DBS operators -- and, indeed, relied on this very point as the primary reason for the FCC to grant its application -- TelQuest cannot in the next breath credibly seek to preclude U.S. DBS operators from having competitor standing to advance matters bearing on the TelQuest serious legal and public policy deficiencies surrounding a grant of TelQuest's application, either before the agency or in this Court.¹

Contrary to TelQuest's assertions, *El Paso Natural Gas Co. v. FERC*, 50 F.3d 23 (D.C. Cir. 1995), is completely consistent with this proposition. In *El Paso*, there was no evidence presented either to the FERC or to the Court that established a prospect of competition between the party seeking review of the FERC order at issue and other parties who were subject to the order, which is why the Court deemed the petitioner's allegations of possible competitive injury in the case to be "wholly speculative." *El Paso*, 50 F.3d at 27. That is a far cry from this case, where TelQuest has *repeatedly* asserted on the record that it will compete directly with DIRECTV and other DBS providers in the United States. Furthermore, as this Court explained in *El Paso*, the "nub" of the Court's competitive standing doctrine is "that when a challenged agency action authorizes allegedly illegal transactions that will almost surely cause petitioner to lose business, there is no need to wait from injury from specific transactions to claim standing."

¹ Indeed, the logic of competitor standing is at its most compelling in this case, given the special policy issues involved. Unlike U.S. domestic satellite providers, who typically must obtain both earth station *and* space station licenses to operate a satellite system, TelQuest proposed to enter the United States using a foreign DBS satellite. Thus, while the processing of most earth station applications is fairly routine at the FCC, TelQuest's earth station application has been the only jurisdictional opportunity that private parties and the U.S. government have had to weigh in on the serious substantive legal and policy issues posed by TelQuest's proposed Canadian-based entry into the U.S. multichannel video marketplace. For example, TelQuest's application caused the U.S. Trade Representative, Department of State, Department of Commerce and Department of Justice to weigh in with serious trade and competitive concerns about the entry of Canadian-based DBS service into the U.S. market, although they agreed that, for now, the TelQuest application should be dismissed as premature because Canada had not yet licensed the satellites with which TelQuest's proposed earth station would communicate. See *TelQuest Ventures, LLC*, 11 FCC Rcd 8151, 8152 (FCC Int. Bur. 1996) ("TelQuest Bureau Order").

Id. That is precisely the case here: in the event that the FCC were to reverse its Order in a fashion contrary to the agency's established rules and precedents in order to permit TelQuest access to the U.S. multichannel marketplace, there is no question that DIRECTV would face a significant prospect of competitive injury.²

In this regard, TelQuest also is incorrect to suggest that DIRECTV must wait until TelQuest has actually deployed a licensed DBS system and for consumers to "actually prefer that system to the DBS television service offered by DIRECTV" before it is conferred standing to challenge TelQuest's application. See TelQuest Response at 2-3.³ Confronted with TelQuest's application to provide U.S. DBS service, DIRECTV was and is not required to "wait for injury" while TelQuest gains a license and proceeds to build out a competing system in order to claim standing. *El Paso*, 50 F.3d at 27; the "competitive injury" threatened by an agency action that would authorize an additional direct competitor is enough. See, e.g., *Investment Company Institute*, 815 F.2d at 1543.⁴ Indeed, agency licensing procedures necessarily are prospective in

² TelQuest erroneously states that "DIRECTV cannot present a plausible claim that it would be illegal for the FCC to ultimately conclude that TelQuest's entry into the DBS business would serve the public interest." TelQuest Response at 4 (emphasis in original). Again, TelQuest is wrong. If the FCC had not followed its existing procedures for processing earth station applications (which TelQuest protests), and if the FCC ultimately licenses TelQuest without applying its existing substantive policies regarding communications with foreign satellites, see, e.g., Order at ¶ 27, DIRECTV would certainly have a "plausible" claim that such action was "illegal."

³ TelQuest's emphasis on the lack of progress it has made to date in deploying a DBS system is ironic, since its failure to sufficiently identify the Canadian space station with which it proposed to communicate is the very reason that its application was dismissed. See, e.g., Order at ¶¶ 6-9. Nevertheless, its use of this point to paint DIRECTV allegations of injury as speculative is utterly disingenuous. TelQuest insisted throughout the FCC proceedings below that the public interest benefit of granting its application would be "to increase the number of DBS providers in the market" and thereby offer direct competition to DIRECTV. Order at ¶ 29. For TelQuest to deny that DIRECTV has competitor standing to challenge or defend FCC actions in licensing such competitive DBS services in the United States is ridiculous.

⁴ *Investment Company Institute* held that securities industry petitioners had demonstrated sufficient competitive injury for standing purposes where the FDIC had issued regulations that would allow the entry of additional competitor nonmember banks to enter the securities field. TelQuest seeks to distinguish the case by arguing that it is not certain that TelQuest will ever actually be licensed, and that its entry into the DBS business "would likely be anything but immediate." TelQuest Response at 3 n.4. This assertion is contradicted by

nature, such that "[a]ctual proof of th[e] allegedly threatened effect" of the licensing action cannot "be made prior to actual operation, so that a showing must be allowed by means less than that." *Broadcast Enterprises, Inc.*, 390 F.2d at 485; cf. *JEM Broadcasting Co., Inc. v. FCC*, 22 F.3d 320, 325-26 (D.C. Cir. 1994) (accordng standing to potential as well as actual license applicants). So long as it is sufficiently clear from TelQuest's application that it "has devised plans sufficiently detailed to enable it to compete" with DIRECTV, the Court is not "required to 'engage in undue speculation as a predicate for finding that [DIRECTV] has the requisite personal stake in the controversy.'" *Orange Park Florida T.V., Inc. v. FCC*, 811 F.2d 664, 672 (D.C. Cir. 1987)(quoting *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 262 (1971)).

TelQuest has proposed to enter the United States as a direct competitor to DIRECTV. As the principal party "likely to be injured by the issuance of a license" to TelQuest, *Sanders Bros. Radio Station*, 309 U.S. at 477, DIRECTV clearly has Article III standing as a party in this appeal, and is an "aggrieved" person whose interests "would be adversely affected by any order of the Commission granting" TelQuest's application. 47 U.S.C. § 402(b)(6).

II. DIRECTV HAS STANDING TO ENSURE THAT THE COMMISSION'S EARTH STATION LICENSING PROCEDURES ARE CONSISTENTLY APPLIED

Apart from its standing as a potential direct competitor to TelQuest, DIRECTV also has standing to ensure that the Commission's earth station licensing procedures are consistently applied to all satellite carriers. In this case, the FCC upheld its International Bureau's decision to

TelQuest's own declarations of its competitive intentions before the FCC, and indeed, TelQuest's earth station application was accompanied by the companion application of WTCL, which similarly argued that "prompt authorization would allow it to launch a high power DBS service within six months and *bring immediate competition* to the U.S. DBS market." TelQuest Bureau Order at ¶ 3 (emphasis added). In any event, however, the immediacy of TelQuest's entry into the United States based upon whether or how long the processing of its application takes at the FCC is irrelevant for standing purposes here. This Court does not need to "predict[] the likelihood" that TelQuest "would receive" a license in order to find that DIRECTV has standing to participate in proceedings that affect TelQuest's application. *Orange Park Florida T.V., Inc. v. FCC*, 811 F.2d 664, 672 (D.C. Cir. 1987).

dismiss TelQuest's application without prejudice in part because the Bureau generally does not act on earth station applications "unless the space station with which the earth station intends to operate has been licensed." Order at ¶ 2.⁵

DIRECTV is a satellite carrier that routinely applies for earth station licenses, and is subject to the same policies and procedures applied by the FCC to TelQuest in this case. In *JEM Broadcasting Co., Inc. v. FCC*, a case involving the dismissal of a radio station application pursuant to the FCC's "hard look" broadcast license processing rules, this Court recognized that, "[o]f course, only parties whose license applications actually contain certain errors or omissions will suffer the concrete effects of the [processing] rules, but that does not make the rules any less applicable as a general matter to all potential FCC license applicants." 22 F.3d at 325. Thus, the Court held that "any person or entity within the class affected" by the license processing rules, "i.e., actual or potential license applicants, would have been 'aggrieved' . . . and thus would have standing to challenge the procedural lineage" of the processing rules at issue. *Id.* at 326.

