1 but could we go through this on a, on a sentence-by-sentence
2 basis? Or at least could I, could I make a defense of the
3 sentences?
4 MS. SCHMELTZER: Well, maybe you could do that
5 during a break or something so we can move on.
6 JUDGE SIPPEL: Well, no, he's not going to leave it
7 for a break. You're asking for a reconsideration?
8 MR. HOWARD: Yes, Your Honor.
9 JUDGE SIPPEL: No, I'm not going to do that.
10 MR. HOWARD: All right. I will not waste their
11 time.
12 JUDGE SIPPEL: Request for reconsideration denied.
13 MR. HOWARD: Thank you.
14 MS. SCHMELTZER: Page 5, paragraph 11, I would move
15 to strike the first sentence. Mr. Schroeder is referring to
16 management discussions; we don't know who was involved. He's
17 referring to documents; we don't know what document he's
18 referring to. He refers to Richard Janssen and Ken Lowe who
19 are not witnesses. So I think for a variety of reasons this
20 sentence should be stricken.
21 JUDGE SIPPEL: Well, what about -- He gives an
22 example. It's Attachment B.
23 MS. SCHMELTZER: Oh, okay, yes. And there's no
24 sponsor for that attachment. It's just -- It says "News
25 Department Comparisons." And it says to RJJ from KWL. So

1 that would be to Richard Janssen from Ken Lowe, and neither
2 Mr. Janssen nor Mr. Lowe are here. I mean, with all due
3 respect, Your Honor, Scripps was perfectly able to -- I don't,
4 I don't know why Mr. Lowe's not testifying if there are going
5 to be all these memos.
6 JUDGE SIPPEL: Well, as I -- as we go back to where
7 we were with paragraph 8, and Mr. Goldstein's question was,
8 you know, what's the purpose for which the memo is being
9 offered, and that cleared it right up. And I guess we should
10 ask him the same question, what's the, what's the purpose for
11 Attachment B?
12 MR. HOWARD: It's to demonstrate the -- that Scripps
13 Howard took an active role, active but limited role in the
14 management of the station during the renewal period and it's a
15 document kept in the ordinary course of business.
16 MS. SCHMELTZER: But unless there's a witness we can
17 cross examine on this, I don't know how you concluded from
18 this document that they took an active role in the management
19 of the business.
20 MR. HOWARD: It's offered only for the -- for what
21 it states, Your Honor, that it shows that the corporate
22 management gathered this information about the programming
23 operations of its stations.
24 MS. SCHMELTZER: Well, Your Honor, it really doesn't
25 show he gathered that information. That might have been done

1 by a secretary.

2 JUDGE SIPPEL: Well --

3 MR. HOWARD: It was at least brought to the

4 attention of the president of the company and a vice president

5 of the company.

6 JUDGE SIPPEL: We're going back and forth on this.

7 Let's hold off just a minute. Let me hear from the Bureau.

8 MR. GOLDSTEIN: The document appears to show that

9 some analysis was done by Scripps Howard and it says it was

10 during the license term. So it seems to be --

11 MS. SCHMELTZER: I don't see a date on this

12 document.

13 JUDGE SIPPEL: Is that the date?

14 MS. SCHMELTZER: Um-hum.

15 JUDGE SIPPEL: I think what you're doing --

16 MR. HOWARD: Why don't you ask the sponsoring

17 witness, Your Honor?

18 JUDGE SIPPEL: I think, I think you're going to have

19 to ask this witness. We're getting -- really going into cross

20 examination for areas that should be covered by cross. We

21 have a --

22 MS. SCHMELTZER: Your Honor, my other objection is

23 that this exhibit and the sentence, for example, refers to the

24 other stations, and the other stations are not involved in

25 this proceeding.

