

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	:
	:
	:
GAME SHOW NETWORK, LLC,	: MB Docket No.
Complainant,	: 12-122
	:
v.	: File No.
	: CSR-8529-P
CABLEVISION SYSTEMS CORP.,	:
Defendant,	:
	:
Program Carriage Complaint	:

Thursday,
July 9, 2015

Volume III

Hearing Room A
Room TW-A363
445 12th Street, S.W.
Washington, DC

The above-entitled matter came on for hearing, pursuant to notice, at 10:06 a.m.

BEFORE: THE HONORABLE RICHARD L. SIPPEL,
Chief Administrative Law Judge

APPEARANCES :On Behalf of the Complainant, Game Show Network, LLC:

LAURA FLAHIVE-WU, ESQ.
PAUL W. SCHMIDT, ESQ.
Of: Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
Tel: (202) 662-5982 (Flahive-Wu)
(202) 662-5272 (Schmidt)
Fax: (202) 662-6291
Email: lflahivewu@cov.com
pschmidt@cov.com

and

C. WILLIAM PHILLIPS, ESQ.
JONATHAN M. SPERLING, ESQ.
Of: Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Tel: (212) 841-1081 (Phillips)
(212) 841-1153 (Sperling)
Fax: (212) 841-1010
Email: cphillips@cov.com
jsperling@cov.com

On Behalf of the Defendant, Cablevision Systems Corporation:

GARY CARNEY, ESQ.
JAY COHEN, ESQ.
Of: Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 373-3051 (Carney)
(212) 373-3163 (Cohen)
Fax: (212) 492-0051 (Carney)
(212) 492-0163 (Cohen)
Email: gcarney@paulweiss.com
jaycohen@paulweiss.com

On Behalf of the Federal Communications Commission:

PAMELA S. KANE, ESQ.
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Tel: (202) 418-2393
Fax: (202) 418-2080
Email: pamela.kane@fcc.gov

WILLIAM H. KNOWLES-KELLETT, ESQ.
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325
Tel: (717) 338-2505
Fax: (717) 338-2698
Email: wkellett@fcc.gov

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Dale Hopkins				
By Ms. Flahive-Wu	580		700 712	
By Mr. Cohen		614		
By Mr. Kane				706
John Zaccario				
By Mr. Sperling	714		810 858	
By Mr. Cohen		747		827 855

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>MARK</u>	<u>RECD</u>
<u>GSN</u>			
303	Hopkins's direct testimony	581	612
298	Zaccario's direct testimony	715	717

Cablevision

405	email from Curran to Goldhill	652	664
403	email from Mr. Michell	675	676
404	email RE Barter	676	682
500	Script with GSN Up Front for 2008	782	787
504	Right Category from John Zaccario dated January 5, 2012	794	803
502	2010 Ad Sales Pacing Report for Multimedia Executive Committee	804	807
713	email Draft for your review: Answers to Questions Posed in our GSA/BSN Media Discussion	665	669
711	email RE Time Warner	700	

Closed Sessions: 598-613/620-671/682-750
758-783/817-860

OTR: 10:06 a.m.
Lunch: 12:55 p.m. to 2:11 p.m.
OTR: 6:12 p.m.

1 P-R-O-C-E-E-D-I-N-G-S

2 (10:06 a.m.)

3 JUDGE SIPPEL: We're on the record. This is our third
4 day, third day in and we've already finished one witness and
5 opening statements. By the way, I didn't mean to cut the bureau
6 out of an opening statement. If you ever -- if you want to make
7 any kind of a statement before we leave.

8 MS. KANE: I don't think so, Your Honor.

9 JUDGE SIPPEL: All right.

10 MS. KANE: We'll certainly reserve that but I don't think
11 that should be necessary.

12 JUDGE SIPPEL: Okay, okay. The next witness is going to
13 be Ms. Hopkins. Is that right?

14 MR. SCHMIDT: Yes, Your Honor. And on the point about
15 timing, Your Honor, we did talk and I think we reached agreement
16 that the broad two remaining buckets of objections we had, I think
17 Your Honor's rulings speak to them and overrule them. So we're
18 standing on our objections, but we're not going to be asserting
19 them on the going forward basis. We're just going to take the view
20 that Your Honor has resolved the issues against the party making
21 the objections.

22 MR. COHEN: Right, so let's be clear. I think what we're
23 each agreeing is that if we do not press objections on tiering,
24 post-tiering objections --

25 JUDGE SIPPEL: Yes.

1 MR. COHEN: -- Mr. Schmidt has agreed that GSN will not
2 argue that we've waived those objections, but than rather argue
3 each one to you when we think Your Honor's really mis-clear, the
4 documents will just come into evidence, with just a reservation of
5 our rights about the relevance. So that'll save a lot, because
6 that's about 50 or 60 exhibits, I think.

7 MR. SCHMIDT: Yes, that's true.

8 JUDGE SIPPEL: And I don't have any, if you want to
9 require, I myself, they do this is in document to document. They
10 only require a proffer of relevance, a short proffer of the
11 relevance, and then you explain it.

12 MR. COHEN: I think with that understanding, I think
13 we'll probably be in good shape. That'll move, we won't have a 20-
14 minute evidentiary argument on each document.

15 JUDGE SIPPEL: What about the admissibility of the
16 evidence then?

17 MR. SCHMIDT: I think the admissibility comes in subject
18 to us later being able to argue kind of the weight of the evidence
19 and having preserved our original --

20 JUDGE SIPPEL: Well, can it be moved in that some --

21 MR. SCHMIDT: Yes.

22 MR. COHEN: Yes, Your Honor.

23 JUDGE SIPPEL: And they will, I mean when I say they, I
24 mean there will specific numbers?

25 MR. COHEN: Yes. Your Honor, the Bureau made a

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1 suggestion to me yesterday, I don't know if they did to Mr.
2 Schmidt, which made a lot of sense, which is I think this week or
3 next week -- we gave Your Honor binders.

4 JUDGE SIPPEL: Yes.

5 MR. COHEN: First of all, I think we'll update the list
6 of what's in evidence for which there's no objections, and then at
7 the end of the trial we'll give Your Honor a supplemental binders
8 with all the additional cross and other exhibits that came in that
9 are not in the original binders. So you'll have, we'll all
10 understand what's in evidence at the end of the hearing, if that's
11 acceptable to the Court.

12 JUDGE SIPPEL: As long as we know what binders are
13 relevant and what binders are out.

14 MR. COHEN: Yes.

15 JUDGE SIPPEL: You know, that's fine. I'm just, yes. I
16 mean yes, we'll do it that way. That sounds very good.

17 MR. SCHMIDT: The other thing we did talk about, Mr.
18 Cohen and I last night, and then with the Enforcement Bureau a
19 little bit this morning, is we share Your Honor's concern about
20 timing in terms again through this, and we're going to look at ways
21 of streamlining in terms of our witnesses just to be, I think, as
22 efficient as possible.

23 JUDGE SIPPEL: Okay, thank you. But I really don't have
24 any, as of this point, don't have any problems with the way we're
25 proceeding. I'm assuming that we feel comfortable finishing next

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1 week.

2 MR. SCHMIDT: That's what we're a little concerned about,
3 just in terms of the number of witnesses to come. That's why we
4 want to try to be efficient.

5 JUDGE SIPPEL: You mean I shouldn't be sleeping as well
6 as I -- okay, thank you very much. Anything else preliminary? No?

7 MR. SCHMIDT: The only other preliminary thing on our
8 end, Your Honor, I introduced her at the beginning. Ms. Flahive-Wu
9 will be examining Ms. Hopkins on our behalf. So I just wanted to
10 make the introduction.

11 JUDGE SIPPEL: Good morning, Ms. --

12 MS. FLAHIVE-WU: Good morning, Your Honor.

13 JUDGE SIPPEL: Will you repeat your name, please?

14 MS. FLAHIVE-WU: Laura Wu.

15 JUDGE SIPPEL: Laura Wu?

16 MS. FLAHIVE-WU: Yes.

17 JUDGE SIPPEL: Okay. Good morning, Ms. Wu.

18 MS. FLAHIVE-WU: Good morning, Your Honor.

19 JUDGE SIPPEL: And we're ready to proceed. Your next
20 witness, Ms. Wu.

21 JUDGE SIPPEL: Please raise your right hand. Do you
22 swear or affirm that the testimony you give in this case will be
23 the truth, the whole truth and nothing but the truth?

24 THE WITNESS: I do.

25

1 WHEREUPON,

2

3

DALE HOPKINS

4

was called as a witness by Counsel for the Complainant and, having

5

been first duly sworn, assumed the witness stand, was examined and

6

testified as follows:

7

JUDGE SIPPEL: Okay, please be seated.

8

MS. FLAHIVE-WU: Your Honor, may I approach? I have a
9 very small binder for Ms. Hopkins to guide us through her direct.

10

JUDGE SIPPEL: Thank you. That chair had a workout
11 yesterday. Mr. Goldhill was in it. Okay, proceed.

12

MS. FLAHIVE-WU: Good morning, Ms. Hopkins.

13

THE WITNESS: Good morning.

14

DIRECT EXAMINATION

15

BY MS. FLAHIVE-WU:

16

Q Can you describe your current position at GSN?

17

A I am Executive Vice President of Distribution.

18

Q How long have you held that position?

19

A Since March 2011.

20

Q How long have you worked at GSN, overall?

21

A I joined GSN in early 2009.

22

Q Ms. Hopkins, how long have you worked in the television
23 industry, overall?

24

A Thirty years plus.

25

Q I'd like to call your attention, Ms. Hopkins, to Tab

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1 Number 1 in the binder that I just handed up. Is this the written
2 direct testimony that you prepared in connection with this
3 litigation?

4 A Yes.

5 MS. FLAHIVE-WU: Your Honor, we move Ms. Hopkins' direct
6 testimony which is GSN Exhibit 303 into evidence.

7 (Whereupon, the above-referred to document was marked as
8 GSN Exhibit 303 for identification.)

9 MR. COHEN: Your Honor, we have a few objections that, do
10 you have a marked copy? Your Honor, let me give you the marked
11 copy, and we've withdrawn --

12 JUDGE SIPPEL: Thank you.

13 MR. COHEN: We've withdrawn most of the objections. I'll
14 get you another copy. So I'm only pressing one type of objection,
15 Your Honor, and I think it's in three places. But I think once, so
16 you can skip most of the things that are in brackets. And Your
17 Honor would go to Page 4 Paragraph 12, I'm on the last sentence.

18 JUDGE SIPPEL: Yes.

19 MR. COHEN: Okay. "Indeed, the network's history of
20 crossovers evidences WE TV's understanding of competitive
21 similarity of the two services and its understanding and belief
22 that the same viewers who watch GSN watch and may be persuaded to
23 watch TV." Your Honor, I don't think the witness is competent in
24 the legal sense to argue what's in WE TV's mind, what their state
25 of mind is. It's argument. She's not a fact witness for what WE

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1 believes, so we think it's a 602 objection, Your Honor, and we
2 would ask that that be stricken.

3 MS. FLAHIVE-WU: Your Honor --

4 JUDGE SIPPEL: Yes, Ms. Wu.

5 MS. FLAHIVE-WU: Do you want to take them all together or
6 do you want --

7 MR. COHEN: Should I do them all together?

8 JUDGE SIPPEL: No, let's take them one at a time.

9 MS. FLAHIVE-WU: Let's take them one at a time.

10 JUDGE SIPPEL: I want to take them one at a time.

11 MS. FLAHIVE-WU: Your Honor, Ms. Hopkins as she just
12 testified as 30 years plus of experience in the television industry
13 and regular dealings with partners, including WE. She therefore is
14 well qualified as a fact witness to provide testimony under
15 reasonable inferences that she draws based on the facts before us.
16 We also, Your Honor, think that, as we move through Ms. Hopkins'
17 direct here in court today that you'll be comfortable with her
18 providing this information which is set forth in her written direct
19 testimony.

20 JUDGE SIPPEL: Well, I'm going to reserve ruling on it.
21 It's your job to remind me before we finish with the witness.

22 MS. FLAHIVE-WU: Certainly.

23 JUDGE SIPPEL: Next one.

24 MR. COHEN: Okay, Your Honor. Paragraph 19.

25 JUDGE SIPPEL: Paragraph 19.

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1 MR. COHEN: Bottom of the page. "Given Mr. Montemagno's
2 years of experience in the industry, he must have known that GSN
3 could not give away its service," and the rest of that sentence.
4 Again, Mr. Montemagno's going to be here. They can cross examine
5 Mr. Montemagno, but I don't know what's probative about this
6 witness talking about Mr. Montemagno's state of mind. She's not
7 testifying about anything he said, she's testifying about an
8 inference she's drawn from the circumstances.

9 MS. FLAHIVE-WU: Your Honor, if I may.

10 JUDGE SIPPEL: Yes, please.

11 MS. FLAHIVE-WU: This exact subject matter was the
12 subject of Mr. Goldhill's testimony yesterday. And just as Mr.
13 Goldhill has the proper experience to testify as to what an
14 industry executive would understand, Ms. Hopkins can do the same.

15 JUDGE SIPPEL: Well, I don't see it quite the same. The
16 reason I'm saying that is because I think as to testifying as to
17 what Mr. Montemagno knows about GSN is quite a stretch. Mr.
18 Montemagno can testify as to what his views are of GSN. I mean I'm
19 not saying that I would let this in even from him, I'm not trying
20 to anticipate that ruling, but that certainly is a much better way
21 to treat this than treating it through Ms. Hopkins.