In this case, DIRECTV could be directly and adversely affected by any Commission decision to reverse the determinations it has made in the Order regarding its earth station processing procedures. There is simply no question that DIRECTV has standing to challenge or defend "agency compliance with the statutory licensing procedures in the Communications Act." *Comm. for Effective Cellular Rules v. FCC*, 53 F.3d at 1316.

⁵ The Bureau also did not want to encourage entities to file speculative earth station applications in the hope that grant of a U.S. earth station license would somehow influence the space station licensing decisions of foreign governments. Order at ¶ 2.

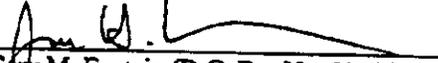
III. CONCLUSION

DIRECTV reiterates its request to intervene as a party in this appeal. The arguments in the TelQuest Response are without merit and should be rejected.⁶

Respectfully submitted,

DIRECTV, Inc.

By:


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Dated: October 22, 2001

⁶ Once again, although DIRECTV plainly has Article III standing to intervene in this appeal, in order to ensure its participation in these proceedings, DIRECTV in the alternative requests to participate as an *amicus curiae* in the event its motion for leave to intervene is denied.

EXHIBIT 1

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EXHIBIT 1

TelQuest Ventures, L.L.C. has entered into a business arrangement with Telesat Canada to use transponders on a high-power satellite to be located at 91°W.L. to provide Direct Broadcast Satellite ("DBS") service to the U.S. domestic market and Canada. The Canadian Minister of Industry has the authority under the Canadian Radiocommunication Act to provide Telesat Canada a radio authorization to operate such a satellite at the Canadian DBS orbital position at 91°W.L. for this purpose and has agreed in principle to provide Telesat Canada with such authorization subject to certain conditions.

TelQuest Ventures, L.L.C. has sought capacity from U.S.-licensed DBS operators for a minimum of twenty-two full-time transponders on one satellite and has determined that such facilities are unavailable due to a shortage of adequate U.S. facilities. The highly concentrated nature of the domestic satellite market, combined with the scarcity of orbital positions from which DBS operators can provide U.S. domestic satellite service, has created a severe shortage of DBS capacity for domestic U.S. service.

The proposed use of Canadian capacity for domestic U.S. service provides a solution to this problem. The use of this Canadian DBS satellite for U.S. domestic service is fully consistent with Commission precedent and international agreements. The Commission historically has allowed the use of foreign satellites where there is a shortage of suitable U.S. domestic capacity¹. The intergovernmental agreement between the U.S. and Canada set out in the 1972 Exchange of Letters provides for the use of capacity on a Canadian satellite to provide service to the U.S. domestic market when there is a shortage of suitable U.S. domestic capacity. There is no dispute that there is a severe shortage of DBS capacity available for domestic U.S. service, and that the additional DBS capacity offered by the Canadian satellite to be located at 91°W.L. can assist in alleviating that shortage.

The grant of TelQuest's applications will expand the availability of innovative video programming services to more members of the public and at more competitive prices. The competition that TelQuest will bring to the U.S. domestic market will benefit all consumers generally, and residential customers specifically, by offering the public a greater choice and a more reliable and diversified supply of video programming services with enhanced quality and at lower prices. Such competition will provide the incentive for other DBS operators to offer their services at lower prices resulting in significant cost savings for U.S. consumers, and will spur the development of innovative service and equipment offerings as new competitors attempt to attract new subscribers.

¹ See e.g., National Broadcasting Co., 9 FCC Rcd 557 (1994); Chevron Industries, 8 FCC Rcd 2726 (1993); GTE Satellite Corporation, 90 FCC2d 1009 (1982), recon. denied, 94 FCC2d 1184, 1196, 1199 (1983); American Satellite Corp., 40 FCC2d 656 (1973).

ES-FCC031309

ES 039 11028

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TELQUEST VENTURES, INC.,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee.

Case No. 01-1384

CERTIFICATE OF SERVICE

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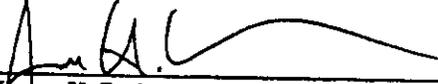
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James H. Barker

Dated: October 22, 2001

RAL EIGH COMPETITIVE REVIEW

Network Programming (AT&T Local)
 ESPN, ESPN2, ESPNNews, TVG, ABC Family, A&E, Cartoon Network, Disney Channel (EAW),
 EWTN, Lifetime, Nickelodeon/Nick at Nite (EAW), TBN, CNBC, CNN, Court TV, C-SPAN, C-SPAN2,
 Headline News, NASA, Weather Channel, A&E, America's Collectables, Beauty and Fashion,
 Comedy Central, E! Entertainment, GEMS, HSN, iShop, Men's Channel, QVC, Sci-Fi Channel, Shop
 at Home, TBS, TNN, TNT, TV Land, USA Network, ShopNBC, Discovery Channel, Food Network,
 HGTV, History Channel, TLC, Travel Channel, CMT, MTV, MTV2, VH-1, BYU, CCCSat, Colours TV,
 EE, Free Speech TV, Good Samaritan Network, HTN, Northern Arizona University, PAEC, PBS You,
 Research TV, RFD-TV, Safety Net, StarNet, University of California, University of Washington,
 WorldNet TV, WTVD-TV (ABC), WRAL-TV (CBS), WRDC-TV (NBC), WRAX-TV (FOX), WLFL-TV
 (WB), WRDC-TV (UPN), WLNC-TV (PBS), WQFT-TV (HD)

Local Channels
 10
 5.97

Network Programming (AT&T Local)
 Includes AT&T Local
 Plus
 AMC, Animal Planet, BBC America, BET, Bravo, CHAMPION, Discovery Health, FX, FOX News
 Channel, Galavision, Game Show Network, IFC, Lifetime Movie Network, MSNBC, MuchMusic USA,
 NOGGIN, PAX-TV, Speed Channel, Tech TV, Toon Disney, Turner South™, Turner Classic Movies,
 Univision, WGN, WE, Women's Entertainment, One Sports Regional Network, CD Music (32)

Local Channels
 10
 5.97

Network Programming (AT&T Local)
 Includes AT100 + Local
 Plus
 Biography, Bloomberg, Boomerang, CHEN, DIY, Discovery Civilization, Discovery Home & Leisure,
 Discovery Kids, Discovery Science, Discovery Wings, Encore Action, Encore Love Stories, Encore
 Mysteries, Encore True Stories, Encore WMA, Encore West, Encore Westerns, FOX Movie Channel,
 FOX Sports World, Golf Channel, Great American Country, Hallmark Channel, History Channel,
 International, Nickelodeon Games & Sports, Outdoor Channel, Outdoor Life, SoapNet, Style, TMC
 Wheel, TMC Xtra West, VH1 Classic, Wisdom Television, Music Channels (18)