1 JUDGE SIPPEL: Well, well, where are you?
2 MS. SCHMELTZER: Attach -- Where it says, "For
3 example, attached as Attachment B is a copy of a report
4 prepared during the license term on WMAR-TV's and the other
5 Scripps Howard stations' news budget." Now, first of all, it
6 says this was prepared during the license term, which means it
7 could have been prepared between September 3 and September
8 30th. And, secondly, and Mr. Lowe and Mr. Janssen are not
9 here to cross examine on that. And, and secondly, it talks
10 about the other Scripps Howard stations, and you've already
11 ruled that those stations are not part of this proceeding.
12 JUDGE SIPPEL: Well, that's true, but we're going to
13 get into -- I mean, you're going to have diversification
14 evidence. I mean, it's not going -- that this is --
15 MS. SCHMELTZER: But this goes to the renewal
16 expectancy, this doesn't go to diversification. This exhibit
17 goes to renewal expectancy.
18 JUDGE SIPPEL: Well, I understand that, I said, but
19 I can't see where the case is being prejudiced in any -- your
20 case is being prejudiced or their case is being helped by my
21 seeing that with respect to some of these other stations.
22 It's just that this was -- We could have, we could have them
23 mask it out and just leave it with the one station, but, you
24 know, for -- Again, it's -- at my discretion, I'm going to
25 permit it to come in the way it is. You can ask the witness

1 questions on cross examination with respect to it. Overruled.
2 Go on.
3 MS. SCHMELTZER: Okay. What about the -- I don't
4 know whether you've ruled on the first sentence in paragraph
5 11.
6 JUDGE SIPPEL: I, I -- He's entitled to testify to
7 that.
8 MS. SCHMELTZER: Well, except that I don't think
9 he's entitled to testify as to what contacts Mr. Janssen and
10 Mr. Lowe had with the station when we can't cross examine
11 them.
12 JUDGE SIPPEL: Well, as I say --
13 MR. GOLDSTEIN: If you were --
14 JUDGE SIPPEL: Go ahead.
15 MR. GOLDSTEIN: If Mr. -- When Mr. Schroeder
16 testifies, if he can report that Mr. Janssen and Mr. Lowe
17 reported at meetings that they were in regular contact, that's
18 all it is. It's not to say what the substance of the contact
19 was, just the fact that a report was given that they were in
20 contact. And that seems to me to be adequate to -- It should
21 be the subject of cross examination.
22 JUDGE SIPPEL: If they're going to try -- I think
23 Mr. Goldstein's correct. If they're going to try and make
24 more of Janssen and Lowe than we're, we're talking about here,
25 they should have Janssen and Lowe in as witnesses. I mean,

1 there's only -- this is only going to -- this can only be
2 taken so far. Anyway, my ruling is that I'm overruling the
3 objection. Let's move on.
4 MS. SCHMELTZER: In the next sentence, I would just
5 move to strike the word "among other things."
6 JUDGE SIPPEL: Where is that? Which page are we on?
7 MS. SCHMELTZER: In that same paragraph, paragraph
8 11.
9 JUDGE SIPPEL: Well, that's, that's like saying --
10 No, again, I want to move on. Paragraph 11 stays the way it
11 is.
12 MS. SCHMELTZER: Paragraph 12, the last sentence on
13 page 5, "After careful examination of his record and
14 qualifications, Scripps Howard determined that Arnie Kleiner
15 met the standards Scripps Howard applies in selecting its
16 general managers," that's self-serving and it's also vague.
17 JUDGE SIPPEL: How about relevance?
18 MS. SCHMELTZER: I also don't think it's relevant.
19 JUDGE SIPPEL: Mr. Goldstein?
20 MR. GOLDSTEIN: I think it's kind of self-serving.
21 I think that's the best you can after examination of --
22 MR. HOWARD: Your Honor, it's offered only for the
23 fact that Scripps Howard made an examination. I don't -- we
24 could certainly strike, but Scripps Howard examined Arnold
25 Kleiner's qualifications and made an affirmative determination