22 MS. FLAHIVE-WU: Your Honor --

23 JUDGE SIPPEL: Yes, what is the importance of bringing it
24 in through Ms. Hopkins?

25 MS. FLAHIVE-WU: Ms. Hopkins is testifying as to her

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1 understanding of what Cablevision was communicating in
2 negotiations, some of the same negotiations that took place in
3 February 2011 that Mr. Goldhill testified about yesterday. And
4 therefore she's in substance offering her experience following the
5 tiering, and that involves her opinion of the conversations that
6 she had with Mr. Montemagno.

7 JUDGE SIPPEL: Well, is this like a state of mind
8 situation, or are you trying to establish the fact all these
9 characteristics of Mr. Montemagno are factually accurate?

10 MS. FLAHIVE-WU: Your Honor, Ms. Hopkins is sharing her
11 impression of the conversations that she had with Mr. Montemagno.
12 We understand that Mr. Montemagno will be available and, but she
13 can offer her view and share her experience with regard to those
14 conversations.

15 JUDGE SIPPEL: Well, I don't have any problem with her
16 testifying as to what, well, let me put it another way. Let me,
17 try to factually -- I take it that the negotiators came back and
18 filled Ms. Hopkins in as to what happened. Ms. Hopkins was not
19 present at the negotiation, is that true?

20 MS. FLAHIVE-WU: The subject of the testimony that's been
21 challenged in Paragraph 19 of Ms. Hopkins' written direct testimony
22 offers Ms. Hopkins' view, reporting on a conversation that she
23 personally had with Mr. Montemagno --

24 JUDGE SIPPEL: Yes.

25 MS. FLAHIVE-WU: -- on March 8th, 2011. It was a

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1 telephone conversation.

2 JUDGE SIPPEL: Well, I'll accept it from the standpoint
3 that this is how she reacted to the situation.

4 MS. FLAHIVE-WU: Yes, Your Honor.

5 JUDGE SIPPEL: With this being her state of mind as to
6 what she felt about Mr. Montemagno. Has anybody ever called him
7 Monty?

8 MR. COHEN: You've got a chance to ask him about that.
9 He's really not a Monty.

10 JUDGE SIPPEL: Okay, I'll say no more. But in any event,
11 that's the way I want to treat this. It's not to establish the
12 fact that he must have known, it's to establish the fact that this
13 is what Ms. Hopkins thought.

14 MR. COHEN: So Your Honor, I'll remind you about
15 Paragraph 12 before I get up on cross. I'll withdraw my third
16 objection to move it along. So I'll let Ms. Wu continue.

17 MS. FLAHIVE-WU: Okay. Thank you, Mr. Cohen.

18 JUDGE SIPPEL: You don't want him to cause anything here.
19 Tough one. Okay.

20 JUDGE SIPPEL: Ms. Wu?

21 MS. FLAHIVE-WU: Thank you, Your Honor.

22 Ms. Hopkins, could you briefly describe your current
23 duties as the executive vice president of distribution for GSN?

24 THE WITNESS: Yes, my duties involve our relationships
25 with our affiliates, our clients, and by doing that I negotiate the

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1 carriage agreements and keep them informed of all our programming
2 that we're working on as well as partner with them in their various
3 markets.

4 BY MS. FLAHIVE-WU:

5 Q What was your role at GSN prior to taking your current
6 role as head of distribution in March 2011?

7 A I was chief marketing officer.

8 Q Did you have experience with women's television networks
9 before you came to GSN?

10 A Yes, I did. I was on the launch team of a network called
11 E! Entertainment Television which was a network dedicated to
12 females 18 to 54 as well. I was there for about, oh, close to ten
13 years as head of marketing, in ad sales and as head of marketing.
14 And we also launched a network called Style which was a network
15 dedicated to women and fashion and was a spinoff of E!. So I did
16 those two female networks.

17 Q Ms. Hopkins, what was Style's target audience?

18 A It is women 18 to 54 as well.

19 Q Could you describe for us how you came to work at GSN?

20 A Mr. Goldhill approached me in late 2008 saying that he
21 was looking at broadening the shows on GSN. GSN, Game Show
22 Network, we attracted women but he wanted to attract more women and
23 broaden the definition of the game show format. And knowing my
24 experience in the networks that I had done at E! and Style, he was
25 interested in me coming over and being part of that team to do

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1 that.

2 Q Ms. Hopkins, I'd like to focus on your first role at GSN
3 as chief marketing officer when you first came on board. What were
4 your primary responsibilities as chief marketing officer?

5 A My primary responsibilities were to market the new shows
6 that GSN had to women 18 to 54. We were taking some, shall we have
7 the Newlywed Game? I'm sure you've all heard of the Newlywed Game.
8 But we had a new revamping of the Newlywed Game with Carnie Wilson.

9 We had another show called Love Triangle, Baggage. We
10 had a lot of relationship shows, dating game shows, so my job was
11 to really get that message out there, as well as working on the
12 brand of GSN. And by doing that I mean what's the creative going
13 to look like, what's the messaging, and identifying strategic
14 partners for us to work with to get our message out there.

15 Q As part of your role as chief marketing officer, were you
16 responsible for having an understanding of GSN's competitive set?

17 A Yes. Yes, I was.

18 Q Why was that important to you, as the chief marketing
19 officer?

20 A It was important because you want to know who you're up
21 against, who you're competing with, who's doing what in the space
22 of this women 18 to 54 space. So it's very, very important. And
23 it was also a way to look at, okay, maybe these are potential
24 people that we could partner with as well. So it was very
25 important.

1 Q Ms. Hopkins, I'd like to ask --

2 JUDGE SIPPEL: Hold on just a second. What do you mean
3 that you would partner with?

4 THE WITNESS: Well, I've looked at, my experience has
5 been since we're an independent network, meaning we have no other
6 sister networks to help get our message out there, usually big
7 companies, you know, the NBCs of the world have a lot of networks
8 they can cross-promote on each other's channels. Even obviously
9 the AMC Nets as well, they have a number of channels. ABC same
10 thing. We're an independent network so we don't have anybody to
11 help us get our message out there.

12 So I would always look, my experience has been I would
13 look for people, I'd look at, okay, I'm looking for women 18 to 54.
14 What are they reading? What are they listening to? What are they
15 watching? And I'd look at --

16 JUDGE SIPPEL: What's that got to do with partnering?

17 THE WITNESS: Because then I could go to them, like I
18 could go to a potential partner, like my experience at E!, for
19 example.

20 JUDGE SIPPEL: Give me an example.

21 THE WITNESS: Okay, I'll give you an example.

22 JUDGE SIPPEL: Who would be a potential partner?

23 THE WITNESS: Okay. So I was at E!, for instance. E! is
24 a network all about celebrity gossip and information and movies.

25 JUDGE SIPPEL: Okay.

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1 THE WITNESS: And things like that. And so we were
2 looking for women, and I looked at things that you may not think is
3 an ideal partner, like I looked at Howard Stern, because Howard
4 Stern was a massive radio personality. You think oh, Howard, male,
5 but in fact he had a lot of females watching, listening, excuse me.

6 And so we went to, we said to Howard Stern, listen, you
7 know, how about we promote your show and you promote our show? And
8 it got even bigger. We ended up in cameras in Howard's studio and
9 made a TV show out of it. And then Howard would say on the air,
10 oh, on E! this week we have this great new show coming up. We're
11 going to go behind the scenes of the Terminator movie. Let's have
12 Arnold Schwarzenegger on to talk about it. So this is on E!
13 Tuesday at 9:00. So that is a barter deal.

14 JUDGE SIPPEL: Well, a barter is not a partnership.

15 THE WITNESS: Yes, well, to me I mean it is.

16 JUDGE SIPPEL: I wasn't there to draft up the papers, I
17 don't know.

18 THE WITNESS: Yes. No, I look at, so that's how
19 partnerships are important. How who could benefit --

20 JUDGE SIPPEL: I understand.

21 THE WITNESS: -- from each other.

22 JUDGE SIPPEL: But that's -- okay, go ahead.

23 THE WITNESS: Did I answer that okay?

24 JUDGE SIPPEL: Well, I don't know if it's okay. I'll let
25 you know six months from now. You answered my question.

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1 BY MS. FLAHIVE-WU:

2 Q Ms. Hopkins, well, let's say on these strategic
3 partnerships or barter deals, can you give us some examples of the
4 barter deals that you entered during your time as chief marketing
5 officer at GSN?

6 A Yes. As I mentioned to the judge, we would look at
7 different TV networks, print publications, radio outlets, anything
8 that we could find a potential female who would be inclined to come
9 over and watch our network. So we did deals with like, for
10 instance, Ladies' Home Journal or Redbook, two leading publications
11 for women. We also did some trade deals with WE where we would
12 exchange inventory. We'd give them some 30 second spots. They
13 would give us some 30 second spots to cross promote our shows.
14 That's a few examples.

15 Q Ms. Hopkins, let's stay on these strategic partnerships,
16 and we'd like to ask you to look at Exhibit 2 in the binder in
17 front of you. And what I'm showing you is GSN Exhibit 21, which is
18 already in evidence. Okay.

19 MR. COHEN: Ms. Wu, I think you misspoke. Are we in Tab
20 3?

21 MS. FLAHIVE-WU: Tab 2.

22 THE WITNESS: It's 2 in my book.

23 MS. FLAHIVE-WU: Tab 2 GSN Exhibit 21.

24 MR. COHEN: It's 3 in my book.

25 MS. FLAHIVE-WU: Oh, I apologize, Mr. Cohen.

1 MR. COHEN: Is there a 3 in your book? I guess that's
2 the issue.

3 MS. FLAHIVE-WU: There is a 3. Do we have another binder
4 we might give Mr. Cohen?

5 MR. COHEN: It's fine. Why don't you continue.

6 MS. FLAHIVE-WU: Okay. I'm sure we can figure out.
7 There's just three documents, but I apologize for that.

8 MR. COHEN: Okay, I got it.

9 JUDGE SIPPEL: Okay, the witness just asked me if she
10 could take her jacket off. So we'll go to the jacket-off portion
11 of the day. It's very warm in here. Very warm in the courtroom.

12 MS. FLAHIVE-WU: Well, hopefully we're all a little bit
13 more comfortable, and so the document that I hope we all have in
14 front of us now is GSN Exhibit 21. Ms. Hopkins, Your Honor, do you
15 have that?

16 JUDGE SIPPEL: I do. Now this is not a confidential
17 situation, is it? We don't have to worry about putting people out
18 of the courtroom?

19 MS. FLAHIVE-WU: No, we don't for this, Your Honor.

20 JUDGE SIPPEL: Okay.

21 BY MS. FLAHIVE-WU:

22 Q Ms. Hopkins, could you describe what we see before us as
23 GSN Exhibit 21?

24 A Okay. This is a document, as you see on the top, Centers
25 for Mediastorm which is an advertising agency that both WE TV and

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1 GSN happen to share, okay. So that's just to give you an idea.
2 And this is the affidavit of the integration promotional exchange
3 we did back in March of '09.

4 And on the left you see WE's and then on the right that
5 small logo is a GSN there. It's very hard to see. And this was
6 taking a WE show, if you look on the right, under GSN, it says
7 initiative Bridezillas underneath, very small print. Bridezillas
8 was a show on WE TV that actually was about women getting married
9 and the crazy things that happen on the way to their biggest day in
10 their life, and they become godzillas along the way. And so we
11 were going to take, we took the couples from Bridezilla and
12 actually put them on the Newlywed Game as a cross promotion to
13 promote the Bridezilla show on WE, which was on Sundays. And so
14 that's what this is.

15 Q And so this document is the written agreement for the
16 barter, as you described it, with WE TV. Is that right?

17 A Correct.

18 Q You mentioned that there was an exchange of in
19 programming time. Was it usual for barter deals with other
20 networks to include that type of cross promotion?

21 A That's really special. That's only held for the ones
22 that really make sense, otherwise we couldn't do it, because we
23 wouldn't jeopardize our programming that way. So this is if you
24 can see on the right where it says GSN Live integration and et
25 cetera, so we actually gave them in-show content and featured their

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1 bridezillas which was really, really valuable inventory. And we
2 would only do it for shows that were dead on for us to cross
3 promote, and in return they gave us some inventory as you can see
4 on the left.

5 Q And you did it because WE and GSN try to target the same
6 viewers?

7 A Yes, we both go after females 18 to 54, and that's why it
8 made sense, really great sense for us to do this.

9 Q Were there other barter deals that you did with WE TV?

10 A Yes, there were. I mean it was such a -- honestly it was
11 a really natural trade to do for us, and we were very happy to do
12 it. And so were they, by demonstrating to us that they came back.
13 We actually had a couple of other shows that we tried to
14 accommodate. That -- one was called My Fair Wedding, I think, and
15 Dazed -- that we couldn't accommodate just because of our
16 initiatives at the time. We just couldn't, didn't have time,
17 didn't have space for them on our air. So we did a number of these
18 deals then.

19 Q Ms. Hopkins, I'd like to go back to the competitive set.
20 I'd like to ask you to look at, what I hope is Tab 3 in your
21 binder. Which is GSN Exhibit 57, which is already in evidence.

22 A Okay.

23 Q Ms. Hopkins, is this an email that you received from
24 Michael Michell? On May 5th, 2010.

25 A Yes. So Michael is our head of research. And he put

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1 this memo out, which is basically listing the networks that we
2 tracked, that we're looking for women that were in our competitive
3 set, meaning they were after women 18 to 54 as well, so we always
4 kept an eye on them. What they were doing, what new shows they
5 had. And, you know, it was just a competitive data for us to look
6 at.

7 Q What does the highlighting on this document reflect?

8 A The highlighting is, you can see, it says that the new
9 networks are highlighted below, so those were networks that were
10 added, recently added. So Lifetime, Country Music, Discovery
11 Health, Style. That had just recently been added.