Local Channels
 10
 5.97

Network Programming (Time Warner)
 TV Guide Channel, WLFL-TV (WB), WRAL-TV (CBS), UNC-TV (PBS), Home Buyers Channel,
 WRNC-TV (NBC), TBS, WTPT-TV (ND), WDTV-TV (ABC), Community Programming,
 Government Access, WRDC-TV (UPN), WRAX-TV (FOX), Educational Programming, WRAY-TV
 (ND), WAUG-LP (ND), WRFX (PAX), Local Subnet Beams, WGN, Triangle TV/Steak

Local Channels
 10
 5.97

Network Programming (Time Warner)
 Includes Basic Package
 Plus
 USA Network, TNT, A&E, ABC Family, CNN, Discovery, ESPN, ESPN2, Lifetime, MSN, QVC,
 Comedy Central, CNBC, AMC, Learning Channel, TBS, Headline News, Weather Channel,
 Nickelodeon, Court TV, MSNBC, Animal Planet, CHEN, VH1, Sci-Fi, Fox Sports Net, Golf, BET,
 MTV, TV Land, Oxygen, History Channel, Disney, FOX News, C-SPAN, C-SPAN2, WE,
 Women's Entertainment, E! Entertainment, SoapNet, ESPN Classic, Turner Classic Movies,
 CMT, Accuweather, DL, EWTN, Hallmark Channel, Travel Channel, Cartoon Network, HGTV,
 Food Network, Univision, National Geographic

Local Channels
 10
 5.97

Network Programming (Time Warner)
 Includes Standard Package
 Plus
 Discovery Kids, Discovery Science, Discovery Wings, Discovery Health, Discovery Civilization,
 Discovery Home & Leisure, BBC America, C-SPAN, CHEN, NewsWorld International, Tech TV,
 Bloomberg, Ovation, Tru, BET on Jazz, Great American Country, MTV2, MuchMusic USA, VH1
 Classic, ESPN News, FOX Sports World, FOX SportsNet Atlantic, FOX SportsNet Central, FOX
 SportsNet Pacific, Speedvision, Outdoor Channel, America's Store, Game Show Network, Style,
 Lifetime Movie Network, Toon Disney, Disney Channel (EAW), NOGGIN, UNC-TV, UNC-TVHD,
 UNC Kids, UNC Educational, UNC NC C-SPAN, WTVD-HD (ABC), WRNC-HD (NBC), WRAX-
 TVHD (FOX), WRZ-TVSD (FOX), WRAL-TVHD (CBS), WRAL-TVSD (CBS), WRAL DS, WRAL
 HD, Navigator Guide, Music Choice (48)

Local Channels
 10
 5.97

ES 015 10090

Effective 2/02

ES-FCC031557

RALEIGH COMPETITIVE REVIEW

HBO Network Premium Package (1 HD Channel)

HBO The Works (8 HBO Channels - including 1 HD Channel)
 MultiMAX (3 Comcast Channels)
 Showtime Unlimited (7 Showtime - including 1 HD Channel, 2 TMC, Fx, Sundance)
 Starz Super Pak (7 Starz Channels, 1 Encore Channel)

Choice of one premium package	\$11.99
Choice of HBO premium package only	\$13.99
Showtime Unlimited/STARZ Super Pak	\$30.99
HBO The Works/MultiMAX	\$30.99
HBO The Works/Showtime Unlimited	\$22.99
HBO The Works/STARZ Super Pak	\$4.99

Comcast Premium Package (1 HD Channel)

HBO (12 HBO Channels - including 1 HD Channel)
 Comcast (12 Comcast Channels)
 Showtime (12 Channels - including 1 HD Channel)
 Movie Channel (2 Movie Channels)
 Starz (5 Starz Channels)
 Cinema Choice (2 Fx Channels, 2 Sundance Channels, 1 FOX Movie Channel, 1 IFC Channel)
 Encore Movie Pak (8 Encore Channels)

Choice of one premium package	\$11.95
Each additional premium package	\$9.00
Cinema Choice	\$1.95
Encore Movie Pak	\$1.95

*Must have digital access. To get digital access, must have basic and standard.
 Digital access fee is an additional \$3.00.

Digital Plus Package (includes Digital Package plus One Premium Package) \$27.10-\$27.70
Digital Preferred Package (includes Digital Package plus Two Premium Packages) \$62.10-\$67.70
Digital Flex Package (includes Digital Package plus Three Premium Packages) \$87.10-\$72.70

America's Everything Pak

Univision, Galavisión, MTV, FOX Sports World Español, Telemundo, One Latino, Discovery en Español, Mun2, Gran Canal Latino, MTV Espanol, Playboy en Español, SUR, Telemundo Internacional, TV Azteca, TVE Internacional, TV Chile, Music Services (8)

Choice of one premium package	\$11.99
Choice of HBO premium package only	\$13.99
Showtime Unlimited/STARZ Super Pak	\$30.99
HBO The Works/MultiMAX	\$30.99
HBO The Works/Showtime Unlimited	\$22.99
HBO The Works/STARZ Super Pak	\$4.99

Global Premium Package (includes Global Package plus Two Premium Packages)

Discovery Espanol, CNN Espanol, Canal Sur, One Latino, FOX Sports World Espanol, MTV Espanol, Visto Pasa, Pura TV, Mun2

Choice of one premium package	\$11.95
Each additional premium package	\$9.00
Cinema Choice	\$1.95
Encore Movie Pak	\$1.95

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CINCINNATI COMPETITIVE REVIEW

Local Networks Programming (ATM) & Locals:
 ESPN, ESPN2, ESPN3, ABC Family, Angel One, Cartoon Network, Disney Channel (EAW),
 E! Entertainment, Nickelodeon/Nick at Nite (EAW), TBN, CNBC, CNN, Court TV, C-SPAN, C-SPAN2,
 Headline News, NASA, Weather Channel, A&E, America's Collectables, Beauty and Fashion,
 Comedy Central, E! Entertainment, GEMS, HSN, Shopp. Jen's Channel, QVC, Sci-Fi Channel, Shop
 at Home, TBS, TNT, TMT, TV Land, USA Network, ShopNBC, Discovery Channel, Food Network,
 HGTV, History Channel, TLC, Travel Channel, CMT, MTV, MTV2, VH-1, BYU, CCCS, Cokus TV,
 EE, Free Speech TV, Good Samaritan Network, HITN, Northern Arizona University, PAEC, PBS You,
 Research TV, REDTV, Safety Net, StarNet, University of California, University of Washington,
 WorldLink TV, WCPO (ABC), WLWT (NBC), WKRC (CBS), WXIX (Fox)

TOTAL CHANNELS COST: \$15.00

Local Networks Programming (ATM) & Locals:
 Includes AT&T + Locals

Plus
 AMC, Animal Planet, BBC America, BET, Bravo, CNN/FM/CNN, Discovery Health, FX, FOX News
 Channel, Galavision, Game Show Network, IFC, Lifetime Movie Network, MSNBC, MuchMusic USA,
 ROGGRN, PAXTV, Speed Channel, Tech TV, Toon Disney, Turner South*, Turner Classic Movies,
 Univision, WGN, WE, Women's Entertainment, One Sports Regional Network, CD Music (32)