1 that he could be their representative in that market.
2 JUDGE SIPPEL: Again, I could -- It just isn't -- it
3 isn't fair to the case to go down each sentence -- I, I'm
4 going to have to just make a -- I will let that evidence come
5 in. I would like to see it come in differently, without so
6 many adjectives, but we just have to move this along. Mr.
7 Schroeder may have to stay on the, on the stand a little
8 longer than he thought, but I'm going to overrule the
9 objection.
10 MS. SCHMELTZER: The next page, paragraph 6, I move
11 to strike all of paragraph 13, which goes over onto page 7.
12 Once again, Scripps Howard is trying to get credit for an
13 alleged record in running the station. And, moreover,
14 Mr. Schroeder is loosely referring to things that Scripps
15 Howard did without identifying who actually did these things.
16 MR. GOLDSTEIN: I would just say that Mr. Kleiner
17 would be testifying as to his own qualifications and I think
18 that they should stand on that rather than any -- Number 13.
19 MR. HOWARD: Your Honor, this is the crux of the
20 argument that I presented before, that in light of the
21 submissions a grant of licensee's wide discretion in how they
22 choose to conduct ascertainment in a market that Scripps
23 Howard is operating, under that wide range of discretion chose
24 to continue Mr. Kleiner's employment and thus gained the
25 benefit of his time as an ascertainer of community needs and

1 interests in Baltimore and was perhaps -- Without
2 characterizing it further, it's offered to show that Scripps
3 Howard had the benefit of substantial ascertainment as part of
4 its acquisition.
5 JUDGE SIPPEL: All right.
6 MR. GOLDSTEIN: The fact is --
7 JUDGE SIPPEL: Let Mr. Howard finish. Are you
8 finished?
9 MR. HOWARD: Yes, sir.
10 MR. GOLDSTEIN: The previous paragraph says that
11 they hired Mr. Kleiner. Mr. Kleiner's testimony goes to great
12 length as to his qualifications and his background and his
13 experience and his role in thus and such. So I need no need
14 for this.
15 MR. HOWARD: This shows that the -- that there was a
16 conscious decision to gain the benefit of his ascertainment
17 experience.
18 JUDGE SIPPEL: Well, I'm, I'm going to cut this off
19 right now. That, that -- If you can show, if you can show
20 that -- No, I should put this in the abstract. Maybe I better
21 not even say it. But you certainly have the benefit of
22 Mr. Kleiner's testimony and other evidence in this case to
23 seek to establish what you're trying to establish. This just
24 lends -- opens up the door for, for cross examination into
25 areas which -- relevant. I, I've heard argument and I'm going

1 to strike paragraph 13 as, as really being an effort to
2 summarize the, the evidence that's going to come through Mr.,
3 Mr. Kleiner. And that could be prejudicial, as well as
4 confusing. Paragraph 14?
5 MS. SCHMELTZER: Okay, paragraph 14, the fourth line
6 down, I would refer -- I would object to "high-quality" as
7 conclusory and self-serving.
8 MR. HOWARD: This go --
9 JUDGE SIPPEL: Go ahead.
10 MR. HOWARD: This goes to what Scripps Howard
11 intended to do by these actions, Your Honor. And that
12 certainly was the intent, to ensure the availability, and I
13 think it's a statement of fact to which he's competent to
14 testify.
15 JUDGE SIPPEL: Mr. Goldstein?
16 MR. GOLDSTEIN: My problem with all this is the
17 proof is in the pudding, and that is what did they perform
18 during the license term. I don't think there's any need to
19 say what Scripps Howard encourages, and that may be fine, but
20 the fact is what did they produce. So I would agree that that
21 shouldn't be in there. I would have to say that Scripps
22 Howard suggests methods to which general managers --
23 MR. HOWARD: "By ensuring the availability of
24 adequate resources" certainly is an important part of --
25 MR. GOLDSTEIN: Okay.