12 Q And, Ms. Hopkins, I see WE on the list but it's not
13 highlighted. Why is that?

14 A WE is on the list and not highlighted because we always
15 looked at them. They weren't new. They weren't new to our
16 competitive set at all. They were someone that we always kept an
17 eye on.

18 Q Ms. Hopkins, are you familiar with the network Wedding
19 Central, which was a spinoff of WE?

20 A Yes.

21 Q Did you consider Wedding Central to be a part of your
22 competitive set?

23 A We knew about WE of course, because we look at everything
24 with women, but it wasn't on this list, because it was not a rated
25 service. A rated network. So it never made it to that, because we

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1 couldn't -- we didn't have any information on it, because it wasn't
2 Nielsen rated.

3 Q And, Ms. Hopkins, could you just review for us how you
4 went about assembling this type of document reflecting the
5 competitive set? What were the factors that you and your team
6 looked at?

7 A We looked at gender. I mean, that was the main one.
8 Like who was chasing this female demographic.

9 And who was really programed, you know, programed to
10 them, talked to them, catered to them, messaged to them. And kind
11 of had their mission of going after those women, 18 to 54.

12 Q Did you look at the median age of other networks?

13 A No.

14 Q How about the median income of the viewers?

15 A No.

16 Q How about the geographic profile of the viewers? Meaning
17 where they lived around the country.

18 A It wasn't important to me. No.

19 Q Why weren't those three factors important?

20 A I'm just looking at the number of women. I don't care
21 where they live. I'll take all that I can get. So those are
22 ancillary numbers. They're, you know, you may look at them but
23 they didn't drive our decision making. And what I was given the
24 mission to do, which was to attract or retain as many females 18 to
25 54 as possible.

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1 Q Now, Ms. Hopkins, I'd like to move forward in time to
2 your current role as the executive vice president of distribution.
3 In that role, why is it important to grow GSN's subscriber base?

4 A Well our business model is a dual revenue stream. So we
5 get money from our advertisers, and we get money from our
6 affiliates, affiliates being the cable operators and satellite
7 providers. So that's our model. So in order to grow it we want,
8 obviously we want to be more successful, so we want more subscriber
9 revenue. And we also want more subscribers and get in as many
10 homes as possible so ad sales can also be more profitable, by
11 having more numbers to sell.

12 Q What was your reaction when you learned that Cablevision
13 had decided to place GSN on its Sports Tier?

14 A Surprised. Disappointed. I mean surprised, first of
15 all, because here we had enjoyed 14 years of continuous carriage
16 with Cablevision on their broadest tier. And then to put us on a
17 Sports Tier, A, to lose those subs and those markets is really
18 devastating in the number one market of the country. And also to
19 put us on a Sports Tier, we're a female network. We don't have
20 sports. We don't produce any sports. So it didn't, you know, it
21 didn't make sense to me.

22 Q Tell me more. Why didn't the Sports Tier make sense to
23 you?

24 A If you look at the lineup that they have for Sports Tier,
25 I mean here we are, a female network that's broadly carried by all

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1 their competitors, basically a general entertainment network. When
2 I say that, that we have wide distribution. So to drop, you know,
3 to put us on a Sports Tier, it just didn't make sense at all.

4 Q Do other major distributors carry GSN on Sports Tiers?

5 A No. No. We are widely distributed. Meaning they look
6 at us as a general entertainment network. Like on Oxygen, like a
7 Bravo, like a Lifetime, like a WE. You know, they look at us like
8 that.

9 MS. FLAHIVE-WU: Ms. Hopkins, I'd like to ask you to look
10 at your written direct testimony, which is in Tab 1 of the binder
11 in front of you. I'd like to call your attention to Table 1, which
12 is on Page 8. And, Your Honor, I think we're about to get into
13 some confidential information here, so I'd like to ask that we --

14 MR. COHEN: Don't know who everybody is on the back row,
15 I would have to confess. Other than the one --

16 JUDGE SIPPEL: All right. Thank you, ma'am. Okay, thank
17 you.

18 MR. COHEN: Thank you.

19 (Closed Session)

20 MS. FLAHIVE-WU: Thank you, Your Honor. I'll move
21 quickly through this and then into the harm section where I think
22 we'll also need to keep to the current group.

23 Ms. Hopkins, what does Table 1 describe?

24 THE WITNESS: Okay. So on this chart you'll see, on the
25 left-hand side, is the cable operators or the satellite providers

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1 on the MVPD chart. And then on the right side of the graph it has
2 their penetration level. And so for instance, if I could just, you
3 know, AT&T, it shows that we're in ■ percent of their homes.
4 Right.

5 Verizon, we're in ■ percent of their homes. DIRECTV,
6 ■. Charter, ■. DISH, ■. Comcast, ■. Time Warner, ■ and
7 Cablevision at ■ percent. With our overall penetration, if
8 would, what we call that number, that we're in ■ percent of homes
9 of our clients. So that's what it says.

10 MS. FLAHIVE-WU: So Cablevision's carriage is far below
11 the average of carriage that you enjoy?

12 THE WITNESS: Yes, we did enjoy it for 14 years. For a
13 long time. And it was actually, you know, in the ■ percent
14 penetration level. So yes, this is really out of step with the
15 market. It's not how the rest of the industry sees us. Which is
16 basically general entertainment network on basic or digital basic
17 cable, when you sign up for it. So yes, they're completely an
18 outlier in this area.

19 MS. FLAHIVE-WU: How would you respond to Cablevision's
20 claim that they just wanted to save money?

21 MR. COHEN: Objection, Your Honor. This is beyond the
22 scope of anything in the direct testimony. I mean if they want her
23 to opine on it they should have put it in her written direct.

24 MS. FLAHIVE-WU: I mean I --

25 JUDGE SIPPEL: Well-

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1 MS. FLAHIVE-WU: Your Honor, I think that she's just
2 offering her view of exactly what's set forth in Table 1 and what
3 that means to her. I think that's --

4 JUDGE SIPPEL: But she hasn't testified --

5 MR. COHEN: You know, Your Honor, I'll withdraw my
6 objection. It's okay, I'll withdraw my objection.

7 MS. FLAHIVE-WU: Thank you, Mr. Cohen.

8 THE WITNESS: Could you repeat the question?

9 MS. FLAHIVE-WU: Sure. How would you respond to
10 Cablevision's explanation that their carriage, which was
11 significantly below the market carriage, is just based on cost
12 savings?

13 THE WITNESS: Everyone says that, right. Everyone says
14 it's a cost saving measure. It's not a common thing that we hear
15 -- uncommon thing we hear, I mean, we hear it because there are
16 cost concerns on their side. But that's a negotiation tactic as
17 well. And that's not, even though the rest of the industry has the
18 same exact cost concerns, they see a way to do business with us
19 because we deliver, I truly believe, a very valuable service for a
20 very low price. So.

21 JUDGE SIPPEL: Who's the they? Use pronouns.

22 THE WITNESS: Okay. Sorry.

23 JUDGE SIPPEL: No, that's okay.

24 THE WITNESS: In this chart, the rest of the industry,
25 the rest of our cable.

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1 JUDGE SIPPEL: Yes.

2 THE WITNESS: So they, when I say they I mean the AT&Ts,
3 Verizons, DIRECTV --

4 JUDGE SIPPEL: Okay, I got you.

5 THE WITNESS: Yes.

6 JUDGE SIPPEL: Okay. And what about them?

7 THE WITNESS: They see GSN as a General Entertainment
8 Network. So when you get -- when you sign up for cable, if you get
9 digital basic cable, entry level package, they see us on being on
10 one of those first couple levels of service. So you get it as you
11 get -- you would get with Oxygen or Lifetime or Bravo and, you
12 know, other services we included, that you would get it. Not as
13 somebody who could live on the Sports Tier.

14 JUDGE SIPPEL: Okay. So with all these other -- these
15 are all entities that your program is contracted to show?

16 THE WITNESS: Correct.

17 JUDGE SIPPEL: And at what level, on what kind of a tier
18 are you on on those?

19 THE WITNESS: Everybody has different names for their
20 tiers. But as you can tell from the penetration level --

21 JUDGE SIPPEL: It would take a lot.

22 THE WITNESS: Right.

23 JUDGE SIPPEL: Let's per say large penetration tier.

24 THE WITNESS: Okay. Let's say Comcast.

25 JUDGE SIPPEL: Let's say any.

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1 THE WITNESS: Okay.

2 JUDGE SIPPEL: No, I'm saying, I'm choosing the phrase
3 significant penetration tier. Are one, some, or all of these
4 substantial penetration tiers that you're on?

5 THE WITNESS: Correct.

6 JUDGE SIPPEL: And so the only that you're not on, in
7 that respect, is Cablevision?

8 THE WITNESS: Correct.

9 JUDGE SIPPEL: Okay. Do you know how to do a cross
10 calculation on a back of a napkin or something? When you say cost,
11 that it doesn't -- well your testimony as to cost, how are you
12 using that term?

13 THE WITNESS: Well when Mr. Montemagno, when we were
14 talking about a deal --

15 JUDGE SIPPEL: Yes. Well I'm saying -- no, no, no. I'm
16 saying in response to Ms. Wu's question.

17 THE WITNESS: Okay. Okay. Could you repeat the --

18 MS. FLAHIVE-WU: Sure.

19 THE WITNESS: -- about the cost.

20 MS. FLAHIVE-WU: Ms. Hopkins, you said that you think GSN
21 provides good value, right?

22 THE WITNESS: Yes.

23 MS. FLAHIVE-WU: Why do you think that GSN provides a
24 good value to the distributors?

25 THE WITNESS: Because we deliver -- we have original

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1 content that reaches a lot of females, big numbers, for a
2 relatively small price. For example, we, you know, our service
3 costs █ cents a month, okay, per subscriber.

4 When --

5 JUDGE SIPPEL: That's your licensing fee?

6 THE WITNESS: Yes. Correct. When you look at other --
7 I'm just going by SNL, which is Kagan and Industry Publication,
8 that kind of lists licensee fees. Obviously I don't have direct
9 knowledge of everybody else's licensee fees. You know, and ESPN
10 will be north of \$5 a month. Just to give you some range.

11 JUDGE SIPPEL: Okay.

12 THE WITNESS: A WE, this is again just from Kagan data,
13 I could be, you know, it's off. It's usually plus or minus. It's
14 █ cents.

15 JUDGE SIPPEL: Okay. No, that's good enough.

16 THE WITNESS: Okay.

17 MS. FLAHIVE-WU: Your Honor, just as a cleanup question:
18 Ms. Hopkins, what was the rate at which Cablevision carried GSN
19 directly, prior to the tiering? I just want to make sure we have
20 that clear on the record.

21 THE WITNESS: █ cents.

22 MS. FLAHIVE-WU: Ms. Hopkins, did Time Warner ever carry
23 GSN on a Sports Tier in certain of its systems?

24 THE WITNESS: Yes.

25 MS. FLAHIVE-WU: Did being distributed on a Sports Tier

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1 in certain of Time Warner's systems, have the same impact on GSN --

2 MR. COHEN: Your Honor?

3 MS. FLAHIVE-WU: -- as being distributed on Cablevision's
4 Sport Tier?

5 MR. COHEN: Your Honor, I'm going to object. The
6 testimony yesterday was that the Sport Tier carriage began in 2006,
7 before Ms. Hopkins even arrived at the network. She's certainly
8 not going to testify about the time period before. She testified
9 that she took her distribution job in 2011. In 2011 is when Time
10 Warner restored GSN to a broad tier. So I don't see how she could
11 possible testify. It wasn't her job.

12 I mean again, they have the wrong witness here. And we
13 should have a witness, if they want to make a point about the
14 impact on Time Warner Cable, they had Mr. Goldhill testify about it
15 yesterday. He was the CEO. But the person who was in charge of
16 distribution, who sat in Ms. Hopkins' chair during the relevant
17 time period, was Mr. Gillespie.

18 MS. FLAHIVE-WU: Your Honor, I'd be happy to lay the
19 foundation per this point.

20 JUDGE SIPPEL: Go ahead.

21 MS. FLAHIVE-WU: Ms. Hopkins, are you aware that Time
22 Warner carried GSN on a Sports Tier in certain of its systems?

23 THE WITNESS: Yes, I was.

24 MS. FLAHIVE-WU: How did you come to know that fact?

25 THE WITNESS: Well when I got into my job, on March 2011,

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1 you know, I obviously started getting into all the deals. And
2 realized that that carriage -- that Time Warner had moved us. Now
3 just to give it some context, you know, Time Warner's got thousands
4 of systems across the country. We have about seven, six or seven
5 million Time Warner subs.

6 And it was so insignificant, this Sport Tier carriage
7 that Time Warner had us on, that I'm embarrassed to tell you I was
8 in the company, I didn't even know it until I got into my job.
9 That's how small and insignificant it was. And once I got in the
10 job and I realized that, I thought that was out of place, I called
11 Time Warner Cable and said, can we talk about this. And they said
12 yes, and then it was rectified. It took some time, but it was
13 rectified.

14 JUDGE SIPPEL: Well --

15 MR. COHEN: I don't think we've laid any foundation.

16 JUDGE SIPPEL: That doesn't sound to me like it.

17 MR. COHEN: I think she said she was unaware of it --

18 MS. FLAHIVE-WU: Your Honor, Ms. Hopkins just testified
19 that she had reached out to Time Warner to discuss carriage on the
20 Sports Tier in certain systems.

21 JUDGE SIPPEL: Is that your testimony?

22 THE WITNESS: Yes.

23 JUDGE SIPPEL: What does reach out mean?

24 THE WITNESS: Mean I called them. And said, God, I
25 didn't know we were on a Sports Tier in Southwest Ohio. So I just

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1 said, that looks out of place to me. Like I didn't realize that.