TOTAL CHANNELS COST: \$17.50

Local Networks Programming (ATM) & Locals:
 Includes AT&T + Locals

Plus
 Biography, Bloomberg, Boomerang, CNN, DTV, Discovery Civilization, Discovery Home & Leisure,
 Discovery Kids, Discovery Science, Discovery Wings, Encore Action, Encore Law & Justice, Encore
 Mystery, Encore True Stories, Encore WAM, Encore West, Encore Westerns, FOX Movie Channel,
 FOX Sports World, Golf Channel, Great American Country, Hallmark Channel, History Channel,
 International, Nickelodeon Games & Sports, Outdoor Channel, Outdoor Life, SoapNet, Style, TMC
 West, TMC Xtra West, VH1 Classic, Wisdom Television, Music Channels (19)

TOTAL CHANNELS COST: \$48.00

Local Networks Programming (ATM) & Locals:
 Commercial, WXIX (Fox), Customer Info, C-SPAN, WLWT (NBC), WCPO (ABC), WCET (PBS),
 C-SPAN2, WGN, WSTR (WB), Weather Radar, WKRC (CBS), WPTO (PBS), Customer
 Info/Community, WPTD (PBS), ITV/CNN/NI, ITV/Customer Information, ITV/Commerical,
 ITV/Commercial/UPN, WCVN (PBS), TBN, EWTN, TV Guide

TOTAL CHANNELS COST: \$15.00

Local Networks Programming (ATM) & Locals:
 Includes Lifetime Service

Plus
 Shop NBC, Animal Planet, Cartoon Network, Nickelodeon, Court TV, ESPN, ESPN2,
 E! Entertainment, USA, BET, MTV, GAC, Lifetime, Fox Family, A&E, CNBC, Weather Channel,
 FX, Fox Sports Net Ohio, TLC, VH-1, AMC, TNN, HGTV, MSNBC, Comedy Central, TNT, Sci-Fi
 Channel, Discovery Channel, CNN, Headline News, Fox News, TBS, PAX, Travel Channel, HSN,
 QVC, Food Network, The History Channel, T-Chart, Golf Channel, TV Land, SoapNet, Oxygen, WE,
 Bravo, Disney, National Geographic, Sports Preview

TOTAL CHANNELS COST: \$17.50

Local Networks Programming (ATM) & Locals:
 Includes Lifetime and Standard Services

Plus
 Discovery Science, Discovery Wings, Discovery Kids, CNN, Ohio News Network, Classic
 Sports, Speedvision, ESPN News, Outdoor, CNN, The Health Network, Discovery Health, BET
 Jazz, Style, Hispanic Television Network, Fox Sports Net Ohio, Ovation, Toon Disney, Game
 Show, BBC America, Lifetime Movies, TechTV, MTV2, Noggin, C-SPAN2, Tru, Newsworld,
 MuchMusic, Hallmark, Bloomberg, Word Networks, TBN, VH-1 Classics, DIY, CD Music (40)

TOTAL CHANNELS COST: \$48.00

CINCINNATI COMPETITIVE REVIEW

<p>OPTION 1: Premium Services (Plus the \$9.99 digital cost) Includes: Multi-screens of HBO, Cinemax, Showtime, and The Movie Channel Choose any one multiplex premium Choose any two multiplex premium Choose any three multiplex premium Choose all four multiplex premium</p>	<p>OPTION 2: Premium Packages HBO The Works (8 HBO Channels - including 1 HD Channel) Showtime Unlimited (7 Showtime - including 1 HD Channel, 2 TMC, Flix, Sundance) Starz Super Pak (7 Starz Channels, 1 Encore Channel)</p>
<p>Digital Movie Fee (Plus the \$9.99 digital cost) Includes 16 additional movie channels Encore, Love Stories, Westerns, True Stories, WAM, Mystery, Action, Fox Movie Channel, Sundance, IFC</p>	<p>Choice of one premium package Choice of HBO premium package only Showtime Unlimited/STARZ Super Pak HBO The Works/MultiMAX HBO The Works/Showtime Unlimited HBO The Works/STARZ Super Pak Encore Movie Pak</p>
<p>OPTION 3: Premium Packages Includes: Multi-screens of HBO, Cinemax, Showtime, and The Movie Channel Choose any one multiplex premium Choose any two multiplex premium Choose any three multiplex premium Choose all four multiplex premium</p>	<p>OPTION 4: Premium Packages Includes: Multi-screens of HBO, Cinemax, Showtime, and The Movie Channel Choose any one multiplex premium Choose any two multiplex premium Choose any three multiplex premium Choose all four multiplex premium</p>
<p>OPTION 5: Premium Packages Includes: Multi-screens of HBO, Cinemax, Showtime, and The Movie Channel Choose any one multiplex premium Choose any two multiplex premium Choose any three multiplex premium Choose all four multiplex premium</p>	<p>OPTION 6: Premium Packages Includes: Multi-screens of HBO, Cinemax, Showtime, and The Movie Channel Choose any one multiplex premium Choose any two multiplex premium Choose any three multiplex premium Choose all four multiplex premium</p>
<p>OPTION 7: Premium Packages Includes: Multi-screens of HBO, Cinemax, Showtime, and The Movie Channel Choose any one multiplex premium Choose any two multiplex premium Choose any three multiplex premium Choose all four multiplex premium</p>	<p>OPTION 8: Premium Packages Includes: Multi-screens of HBO, Cinemax, Showtime, and The Movie Channel Choose any one multiplex premium Choose any two multiplex premium Choose any three multiplex premium Choose all four multiplex premium</p>
<p>OPTION 9: Premium Packages Includes: Multi-screens of HBO, Cinemax, Showtime, and The Movie Channel Choose any one multiplex premium Choose any two multiplex premium Choose any three multiplex premium Choose all four multiplex premium</p>	<p>OPTION 10: Premium Packages Includes: Multi-screens of HBO, Cinemax, Showtime, and The Movie Channel Choose any one multiplex premium Choose any two multiplex premium Choose any three multiplex premium Choose all four multiplex premium</p>

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Effective 2002

Memo

Date: 2/19/2002
To: Michael Schwimmer
Cc: Angela Borrillo, Eric Sahl
From: Laura Danyliw
RE: Competitive Analysis – 6 Requested Markets

Michael-

Per your request, attached is the Competitive Analysis for the following:

Major Markets:

- Chicago (AT&T)
- San Diego (Cox)
- Philadelphia (Comcast)

Mid-Tier Markets

- Grand Rapids
- Cincinnati
- Raleigh-Durham

Please let me know if you have any questions.

10/9/2000

Confidential

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ES 015 10096

CINCINNATI COMPETITIVE REVIEW

Time Warner - Lifestyle Service
 Commercial, WXXI (Fox) Customer Info., C-SPAN, WLWT (NBC), WCPO (ABC), WCET (PBS), C-SPAN2, WGN, WSTR (WB), Weather Radar, WGRG (CBS), WPTO (PBS), Customer Info/Community, WPTD (PBS), ITV/CHNSI, ITV/Customer Information, ITV/Commercials, ITV/ConnecticutUPN, WCVN (PBS), TBN, EWTN, TV Guide

TOTAL CHANNELS COST

Digital Network Programming (ATN) - Local
 ESPN, ESPN2, ESPN News, TVG, ABC Family, Angel One, Cartoon Network, Disney Channel (EAW), EWTN, Lifetime, Nickelodeon/Nick at Nite (EAW), TBN, CNBC, CNN, Court TV, C-SPAN, C-SPAN2, Headline News, NASA, Weather Channel, A&E, America's Collectibles, Beauty and Fashion, Comedy Central, E! Entertainment, GEMS, HSN, iShop, Merri's Channel, QVC, Sci-Fi Channel, Shop at Home, TBS, TNN, TNT, TV Land, USA Network, ShopNBC, Discovery Channel, Food Network, HGTV, History Channel, TLC, Travel Channel, GMT, MTV, MTV2, VH-1, BYU, CCOSat, Coburn TV, EE, Free Speech TV, Good Samaritan Network, HITN, Northern Arizona University, PAEC, PBS You, Research TV, RFD/TV, Safety Net, StarNet, University of California, University of Washington, WorldLink TV, WCPO (ABC), WLWT (NBC), WRGC (CBS), WXXI (Fox), WSTR (WB), WCET (PBS)