1 MR. HOWARD: -- making -- permitting the delivery of
2 high-quality programming.
3 JUDGE SIPPEL: All right. Let me, let me hear --
4 let me move on. Is there anything else on paragraph 14?
5 MS. SCHMELTZER: Yes. Yes, sir.
6 JUDGE SIPPEL: Let's, let's get all of paragraph 14
7 out then.
8 MS. SCHMELTZER: The, the sentence that refers to
9 Attachment E is a copy of a memo sent during the license term.
10 That attachment was sent September 13th, which is after the
11 September 3 deadline. There's no sponsor for that memo. Mr.
12 Schroeder is not indicated as copied on that memo. So I would
13 object to that sentence about Attachment E. And, finally, I
14 would object to the sentence "Scripps Howard encourages the
15 communication of programming ideas among stations through
16 memoranda that are regularly sent to all stations," and the
17 following sentence, "Attachment G is a copy of one such memo,"
18 because again that brings to the fore all of the other
19 stations, which are not a part of this proceeding.
20 And, in addition, there's no sponsor for Attachment
21 G. Mr. Schroeder is not copied on that.
22 JUDGE SIPPEL: Anything else? Is there anything
23 else in that --
24 MS. SCHMELTZER: That's, that's all my objections to
25 that paragraph.

1 JUDGE SIPPEL: Let me hear from Mr. Goldstein first,
2 and then you go last, Mr. Howard.
3 MR. GOLDSTEIN: Did you object to Attachment F, too,
4 Mrs. Schmeltzer, since it was initiated by Mr. Schroeder?
5 MS. SCHMELTZER: No, I did not object to
6 Attachment F.
7 MR. GOLDSTEIN: I, I just think if you take the
8 adjectives out, then it gives background as to how Scripps
9 Howard operates. "While as noted above, Scripps Howard
10 general managers decide what public affairs and news
11 programming," take out the words "high-quality programming"
12 and take out the words "superior performance." Take out the
13 word "superior" and come up with another adjective. And the
14 rest of it, I -- is background, as far as I'm concerned. It
15 just doesn't --
16 JUDGE SIPPEL: Well, you know, if you took this, if
17 you took this in the context -- What we're talking about here
18 is direct testimony, and if you took this in the context of
19 how that would play out and you would ask the witness on
20 direct testimony, you know, explain what it was that you --
21 what your insights were with respect to Mr. Kleiner and how
22 you, how you and Mr. Kleiner -- how you thought Mr. Kleiner
23 was doing in addition to your programming efforts or what not,
24 seems to me that without the adjectives this, this could be
25 received.

1 So I don't -- I understand where you're coming from,
2 too, Ms. Schmeltzer. I mean, as I say, it doesn't -- I would
3 like to see it presented editorially in a different way, but
4 this is, this is --
5 MS. SCHMELTZER: But the point is that the advocacy
6 should be in proposed conclusions and, and not in the direct
7 case exhibits.
8 JUDGE SIPPEL: I understand. That's when, you know,
9 that's when they decided that they were going to use canned
10 testimony. We go through this in every case.
11 MR. HOWARD: Are you going to ask to have some, some
12 deletions -- some changes in the adjectives that would take
13 care of it?
14 JUDGE SIPPEL: Yes. What I'm going to do is we're
15 getting close to a break. I'm going to give you five minutes
16 more on the break and see if you can work out with, with
17 Ms. Schmeltzer, if you both would want to, how you want to
18 recast that paragraph.
19 MR. HOWARD: All right.
20 JUDGE SIPPEL: And let's, let's move on to other
21 business. So I'm reserving ruling on paragraph 14.
22 (Brief recess.)
23 JUDGE SIPPEL: All right, can you state for the
24 record, Mr. Howard, what the changes are to paragraph 14?
25 MR. HOWARD: There are some we've agreed on,

1 Your Honor, and some that, that we have not. In, in line 1,
2 2, 3, 4, we would change "high quality" to "such programming."
3 JUDGE SIPPEL: So scratch "high quality" and insert
4 "such"?
5 MR. HOWARD: Yes, Your Honor, referring back to this
6 public affairs and new programming.
7 JUDGE SIPPEL: All right. The, the reporter will
8 make that change and the record will be so changed.
9 MR. HOWARD: And two lines down, I'm not sure that I
10 have the opposing counsel's agreement. I believe the Mass
11 Media Bureau would agree with this. That to strike "to ensure
12 superior performance" and substitute "after suggesting methods
13 of performance with respect to such programming."
14 MS. SCHMELTZER: I don't have any objection,
15 Your Honor.
16 JUDGE SIPPEL: I'm trying to find out where that is.
17 MR. HOWARD: It's 1, 2, 3, 4, 5, 6 lines down in
18 paragraph 14, after --
19 JUDGE SIPPEL: I see it. All right, would you give
20 me the change again, please?
21 MR. HOWARD: Yes, sir. After "suggesting methods,"
22 strike "to ensure superior performance."
23 JUDGE SIPPEL: All right.
24 MR. HOWARD: Insert "of performance with respect to
25 such programming."