2 JUDGE SIPPEL: Yes.

3 THE WITNESS: And their reply was, you know what, let's
4 take a look at that. And we did a new deal and --

5 JUDGE SIPPEL: All right, now wait a minute. Just leave
6 it at that. What's wrong with that? She -- that's a telephone
7 call that she was on.

8 MR. COHEN: Yes. Well, Your Honor, the documentary
9 evidence that was submitted yesterday --

10 JUDGE SIPPEL: Yes.

11 MR. COHEN: -- was a memorandum. An internal GSN
12 memorandum. I don't have the document in front of me, and maybe
13 it's just not worth the time at this point, but she said we've been
14 restored. And it was April of 2010. So she's testifying that they
15 were still on the Sport Tier in 2011 then she --

16 JUDGE SIPPEL: Well she was, you know, someplace in
17 Fargo, North Dakota or something like that.

18 MR. COHEN: All right. Let's proceed, Your Honor.

19 JUDGE SIPPEL: All right.

20 MR. COHEN: Again, in the interest of time, let's
21 proceed. I've made my point.

22 THE WITNESS: It was small.

23 MS. FLAHEVE-WU: So at some point, while you were
24 employed at GSN, you learned that GSN was distributed on certain
25 Time Warner systems on a Sport Tier?

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1 THE WITNESS: Yes.

2 MS. FLAHIVE-WU: Did being distributed on the Sports
3 Tier, Time Warner's Sport Tier, and certain of its systems, have
4 the same impact on GSN as being distributed on Cablevision's Sport
5 Tier?

6 THE WITNESS: No. Because Cablevision being in New York,
7 being the number one market in the country, and being noticed by
8 their competitors, Comcast, the AT&T's of the world, you know,
9 there's a huge difference, right. So no one even -- honestly it
10 was never mentioned to me about Time Warner being on a Sports Tier
11 or never ever came up.

12 MS. FLAHIVE-WU: How --

13 JUDGE SIPPEL: That's kind of inconsistent what you said
14 before?

15 THE WITNESS: I meet with my clients. Like they -- where
16 they never mentioned, oh, I see Time Warner has put you on a Sports
17 Tier in Ohio.

18 JUDGE SIPPEL: Who are your clients?

19 THE WITNESS: The clients being my cable operators and
20 affiliates that I work with on this chart here. I refer to them as
21 my clients. The Comcasts, the Charters, DIRECTVs of the world.
22 They kind of keep a tab on --

23 JUDGE SIPPEL: No, I -- don't keep going, that's fine.
24 That's fine. Ms. Wu, go ahead.

25 MS. FLAHIVE-WU: Ms. Hopkins, in your view, how has GSN

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1 been harmed by distribution on Cablevision Sports Tier?

2 THE WITNESS: It's, a loss of subs is a big deal to any
3 company, any cable network, at any time. So when you loss subs,
4 especially that number in that market, that's an enormous blow to
5 the company. As I mentioned, you know, we're dual revenue stream
6 so we've, you know, we obviously lost that revenue. And it was
7 very difficult.

8 JUDGE SIPPEL: What is a sub? You lost subs?

9 THE WITNESS: So yes. So when Cablevision, we run --

10 JUDGE SIPPEL: What is a sub?

11 THE WITNESS: A sub is a home.

12 JUDGE SIPPEL: Okay.

13 THE WITNESS: Yes. Subscriber. Excuse me.

14 JUDGE SIPPEL: Oh, okay.

15 THE WITNESS: Subscriber.

16 JUDGE SIPPEL: Okay.

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: Okay, go ahead. Go ahead, Ms. Wu.

19 MS. FLAHIVE-WU: Ms. Hopkins, following your placement on
20 Cablevision Sports Tier, has any other distributor followed suit?

21 THE WITNESS: No.

22 MS. FLAHIVE-WU: So why are you concerned about your
23 carriage in the marketplace?

24 THE WITNESS: I'm really concerned because all
25 Cablevisions' competitors, through AT&T, Verizon, DIRECTV, Charter,

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1 they're looking at the situation and seeing how Cablevision
2 behaves. And if they get away with tiering us, you know, it's a
3 threat hanging over me. Because everybody's keeping an eye on it.
4 I've been told that.

5 MS. FLAHIVE-WU: How does that impact your --

6 JUDGE SIPPEL: Well that testimony is so vague and
7 indefinite and far reaching that I'm going to disregard it. Now if
8 you got something specific to ask the witness and she wants to
9 testify to it, that's fine.

10 MS. FLAHIVE-WU: Certainly, Your Honor. Ms. Hopkins, you
11 said that you feel as if it's hanging over you as a threat. Can
12 you describe any specific instances in which the tiering has come
13 up in your negotiations with distributors?

14 THE WITNESS: Yes. It did come up in my negotiations
15 with [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED] [REDACTED]
2 MS. FLAHIVE-WU: Has it come up in any of your other
3 negotiations with distributors, other than [REDACTED]?

4 THE WITNESS: It came up at a [REDACTED] [REDACTED]
5 [REDACTED]

6 MS. FLAHIVE-WU: And how did it impact those
7 negotiations?

8 THE WITNESS: [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED]
11 [REDACTED]

12 MS. FLAHIVE-WU: Now, Ms. Hopkins, as you know --

13 JUDGE SIPPEL: I take it you're going to cross examine on
14 this?

15 MR. COHEN: Absolutely, Your Honor.

16 MS. FLAHIVE-WU: As you know, Ms. Hopkins, GSN has
17 continued to grow in terms of the number of subscribers since
18 February 2011.

19 THE WITNESS: Yes.

20 MS. FLAHIVE-WU: How do you reconcile that growth in subs
21 with the harm you believe GSN has experienced?

22 THE WITNESS: We have, you know, put a lot of money and
23 effort, programming and marketing dollars, into making our service
24 more successful. And people see the value that, in a network like
25 ours, that we're able to reach a large sum of women for a

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1 relatively low price. And so it's a really good value for them.
2 And it gives them something on their lineup that's quite different
3 from everything else.

4 MS. FLAHIVE-WU: Thank you, Ms. Hopkins.

5 JUDGE SIPPEL: Is that it?

6 MS. FLAHIVE-WU: That's it. Mr. Cohen.

7 MR. COHEN: Your Honor, I don't remember what we did. I
8 think you were actually offered Mr. Goldhill's written testimony,
9 so obviously if you want to offer Exhibit 303 at this time it's
10 probably an appropriate time.

11 JUDGE SIPPEL: Is this the Hopkins depositions?

12 MR. COHEN: No, the Hopkins direct testimony, Your Honor.

13 MS. FLAHIVE-WU: I believe we already did, but for --

14 MR. COHEN: I don't think so.

15 MS. FLAHIVE-WU: -- clarity on the record, Your Honor, we
16 move --

17 MR. COHEN: I just want to make sure you do.

18 MS. FLAHIVE-WU: -- GSN Exhibit 303 into evidence.

19 JUDGE SIPPEL: Thank you. Well isn't there an
20 outstanding --

21 MR. COHEN: I have the objection on Paragraph 12, Your
22 Honor. About what we --

23 JUDGE SIPPEL: Right. Right, right, right.

24 MR. COHEN: Down at the bottom of page --

25 JUDGE SIPPEL: Paragraph 12.

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1 MR. COHEN: Paragraph 4, the bottom of 4, over to the top
2 of 5.

3 JUDGE SIPPEL: I got it. Wait a minute, where is this
4 now?

5 MR. COHEN: Oh, Your Honor, right at the bottom of
6 Paragraph --

7 JUDGE SIPPEL: 12?

8 MR. COHEN: -- 12, at the bottom of Page 4. It says,
9 indeed the network's history --

10 JUDGE SIPPEL: Yes.

11 MR. COHEN: -- and it's the carryover to the following
12 page.

13 JUDGE SIPPEL: Well, I'll go with the understanding and
14 belief that the same viewers who watch GSN, who watch GSN, I would
15 say that they may watch WE TV, but I don't know about the persuaded
16 part. I don't know how you get the persuaded. Well it's, you
17 know, it's so speculative that I will permit it and overrule the
18 objection.

19 MS. FLAHEVE-WU: Thank you, Your Honor.

20 MR. COHEN: May I proceed, Your Honor?

21 JUDGE SIPPEL: Yes, please.

22 MR. COHEN: Okay. I don't know what these are. This is
23 Mr. Goldhill.

24 MR. CARNEY: So can I -- just to clarify, this came into
25 evidence?

1 JUDGE SIPPEL: Yes. Oh, I'm sorry, yes. Let me make a
2 specific ruling on this. What is this offered as, Exhibit number?

3 MS. FLAHIVE-WU: 303, Your Honor.

4 JUDGE SIPPEL: This is 303?

5 MS. FLAHIVE-WU: GSN Exhibit 303.

6 JUDGE SIPPEL: Yes, the whole book is 303, right?

7 MS. FLAHIVE-WU: Just Tab 1.

8 JUDGE SIPPEL: Oh, okay.

9 MS. FLAHIVE-WU: Ms. Hopkins written direct testimony.

10 JUDGE SIPPEL: GSN 303 is received into evidence.

11 (Whereupon, the above-referred to document was received
12 into evidence as GSN Exhibit No. 303.)

13 MS. FLAHIVE-WU: And, Your Honor, the other Tabs, GSN 21
14 and 57, are already in evidence.

15 JUDGE SIPPEL: Thank you.

16 MS. FLAHIVE-WU: Thank you.

17 JUDGE SIPPEL: Thank you.

18 MR. COHEN: We're good now.

19 JUDGE SIPPEL: By the way, I'm sure -- I mean I just want
20 to reaffirm the fact that these rulings on admissibility that are
21 subject to objection, of course if I'm ruling in favor of GSN, it
22 still leaves open the question of the weight that evidence is going
23 to be given, that testimony is going to be given.

24 MS. FLAHIVE-WU: Understood, Your Honor.

25 MR. COHEN: Understood, Your Honor. Your Honor, I have

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1 a cross examination -- there's always a binder. Next life, no
2 binders.

3 JUDGE SIPPEL: Why is it five times heavier than the other
4 one?

5 (Laughter.)

6 MR. COHEN: Cross examination tends to be.

7 JUDGE SIPPEL: Always a weighty thing.

8 MR. COHEN: Okay, good morning, Ms. Hopkins.

9 JUDGE SIPPEL: Now the fun begins, Ms. Hopkins. All
10 right?

11 THE WITNESS: Thank you.

12 MR. COHEN: Ms. Hopkins, we haven't seen each other since
13 your deposition, so hello.

14 THE WITNESS: Hello, Mr. Cohen.

15 MR. COHEN: It can be open for now. Yes.

16 (Open Session)

17 MR. COHEN: Now just to clarify, since March of 2011 --
18 just wait a second.

19 JUDGE SIPPEL: We're back in open session?

20 MR. COHEN: Yes. There will be a little period where
21 I'll need to go into closed session, but it's not now.

22 JUDGE SIPPEL: Can you ask the people to come back? If
23 they want to.

24 MR. COHEN: I think it was one person.

25 MS. FLAHEVE-WU: It was one person.

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1 MR. COHEN: The crowd is diminishing, Your Honor.

2 JUDGE SIPPEL: Starbucks gets another customer. Go
3 ahead.

4 CROSS EXAMINATION

5 BY MR. COHEN:

6 Q So, Ms. Hopkins, when you joined GSN, you were hired into
7 a marketing position, correct?

8 A Correct.

9 Q And then in about sometime, let's say February of 2011,
10 Mr. Gillespie left and then you took his job as the head of
11 distribution, right?

12 A Correct.

13 Q Okay. And then in that job you had the responsibilities
14 that you outlined for Ms. Wu, right?

15 A Correct.

16 Q Now this is not the first time you've had a senior
17 distribution job in the cable business, is it?

18 A Correct.

19 Q Now you talked, in response to Ms. Wu's questions about
20 your experience in women's networks, but you have a lot of
21 experience in networks that are not women's networks, correct?

22 A I've done a couple.

23 Q Right. And immediately prior to your time at GSN, the
24 time you were having conversations with Mr. Goldhill, or maybe just
25 before that, you were in a network called G4?

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1 A Yes.

2 Q And you were the senior distribution executive at G4,
3 right?

4 A At onetime, yes.

5 Q Right. And G4 is not a female oriented network, right?

6 A No, it wasn't.

7 Q It was a men's network, correct?

8 A It was a young male.

9 Q Young male network.

10 A Yes.

11 Q So people who do distribution, like you, you can do
12 distribution for men's network or women's network, the general
13 network, correct?

14 A People -- yes.

15 Q Okay. Now when you took over this position in February
16 of 2011, from Mr. Gillespie, did you kind of re-familiarize
17 yourself with sort of the state of the marketplace with respect to
18 cable operators?

19 A Yes.

20 Q Okay. Let me ask you to turn, please, to Exhibit 198.
21 Cablevision -- no, there are 198 exhibits. They have numbers.

22 A Wow. Okay.

23 Q 198. You'll see the numbers on the side there.

24 A Yes. Yes, I do. Thank you.

25 JUDGE SIPPEL: What tab you're on?

1 THE WITNESS: 198.

2 MR. COHEN: I'm on Exhibit 198, Your Honor.

3 JUDGE SIPPEL: Okay.

4 MR. COHEN: CV 198. The same thing as yesterday, for us
5 the CVs are always in front and the GSNs are behind.

6 THE WITNESS: There it is.

7 JUDGE SIPPEL: I got it. I'm getting to it. Okay. I've
8 got it right now. Okay.

9 MR. COHEN: Okay, now on this exhibit, Ms. Hopkins, this
10 is an internal GSN document that was used in connection with a
11 sales conference at the end of 2011, right?