TOTAL CHANNELS COST

Time Warner - Standard Service
 Includes Lifetime Service
 Plus
 Shop NBC, Animal Planet, Cartoon Network, Nickelodeon, Court TV, ESPN, ESPN2, E! Entertainment, USA, BET, MTV, QVC, Lifetime, Fox Family, A&E, CNBC, Weather Channel, FX, Fox Sports World, TLC, VH-1, AMC, TNN, HGTV, MSNBC, Comedy Central, TNT, Sci-Fi Channel, Discovery Channel, CNN, Headline News, Fox News, TBS, PAX, Travel Channel, MSN, QVC, Food Network, The History Channel, TOM, Golf Channel, TV Land, SoapNet, Oxygen, WE: Women's Entertainment, Bravo, Disney, National Geographic, Sneak Preview

TOTAL CHANNELS COST

Dish Network Programming (AT 448)
 Includes AT 100 - Local
 Plus
 AMC, Animal Planet, BBC America, BET, Bravo, CNN/FN/CNNM, Discovery Health, FX, FOX News Channel, Galavision, Game Show Network, IFC, Lifetime Movie Network, MSNBC, MuchMusic USA, NOGGIN, PAXTV, Speed Channel, Tech TV, Toon Disney, Turner Classic Movies, Univision, WGN, WE: Women's Entertainment, One Sports Regional Network, CD Music (32)

TOTAL CHANNELS COST

Time Warner - Digital Service
 Includes Lifetime and Standard Service
 Plus
 Discovery Science, Discovery Wings, Discovery HDs, CNNfn, Ohio News Network, ESPN Classic, Speed Channel, ESPN News, Outdoor Channel, CHNSI, The Health Network, Discovery Health, BET Jazz, Style, Hispanic Television Network, Fox Sports Net Ohio, Ovalton, Toon Disney, Game Show, BBC America, Lifetime Movies, TechTV, MTV2, Noggin, C-SPAN2, Tru, NewsWorld, MuchMusic, Hallmark, Bloomberg, Word Network, TBN, VH-1 Classics, DIY, CD Music (40)

TOTAL CHANNELS COST

Dish Network Programming (AT 100)
 Includes AT 100 - Local
 Plus
 Biography, Bloomberg, Bloomberg, CHNSI, DIY, Discovery Civilization, Discovery Home & Leisure, Discovery HDs, Discovery Science, Discovery Wings, Encore Action, Encore Love Stories, Encore Mysteries, Encore True Stories, Encore WAM, Encore West, Encore Westerns, FOX Movie Channel, FOX Sports World, Golf Channel, Great American Country, Hallmark Channel, History Channel, International, Nickelodeon Games & Sports, Outdoor Channel, Outdoor Life, SoapNet, Style, TMC West, TMC Xtra West, VH1 Classic, Western Television, Music Channels (10)

TOTAL CHANNELS COST

Effective 2002
 Revised 2/1/02

CINCINNATI COMPETITIVE REVIEW

<p>Digital Services (plus the Starz digital cost)</p>	<p>Digital Services (plus the Starz digital cost)</p>
<p>HBO (14 HBO Channels) Cinemax (8 Cinemax Channels) Showtime (10 Showtime Channels) Movie Channel (4 Movie Channels) Starz (10 Starz Channels)</p> <p>Choose any one multiple premium Choose any two multiple premiums Choose any three multiple premiums Choose all four multiple premiums</p>	<p>HBO (14 HBO Channels) Cinemax (8 Cinemax Channels) Showtime (10 Showtime Channels) Movie Channel (4 Movie Channels) Starz (10 Starz Channels)</p> <p>Choose any one multiple premium Choose any two multiple premiums Choose any three multiple premiums Choose all four multiple premiums</p>
<p>Digital Movie Tier (plus the \$6.00 digital cost) Includes 14 additional movie channels Encore (EAW), Love Stories (EAW), Westerns (EAW), True Stories (EAW), WAM, Mystery (EAW), Action (EAW), Fox Movie Channel, Sundance, iFC</p>	<p>Digital Movie Tier (plus the \$6.00 digital cost) Includes 14 additional movie channels Encore (EAW), Love Stories (EAW), Westerns (EAW), True Stories (EAW), WAM, Mystery (EAW), Action (EAW), Fox Movie Channel, Sundance, iFC</p>
<p>Showtime Premium (includes Lifetime, Signature, Digital, and HBO, Showtime, Cinemax and Movie Channel Premium Packages)</p>	<p>Showtime Premium (includes Lifetime, Signature, Digital, and HBO, Showtime, Cinemax and Movie Channel Premium Packages)</p>
<p>No 3 to card list</p>	<p>No 3 to card list</p>
<p>No packages listed</p>	<p>No packages listed</p>
<p>Digital Services Premium Packages</p>	<p>Digital Services Premium Packages</p>
<p>HBO The Works (8 HBO Channels) MustiMAX (3 Cinemax Channels) Showtime Unlimited (7 Showtime - including 1 HD Channel) Starz Super Pak (7 Starz Channels, 1 Encore Channel)</p> <p>Choice of one premium package Choice of HBO premium package only Showtime Unlimited/STARZ Super Pak HBO The Works/MustMAX HBO The Works/Showtime Unlimited HBO The Works/STARZ Super Pak Encore Movie Pak</p>	<p>HBO The Works (8 HBO Channels) MustiMAX (3 Cinemax Channels) Showtime Unlimited (7 Showtime - including 1 HD Channel) Starz Super Pak (7 Starz Channels, 1 Encore Channel)</p> <p>Choice of one premium package Choice of HBO premium package only Showtime Unlimited/STARZ Super Pak HBO The Works/MustMAX HBO The Works/Showtime Unlimited HBO The Works/STARZ Super Pak Encore Movie Pak</p>
<p>A la Carte</p>	<p>A la Carte</p>
<p>America's Everything Pak 3 Locals</p>	<p>America's Everything Pak 3 Locals</p>
<p>Digital/Lite</p>	<p>Digital/Lite</p>
<p>Univision, Galavisión, MTV, FOX Sports World Español, Telemundo, Cine Latino, Discovery en Español, Mun2, Gran Canal Latino, MTV Español, Playboy en Español, SUR, Telemundo Internacional, TV Azteca, TVE Internacional, TV Chile, Music Service (8)</p>	<p>Univision, Galavisión, MTV, FOX Sports World Español, Telemundo, Cine Latino, Discovery en Español, Mun2, Gran Canal Latino, MTV Español, Playboy en Español, SUR, Telemundo Internacional, TV Azteca, TVE Internacional, TV Chile, Music Service (8)</p>
<p>TOTAL CHANNELS COST</p>	<p>TOTAL CHANNELS COST</p>

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GINGINNATI COMPETITIVE REVIEW

TOTAL CHANNELS COST	27 \$ 59,777,104.8	TOTAL CHANNELS COST	1916 \$ 1,014,341,000
PLAYBOY, ENTASY, T&A, HOT ZONE, EOP	3 \$ 1,000,000	HBO on Demand	Must subscribe to HBO
TOTAL CHANNELS COST	3 \$ 1,000,000	TOTAL CHANNELS COST	1916 \$ 1,014,341,000
SPORTS PPV	8 \$ 1,000,000	SPORTS PPV	