1 JUDGE SIPPEL: Okay, the testimony will be so
2 changed.
3 MR. HOWARD: Those are the only changes that --
4 JUDGE SIPPEL: Those were the only agreed to --
5 MR. HOWARD: The only agreed to changes, yes,
6 Your Honor.
7 JUDGE SIPPEL: All right. Then what's left to rule
8 on?
9 MS. SCHMELTZER: The sentence describing Attachment
10 E and that exhibit. Or maybe you're going to get to the -- We
11 haven't really definitively addressed the exhibits, but I
12 think we could quickly go through those. There's no sponsor
13 for Attachment E, which is further -- There's no -- sponsor
14 for Attachment E and it refers to all stations, not just WMAR-
15 TV.
16 JUDGE SIPPEL: Well, again, this is a general
17 description of the type of assistance that was given -- As I'm
18 reading this, this is -- it's illustrative. Here's the kind
19 of help --
20 MS. SCHMELTZER: But also, Your Honor, this is --
21 the memo is dated September 13th, which is after we filed the
22 competing application.
23 JUDGE SIPPEL: Well, I, I -- Let me hear from
24 Mr. Howard on that.
25 MR. HOWARD: Your, Your Honor, as -- if there is

1 information referencing in here that much of this material was
2 discussed at a Kansas City meeting which occurred previously,
3 I think that Mr. Schroeder would be able to testify that that
4 meeting occurred substantially previously, in fact, before the
5 license term. I -- Again, it's not during the license term,
6 but there's certainly no question that this document was
7 prepared in, in, in response to a comparative challenge.
8 MS. SCHMELTZER: There's no indication anywhere as
9 to when the Kansas City meeting occurred.
10 JUDGE SIPPEL: Well, I'm going to, I'm going to
11 sustain that objection because, I mean, I have to, I have to
12 be very careful with the slippage on those dates. I, I, -- My
13 instructions were that if they implemented programming before,
14 before September 3rd but, you know, it wasn't put on the air
15 until after September 3rd, but before the 30th or the 31st,
16 30th of September, that I would permit it. But this -- That
17 ruling was specifically designed to avoid this, that something
18 could not be created after the 3rd of September.
19 And I'm not suggesting that this was done for, for
20 some venal purpose. I'm simply telling you that this is, this
21 is the time that's being eaten up here, have to deal with
22 this, and it, it'll never be satisfactorily resolved. I don't
23 need -- the point -- My ultimate point is that I don't think
24 that this, this, this testimony or the evidence that's in this
25 memo is, is, is of great significance to the issues in this

1 case. On the basis -- On the narrow basis that it falls
2 outside of the, the renewal period, I'm going to strike -- I,
3 I will not consider and strike Attachment E. So the sentence
4 with respect to Attachment E gets stricken. That is the
5 sentence in paragraph 14 describing Attachment E.
6 MR. HOWARD: Your Honor, that was only offered as
7 support of the -- I'm sorry, the Attachment E sentence, I'm
8 sorry, but not the se-- preceding sentence?
9 JUDGE SIPPEL: No, I haven't decided on what to do
10 with the preceding sentence yet.
11 MR. HOWARD: I'm sorry.
12 JUDGE SIPPEL: I would -- What's your position now
13 with respect to the sentence, Ms. Schmeltzer, without the --
14 MS. SCHMELTZER: Well, the only problem would be
15 "through sending memoranda."
16 JUDGE SIPPEL: Mr. Goldstein?
17 MR. GOLDSTEIN: I would ask him about it. I, I
18 don't have a problem with the way it is.
19 JUDGE SIPPEL: I, I've given you a lot with striking
20 Attachment E. I'm going to stay with what we have on, on, on
21 the sentence. Now, anything else?
22 MS. SCHMELTZER: Yeah, there was the sentence about
23 Scripps Howard encourages, and then the Attachment G. And
24 Attachment G is from Ken Lowe. It did not go to Mr. Schroeder
25 and it's about something -- a museum in Memphis. So I can't

1 see that this is in any way relevant.

