

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

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*In re* )  
 )  
 ) **NO. 16-CRB-0009-CD (2014-17)**  
**DISTRIBUTION OF CABLE** )  
**ROYALTY FUNDS** )

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**JOINT SPORTS CLAIMANTS’ RESPONSE IN OPPOSITION TO PTV’S MOTION TO STRIKE PORTIONS OF THE TESTIMONY OF R. GARRISON HARVEY**

Mr. Harvey is a statistician and applied mathematician, with decades of experience analyzing complex data sets and designing or evaluating thousands of regressions. The testimony he has presented in this proceeding falls squarely within his areas of expertise and relates to central elements of the issues in dispute, including: (a) analyzing location and carriage data to identify distant PTV signals subject to the must-carry rules based on objective criteria; and (b) evaluating the regressions presented in this proceeding through standard statistical testing and data analysis.

PTV does not challenge Mr. Harvey’s qualifications as a mathematician and statistician nor do they question the reliability of any of the statistical methods that Mr. Harvey applies and details throughout his testimony. Instead, PTV asks the Judges to exclude all of Mr. Harvey’s must-carry analysis, as well as unspecified portions of Mr. Harvey’s regression analysis, on the grounds that these are really opinions on “communications law,” “economic theory,” and “the value of particular television content” and PTV only realized at the hearing that Mr. Harvey lacks the requisite expertise to offer these opinions. *See Mot.* at 1 n.1.<sup>1</sup>

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<sup>1</sup> PTV’s suggestion that it was awaiting learning of additional areas of expertise is simply not credible. Mr. Harvey’s written direct and rebuttal testimony both made clear that he is a statistician and applied mathematician. Ex. 7105 ¶ 1 (“I am a statistician and applied mathematician.”); Ex. 7106 ¶ 1 (same). There was thus no basis for PTV to wait until Mr. Harvey took the stand at trial to raise its challenge, especially given the existence of a deadline for raising such issues in the scheduling order. *See Order 28 ¶¶ 31, 48; Order 26 ¶ 48.*

But Mr. Harvey never purported to be an expert in any of these areas, nor did he require specialized knowledge in these areas to offer his statistical opinions. Rather, as is standard and appropriate for experts, Mr. Harvey relied on certain facts, data, and assumptions—all well-supported in the record—that related to his statistical work and data analysis. And he applied his statistical expertise to evaluate regressions, a technique that statisticians are recognized as expert in and therefore an area in which courts afford them wide latitude to opine.

Under the *Daubert* standard, the law is clear that disagreements with the facts, data and assumptions underlying expert testimony are properly resolved through the adversarial process, not through a motion to strike. The law is also clear that economists are not shielded from criticism by non-economists evaluating economic conclusions from a different area of expertise. PTV has had a full opportunity to challenge the material on which Mr. Harvey relied, and to attempt to show that Mr. Harvey's critiques of their expert's regression are wrong or explained away by economic theory. In many cases, it has chosen not to do so, or has offered invalid critiques. PTV's motion is not about Mr. Harvey's lack of expertise but rather merely reflects PTV's dislike of what Mr. Harvey's analyses demonstrate. Striking any of Mr. Harvey's testimony, to say nothing of the wholesale exclusions that PTV seeks, would improperly short-circuit the fact-finding process without basis. For these reasons, PTV's motion to strike should be denied.

## **MR. HARVEY'S QUALIFICATIONS AND OPINIONS**

### **I. Mr. Harvey's Qualifications and Expertise**

Mr. Harvey is a statistician and applied mathematician. He received an undergraduate degree in applied mathematics from the United States Air Force Academy, and a master's degree in operations research from the Air Force Institute of Technology. Ex. 7105 ¶ 1. He used his statistical expertise to advise the Air Force on issues of significant national importance, and was appointed as an advisor to the Joint Chiefs of Staff on statistical analysis. Tr. 1767:3-1768:6.