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CHICAGO COMPETITIVE REVIEW

<p>DISH Network Programming (AT100) + Local ESPN, ESPN2, ESPN3, ABC Family, Angel One, Cartoon Network, Disney Channel (EAW), EWTN, Lifetime, Nickelodeon/Nick at Nite (EAW), TBN, CNBC, CNN, Court TV, C-SPAN, C-SPAN2, Headline News, NASA, Weather Channel, A&E, America's Collectibles, Beauty and Fashion, Comedy Central, E! Entertainment, GEMS, HSN, iShop, Men's Channel, QVC, Sci-Fi Channel, Shop at Home, TBS, TNT, TNT, TV Land, USA Network, ShopNBC, Discovery Channel, Food Network, HGTV, History Channel, TLC, Travel Channel, CMT, MTV, MTV2, VH-1, BTV, C-SPAN, C-SPAN2, C-SPAN3, History TV, Good Samaritan Network, HTN, Northern Arizona University, PHEC, PBS, You, Research TV, RFD TV, Safety Net, StarNet, University of California, University of Washington, WorldLink TV, WLS (ABC), WMAQ (NBC), WBBM (CBS), WFLD (Fox), WTTW (PBS), WUPVR (UPN), WGNB (WB), WGNB (Univision), WWSN (Telemundo), WXFT (Telemundo), WYCC (PBS), WJYS (Ind)</p>	<p>AT&T - Basic Service WBBM (CBS), Local Origination, WGBB (Univision), WMAQ (NBC), Government Access, WLS (ABC), WUPVR (UPN), WGNB (WB), WCIU (Ind.), WTTW (PBS), WFLD (Fox), WCPK (PAX), WSNB (Telemundo), WJYS (Ind.), Educational Access, Public Access, WYCC (PBS), C-SPAN2.</p> <p>TOTAL CHANNELS Cost 20 \$634</p>
<p>DISH Network Programming (AT100) + Local Includes AT100 + Local</p> <p>DISH Network Programming (AT100) + Local Includes AT100 + Local</p> <p>DISH Network Programming (AT100) + Local Includes AT100 + Local</p> <p>TOTAL CHANNELS Cost 19 \$379</p>	<p>AT&T - Satellite 1 Service Cartoon Network, Discovery Channel, TNT, TBS, ABC Family, Home & Garden, Disney Channel, ESPN Classic Sports</p> <p>AT&T - Satellite 2 Service C-SPAN, Animal Planet, Fox News Channel, TNN, MTV, VH-1, USA, Fox Sports Net, ESPN, ESPN2, Headline News, CNN, CLTV, CNBC, Weather Channel, A&E, AMC, Comedy Central, E! Entertainment, Sci-Fi Channel, Lifetime, Nickelodeon, TLC, QVC, FX, MSNBC, Food Network, EWTN, TV Guide, Travel Channel, BET, Learning Channel, Hallmark Channel, CMT, Speedvision, TV Land, Bravo, History Channel, Court TV, Turner Classic Movies</p> <p>TOTAL CHANNELS Cost 33 \$375</p>
<p>DISH Network Programming (AT100) + Local Includes AT100 + Local</p> <p>DISH Network Programming (AT100) + Local Includes AT100 + Local</p> <p>DISH Network Programming (AT100) + Local Includes AT100 + Local</p> <p>TOTAL CHANNELS Cost 18 \$378</p>	<p>AT&T - Standard Cable Includes Basic Service, Satellite 1 Service, and Satellite 2 Service</p> <p>AT&T - Digital Service Includes Basic, Expanded Basic, Digital Basic, Multiple Encore, DMX Music, and Interactive Guid Plus Noggin, Discovery Kids, Game Show Network, BBC America, Style, Discovery Health, Discovery Science, National Geographic, History Channel, Fox Sports World, ESPNNews, Outdoor Life, Golf Channel, ESPN News, WE: Women's Entertainment, IFC, Encore, Love Stories, Mystery, Westerns, CD Music (9)</p> <p>TOTAL CHANNELS Cost 18 \$129</p>

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CHICAGO COMPETITIVE REVIEW

1	2	3	4
Various	Various	Various	Various
Playboy, Entasy, Total Hot Zone, Eclp			
TOTAL CHANGES Cost	TOTAL CHANGES Cost	TOTAL CHANGES Cost	TOTAL CHANGES Cost

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GRAND RAPIDS COMPETITIVE REVIEW

<p>AT&T Standard Cable Includes Basic Service</p> <p>Plus</p> <p>ABC Family, TV Land, TNT, Oxygen, Hallmark, Cartoon Network, Disney Channel, Hallmark, Weather Channel, Fox News, Headline News, CNN, CNBC, MSNBC, Court TV, ESPN, Fox Sports Net, MTV, VH-1, Comedy Central, E! Entertainment, FX, USA Network, Univision, BET, TRN, Lifetime, A&E, Discovery Channel, Animal Planet, AMC, TLC, History Channel, Travel Channel</p>	<p>26 \$25.99</p> <p>TOTAL CHANNELS 63</p>
<p>AT&T Standard Cable Includes Basic Service</p> <p>Plus</p> <p>ABC Family, TV Land, TNT, Oxygen, Hallmark, Cartoon Network, Disney Channel, Hallmark, Weather Channel, Fox News, Headline News, CNN, CNBC, MSNBC, Court TV, ESPN, Fox Sports Net, MTV, VH-1, Comedy Central, E! Entertainment, FX, USA Network, Univision, BET, TRN, Lifetime, A&E, Discovery Channel, Animal Planet, AMC, TLC, History Channel, Travel Channel</p>	<p>26 \$25.99</p> <p>TOTAL CHANNELS 63</p>
<p>AT&T Standard Cable Includes Basic Service</p> <p>Plus</p> <p>ABC Family, TV Land, TNT, Oxygen, Hallmark, Cartoon Network, Disney Channel, Hallmark, Weather Channel, Fox News, Headline News, CNN, CNBC, MSNBC, Court TV, ESPN, Fox Sports Net, MTV, VH-1, Comedy Central, E! Entertainment, FX, USA Network, Univision, BET, TRN, Lifetime, A&E, Discovery Channel, Animal Planet, AMC, TLC, History Channel, Travel Channel</p>	<p>26 \$25.99</p> <p>TOTAL CHANNELS 63</p>
<p>AT&T Standard Cable Includes Basic Service</p> <p>Plus</p> <p>ABC Family, TV Land, TNT, Oxygen, Hallmark, Cartoon Network, Disney Channel, Hallmark, Weather Channel, Fox News, Headline News, CNN, CNBC, MSNBC, Court TV, ESPN, Fox Sports Net, MTV, VH-1, Comedy Central, E! Entertainment, FX, USA Network, Univision, BET, TRN, Lifetime, A&E, Discovery Channel, Animal Planet, AMC, TLC, History Channel, Travel Channel</p>	<p>26 \$25.99</p> <p>TOTAL CHANNELS 63</p>
<p>AT&T Standard Cable Includes Basic Service</p> <p>Plus</p> <p>ABC Family, TV Land, TNT, Oxygen, Hallmark, Cartoon Network, Disney Channel, Hallmark, Weather Channel, Fox News, Headline News, CNN, CNBC, MSNBC, Court TV, ESPN, Fox Sports Net, MTV, VH-1, Comedy Central, E! Entertainment, FX, USA Network, Univision, BET, TRN, Lifetime, A&E, Discovery Channel, Animal Planet, AMC, TLC, History Channel, Travel Channel</p>	<p>26 \$25.99</p> <p>TOTAL CHANNELS 63</p>
<p>AT&T Standard Cable Includes Basic Service</p> <p>Plus</p> <p>ABC Family, TV Land, TNT, Oxygen, Hallmark, Cartoon Network, Disney Channel, Hallmark, Weather Channel, Fox News, Headline News, CNN, CNBC, MSNBC, Court TV, ESPN, Fox Sports Net, MTV, VH-1, Comedy Central, E! Entertainment, FX, USA Network, Univision, BET, TRN, Lifetime, A&E, Discovery Channel, Animal Planet, AMC, TLC, History Channel, Travel Channel</p>	<p>26 \$25.99</p> <p>TOTAL CHANNELS 63</p>