2 MR. HOWARD: It says he sent it to Arnie Kleiner, as

3 evidenced by the initials, JHK. I'm sorry, HAK.

4 MS. SCHMELTZER: So then it should be with

5 Mr. Kleiner's testimony, not Mr. Schroeder's testimony.

6 MR. HOWARD: Well, but it was kept in the ordinary

7 course of business records in corporate headquarters and

8 Mr. Kleiner did not have a copy of it in his, in his

9 documents. So that's why it's submitted as part of

10 Mr. Schroeder's testimony, because it's a document kept in the

11 ordinary course of business over which -- about which he could

12 testify.

13 MS. SCHMELTZER: So then we can't be sure that

14 Mr. Kleiner actually received it then if it's not -- it wasn't

15 in his records.

16 JUDGE SIPPEL: Well, I'm going to --

17 MR. HOWARD: You could cross examine him on it.

18 JUDGE SIPPEL: Let me, let me, let me bring this to

19 a close. If, if, if I would permit the testimony, for

20 whatever it's worth, to come in about encouraging this inner

21 exchange of information among the stations, but since this

22 does pertain to Memphis specifically, I'm going to apply the

23 principles of Rule 402 of the federal rules. This is just

24 going to -- It lends itself more to confusing than to

25 clarifying. So I'm going to strike Attachment G.

1 MS. SCHMELTZER: And the sentence on that?
2 JUDGE SIPPEL: Well, wait a minute. Let me move
3 back up into the sentence. The sentence simply says that they
4 encourage communicating programming ideas among the stations.
5 MS. SCHMELTZER: I'm sorry, the following sentence.
6 JUDGE SIPPEL: Oh. You're objecting to the
7 following sentence?
8 MS. SCHMELTZER: Um-hum. That's right. Just
9 because it refers to Attachment G.
10 JUDGE SIPPEL: Which, Mrs. Schmeltzer? Do you see
11 what she's referring to?
12 MR. HOWARD: You mean the preceding sentence?
13 MS. SCHMELTZER: No, I mean -- I'm -- The sentence I
14 think should be stricken is "Attachment G is a copy of one
15 such memo."
16 JUDGE SIPPEL: Oh, that's already stricken.
17 MR. HOWARD: It's already been stricken.
18 MS. SCHMELTZER: Okay, okay.
19 MR. HOWARD: I thought we were going down to the FCC
20 requirements.
21 MS. SCHMELTZER: No.
22 MR. GOLDSTEIN: But the preceding sentence is not
23 stricken.
24 MS. SCHMELTZER: Right.
25 JUDGE SIPPEL: That's correct, the preceding

1 sentence stays. So that the record is clear, what I have
2 stricken is the following sentence. Quote, "Attachment G is a
3 copy of one such memorandum sent during the license term."
4 That's the only thing that I have stricken with respect to
5 that portion of the paragraph. And you don't have any problem
6 with the last sentence, do you?
7 MS. SCHMELTZER: No.
8 JUDGE SIPPEL: Over on page 8, paragraph 15?
9 MS. SCHMELTZER: I just have two minor problems in
10 paragraph 15. I would move to strike the word "detailed"
11 after "corporate offices" and I would move to strike the word
12 "ongoing" before "contact," two lines below that.
13 MR. HOWARD: Your Honor --
14 JUDGE SIPPEL: Yeah?
15 MR. HOWARD: -- "detailed" I, I think would be
16 consistent with your, your past rulings that came out. But
17 the "ongoing" is a statement of fact that's -- it's
18 descriptive, it's not trying to do anything except describe
19 what occurred.
20 MR. GOLDSTEIN: And I think it could be the subject
21 of cross examination to explain what the frequency is when
22 Mr. Schroeder testifies.
23 JUDGE SIPPEL: Yes. I'm going to strike the word
24 "detailed" but I'm going to leave "ongoing" in. If
25 Ms. Schmeltzer wants to cross examine, she can.