12 THE WITNESS: It says that, yes.

13 BY MR. COHEN:

14 Q Right. And this was something that was prepared by
15 somebody who reported to you, Ms. Fasano, correct?

16 A Yes.

17 Q Right? So this -- and you've seen this document before,
18 we talked about it at your deposition, right?

19 A Yes.

20 Q Okay. Would you --

21 A I believe so.

22 Q Would you turn please -- let me give you one other kind
23 of rule of the road. There are pages -- if you turn one page
24 you'll see there are page numbers down at the bottom right. 2 of
25 31.

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1 A Yes.

2 Q 3 of 31.

3 A Yes.

4 Q I'll refer to those. Look at 6 of 31. Distribution
5 landscape. Now before I ask you, tell me when you get there. Take
6 your time.

7 A Okay.

8 Q 6 of 31. Do you see it says, distribution landscape?

9 A Yes.

10 Q And before I get -- ask you about this, let me just say,
11 this sales conference, who were the attendees at the sale
12 conference?

13 A I, if I recall right, this was a presentation to, I think
14 it was to the ad sales group.

15 Q Okay. To the GSN ad sales group --

16 A Yes, correct.

17 Q -- correct?

18 A Internal.

19 Q Okay. And it says, sport retransmission fee increases
20 put squeeze on distributors and margins. That was true in 2011,
21 right? That's why you put it in this book?

22 A Yes, it was true.

23 Q Right. And the people who were being squeezed were cable
24 operators, like Cablevision, not GSN, correct?

25 A Correct.

1 Q And it says, surging usage of internet video with rising
2 broadband penetration. And the point that's being made there is
3 that in 2011, the cable operators were facing new competition from
4 nontraditional distribution sources, right?

5 A Correct.

6 Q All right. Now, turn to the notes, next -- they're on
7 the next page. 7 of 31. Could you take a look at that please?

8 A Yes.

9 Q Okay. And what it says in the notes is, re-trans
10 revenue, the second line, Page 7, has gone from virtually zero in
11 the past five years to projected \$4 billion in 2015. Right?

12 A Yes.

13 Q Okay. And the point is, you were now competing for
14 programing dollars with local television stations that have never
15 been paid before by cable operators, right?

16 A I don't think we were competing, but it was a fact from
17 the cable operator --

18 Q Right.

19 A -- standpoint. Yes.

20 Q And have you had any negotiations since 2011 with any
21 cable operator in which they didn't complain about retransmission
22 fees?

23 A No.

24 Q Have you had any conversation with any cable operators
25 since 2011, in which they didn't tell you that because they have to

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1 pay people, like ESPN, the number, the \$5 number that you mentioned
2 before, that they're running out of dollars to pay cable networks?

3 A They say that.

4 Q They say that all the time, right?

5 A Yes.

6 Q And turn to Page 8 of 31. Video market share, do you see
7 that?

8 A Yes.

9 Q Cable is losing share to DIRECTV, Verizon and AT&T.

10 A Yes.

11 Q So another thing that was going on in the marketplace,
12 when you took over distribution, is that cable operators, like
13 Cablevision, were losing customers to DIRECTV, which is a satellite
14 provider, right?

15 A Correct.

16 Q And to Verizon, which is a Tel Co through its FiOS
17 service, that now has millions of subscribers, right?

18 A Correct.

19 Q And you know from your experience in the business, don't
20 you, that Verizon has a particularly fierce battle going on with
21 Cablevision, right?

22 A Correct.

23 Q Okay. Now turn to -- you can put that document to one
24 side.

25 A Okay.

1 Q All right. So it's true, is it not, that you actually
2 have responsibilities, since 2011, for negotiating the actual
3 written documents, right, because somehow of course, between GSN
4 and your cable and satellite partners, right?

5 A Yes.

6 Q Now and you've been negotiating -- things that you
7 negotiate include rates, right?

8 A Correct.

9 Q And it's customary as well for there to be a description
10 of the programing that's going to be delivered by the network in
11 these carriage agreements, right?

12 A Correct.

13 Q Okay. Do you refer to it as a content description? What
14 word do you use?

15 A Yes, exactly. I would say content description.

16 Q Okay, a content description clause.

17 A Yes.

18 MR. COHEN: I'm going to show you some documents that I
19 have a feeling GSN is going to think are protected, Your Honor, and
20 I think they're right.

21 (Closed Session)

22 MR. COHEN: Which are, sorry again, it's only again one
23 person, which I apologize. Which are some of the programing
24 agreements that GSN has entered into. Okay.

25 THE WITNESS: Okay.

1 MR. COHEN: So if you turn in this book to Exhibit 5, CV
2 5. It's a long document, and I'm only going to show you one or two
3 pages.

4 THE WITNESS: Okay.

5 MR. COHEN: All right. And this is -- I'm going to wait
6 for the Judge. We keep putting these books in front of him.

7 JUDGE SIPPEL: Always waiting for the Judge.

8 MR. COHEN: Exhibit 5.

9 JUDGE SIPPEL: When I was talking about the weight of the
10 evidence, by the way, this does not apply. Okay, what page?

11 MR. COHEN: I'm going to -- First I just want to
12 identify. So this is, and there had been some amendments, but this
13 is the Affiliation Agreement with DIRECTV, right?

14 THE WITNESS: Yes.

15 BY MR. COHEN:

16 Q Okay. And you negotiated actually an extension, right,
17 when you took over your job?

18 A I'm just looking at these dates, Mr. Cohen.

19 Q Let me help you out.

20 A So this was on two --

21 Q Let me help you out.

22 A Yes.

23 Q Look at Page 28 of 131.

24 A 128.

25 Q Okay.

1 A Yes.

2 JUDGE SIPPEL: This Agreement was made on, entered into
3 on the [REDACTED]?

4 MR. COHEN: Yes, originally. I'm now going to show --

5 JUDGE SIPPEL: Originally?

6 MR. COHEN: Yes. I'm going to show her an amendment now
7 from 2011 during her time.

8 JUDGE SIPPEL: Thank you, thank you.

9 MR. COHEN: All right.

10 THE WITNESS: I'm sorry, Mr. Cohen, what page did you
11 say?

12 BY MR. COHEN:

13 Q Sure. No, no, take your time, 28 of 131.

14 A Twenty-eight, okay.

15 Q Okay. And this an amendment that you actually signed on
16 behalf of Game Show, if you go to 34 of 131 you'll see.

17 A Thirty-four, okay.

18 Q Yes, I'm just trying to show you that you actually signed
19 it, do you see that?

20 A Yes.

21 Q Okay. So this is in your tenure as the Head of
22 Distribution, right?

23 A Yes.

24 Q Okay. And look at the content description on Page 29 of
25 131.

1 A Standby.

2 JUDGE SIPPEL: It's the content description in the middle
3 of the page?

4 MR. COHEN: Yes, Your Honor.

5 THE WITNESS: Yes.

6 BY MR. COHEN:

7 Q [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12 A Yes.

13 Q And that's an accurate description of what the
14 programming was on GSN in [REDACTED] when you signed this Agreement with
15 DIRECTV, right?

16 A Yes.

17 Q Now let me show you another one, which is Exhibit 2, it
18 would be the first one in the book.

19 A Yes.

20 Q And we'll start with the first page, which I know
21 predates you, but would you agree with me that this is an
22 agreement, although it says with Satellite Services, Satellite
23 Services is Comcast's Distribution R, Affiliation R, right?

24 A Correct.

25 Q So this is a Comcast Agreement, Exhibit 2, right?

1 A Correct.

2 Q Which is not apparent from the name, all right. And
3 would you turn -- And this was also, by the way, this was amended
4 in 2011 as well wasn't it? Do you remember that? I can help you.

5 A Yes.

6 Q Okay.

7 A Yes.

8 Q So actually I think [REDACTED].

9 A Yes. What page is that Mr. Cohen?

10 Q Yes. It is --

11 A Let me just look.

12 Q It's actually, it was first actually amended, let me just
13 try to do this as quickly as I can, it was first actually amended
14 in 2011, but all right, well let's go to the [REDACTED] agreement, 243,
15 got to go to a different document.

16 A 243.

17 Q Sorry about that. Third Amendment to Affiliation
18 Agreement.

19 A Wait. Oh, I'm sorry, okay.

20 JUDGE SIPPEL: What page are we looking for now?

21 MR. COHEN: Now we're on Exhibit 243, Your Honor.

22 JUDGE SIPPEL: Oh.

23 MR. COHEN: I'm going to the amendment --

24 THE WITNESS: Oh, okay, now --

25 MR. COHEN: It's the recent amendment to this Agreement.

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1 JUDGE SIPPEL: Oh.

2 MR. COHEN: All right. One was marked -- We actually
3 marked documents for trial before 2013 that were in 2013 and as
4 Your Honor noted we didn't get there.

5 JUDGE SIPPEL: Well there were reasons, but that's
6 another thing.

7 MR. COHEN: Yes.

8 JUDGE SIPPEL: What, 243 you say?

9 MR. COHEN: Exhibit 243, all right.

10 JUDGE SIPPEL: I've got it, thank you.

11 MR. COHEN: Okay.

12 JUDGE SIPPEL: Third Amendment.

13 MR. COHEN: Okay. And the content description, let me
14 just not, let me try to shortcut this. The content description
15 that I showed you for DIRECTV, is that substantially similar to the
16 content descriptions in all of the affiliation agreements you have
17 signed on behalf of GSN?

18 THE WITNESS: Honestly, I'd have to look, but generally
19 probably yes.

20 BY MR. COHEN:

21 Q Right. So generally the content descriptions in your
22 affiliate agreements, and they are in evidence, so we can just
23 point them out to Your Honor later than waste your time.

24 A Yes.

25 Q The content descriptions that you signed with your

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1 distribution partners generally refer to [REDACTED]

2 [REDACTED]?

3 A Correct.

4 Q Have you ever signed an affiliation agreement with a
5 distribution partner in which there was any reference to the
6 content of the network in which the words [REDACTED]

7 [REDACTED]?

8 A [REDACTED]

9 Q Okay.

10 A And --

11 Q No, you don't need to, but no, right?

12 A Okay, okay. Yes.

13 Q And you know from your experience in this business that
14 some of the women's networks that you view in your competitive set
15 enter into affiliation agreements in which they obligate themselves
16 to offer programming that's of particular interest to women, right?

17 A I don't -- I can't say that for sure because I've never
18 seen their content definitions.

19 Q Okay. So you don't -- You know they are what they are?

20 A Yes. I don't know if they have used women in it or not.

21 Q Okay. But these content description provisions they are
22 negotiated specifically, right, between distributors and networks?

23 A Yes.

24 Q Okay. And why does a distributor want a content
25 description clause that a programming service, or a programming

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1 network, is obligated to give?

2 A They want that because they want to be able to offer up
3 as many different programming formats to their subscribers, to the
4 homes that they have, and they want a content definition, so you
5 say okay, here is what we're doing, here is who we've programmed,
6 here's where we market, that these are our shows, and so it's an
7 important thing for the cable operator, yes.

8 Q Right. And it's important for the network because if you
9 don't deliver what you promise then you can lose your carriage,
10 right?

11 A They could lose it, right.

12 MR. COHEN: Right, okay.

13 JUDGE SIPPEL: Who prepares these contracts, the
14 distributor or is it --

15 THE WITNESS: Both sides. So both sides do it. They may
16 initiate it, as you see from these --

17 JUDGE SIPPEL: Who is "they," the cable?

18 THE WITNESS: The cable company and satellite providers,
19 telecom companies.

20 JUDGE SIPPEL: Okay. And you get legal advice? Yes, I'm
21 sure you ask for legal advice.

22 THE WITNESS: Oh, yes.

23 JUDGE SIPPEL: So you're just really, in the final
24 analysis you're just putting your signature on this thing but you
25 do know what's in it as far as content certainly?

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1 THE WITNESS: Yes.

2 JUDGE SIPPEL: And you make input on that?

3 THE WITNESS: Correct.

4 JUDGE SIPPEL: And did you ever think of putting [REDACTED]
[REDACTED] in there?

6 THE WITNESS: I never did because in my experience it's
7 not necessary to put it in there because it's, we talk to our
8 clients all the time, they know exactly what we're doing, they know
9 who we're programming.

10 JUDGE SIPPEL: When you're talking about, again, your
11 clients, you're talking about cable companies --

12 THE WITNESS: I'm talking about the cable companies and
13 satellite provides.

14 JUDGE SIPPEL: Yes.

15 THE WITNESS: Would they know what kind of programming we
16 do or do they know we're [REDACTED] [REDACTED]
[REDACTED].

18 Now for an example, I bet, I don't know for a fact, but
19 I don't imagine ESPN has got programming for men in their content
20 definition.

21 JUDGE SIPPEL: Well let's forget about ESPN.

22 THE WITNESS: Yes. But just --

23 JUDGE SIPPEL: They're not in the mix yet. But if -- I'm
24 trying to -- If you had, well let's say hypothetically that your
25 main program, the main programming that they all knew about, that

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1 "they," I'm doing the same thing you are --

2 THE WITNESS: Yes, sorry.

3 JUDGE SIPPEL: -- the cable companies know about, your
4 main program let's say is horseback riding but you use the term
5 female programming and they know that it's not female programming,
6 it's horseback riding.

7 Do you see what I'm saying? It seems like you're putting

8

■ [REDACTED], but they know. Is there some kind of a secret code?