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GRAND RAPIDS COMPETITIVE REVIEW

Package Name	Description	Price
Digital (Weekly) Premium Packages	Available Only with Digital Service	
HBO (8 HBO Channels)	HBO (8 HBO Channels)	\$33.9
SHOWMAX (3 Showmax Channels)	Showmax (3 Showmax Channels)	\$12.9
SHOWTIME UNLIMITED (7 Showtime - Including 1 HD Channel, 2 TMC, Fla, Sundance)	Showtime Unlimited (7 Showtime - Including 1 HD Channel, 2 TMC, Fla, Sundance)	\$12.4
STARZ SUPER PAK (7 Starz Channels, 1 Encore Channel)	Starz Super Pak (7 Starz Channels, 1 Encore Channel)	\$12.9
Choice of one premium package	Choice of one premium package	\$3.9
Choice of HBO premium package only	Choice of HBO premium package only	\$3.9
SHOWTIME UNLIMITED/STARZ SUPER PAK	Showtime Unlimited/STARZ Super Pak	\$20.38
HBO THE WORKS/MAX	HBO The Works/MAX	\$22.96
HBO THE WORKS/SHOWTIME UNLIMITED	HBO The Works/Showtime Unlimited	\$22.96
HBO THE WORKS/STARZ SUPER PAK	HBO The Works/STARZ Super Pak	\$22.9
Encore Movie Pak	Encore Movie Pak	\$3.9
Starz Channel (2TV)	Starz Channel (2TV)	\$13.9
The God Channel	The God Channel	\$1.9
Outdoor Channel	Outdoor Channel	\$1.9
DSH CD	DSH CD	\$1.9
Single Broadcast Networks	Single Broadcast Networks	\$2.99
MultiSport Package (Must subscribe to AT100 or AT150)	MultiSport Package (Must subscribe to AT100 or AT150)	
A la Carte	A la Carte	
American's Everything Pak	American's Everything Pak	\$24.99
ESPN	ESPN	\$2.99
ESPN2	ESPN2	\$2.99
ESPN3	ESPN3	\$2.99
ESPN4	ESPN4	\$2.99
ESPN5	ESPN5	\$2.99
ESPN6	ESPN6	\$2.99
ESPN7	ESPN7	\$2.99
ESPN8	ESPN8	\$2.99
ESPN9	ESPN9	\$2.99
ESPN10	ESPN10	\$2.99
ESPN11	ESPN11	\$2.99
ESPN12	ESPN12	\$2.99
ESPN13	ESPN13	\$2.99
ESPN14	ESPN14	\$2.99
ESPN15	ESPN15	\$2.99
ESPN16	ESPN16	\$2.99
ESPN17	ESPN17	\$2.99
ESPN18	ESPN18	\$2.99
ESPN19	ESPN19	\$2.99
ESPN20	ESPN20	\$2.99
ESPN21	ESPN21	\$2.99
ESPN22	ESPN22	\$2.99
ESPN23	ESPN23	\$2.99
ESPN24	ESPN24	\$2.99
ESPN25	ESPN25	\$2.99
ESPN26	ESPN26	\$2.99
ESPN27	ESPN27	\$2.99
ESPN28	ESPN28	\$2.99
ESPN29	ESPN29	\$2.99
ESPN30	ESPN30	\$2.99
ESPN31	ESPN31	\$2.99
ESPN32	ESPN32	\$2.99
ESPN33	ESPN33	\$2.99
ESPN34	ESPN34	\$2.99
ESPN35	ESPN35	\$2.99
ESPN36	ESPN36	\$2.99
ESPN37	ESPN37	\$2.99
ESPN38	ESPN38	\$2.99
ESPN39	ESPN39	\$2.99
ESPN40	ESPN40	\$2.99
ESPN41	ESPN41	\$2.99
ESPN42	ESPN42	\$2.99
ESPN43	ESPN43	\$2.99
ESPN44	ESPN44	\$2.99
ESPN45	ESPN45	\$2.99
ESPN46	ESPN46	\$2.99
ESPN47	ESPN47	\$2.99
ESPN48	ESPN48	\$2.99
ESPN49	ESPN49	\$2.99
ESPN50	ESPN50	\$2.99
ESPN51	ESPN51	\$2.99
ESPN52	ESPN52	\$2.99
ESPN53	ESPN53	\$2.99
ESPN54	ESPN54	\$2.99
ESPN55	ESPN55	\$2.99
ESPN56	ESPN56	\$2.99
ESPN57	ESPN57	\$2.99
ESPN58	ESPN58	\$2.99
ESPN59	ESPN59	\$2.99
ESPN60	ESPN60	\$2.99
ESPN61	ESPN61	\$2.99
ESPN62	ESPN62	\$2.99
ESPN63	ESPN63	\$2.99
ESPN64	ESPN64	\$2.99
ESPN65	ESPN65	\$2.99
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ESPN67	ESPN67	\$2.99
ESPN68	ESPN68	\$2.99
ESPN69	ESPN69	\$2.99
ESPN70	ESPN70	\$2.99
ESPN71	ESPN71	\$2.99
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ESPN73	ESPN73	\$2.99
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ESPN80	ESPN80	\$2.99
ESPN81	ESPN81	\$2.99
ESPN82	ESPN82	\$2.99
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ESPN99	ESPN99	\$2.99
ESPN100	ESPN100	\$2.99
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ESPN102	ESPN102	\$2.99
ESPN103	ESPN103	\$2.99
ESPN104	ESPN104	\$2.99
ESPN105	ESPN105	\$2.99
ESPN106	ESPN106	\$2.99
ESPN107	ESPN107	\$2.99
ESPN108	ESPN108	\$2.99
ESPN109	ESPN109	\$2.99
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ESPN111	ESPN111	\$2.99
ESPN112	ESPN112	\$2.99
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ESPN126	ESPN126	\$2.99
ESPN127	ESPN127	\$2.99
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ESPN275	ESPN275	\$2.99
ESPN276	ESPN276	\$2.99
ESPN277	ESPN277	\$2.99
ESPN278	ESPN278	\$2.99
ESPN279	ESPN279	\$2.99
ESPN280	ESPN280	\$2.99
ESPN281	ESPN281	\$2.99
ESPN282	ESPN282	\$2.99