In the 2010-13 cable royalty proceeding, the Judges qualified Mr. Harvey as an expert in statistics and applied mathematics. *See In the Matter of Determination of Cable Royalty Funds*, Dkt. No. 14-CRB-0010-CD (2010-2013), Tr. 1158:20-1160:14 (Feb. 22, 2018). In that proceeding, Mr. Harvey rebutted the viewing study offered by Program Suppliers witness Dr. Jeffrey Gray, including Dr. Gray’s use of a regression analysis to predict levels of distant viewing. *Id.* Ex. 1089 ¶¶ 28-37 (Wecker and Harvey 2010-13 WRT).

Over his more than thirty-year career, Mr. Harvey has extensive expertise analyzing large, complex data sets. Ex. 7106 ¶ 2; Tr. 1771:1-1772:4. He has, for example, analyzed global payment card transactions totaling “approximately 1.5 petabytes” of data in connection with antitrust litigation. Tr. 1771:8-15. He has also analyzed voluminous financial aid databases and Blue Cross insurance data. Tr. 1768:15-1769:5; Tr. 1771:16-23. Mr. Harvey has also applied his statistical expertise to design or evaluate thousands of regression analyses. Tr. 1769:19-1770:7.

## **II. Mr. Harvey’s Data Analysis of Must-Carry Carriage**

Mr. Harvey’s written direct testimony explains that his must-carry analysis relies on the understanding that the must-carry rules require a cable system to carry a noncommercial signal upon request if the signal is licensed to a principal community within fifty miles of the principal headend of the cable system, or places a Grade B service contour over the cable system’s principal headend. Ex. 7105 ¶ 82. This assumption is correct as a matter of law. *See JSC PCOL* ¶¶ 10-12 (citing 47 U.S.C. § 535).

Using this principle, Mr. Harvey developed criteria for identifying distantly retransmitted PTV call signs subject to the must-carry rules. Ex. 7105 ¶ 83. First, Mr. Harvey identified “all instances in which a primary PTV call sign was licensed to a community whose reference point

was within 50 miles of the principal headend of the system carrying the call sign.” *Id.*<sup>2</sup> Further, Mr. Harvey limited the resulting set of PTV primary call-signs to instances in which the call-sign was both (a) transmitted (either locally or distantly) to all subscriber groups in the cable system and (b) local to at least one subscriber group within the system. *Id.* ¶ 83. Because these latter two requirements are not necessary under the must-carry rules, Mr. Harvey’s statistical criteria are conservative. JSC PCOL ¶ 10-12.

Mr. Harvey then expanded his analysis to include PTV multicast call signs. As again explained in his written direct testimony, he relies on the understanding that “in the 2014-17 period PTV . . . had an agreement with the NCTA whereby NCTA members agreed to carry up to three additional streams of programming associated with a primary PTV call sign that was subject to the Must Carry rule.” *Id.* ¶ 85. This understanding is again correct. *See* JSC PFOF ¶ 7.

Finally, Mr. Harvey expanded his analysis to account for instances in which cable systems appeared to be substituting a sister simulcast for the call sign that is entitled to demand carriage under the must-carry rules. Ex. 7105 ¶¶ 87-92. As Mr. Harvey explained, he observed in the data that PTV broadcasts are often aired simultaneously on multiple “sister simulcasts” within a given state or region. *Id.* PTV does not deny the existence of such sister simulcasts; nor does it seek to strike Figure 1 in Mr. Harvey’s written direct testimony, which identifies “all PTV sister call signs in the U.S. that are members of statewide or regional broadcast simulcast group.” Ex. 7105 ¶ 90.