10 THE WITNESS: No, I think it's because they know game
11 shows have always skewed female from the beginning of time.

12 JUDGE SIPPEL: Yes.

13 THE WITNESS: I mean it was daytime fare and network
14 television. They, our clients, the cable companies --

15 JUDGE SIPPEL: Yes.

16 THE WITNESS: -- I meet with them frequently, they know
17 the shows that we have, they know they are geared towards females.
18 I mean game shows have always been female-driven, so --

19 JUDGE SIPPEL: Really?

20 THE WITNESS: Yes. I mean when you look at daytime fare
21 back in the day when game shows first started, TV skews female to
22 begin with, right.

23 JUDGE SIPPEL: Every time I see daytime cablevision or
24 anything like that it's I am terribly sick and then I'm usually
25 sleeping so I can't see it anyway.

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1 So I don't know what -- I have no way of reacting to what
2 you are saying. But you are saying game shows, it's a given that
3 if you are pushing game showing in your description content that
4 everybody knows you are skewing women?

5 THE WITNESS: Correct.

6 JUDGE SIPPEL: Okay.

7 MR. COHEN: Ms. Hopkins, let me follow up on that.

8 THE WITNESS: Yes.

9 BY MR. COHEN:

10 Q Does anyone have any doubts that GSN is putting game
11 shows on the air?

12 A Does anyone --

13 Q Does everyone know that GSN has game shows?

14 A When you say "does everyone," do you mean our clients?

15 Q Do the distributors know that GSN has game shows on its
16 programming?

17 A Yes.

18 Q So why do they have [REDACTED] [REDACTED] in the content
19 description? Why do they need a description of the programming
20 that says game show if they know it?

21 A Because they want to make sure that they provide
22 different content on their lineup and they put a content definition
23 in everybody's agreements.

24 Q Right. And do the distributors, based on your long in
25 the industry experience, know that networks like WE are female

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1 skewing networks?

2 A Yes, I would say so.

3 MR. COHEN: So they wouldn't need a content description
4 with WE to assure themselves that the network was skewing women,
5 the distributors?

6 MS. FLAHIVE-WU: Your Honor, I object. Ms. Hopkins can't
7 really testify as to the intentions of cable distributors.

8 JUDGE SIPPEL: Well she's --

9 MS. FLAHIVE-WU: Or to WE TV. We asked about the --

10 MR. COHEN: She's been doing it, Your Honor.

11 JUDGE SIPPEL: She's doing it.

12 MS. FLAHIVE-WU: Well she was talking about her dealings
13 between GSN and as she says GSN's clients and its distributors.

14 JUDGE SIPPEL: Yes, that's the cable companies.

15 MS. FLAHIVE-WU: The cable companies, that's right.

16 JUDGE SIPPEL: Distributors.

17 MS. FLAHIVE-WU: She is now being asked about WE TV's
18 content descriptions, which as she said she's never seen before.
19 She can't see them. She's not allowed to see them.

20 JUDGE SIPPEL: But she's partnered or bartered with WE
21 TV. She talked about that earlier.

22 MS. FLAHIVE-WU: She has, but she has not seen their
23 distribution agreements. WE TV like protects them highly.

24 JUDGE SIPPEL: Well --

25 MS. FLAHIVE-WU: She has not reviewed them.

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1 JUDGE SIPPEL: Well, okay, we can ask that question.

2 MR. COHEN: Okay.

3 JUDGE SIPPEL: We can ask that question. Can you answer
4 Mr. Cohen's question? He has asked you about WE TV vis-a-vis
5 cable, you know, distributor.

6 THE WITNESS: Yes, Mr. Cohen, could you repeat the
7 question. I'm sorry, exactly what -- Are you asking me --

8 MR. COHEN: Here is what I am asking you.

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: Yes.

11 MR. COHEN: The content description provisions are
12 heavily negotiated, correct?

13 THE WITNESS: Yes.

14 MR. COHEN: And you say it's so obvious that GSN is a
15 female-skewing network that it doesn't have to be in the content
16 description, right?

17 THE WITNESS: Correct.

18 MR. COHEN: And it's so obvious, but it's not so obvious,
19 but notwithstanding your programming, the cable operators still
20 want a description of programming that says [REDACTED], right?

21 THE WITNESS: Correct.

22 MR. COHEN: It's at least as obvious to the cable
23 operators and to you that your programming is cable --

24 MS. FLAHEVE-WU: Objection, Your Honor.

25 MR. COHEN: -- is game shows? Please, Ms. Wu, it's cross

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1 examination, and let me please finish the question.

2 MS. FLAHIVE-WU: Your Honor, I --

3 JUDGE SIPPEL: What's your objection?

4 MS. FLAHIVE-WU: I don't think that is appropriate for
5 Ms. Hopkins to testify as to what Cablevision's or any distributors
6 state of mind. She does not have the foundation to do that. She
7 is not a distributor. She can't offer an opinion as to their
8 intentions.

9 JUDGE SIPPEL: Well so far she's been answering the
10 questions. Now if you want to go down these objections one by one
11 we can do that but it's going to take a long time.

12 MS. FLAHIVE-WU: Well there is two questions. One is as
13 to what the distributor intends. Perhaps if you break it down and
14 then we can do it that way, because you have asked her opinion of
15 the views of several different parties in your question --

16 (Simultaneous speaking)

17 JUDGE SIPPEL: He hasn't been asking her for an opinion
18 really.

19 MR. COHEN: Your Honor, her whole direct, including my
20 overruled objections, went into what cable operators think and what
21 we thought. So if she can testify about what WE thought about GSN
22 she should ought to be able to testify about what GSN thought about
23 WE.

24 MS. FLAHIVE-WU: Okay, Mr. Cohen, if I may suggest, if
25 you ask about specific parties perhaps we can break it down. When

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1 they are co-mingled that way I do think it is very confusing.

2 JUDGE SIPPEL: Well I'm going to ask Mr. Cohen to state
3 the question again. I am overruling the objection you have made
4 for the reason stated by Mr. Cohen primarily and let's try this
5 once more. We're running out of time.

6 MR. COHEN: Let me try to ask one last question, or one
7 or two questions and we can move on because it's not worth the
8 time, all right.

9 Your testimony as I understand it is that there is no
10 need to state that GSN's programming in the content description
11 clauses that are negotiated skew towards women because everyone in
12 the industry knows that game shows are primarily viewed by women,
13 is that fair?

14 THE WITNESS: Yes.

15 BY MR. COHEN:

16 Q Okay. Does everyone in the industry, the same everyone
17 in the industry, know that the content on WE skews towards women?

18 A I would say yes.

19 Q Okay.

20 A At that time.

21 Q 2010?

22 A That was in their name, right?

23 Q Right. Women's Entertainment Network, right?

24 A Yes.

25 Q Okay. Now can I ask you turn, we can move on, to Exhibit

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1 73 in your book, and this is a long email chain but I don't want
2 you to, you can read anything you want, but I'm really going to
3 direct your attention to the bottom of Page 3 of 4.

4 A Okay.

5 JUDGE SIPPEL: Where are we now?

6 MR. COHEN: Exhibit 73, it's a series of emails, and it's
7 three of four.

8 JUDGE SIPPEL: Okay.

9 MR. COHEN: And it's the email from Mr. Brunell to
10 various people, including you, down at the bottom of the page,
11 dated September 16, 2009, do you see that?

12 THE WITNESS: Yes.

13 BY MR. COHEN:

14 Q Okay. And just to set the stage Mr. Brunell in 2009 he
15 was the Chief Financial Officer of Game Show Network?

16 A Correct.

17 Q Okay. And the recipients among you, it was you, Mr.
18 Goode, she was identified yesterday, she was Head of Programming,
19 right, for that time?

20 A Correct.

21 Q Mr. Zaccaro, who was the Head of Sales, right?

22 A Correct.

23 Q Mr. Feldman, he's here. So it was the Senior Executive
24 Team of GSN, right?

25 A Correct.

1 Q And this was in connection with an upcoming management
2 retreat, right?

3 A Yes.

4 Q Right. And Mr. Brunell suggested that there would a
5 topic devoted to "women's cable networks," do you see that?

6 A Yes.

7 Q And then in an email just above it you respond the same
8 day. You say "my thoughts," right, do you see that?

9 A Correct. Yes, I did.

10 Q And he had said "women's cable networks," and your
11 thought Number 1 was "female-skewing nets, not women's cable nets,
12 which really only is a few," do you see that?

13 A Yes.

14 Q There's a difference is there not, Ms. Hopkins, between
15 networks that skew female and networks that are in fact women's
16 cable networks?

17 A What --

18 Q Can you answer my question yes or no?

19 A No.

20 Q There's no difference?

21 A I don't think there is.

22 Q Okay.

23 A There is -- This was an email as you said to the Senior
24 Management Team which executives of the company were going to
25 attend who weren't familiar with a lot of the TV landscape, and so

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1 I was just clarifying that I just didn't want to just do when you
2 say "women's cable net," which is only a few, that maybe what I
3 thought Steve may have been referring to that had women's name in
4 the title.

5 Q Right. And you referring in that to Lifetime and WE, in
6 this email, correct?

7 A I think I was, yes.

8 Q All right.

9 A Even though Lifetime didn't have it in their name.

10 Q Right. So Lifetime didn't have it in their name, but it
11 was a women's --

12 A Well it said Television for Women at one time underneath
13 their tag lines.

14 Q Right. And WE at one point was Women's Entertainment,
15 right?

16 A Correct.

17 Q Okay. And you were drawing a distinction in this email
18 between female-skewing networks and women's cable networks, such as
19 WE and Lifetime, correct?

20 A Honestly, I think you're reading too much into it. I
21 didn't -- I just meant like we should be looking at networks that
22 women 18 to 54 watch, are programmed to, and I just didn't want him
23 to think there were a couple of networks.

24 So that was really it, it was shorthand between a couple
25 of the executives and I wanted to breakdown the shows as you see

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1 below, so that was all that was.

2 Q Okay.

3 A Like even -- Yes.

4 Q Okay. GSN has never had women in it's tag line, has it?

5 A It has not.

6 Q And a tag line in your industry that's the kind of like
7 kind of catch phrase that comes after the name?

8 A Sometimes. Tags like change all the time.

9 Q Right.

10 A You know when we built E! we didn't put women in the tag
11 line. ES -- Yes.

12 Q That wasn't really my question.

13 A Yes, I was just --

14 Q I was asking you a general question about just to
15 identify what tag lines are.

16 A Tag lines are a creative choice.

17 MR. COHEN: Right.

18 JUDGE SIPPEL: Are what?

19 THE WITNESS: A creative choice if you want to put a, you
20 know, a little --

21 JUDGE SIPPEL: A creative choice. So if you did that as
22 a creative choice would you have to run it by Mr. Goldhill?

23 THE WITNESS: Oh, yes.

24 JUDGE SIPPEL: Well he's not a creative guy.

25 (Laughter)

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1 THE WITNESS: He is.

2 JUDGE SIPPEL: He is, what? He's the Executive Officer?

3 THE WITNESS: Yes.

4 MR. COHEN: She's under oath, Your Honor.

5 MR. SCHMIDT: She can also invoke her Fifth Amendment
6 rights.

7 THE WITNESS: He has a lot of creative opinion.

8 JUDGE SIPPEL: How about that's something. But was there
9 ever any thought given by anybody, you know, by anybody in the
10 loop, that why don't we put a tag line on this thing because we
11 know we skew to women. What's wrong?

12 THE WITNESS: It was never discussed to put because it
13 was a given. It was, to us --

14 JUDGE SIPPEL: Never discussed?

15 THE WITNESS: Yes, it was never discussed. We never
16 thought about that because why.

17 JUDGE SIPPEL: Okay.

18 MR. COHEN: Well let me follow up, Ms. Hopkins.

19 THE WITNESS: Yes?

20 BY MR. COHEN:

21 Q What's the largest women's network in terms of women
22 viewers 18 to 54, Lifetime, in terms of viewers?

23 A I don't know at this time actually.

24 Q Back in 2010?

25 A Oh, I couldn't even speak to back then either, yes.

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1 Q Okay. Lifetime though in 2010 they had a lot more women
2 viewers than you did, right?

3 A Yes.

4 Q Right, and they were Lifetime, Television for Women?

5 A I think they had that title, I'm not sure. I know they
6 had it in their early days. I don't know what their tag line was
7 in 2010.

8 Q Okay. And everybody by 2010 knew that in 2010 WE was
9 aiming its program towards women, about women, right?

10 A Correct.

11 Q And they were called WE, the Women's Entertainment
12 Network, correct?

13 A At that time.

14 Q Right.

15 A Which has since changed.

16 MR. COHEN: Okay. Now let me ask you another question.
17 When you wrote --

18 JUDGE SIPPEL: Wait a minute.

19 MR. COHEN: I'm sorry.

20 JUDGE SIPPEL: Do you know why they change this?

21 THE WITNESS: Well they say, they called themselves WE
22 Entertainment Television, Women's Entertainment Television --

23 JUDGE SIPPEL: No, Lifeline. We're talking about
24 Lifeline?

25 THE WITNESS: Oh, Lifetime.

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1 JUDGE SIPPEL: Lifeline, is it Lifeline?

2 THE WITNESS: No, Lifetime.

3 JUDGE SIPPEL: Lifetime, okay. I moved it up a notch,
4 okay.

5 THE WITNESS: It could be Lifeline.

6 JUDGE SIPPEL: But you say they dropped the tag line?

7 THE WITNESS: Yes. They dropped the tag line Television
8 for Women.

9 JUDGE SIPPEL: Why?

10 THE WITNESS: I can't speak for them, but I assume they
11 just, a creative decision like we don't need that or we don't like
12 it anymore for whatever reason. Now their tag line is Your Time,
13 Your Life, something like that.