1 MS. SCHMELTZER: Okay. In the next paragraph, I
2 would move to strike the sentence that says "Attachment O of
3 Emily Barr's testimony is composed of copies of memos." I've
4 reviewed Emily Barr's testimony, Your Honor, and it's
5 redundant to be referring to it here.
6 MR. HOWARD: Your Honor, Terry Schroeder plays an
7 important role in these equipment purchases and thus his
8 support of the Attachment O documents is also worth having and
9 keeping in the record.
10 MS. SCHMELTZER: And when I go over to Attachment O,
11 there is, there's just no sponsor for these. They're just
12 kind of like -- Certainly, Mr. Schroeder is not indicated on
13 these documents.
14 JUDGE SIPPEL: Well, I'll -- Let me hear from the
15 Bureau.
16 MR. GOLDSTEIN: I'm sorry, Your Honor.
17 JUDGE SIPPEL: Do you have any --
18 MR. GOLDSTEIN: I haven't cross referenced -- I'm
19 sorry.
20 JUDGE SIPPEL: The exhibits -- Emily Barr it would,
21 it would be logical to be able to, to permit a cross reference
22 to it. Well, this, this, this particular witness, this
23 particular witness is -- It's more of an explanation type of
24 testimony. The crucial testimony is going to come with
25 Ms. Barr. And the issue is evidence of upgrading the

1 operational and programming capabilities. That's how I see
2 the relevance of this evidence. Do you have other relevance?
3 MR. HOWARD: It's evidence that Scripps Howard
4 upgraded the programming capabilities. Yes, Your Honor,
5 that's correct.
6 JUDGE SIPPEL: And here's a senior officer of the
7 company that's aware of it and why he's aware of it. So -- If
8 it doesn't -- Emily Barr's testimony, then it falls -- So I
9 would leave -- Let me see what the Bureau has to say.
10 MR. GOLDSTEIN: I would leave it in and just ask him
11 what -- to give a further explanation of what these specific
12 materials represent.
13 JUDGE SIPPEL: All right. That -- Well, that,
14 that's -- We'll let it in, we'll let it in subject to whatever
15 you want to do with it on cross examination. But, as I say,
16 it, it's going to rise and fall on Ms. Barr. But I'm assuming
17 that he would be aware of it. If Ms. Barr can establish this
18 and the fact that it's evidence, he could testify that he was
19 aware of what was going on in that respect and here's an
20 example of it, his, his Attachment O.
21 MS. SCHMELTZER: I think we have a few unsettled
22 matters as far as the exhibits are concerned. I just want to
23 make sure --
24 JUDGE SIPPEL: Well, let me, let me --
25 MS. SCHMELTZER: Yes.

1 JUDGE SIPPEL: All right. Let me make my ruling
2 with respect to paragraph 16. And I'm also -- Your objection
3 is overruled subject to cross examination and subject to the
4 testimony of Ms. Barr, in which case you may renew your
5 objection. Now, and that's the end of his testimony. Now you
6 say you've got some questions with the exhibits.
7 MS. SCHMELTZER: Yeah. I just want to make sure
8 that we're consistent with the rulings on the exhibits. It
9 was our position that Exhibit A is irrelevant. It's before
10 the -- It's May 22, 1991. It's before the relevant period.
11 Mr. Schroeder is not copied on this. It contains a lot of
12 self-serving statements about people at WMAR.
13 JUDGE SIPPEL: What paragraph is exhibit in?
14 MR. HOWARD: Paragraph 8 and 9 where it was --
15 JUDGE SIPPEL: Paragraph 8?
16 MR. HOWARD: Paragraph 8, page 3. An objection was
17 made and ruled --
18 JUDGE SIPPEL: That's correct. That's a -- Well,
19 that's in the nature of reconsideration. Whatever I ruled on
20 with respect to paragraph 8 stays.
21 MS. SCHMELTZER: And with respect to Exhibit B --
22 MR. GOLDSTEIN: Your Honor, just for clarification,
23 basically then A was received over our objections.
24 JUDGE SIPPEL: It was received over objection.
25 MS. SCHMELTZER: With respect to B, I don't have any