Mr. Harvey also presented alternative versions of his must-carry analyses limited to the subset of cable systems that carried exclusively PTV distant signals (“PTV Only” systems). Ex. 7105 ¶¶ 118-125 & Tbls. 37-39. In total, Mr. Harvey found that must-carry PTV primary signals

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<sup>2</sup> Mr. Harvey reviewed Grade B contour data, and determined that relying upon the distance measure alone was the more conservative approach to identifying must-carry signals. Tr. 1845:9-13. Additionally, because most cable systems’ headend location is not publicly available, Mr. Harvey used cable systems’ “first” or “prime” communities, as identified in Cable Data Corporation data, as a proxy. *Id.* ¶ 173. Mr. Harvey validated the use of this proxy by comparing it with actual headend data where available. *Id.* ¶ 175 & Fig. 9.

and their associated multicasts (or sister call signs) accounted for approximately 33% of all distant PTV signals, and approximately 39% of all distant PTV signals carried by PTV Only systems, in 2014-17. *Id.* ¶ 92 & Table 26; ¶ 121 & Table 39.

### **III. Mr. Harvey's Testimony Regarding the Fee-Based Regressions**

Mr. Harvey testified to a number of statistical analyses demonstrating that the regressions offered by PTV and other parties are unreliable and generate absurd results. Tr. 1780:1-7. JSC focuses here on the testimony that PTV specifically identifies in its motion as supposedly improper.

Mr. Harvey testified that the regression models cannot reliably estimate the value of JSC programming during the 2015-17 period. Ex. 7106 at ¶¶ 36, 39. Mr. Harvey explained that he arrived at this conclusion by running the models without data from 2014. *Id.* at ¶ 36. When he conducted these tests, he found that the models estimated non-statistically significant, and sometimes negative, results for JSC programming. *Id.* at ¶¶ 37-51. The results of his statistical analysis indicate that, for the regression models to be believed, one must believe that the per minute value of JSC programming plummeted from the most valuable among the claimant categories to the least valuable between 2014 and 2015. JSC PFOF ¶ 140. Based upon his understanding “from the industry experts and economists that such a result is implausible and contradicted by market evidence,” Mr. Harvey concluded that the models failed to estimate JSC value reliably in the 2015-17 period. *Id.* at ¶ 37.

Mr. Harvey also concluded that the regression models are unreliable because they estimate values for certain categories of programming that are inconsistent with external evidence. *See* Ex. 7106 at ¶¶ 74, 79, 81, 83-85, 88, 91, 93. For example, Mr. Harvey ran tests of each of the regression models to assess the relative market value they would estimate for infomercials as a stand-alone category of programming, and found that each of the models estimated that infomercials were

worth tens of millions of dollars, and in some years many times the value of JSC programming. Ex. 7106 ¶¶ 71-81; Tr. 1906:17-1907:3. As Mr. Harvey explained, this demonstrates that the models are unreliable, because former programming executives Allan Singer and Daniel Hartman testified that infomercials had no value whatsoever to cable operators during the 2014-17 period. *Id.* ¶ 72 & n. 71. Mr. Harvey ran similar tests comparing the regression models' results for NFL programming, post-season JSC programming, and PTV multicast programming to external evidence, and likewise found that the models generated absurd results, further demonstrating their lack of reliability. Ex. 7106 ¶¶ 82-108.

## ARGUMENT

### **I. Mr. Harvey's Data Analysis Identifying Must-Carry Signals Is Within His Areas of Expertise**

Mr. Harvey analyzed a large data set in order to identify signals that met certain geographic and carriage pattern criteria that are consistent with carriage pursuant to the must-carry rules. *See supra* 3-5. This exercise of “sorting through raw data” and “present[ing] statistical conclusions that are not evident on the face of the data” is within his expertise as a statistician. *DL v. D.C.*, 730 F. Supp. 2d 78, 83 (D.D.C. 2010). And his findings are relevant to assessing the relative value of distant PTV programming in this proceeding because they show the extent to which cable system carriage of distant PTV signals reflects compelled carriage at no cost. *See, e.g.*, JSC Post-Hearing Br. at 5-7, 74-78.