14 JUDGE SIPPEL: Yes.

15 THE WITNESS: I could have it wrong.

16 JUDGE SIPPEL: But it doesn't make mention --

17 THE WITNESS: It doesn't mention women.

18 JUDGE SIPPEL: -- anything about women?

19 THE WITNESS: No.

20 JUDGE SIPPEL: But you don't know why?

21 THE WITNESS: No. And that's --

22 JUDGE SIPPEL: These things come and go?

23 THE WITNESS: They come and go, exactly.

24 JUDGE SIPPEL: Go ahead, I'm sorry.

25 MR. COHEN: Okay. But what never went into GSN's tag

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1 line was the word "women" or a "female," correct?

2 THE WITNESS: Yes. We didn't feel we needed it.

3 BY MR. COHEN:

4 Q Okay.

5 A It's a creative choice.

6 Q Now in 2009 when you wrote this memo you were then the
7 Head of Marketing, right, before your distribution job?

8 A Correct.

9 Q All right. And one of the jobs that you had as the head
10 of marketing was to actually buy advertising time for GSN on cable
11 and satellite networks and distributors, right?

12 A Yes.

13 Q And just to set the stage because we're not all in the TV
14 business, if you want to promote a show one of the things that
15 you'll do is you'll buy advertising across other cable networks so
16 when somebody watches a commercial on Lifetime they'll see an ad
17 for a GSN show if that's --

18 A If that's what we want, correct.

19 Q If that's what you bought, right?

20 A Correct.

21 Q And the cable operators sell time, right?

22 A Correct.

23 Q And the satellite operators sell time, DISH and DIRECTV,
24 right?

25 A Correct.

1 Q And you knew at the time that you were running marketing
2 through early 2011 that the satellite distributors they advertised
3 in what was called the cluster, right?

4 A That's how they segmented their files, correct.

5 Q So you would go to DIRECTV, for example, and I'll show
6 you some documents in a minute, and you'd say I want to buy
7 advertising time across this cluster, which is a group, and this
8 group and that group, but not on the fourth group, something like
9 that, right?

10 A I didn't do that.

11 Q People who worked for you did that?

12 A Yes. And our goal was to reach women 18 to 54 so we
13 didn't specify, you know. The DIRECTV sales group would recommend
14 clusters.

15 Q I'm going to come to that in a minute, just stay with my
16 question if you would.

17 A Okay, yes.

18 Q You knew that those clusters were designed to reach a
19 specific demographic group, right?

20 A Yes.

21 Q And in 2009 and 2010 and early into 2011 when you had the
22 marketing job DIRECTV had what they called a female cluster, right?
23 Correct?

24 A Well you showed that to me in my deposition, yes.

25 Q Well forget what I showed you in the deposition --

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1 A Yes.

2 Q -- it's true and you knew from your work at GSN that in
3 2010, to pick a year, DIRECTV has a women's cluster of networks,
4 right?

5 A They did, yes.

6 MR. COHEN: Okay. So let me show you, if I can -- Yes,
7 I'll show the document, I can show you -- Give me 212.

8 FEMALE PARTICIPANT: It's in the binder.

9 MR. COHEN: Look at 212, which is in the binder.

10 THE WITNESS: 212.

11 MS. FLAHIVE-WU: Your Honor?

12 JUDGE SIPPEL: Yes?

13 MS. FLAHIVE-WU: I would just like to note for the record
14 that this is one of the documents for which GSN is allowing the
15 document into evidence, but preserving its foundation objection.

16 JUDGE SIPPEL: Where -- Okay, let's get to the document,
17 which is it?

18 THE WITNESS: 212.

19 MR. COHEN: I don't know what that means.

20 MR. SCHMIDT: It means we understand the Judge's ruling
21 to have overruled our objection.

22 MR. COHEN: Okay.

23 (Simultaneous speaking)

24 MR. COHEN: I understand.

25 JUDGE SIPPEL: Yes, so can we get a short proffer of

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1 relevance on this document?

2 MR. COHEN: I think, Your Honor, they are saying they
3 will -- 212 is in by agreement subject to that reservation of
4 rights, Your Honor.

5 JUDGE SIPPEL: All right.

6 MR. SCHMIDT: But we still think there should be a
7 proffer of relevance.

8 JUDGE SIPPEL: Can you give your proffer?

9 MR. COHEN: Your Honor --

10 MS. FLAHIVE-WU: Your Honor, may I just mention this is
11 a document from 2013. Ms. Hopkins had held her marketing role in
12 2010 and early 2011, just to let the record reflect that.

13 MR. COHEN: Ms. Hopkins, we don't have -- I don't want to
14 spend a lot of time on this. You knew there was a female cluster
15 on DIRECTV, correct?

16 THE WITNESS: I was aware of it, yes.

17 MR. COHEN: At the time you had the marketing job, right?

18 THE WITNESS: Correct.

19 MR. COHEN: Okay. Now turn in Exhibit 212 to five of 18.

20 THE WITNESS: Yes, okay.

21 JUDGE SIPPEL: Now don't let him rush you. I doubt that
22 he says he doesn't have -- You have time, he doesn't have time,
23 it's okay. Just take your time.

24 (Off the record comments)

25 JUDGE SIPPEL: Let's get this right.

1 MR. COHEN: Okay. I'm happy to get it right, Your Honor.

2 JUDGE SIPPEL: Thank you.

3 MR. COHEN: Do you see where it says "the best
4 programming targeted clusters?"

5 THE WITNESS: Yes.

6 MR. COHEN: Right. And there are adult clusters -- Do
7 you have that, Your Honor, five of 18?

8 JUDGE SIPPEL: Five of 18? I don't have five of 18, but
9 I'm going to get to it. You keep talking while I get it. I got it
10 right now.

11 MR. COHEN: Okay. There was an adult cluster, a male
12 cluster, a female cluster, a young adult cluster, kids, lifestyle,
13 sports, and news, right?

14 THE WITNESS: Correct.

15 MR. COHEN: Okay. And you would buy, GSN would buy time
16 on these various clusters, right?

17 THE WITNESS: Yes.

18 MR. COHEN: Okay. And you were --

19 MS. FLAHEVE-WU: Mr. Cohen, can you clarify the time
20 period for which you are talking about because Ms. Hopkins was in
21 her marketing position again in 2010 and very early 2011.

22 MR. COHEN: Your Honor --

23 MS. FLAHEVE-WU: This document is from 2013. If you are
24 trying to establish foundation for this document --

25 MR. COHEN: Your Honor, with all due respect, and maybe

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1 we need to take a break, we struck a deal this morning so we
2 wouldn't have to do this.

3 If we're going to go back and do this -- It's cross
4 examination. If they think I'm misleading the witness about the
5 timeframe I am sure they can do it on redirect.

6 MS. FLAHIVE-WU: I just want -- I want --

7 MR. COHEN: I don't have to lay a foundation on cross
8 examination, Your Honor.

9 JUDGE SIPPEL: Yes, he's right. I mean but there is
10 enough of a proffer made just in the preliminary discussions. I
11 know where we're going at. The problem is that, and you pointed it
12 out very clear, that there's an inconsistency in dates.

13 And let me just see if I can clear this up. Have you
14 seen this document before?

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: Do you understand it?

17 THE WITNESS: Yes, I do.

18 JUDGE SIPPEL: All right, let's go.

19 MR. COHEN: Okay. And you understood --

20 JUDGE SIPPEL: You can object. Yes, what's your
21 objection now?

22 MS. FLAHIVE-WU: I believe that Ms. Hopkins is testifying
23 that she saw it in her deposition.

24 JUDGE SIPPEL: I'm asking her if she --

25 (Simultaneous speaking)

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1 MR. COHEN: Your Honor, I have to say, I mean with all
2 due respect to Ms. Wu, that's not an objection.

3 JUDGE SIPPEL: It's not.

4 MR. COHEN: I mean --

5 MS. FLAHIVE-WU: It's a point of clarification, Mr.
6 Cohen.

7 MR. COHEN: That's not an objection during cross
8 examination, Ms. Wu.

9 JUDGE SIPPEL: Okay. I may --

10 MR. COHEN: Your Honor, I feel like I'm being impeded
11 here.

12 JUDGE SIPPEL: We don't have to switch seats. I mean I
13 think we're going to keep going, all right. We're either going to
14 take a break or we're going to keep going. Are you ready to keep
15 going?

16 MR. COHEN: I'm ready to keep going.

17 JUDGE SIPPEL: That's good.

18 MR. COHEN: Let me help you with the time. Let me show
19 you where --

20 JUDGE SIPPEL: I'm overruling it.

21 MR. COHEN: Let me show -- You know, look at Exhibit 212,
22 you knew in 2010 when you had the marketing job that DIRECTV had a
23 women's cluster and GSN was not in it, right?

24 THE WITNESS: Correct.

25 MR. COHEN: Right. And you knew in 2010, and I'll show

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1 the DISH documents in a few minutes, that DISH had a women's
2 cluster and GSN wasn't in it, correct?

3 THE WITNESS: Yes.

4 MR. COHEN: So if I wanted to buy advertising from the
5 women's clusters, but I'm not GSN, I'm some other network, and I
6 wanted to buy advertising from the women's cluster of networks on
7 DIRECTV I wouldn't be buying GSN, right?

8 THE WITNESS: If you just wanted the female cluster here,
9 but it -- Can I say something?

10 JUDGE SIPPEL: Wait a minute.

11 THE WITNESS: Okay.

12 JUDGE SIPPEL: Answer his question.

13 MR. COHEN: My question --

14 THE WITNESS: I would buy multiple clusters if I were
15 looking for women.

16 JUDGE SIPPEL: All right, now let's -- Okay, but let's
17 overlook that question and your answer. Let's try it again.

18 MR. COHEN: Yes. If you were a network or an advertiser
19 --

20 THE WITNESS: An advertiser.

21 MR. COHEN: -- an advertiser that only wanted to buy the
22 female cluster on DIRECTV you would not be buying advertising that
23 would be aired on GSN, right?

24 THE WITNESS: If you just bought the female cluster,
25 correct.

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1 BY MR. COHEN:

2 Q And if you wanted to reach GSN's viewers, you would have
3 to also buy the adult cluster, correct?

4 A Yes.

5 Q Right. And that was true in 2007, or 2009, right? When
6 you were in the marketing job?

7 A I think so, yes.

8 Q And it was still, it was true in 2010, was it not?

9 A I don't have that in front of me, but I'm going to say
10 yes. I'm sure you could back it up.

11 Q And it's --

12 A It was in '10.

13 Q It's still true today, right?

14 A According to this '13. I don't know. I haven't looked
15 at it today.

16 Q Now --

17 A I mean, it's probably --

18 Q Sure. DIRECTV is one of the owners of GSN, right?

19 A Correct.

20 Q And did you ever complain to anybody at DIRECTV and say,
21 why aren't you putting us on women's cluster, female cluster?
22 We're a women's network. When people buy advertising on women's
23 network they should be buying on ours.

24 A No, I never complained about it.

25 Q Do you know if anybody else at GSN ever complained?

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1 A Not that I'm aware of.

2 Q Did you ever complain to DISH, and say, gee, we can't
3 figure out why we're not on the women's cluster or women's network?

4 A No.

5 Q Do you know anybody else at GSN who ever complained?

6 A I can't speak to that. I know I didn't.

7 Q Okay. And you actually bought on specific clusters, you
8 GSN, during the time you were there, right?

9 A Correct.

10 Q So let me show you what we've marked as Exhibit 405.
11 Now, just look at the top email, and I'm going to direct you to a
12 part of 405. But this is an email that you were copied on from
13 Tina Curran.

14 JUDGE SIPPEL: Wait a minute, this is 406.

15 MR. COHEN: I hope not, Your Honor.

16 JUDGE SIPPEL: Well, it's only the question --

17 MR. COHEN: It was. Thank you.

18 JUDGE SIPPEL: Okay.

19 MR. COHEN: Do you have 405 instead of 406?

20 (Off the record comment)

21 MR. COHEN: Okay.

22 JUDGE SIPPEL: You were testing me. I am awake and
23 alert.

24 MR. COHEN: I think I'm the one that is being tested
25 here. I don't think it was a test of you. I think I was being

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1 tested. So, this is an email from Tina Curran, to Mr. Goldhill and
2 Mr. Brunell, and you're one of the CC's, right?

3 THE WITNESS: Correct.

4 (Whereupon, the document referred to was marked as
5 Cablevision Exhibit 405 for identification.)

6 BY MR. COHEN:

7 Q Okay. And just again, I think there was a little
8 testimony yesterday, Tina Curran, she worked in your department, or
9 Mr. Zaccario's department?

10 A She worked in the marketing department, my department.

11 Q In your department. So she worked for you --

12 A Correct.

13 Q -- in 2009? And what's laid out here is a marketing plan
14 for the launch of a couple of shows, correct?

15 A Yes.

16 Q And turn to Page 5 of 5, it says Appendix.

17 A Page 5 of 5, yes.

18 Q All right. And this actually lists the clusters, right,
19 that were on DIRECTV and DISH. It groups the networks into which
20 networks were in which clusters, right?

21 A Yes.

22 Q So in your marketing job at GSN you were aware when you
23 were placing ads on DIRECTV and DISH which networks were in which
24 cluster, right?

25 A Correct.

1 Q And sometimes, like for these shows, which you thought
2 skewed women, you bought on the female cluster, right?

3 A Yes, we did.

4 Q And you also bought on the adult cluster?

5 A And the light, yes.

6 Q Right? And light?

7 A And others.

8 Q And other clusters?

9 A Yes.

10 Q Right? But so --

11 JUDGE SIPPEL: You have to answer yes or no.

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: You can't go mm hmm.

14 BY MR. COHEN:

15 Q Right. So you were always aware, in the course of your
16 job, that the two big satellite providers were selling advertising
17 on groups of women's networks, and you weren't in, right?