SAN DIEGO COMPETITIVE REVIEW

<p>Cox Communications - Basic Service</p> <p>USA Network, ESPN, Channel 4 San Diego, KSWB (WB), XE-TV (Fox), KNSD (NBC), KFMB (CBS), KUSI/KQTV (ABC), KPBS (PBS), XEWT (Spanish/WTN), XUPN, KTLA (WB), New Channel 16, (TV, KBBT (Spanish), C-SPAN2, ABC Family, XHAS (Spanish), C-SPAN), Weather Channel, Public Access, Government Access</p>	<p>Cox Communications - Basic Service</p> <p>USA Network, ESPN, Channel 4 San Diego, KSWB (WB), XE-TV (Fox), KNSD (NBC), KFMB (CBS), KUSI/KQTV (ABC), KPBS (PBS), XEWT (Spanish/WTN), XUPN, KTLA (WB), New Channel 16, (TV, KBBT (Spanish), C-SPAN2, ABC Family, XHAS (Spanish), C-SPAN), Weather Channel, Public Access, Government Access</p>
<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>OVC, WGN, HSN, ESPN2, Fox Sports Net, MTV, CNN, Headline News, TBS, TNT, Discovery Channel, TLC, Fox News, Lifetime, MSNBC, BET, A&E, Bravo, CNBC, Court TV, TIMEWTH, VH-1, Nickelodeon/Nick-at-Home, Comedy Central, E! Entertainment, Cartoon Network, PAM, Disney Channel, Speed Channel, AMC, TCM, TV Land, Travel Channel, GMT, The Golf Channel, Sci-Fi Channel, Galaxion's ESPN Classic, UCSD-TV, Cox Paid Programming, Shop NBC, FX, Food Network, Outdoor Life, HGTV, Animal Planet, History Channel, Lifetime Action, Cox In Demand/SPV, TV Guide Channel</p>	<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p> <p>Plus a Choice of up to Five Programming Packages</p> <p>One Programming Package Three Programming Packages Four Programming Packages All Five Programming Packages</p> <p>*In addition to regular Cox Cable TV bill.</p> <p>Programming Package Choices:</p> <p>IFC, Sundance, FX, Encore, Love Stories, Westerns, Mystery, True Stories, Action, Lifetime Movie Network</p> <p>CHNH, Bloomberg, Weather.com San Diego, ESPNNews, CNN51, Fox Sports World, TeenTV</p> <p>BET On Jazz, MuchMusic, The Game Show Network, Overton, Encore WAAA</p> <p>BBC America, Toon Disney, SoapNet</p> <p>CineLatino, HTVN, Fox Sports World Español, E!MTN Global Catulias, Discovery en Español, CNN en Español</p> <p>E!MTN, TBN, HLN TV</p>
<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>	<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>
<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>	<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>
<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>	<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>
<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>	<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>
<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>	<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>
<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>	<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>
<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>	<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>
<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>	<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>
<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>	<p>Cox Communications - Multi-Channel Programming Package</p> <p>Includes Basic and Standard Service</p> <p>Plus</p> <p>Discovery Kids, Discovery Science, Discovery Home & Leisure, Discovery Civilization, Discovery Wings, Discovery Health, CD Music (45)</p>

SAN DIEGO COMPETITIVE REVIEW

Service Description	Price	Notes
DBSH Network Premium Packages		
HBO The Works (9 HBO Channels - Including 1 HD Channel)	\$41.99	
MuVIMAX (3 Cinemax Channels)	\$3.00	
Showtime Unlimited (7 Showtime - Including 1 HD Channel, 2 TMC, Flx, Sundance)	\$22.99	
Starz Super Pak (7 Starz Channels, 1 Encore Channel)	\$22.99	
Choice of one premium package	\$4.99	
Choice of HBO premium package only	\$3.99	
Showtime Unlimited/STARZ Super Pak	\$22.99	
HBO The Works/MuVIMAX	\$22.99	
HBO The Works/Showtime Unlimited	\$22.99	
Encore Movie Pak	\$4.99	
A la Carte		
Disney Channel (E&W)	\$9.99	
The Golf Channel	\$4.99	
Outdoor Channel	\$1.99	
ESPN CD	\$1.99	
Surge Broadcast Networks	\$1.99	
Multi-Sport Package (Must subscribe to AT100 or AT150)	\$3.99	
Latin		
Latin America (Various Channels)	\$1.99	
PPV		
Various Pay-Per-View Events	\$1.99	
Specialty PPV		
Various Specialty Pay-Per-View Events	\$1.99	
Other Channels		
Various Other Channels	\$1.99	
Global Channels		
Various Global Channels	\$1.99	
Power TV (Mandarin)		
Power TV (Mandarin)	\$1.99	

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PHILADELPHIA COMPETITIVE REVIEW

Service/Package	Cost	Notes
Digital Network Premium Packages		
HBO The Works (8 HBO Channels - including 1 HD Channel)	\$74.00	
Multimax (8 Cinemax Channels)	\$70.75	
Showtime Unlimited (7 Showtime - including 1 HD Channel, 2 TMC, FX, Sundance)	\$74.20	
Starz Super Pak (7 Starz Channels, 1 Encore Channel)	\$74.20	
Choice of one premium package	\$74.20	
Choice of HBO premium package only	\$74.20	
Showtime Unlimited/STARZ Super Pak	\$74.20	
HBO The Works/Multimax	\$74.20	
HBO The Works/Showtime Unlimited	\$74.20	
HBO The Works/STARZ Super Pak	\$74.20	
Encore Movie Pak	\$18.00	
America's Everything Pak	\$19.95	
A la Carte		
Disney Channel (E!TV)	\$4.95	
The Golf Channel	\$4.95	
Outdoor Channel	\$4.95	
DISH CD	\$4.95	
Single Broadcast Networks	\$4.95	
MultiSport Package (Must subscribe to AT100 or AT180)	\$4.95	
DISH Latine		
Univision, Galavisión, MTV, FOX Sports World Español, Telemundo, Che Latine, Discovery en Español, iMUG, Gran Canal Latine, MTV Español, Playboy en Español, SUR, Telemundo Internacional, TV Asicsa, TVE Internacional, TV Chile, Music Services (8)		
TOTAL Channels Cost	\$22.95	
PPV		
TOTAL Channels Cost	\$22.95	
Adult PPV		
Playboy, Emory, Y&N, Hot Zone, Etc		
TOTAL Channels Cost	\$	
Events PPV		
TOTAL Channels Cost	\$	
Digital Plus Premium Packages (includes all channels)		
TOTAL Channels Cost	\$29.95	
A la Carte		
No a la carte fees		
Latin		
Cinemas (Spanish Programming): 8 channels DMX Hispanic Audio: 8 channels		
TOTAL Channels Cost	\$	
PPV		
Basic/Adult Service: 1 Preview Channel, 2 PPV Channels Digital Service: 2 Preview Channels, 38 PPV Channels		
TOTAL Channels Cost	\$41.00	
Adult PPV		
Basic/Adult Service: 1 Playbox channel Digital Service: Another Playbox Channel, Spice, Spice 2, Mustang		
TOTAL Channels Cost	\$	
Events PPV		
ESPN PPV/MLB PPV, NFL.com TV, NBDW/NBA PPV, NHL PPV/MLB PPV		
TOTAL Channels Cost	\$	
Premium Services		
HBO Cinemax The Movie Channel Showtime Starz (available only with Comcast Digital Cable) Clayton Playboy		
Premium Services Package Pricing		
Digital Plus Platinum (all five premium services) Digital Plus Gold (choose two premium services - EITHER Starz & HBO OR Showtime & HBO) Digital Plus Silver (choose one premium service - EITHER HBO, Starz, or Showtime)		
Costs		
Digital Plus Platinum	\$19.95	
Digital Plus Gold	\$15.95	
Digital Plus Silver	\$9.95	
TOTAL Channels Cost	\$29.95	

Effective 202

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