PTV's motion does not challenge Mr. Harvey's qualifications to conduct this data analysis, the accuracy of his calculations, or the relevance of his findings. PTV instead seeks to exclude opinions that Mr. Harvey does not offer, on grounds that the law does not recognize.<sup>3</sup>

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<sup>3</sup> PTV relies upon this argument as the basis to strike Ex. 7105 ¶¶ 80, 82-87, 89, 91-92, 118-25, Tbls. 24-26, 37-39; Ex. 7106 ¶ 108, n. 94; and Tr. 1836:5-1849:12, 1872:18-1873:2, 1881:18-1882:5, 2163:7-12, 2226:4-7, 2315:18-21, 2316:10-14, 2336:18-2337:9, 2338:1-20, 2338:25-2339:13. Mot. at App'x A. For the reasons set forth in this section, none of this testimony should be stricken.

Mr. Harvey has not, as PTV claims, offered expert opinions on “must-carry law.” Mot. at 3. Mr. Harvey was clear in his testimony that he is not “purporting to be a communications law expert,” Tr. at 1843:1-3, and that his discussion of must-carry requirements reflects assumptions on which he relied to establish the objective criteria for his data analysis. *See, e.g.*, Ex. 7105 ¶¶ 80, 82-83, 85 (stating his “understand[ings]” of must-carry requirements); Tr. 1845:14-17. His approach is no different than that of PTV’s expert Dr. Johnson, who also relied on assumptions about copyright and must-carry law in his testimony, although unlike Mr. Harvey some of Mr. Johnson’s assumptions were proven to be incorrect. *Compare* Ex. 7300 ¶ 13 & n.3 (stating “I understand that the retransmission of a broadcast signal is ‘distant’ if the signal is retransmitted outside . . . the geographic area within which the broadcast station is entitled to insist that its signal be retransmitted . . . under the FCC must-carry rules”); *with* JSC PCOL ¶¶ 12, 21-22 (showing that PTV signals are not treated this way under the law).

It is both routine and proper for an expert to rely on assumptions about the law in forming opinions. *See, e.g., United States v. Philip Morris USA Inc.*, 2022 WL 1101730, at \*9 (D.D.C. Apr. 13, 2022) (holding that expert “was entitled to rely on assumptions provided to him by . . . counsel,” including regarding appropriate remedies under the law); *Minebea v. Pabst*, 231 F.R.D. 1, 2 (D.D.C. 2005) (holding expert was “free to use” legal definition of sales provided by counsel, “despite the fact that the Court ultimately may or may not agree with that definition”). Moreover, even if these assumptions were “impermissible legal opinions”—which they are not—PTV’s request for “wholesale exclusion” of Mr. Harvey’s must-carry analysis “would be unwarranted.” *Philip Morris USA Inc.*, 2022 WL 1101730, at \*9 (internal quotation marks omitted); *see also* Mot. at App’x A (seeking to exclude, *inter alia*, all of Mr. Harvey’s quantification of must-carry

carriage). The Judges are more than “capable of screening factual statements from legal conclusions.” *Philip Morris USA Inc.*, 2022 WL 1101730, at \*9

The assumptions on which Mr. Harvey relied are correct under the law and supported by independent record evidence. *See, e.g.*, JSC PCOL ¶¶ 10-12; JSC PFOF ¶¶ 4, 7. To the extent that PTV disagrees with these assumptions, it has had a full opportunity to develop its responses, as they were identified in Mr. Harvey’s written direct testimony more than eight months before the hearing. But the Judges should “not strike an expert . . . simply because the expert did not rely on the particular assumptions or data [PTV] thought was necessary. Those issues are more properly addressed through ‘vigorous cross-examination [and] presentation of contrary evidence.’” *Am. Soc’y for Testing & Materials v. Public.Resource.Org, Inc.*, 2016 WL 7839128, at \*2 (D.D.C. Sept. 21, 2016) (quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596 (1993)); *see also, e.g., McReynolds v. Sodexo Marriott Servs., Inc.*, 349 F. Supp. 2d 30, 42 (D.D.C. 2004) (“When the factual underpinnings of an expert’s opinion are in dispute, it is not the role of the court to determine the correctness of the facts underlying the expert’s testimony.”). There is no reason to short-circuit the fact-finding process, and exclude highly probative evidence, as PTV requests.