1 objection so far as WMAR is concerned. There's no date on
2 this exhibit, but I don't think -- I think all of the other
3 material with respect to the other stations should be
4 stricken.
5 MR. HOWARD: We're going to ask -- This is supposed
6 to be the subject of cross examination with respect to the
7 date.
8 JUDGE SIPPEL: Well, I've already, I've already
9 received that into evidence and I'm going to deny
10 reconsideration.
11 MS. SCHMELTZER: Your Honor, I don't know whether
12 you ruled on Attachment C or not. There, there -- The only
13 possible sponsor for this could be Arnie Kleiner, not
14 Mr. Schroeder. Mr. Schroeder is not listed on these
15 documents.
16 MR. HOWARD: Your Honor, Terry Schroeder is the
17 sponsor because these documents were maintained at
18 headquarters, corporate headquarters, and that's --
19 JUDGE SIPPEL: They were maintained at corporate
20 headquarters. In other words, he's, in effect, testifying as
21 a custodian?
22 MR. HOWARD: Yes, Your Honor.
23 JUDGE SIPPEL: Well, I mean, that undercuts the
24 weight to be accorded the, the, the evidence insofar as, as
25 these are documents in connection with his testimony. These

1 are illustrative documents that corroborates or supports the
2 statements that are made in the testimony.
3 MR. HOWARD: Your Honor, it also will support
4 statements in, in Mr. Kleiner's testimony. I think it's --
5 for one -- for the witness that has a document that supports
6 the evidence that can be offered by another witness to, to
7 introduce that, that evidence.
8 JUDGE SIPPEL: Well, if it's in -- Well, let me ask
9 this. Do you intend to -- Well, I don't know -- see how
10 you're going to have your opportunity to do that with
11 Mr. Kleiner because this is -- we've got his testimony already
12 locked in, unless something comes up on cross examination that
13 you can redirect with respect to an exhibit that's in
14 Schroeder's testimony. This is not going to be seen by
15 Kleiner. So all of my comment -- I'm, I'm just making some
16 general comments with respect to the weight -- I understand
17 how you're trying to use this, this evidence and -- And
18 Ms. Schmeltzer made the point he's not copied on it, he's not
19 seen it in the course of business. He's only testified that
20 -- document.
21 MR. HOWARD: Mr. Kleiner does testify extensively
22 about the --
23 JUDGE SIPPEL: No, no, no. No, no, listen to me.
24 Mr. Schroeder, I'm sorry. I'm saying Mr. Kleiner doesn't get
25 to see the -- unless there are copies in his testimony, too,

1 or unless something opens up on cross examination and you're
2 permitted to -- But as a general rule, this is it. This is
3 Mr. Schroeder's testimony. He's cross examined on this and
4 we'll close the book and it's put away.
5 MR. HOWARD: If I can have a minute, Your Honor.
6 JUDGE SIPPEL: All right. Go off the record,
7 please.
8 (Off the record.)
9 JUDGE SIPPEL: We're back on the record.
10 MR. HOWARD: I'm sorry. The same memorandum is
11 included in Arnie Kleiner's testimony and it's --
12 MS. SCHMELTZER: But he doesn't have --
13 UNIDENTIFIED SPEAKER: It's got a different -- It's
14 in Emily's testimony.
15 MR. HOWARD: It's in Emily's testimony. I'm sorry,
16 Your Honor. And referenced in Arnie Kleiner's testimony.
17 MS. SCHMELTZER: Well, if it's not attached to Arnie
18 Kleiner's, then it's not his testimony.
19 MR. HOWARD: Yes, it is. He states, "At my request,
20 Emily Barr collected materials documenting the management
21 decision-making process concerning this expansion and has
22 offered them as Attachment B to her testimony." And getting
23 his review to Attachment B to her testimony and that he can
24 testify as to its accuracy.
25 JUDGE SIPPEL: Well, I'm not going to, I'm not going