Moreover, notwithstanding PTV’s challenges to Mr. Harvey’s qualifications to identify signals subject to must-carry requirements, it did not proffer any testimony asserting that Mr. Harvey’s must-carry analysis was incorrect. For example, no PTV expert testified that Mr. Harvey had misidentified a specific signal as subject to must-carry requirements.<sup>4</sup> Rather, PTV remained silent on the issue. PTV had a full opportunity to counter Mr. Harvey’s analysis. The fact that it does not like the results of Mr. Harvey’s analysis is not a basis for exclusion.

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<sup>4</sup> The sole exception was Dr. Johnson’s testimony that Mr. Harvey had misidentified certain simulcasts. As Mr. Harvey explained at trial, Dr. Johnson based his analysis on incomplete data and was in error. *See* JSC PFOF ¶ 474.



## II. Mr. Harvey's Criticisms of Proposed Regressions Are Within His Areas of Expertise

As a statistician, Mr. Harvey is also qualified to evaluate regressions. *See, e.g., Manpower, Inc. v. Ins. Co. of Pennsylvania*, 732 F.3d 796, 808 (7th Cir. 2013) (noting the “latitude we afford to statisticians employing regression analysis” under *Daubert*); *In re Polyurethane Foam Antitrust Litig. Direct Purchaser Class*, 2015 WL 12747961, at \*1-\*2 (N.D. Ohio Mar. 6, 2015) (holding statistician had “sufficient basis to (1) comment on the general design of [regression] models, (2) explain how a statistician might interpret the model results, and (3) address [other] experts’ critiques of [the] models (to the extent those critiques are rooted in statistical theory)”); *United States v. Johnson*, 122 F. Supp. 3d 272, 309, 339 (M.D.N.C. 2015) (holding statistician was qualified to offer critiques of regression analysis, including critiquing “the use of a linear regression analysis,” “statistical conclusions,” and “the use of variable controls”). Without challenging this principle, PTV argues that broad categories of Mr. Harvey’s testimony detailing the flaws in the regressions presented in this proceeding should be excluded “to the extent the testimony concerns economics and economic conclusions.” Mot. at App’x A.<sup>5</sup> But the only specific examples PTV offers of Mr. Harvey’s supposedly improper “economic” testimony are conclusions based on the statistical testing and analysis that he is well-qualified to perform, as well as other evidence on which he appropriately relies and which PTV does not challenge. PTV’s sweeping and largely unspecified objections to Mr. Harvey’s regression critiques should be rejected in full.

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<sup>5</sup> PTV relies upon this argument as the basis to strike Ex. 7105 ¶¶ 5, 44-45, 80 127-19; Ex. 7106 ¶¶ 36, 39, 40, 45, 46, 55, 62, 74, 79, 81, 83-85, 88, 91, 93, 108 n. 94; and Tr. 1779:22-1780:5-7, 1842:4-20, 1860:16-1861:10, 1913:6-16, 1929:2-4, 1931:20-23, 1986:6-8, 1986:13-17, 2226:1-3, 2226:23-2227:12. Mot. at App’x A. For the reasons set forth in this section, none of this testimony should be stricken.

First, PTV cites to instances where Mr. Harvey concludes that the regressions are not capable of producing reliable estimates. *See* Mot. at 6-7. These conclusions are based on Mr. Harvey’s own statistical analysis and are not “economic interpretations.” Mot. at 6; *see supra* 5-6. Mr. Harvey does not need to be an economist in order to criticize economic models based on his own areas of expertise. *See, e.g., TC Systems Inc. v. Town of Colonie*, New York, 213 F. Supp. 2d 171, 178 (N.D.N.Y. 2002) (rejecting the argument that a non-economist expert is “per se unqualified to rebut” an economist’s testimony, explaining that “Plaintiffs . . . have not cited, and this Court has not found, any authority for such a proposition”); *see also Mahaska Bottling Co. v. PepsiCo, Inc.*, 441 F. Supp. 3d 745, 761–62 (S.D. Iowa 2019) (rejecting the argument that “a non-economist cannot testify regarding economic topics”). This is particularly true where the economics analysis being criticized is itself a statistical tool concerning which Mr. Harvey has deep expertise. Indeed, just last year, a court ruled that Mr. Harvey was qualified to opine that his analyses showed economic experts’ calculations of rates in a but-for world were “unreliable,” rejecting the argument that “because Mr. Harvey is not an economist, he is not qualified to critique . . . experts’ economic opinions.” *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2022 WL 14814183, at \*3-\*10 (E.D.N.Y. Oct. 26, 2022).

Second, PTV cites to Mr. Harvey’s testimony that the results of the regressions are incompatible with external evidence of the relative marketplace value of certain programming categories. *See* Mot. at 7. For external evidence of relative marketplace value, Mr. Harvey relied on the testimony of industry experts. *See* Ex. 7106 Ex. B (“Material Considered”) *see also, e.g.,* Ex. 7115 ¶ 19 (Witmer WRT) (“[T]he presence of live team sports events – including premier post-season events such as the Super Bowl, NBA Playoffs and World Series – drove substantial increases in retransmission consent fees to commercial broadcast stations”); Ex. 7108 (Singer WDT) ¶ 41 (describing “pre-season, regular season, and playoff NFL games” as “highly

valuable”). As the testimony of other economic experts shows, it is reasonable to rely on information from industry experts in designing or evaluating a regression. *See* Ex. 7114 (Asker WRT) ¶¶ 105, 107 (explaining “it would be entirely proper, as a matter of applied econometric methodology, to assess the overall usefulness of the regressions in this proceeding with reference to the broader set of evidence available to the Judges,” including industry expert testimony); Ex. 7300 at App’x C (Johnson WDT) (including interview with industry expert Lynne Costantini among materials considered). Because Mr. Harvey appropriately relied on record evidence in order to make his comparisons, there is no basis for excluding any of this testimony. *Minebea*, 231 F.R.D. at 2 (holding, “[s]o long as there is some factual support for” the assumptions of an expert’s analysis, “the analysis is admissible”); *see generally* Fed. R. Evid. 703 (explaining that an expert “may base an opinion on facts or data in the case that the expert has been made aware of”).

Finally, PTV cites Mr. Harvey’s oral testimony that the regressions’ inability to distinguish between duplicative and non-duplicative programming data makes it “very tricky” for the regressions to “tease out a revealed preference” from “volume,” as they purport to do. Tr. 1860:4-1865:3; *see also* Mot. at 7. However, as clarified in his colloquy with Judge Strickler, Mr. Harvey’s testimony is not based on an “economic argument” about why certain programming is valuable, or whether the regressions can be interpreted as revealing preference. *Id.* at 1864:6-20. Rather, his opinion is based on the “fidelity and quality of the data,” which is at the core of his own expertise, not what the regression experts claim their models can do with that data. *Id.* at 1864:20-1865:3.

Appendix A to PTV’s motion lists additional portions of Mr. Harvey’s testimony that PTV seeks to strike “to the extent [it] concerns economics and economic conclusions,” but which PTV does not even discuss in its brief. In particular, PTV does not explain which portions of the

testimony cited in Appendix A “concern[] economics and economic conclusions,” and which do not. Because PTV has not even attempted to explain or justify its requests to strike all of this testimony, those requests should also be denied.<sup>6</sup> Beyond PTV’s failure of proof, as explained above, Mr. Harvey’s testimony regarding the regressions is based on his statistical and mathematical analyses, and does not exceed his expertise.

### **III. Mr. Harvey Properly Relies on Industry Expert Evidence**

PTV seeks to strike three statements in Mr. Harvey’s testimony where it claims that Mr. Harvey offers “opinions regarding the value of different programming types.” Mot. at 7-8.<sup>7</sup> In each instance, Mr. Harvey is not seeking to play the role of an industry expert as PTV suggests. Rather, he is pointing to facts supported elsewhere in the record that set up, or provide relevant context for, a data analysis that Mr. Harvey performs. Thus, he notes the fact that postseason sports has high relative value—a fact supported in the record, *see e.g.*, Ex. 7115 ¶ 19—as external evidence for his validity test of whether the regressions are able to detect that high relative value. Ex. 7106 ¶¶ 91-99 & Figs. 11-13. Using his statistical expertise, Mr. Harvey demonstrated that the regressions estimate very low (and often negative) relative values for NFL games, notwithstanding the industry expert testimony that such content has high relative value. *Id.*

Mr. Harvey likewise employed his statistical and data expertise to demonstrate that CSOs frequently elected not to add additional PTV signals even though they could have done so without incurring additional Section 111 liability. Ex. 7106 ¶¶ 106-108 & Tbl. 14. He then compares the results of his own data and statistical analysis to evidence, also evaluated by Dr. Majure, indicating

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<sup>6</sup> PTV should not be permitted to raise new arguments on reply. However, if it does so, JSC respectfully reserves the right to request an opportunity to respond.

<sup>7</sup> PTV relies upon this argument as the basis to strike Ex. 7105 ¶ 102 and Ex. 7106 ¶¶ 91, 108 n. 94. Mot. at App’x A. For the reasons set forth in this section, none of this testimony should be stricken.

that in the non-regulated market CSOs drop PTV signals when they are not subject to must-carry requirements. *See* Ex. 7106 ¶ 108 n.94; Ex. 7104 (Majure WRT) ¶ 41, n. 52.

Finally, Mr. Harvey performed a data analysis to determine which programming on PTV multicasts was not also broadcast on PTV primary signals. Ex. 7105 ¶¶ 102-103 & Tbls. 30-31. Mr. Harvey presents the results of his findings, which are squarely within his expertise. He observes that the programs identified by his analysis are “relatively obscure,” *id.* ¶ 102—a fact that both Mr. Hartman and Mr. Singer testified to based on their industry expertise, *see* Ex. 7110 ¶ 35, Ex. 7108 ¶ 36.

Mr. Harvey can properly rely on “facts or data in the case,” without needing to be an expert on every topic. Fed. R. 703. To the extent PTV disagrees with the evidence on which Mr. Harvey relies, the appropriate recourse was the adversarial process, not a motion to strike. *See Manpower*, 732 F.3d at 808 (“The reliability of data and assumptions used in applying a methodology is tested by the adversarial process and determined by the jury; the court’s role is generally limited to assessing the reliability of the methodology—the framework—of the expert’s analysis.”). Yet, once again, PTV did not do so. Instead, PTV seeks to improperly exclude evidence it does not like.

## **CONCLUSION**

For the foregoing reasons, the Judges should deny PTV’s Motion.

Dated: June 23, 2023

## JOINT SPORTS CLAIMANTS

/s/ Ryan White

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of June, 2023, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ Ryan White  
Ryan White

# Proof of Delivery

I hereby certify that on Friday, June 23, 2023, I provided a true and correct copy of the JSC Response in Opposition to PTV's Motion to Strike Portions of the Testimony of R. Garrison Harvey to the following:

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Signed: /s/ Ryan D White