18 A Correct.

19 Q And can you offer any explanation to us as to why you
20 didn't complain, since you think it was so obvious --

21 A Well --

22 Q -- that you were a women's network?

23 A Well, if you look at either this appendix, or back to
24 Page 5 of 18 here, I think it's actually pretty smart on DIRECT and
25 DISH's sales efforts, that they actually moved a lot of networks

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1 around so you would have to end up buying multiple clusters.

2 So, for instance, if you look down in Lifestyle there are
3 many female networks in there, Cooking channel, Hallmark, Food,
4 HGTV, you know, those are clearly female skewing networks, right.
5 So, and then even as in adult, as you pointed out, Bravo, CMT, ID,
6 USA, you know. So, you're going to have to end up buying multiple
7 clusters to reach your intended target of females, which is what we
8 ended up doing, as you can see --

9 Q Right.

10 A -- from Tina's appendix.

11 Q And nonetheless, you were never in the women's cluster,
12 correct?

13 A That's correct.

14 Q Okay.

15 A But a lot of other networks aren't either --

16 Q Right.

17 A -- that were females.

18 Q But the --

19 A We're not an outlier there.

20 Q The network, well, the networks that are in the women's
21 cluster all skew female, correct?

22 A Yes.

23 Q So it wasn't mislabeled in that way, right?

24 A No, it wasn't mislabeled that way.

25 Q Okay.

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1 A I think it's misleading on the others. But that's their
2 business, not mine.

3 Q Okay.

4 JUDGE SIPPEL: Well, what I think what you're saying is
5 some program that didn't make it to the female cluster that are on
6 this document also skewed female.

7 THE WITNESS: Heavy female.

8 JUDGE SIPPEL: And nothing is as it appears.

9 THE WITNESS: Yes, correct.

10 JUDGE YOUNGER: Nothing ever is as it appears.

11 THE WITNESS: And that's a --

12 JUDGE SIPPEL: A statement from Doctor Who, or somebody.
13 This is, I'm getting educated in a world that I hadn't heard of
14 before.

15 THE WITNESS: Well, what it allows them to do is --

16 JUDGE SIPPEL: I hear what you're saying.

17 THE WITNESS: -- make more money.

18 JUDGE SIPPEL: I heard what you're saying.

19 THE WITNESS: It's smart.

20 JUDGE SIPPEL: I heard what you're saying. Okay.

21 BY MR. COHEN:

22 Q Let's show you DISH to round this out, 213.

23 A 213.

24 Q And look at Page 5 of 22.

25 A Okay. Oh, boy.

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1 Q See that, that little wheel?

2 A Yes.

3 JUDGE SIPPEL: What tab are you on?

4 THE WITNESS: 213 --

5 MR. COHEN: 213, the next one.

6 THE WITNESS: Page 5.

7 JUDGE SIPPEL: I got you, okay, DISH, right?

8 MR. COHEN: The wheel.

9 JUDGE SIPPEL: The wheel.

10 BY MR. COHEN:

11 Q The wheel. And there's a women's network group in this
12 wheel with 13 networks, right?

13 A Correct.

14 Q It includes WE, right?

15 A Yes.

16 Q So owned, those are all on your competitive set, right?

17 A Correct.

18 Q E! is in your competitive set, right?

19 A Mm hmm.

20 Q And it doesn't include GSN, does it?

21 A Correct. Same story.

22 Q Same story. Did you have a discussion with them about --

23 A No.

24 Q -- how it would be --

25 A The same.

1 Q I just want to make sure, when you're telling the Judge
2 what you thought DISH and DIRECTV were doing, is that based on any
3 conversations you had with them?

4 A About their clusters?

5 Q Yes. Did you ever have a conversation with DIRECTV about
6 how they placed different networks --

7 A No.

8 Q -- in different clusters?

9 A I did not.

10 Q Did you ever have a conversation with DISH about how they
11 placed different networks in different clusters?

12 A No.

13 Q But the one thing you do know is that GSN wasn't in those
14 women's clusters, and you never complained, right?

15 A Correct.

16 Q Okay. You can put that to one side.

17 A Okay.

18 Q Now, you also bought advertising from cable operators,
19 right?

20 A Yes.

21 Q Okay. Including advertising, including cable operators
22 like Comcast, right?

23 A Yes.

24 Q Okay. And did you buy it for something called Comcast
25 Spotlight?

1 A Correct.

2 Q Okay. And just tell us what Comcast Spotlight is.

3 A Comcast Spotlight is Comcast's ad sales arm that sells
4 their local inventory, comparable to the DISH sales team or the
5 DIRECTV sales team, ad sales team.

6 Q Would you look at Exhibit 90 in your binder, which is a
7 GSN presentation to Comcast Spotlight.

8 JUDGE SIPPEL: What's the --

9 MR. COHEN: Ninety, Your Honor, 9-0.

10 JUDGE SIPPEL: I hear you. You could have stopped with
11 90. You didn't have to go to 9-0. I know what --

12 MR. COHEN: Just wanted to make sure I was speaking
13 clearly.

14 JUDGE SIPPEL: Yes, you're okay. You're okay.

15 MR. COHEN: Giving the call letters, Alpha, Bravo.

16 JUDGE SIPPEL: All right.

17 MR. COHEN: Okay?

18 JUDGE SIPPEL: I'm here. I'm with you.

19 BY MR. COHEN:

20 Q All right. Now, so this Comcast Spotlight was the
21 advertising arm of Comcast, right?

22 A Correct.

23 Q Would you turn to 11 of 19?

24 A Okay.

25 Q And you've seen documents like this, have you not, in

1 which GSN tells cable operators that the network was ■ percent
2 female, ■ percent male?

3 A I've seen this, yes.

4 Q Right.

5 A I don't know if I've seen this particular one, but yes.

6 Q You've seen pie charts like that, right?

7 A Yes.

8 Q Now, I just want to understand the context. You want to
9 sell advertising. You want Comcast Spotlight to sell advertising
10 that will land on your network, correct? Isn't that what you're
11 trying to do when you meet with them?

12 A It's to give them so that they can sell the advertising.

13 Q Right.

14 A Yes.

15 Q And so, if they were going to sell advertising on a
16 network that was female skewing, a women's network, as you say, it
17 isn't helpful, is it, to tell Comcast that you're only ■ percent
18 female? That's ■ in the cable world, isn't it?

19 A Can I give an explanation?

20 Q Well let me just ask --

21 JUDGE SIPPEL: Well no, you answer his question.

22 THE WITNESS: So, yes.

23 BY MR. COHEN:

24 Q It's not helpful?

25 A Well no, no, it is. I'm sorry, I misunderstood. I got

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1 lost when I stopped. This was for a different intention, right.
2 They're selling, this is for them to present the best picture in
3 the market that they want to sell. It may be a women's network, it
4 may not.

5 Q They didn't ask you, Ms. Hopkins, Comcast, to give them
6 a piece of paper that said the skew was [REDACTED]. That's something
7 that you presented to them based on your own decision, correct?

8 A I didn't do this document. So I don't know what the
9 thinking was. But I would assume that they, yes.

10 Q You weren't suggesting in your last answer that Comcast
11 called up GSN and said, hey, can you give you us some document that
12 shows the networks are only [REDACTED] --

13 A No.

14 Q -- or 53/47?

15 A No.

16 Q Even though you're really [REDACTED]?

17 A No.

18 Q All right. So I'm just trying to understand. This is to
19 help Comcast sell advertising on GSN, right?

20 A It's, yes.

21 Q And the way that GSN sought to help Comcast sell
22 advertising on GSN was to give them viewership information that
23 said the network was [REDACTED]? Is that right?

24 A Yes.

25 Q Now, and just something I think Mr. Goldhill testified

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1 about, just to finish this off. Cable generally is not 50/50, it's
2 skewed slightly women?

3 A Yes.

4 Q So [REDACTED], that's kind of the average skew of cable,
5 irrespective of men's or women's networks, roughly?

6 A Again, I, yes probably. I haven't seen the skews lately.
7 But I'd say yes.

8 Q Okay. But you know it's more than 50/50 women generally?

9 A Correct.

10 Q Okay.

11 A TV skews women.

12 Q Okay. You can put that document to one side.

13 A Okay.

14 JUDGE SIPPEL: Now, can we talk about the source of those
15 numbers, MRI? Do you know anything about the sources, MRI versus
16 Nielsen, versus this, that and the other thing?

17 THE WITNESS: I really can't speak to them. But I know
18 it's a valuable source.

19 JUDGE SIPPEL: Okay.

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: Never mind. Keep going.

22 (Simultaneous speaking)

23 BY MR. COHEN:

24 Q I'm going to show you another document, but let me ask
25 this. I think you're, I'm trying to summarize your direct

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1 testimony. If I don't get it exactly right, please tell me. I
2 think you said that your job, since you've arrived at GSN, was to
3 market shows that were designed to appeal to an 18 to 54 year old
4 women's audience, right?

5 A Correct.

6 Q Okay. Now, not all of the shows on GSN were designed for
7 that audience, right?

8 A It always had, that was the primary target. That was the
9 always core target in mind.

10 Q Okay. But not all the shows were skewed for an 18 to 54
11 year old woman, correct?

12 A When you say skewed, what do you mean by that?

13 Q So let's just take poker. I don't want to spend a lot of
14 time --

15 A Oh.

16 Q -- on this. But poker was a men's skewing show. You
17 showed it on two prime time nights, right?

18 A Poker was in a basic infomercial.

19 Q Right.

20 A Yes.

21 Q Well, I didn't know if it was a basic infomercial. It
22 was programming that you represented to your distributors that was
23 original GSN programming, correct?

24 A It was a paid for infomercial that we isolated on
25 Saturday nights, away from our prime time programming where we were

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1 spending our programming and marketing dollars. It was at a time
2 when poker was hot.

3 It was an economic decision on behalf of the network. It
4 came to us as a paid programming, filled with its own advertisers.
5 It's a common practice to take infomercials. And we did, we kept
6 it away from our original programming.

7 Q Maybe I just don't know the industry lingo. I think of
8 an infomercial as when the programming is bought by an advertiser,
9 that they're going to show the greatest cheese slicer for 30
10 minutes, right. That's what we think of as --

11 A Yes.

12 Q -- infomercials. That wasn't this. These were game
13 shows that happened to be sponsored by people, correct?

14 A No. It was paid for by, it was handed over to us and
15 produced by the person who was paying for it.

16 Q It was actually a competition, just like your other game
17 shows, right?

18 A It was in, it was poker, it's poker, right. So it's at
19 a time when poker was hot. It was an economic reality at the time.
20 It's not an uncommon practice to do things like that.

21 Q Okay.

22 A And if poker's not hot, it's not airing anymore.

23 Q Now, in 2009, 2009, so that's about two years after you
24 arrived? When did you arrive?

25 A At the company?

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1 Q Yes. When did you arrive?

2 A 2009.

3 Q You arrived in 2009. Were you there, you were there for
4 the launch of Big Saturday Night, right?

5 A Yes.

6 Q Okay. In 2009 GSN attempted to come up with some
7 programming to fill Saturday night prime time, right?

8 A Correct.

9 Q Right. And you called it Big Saturday Night, BSN?

10 A Yes.

11 Q And you were involved in that launch, right?

12 A Correct.

13 Q Okay. Let me show you a document that we've marked as
14 Defendant's Exhibit 713.

15 (Off the record comments)

16 MR. COHEN: Your Honor, may I offer 405 into evidence
17 before I do that?

18 JUDGE SIPPEL: Any objection?

19 MS. FLAHIVE-WU: No, Your Honor.

20 JUDGE SIPPEL: Then 405 is in.

21 (Whereupon, the document previously marked as Defendant's
22 Exhibit 405 for identification was received into evidence.)

23 MR. COHEN: And Mr. Schmidt and Ms. Flahive-Wu, I'm
24 assuming I don't need to offer specifically the documents that the
25 evidence, that the objections have been withdrawn?

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1 MS. FLAHIVE-WU: We agree.

2 MR. COHEN: Okay. So just 405 then. Okay. All right.

3 Now, would you look at Exhibit 713?

4 (Off the record comments)

5 MR. COHEN: 713. Is that what's on there?

6 THE WITNESS: Yes, yes.

7 MR. COHEN: Okay.

8 MR. SCHMIDT: Can I just make sure we have the right one,
9 because ours is a copy.

10 MR. COHEN: Yes. It's Hopkins Deposition Exhibit 4 is in
11 fact, Your Honor, I'll give you a stickered copy at the break,
12 Cablevision 713.

13 MS. FLAHIVE-WU: Okay.

14 MR. COHEN: We'll put stickers on it at the break. But
15 just so we're all clear for the record.

16 (Whereupon, the document referred to was marked as
17 Cablevision Exhibit 713 for identification.)

18 JUDGE SIPPEL: The number is what, 713?

19 MR. COHEN: Yes. The actual exhibit number will be
20 Cablevision 713. On the copy in front of Your Honor it says,
21 Hopkins Exhibit 4. That's her deposition --

22 JUDGE SIPPEL: I see.

23 MR. COHEN: -- exhibit number.

24 JUDGE SIPPEL: I see.

25 BY MR. COHEN:

1 Q Now, this is a document, I don't want to go through the
2 whole thing, but I don't want to cut you off in looking at it,
3 right, which relates to the media roll out for Big Saturday Night
4 in 2009, right?

5 A Correct.

6 Q So Mr. Goldhill came in 2007. So this is a couple of
7 seasons into his tenure?

8 A Yes.

9 Q Right? And Tina Curran, we've discussed her. And she's
10 lays out a whole media campaign for this show. It's a series of
11 shows that you were going to launch in 2009 on Saturday nights in
12 prime time, right?

13 A Yes.

14 Q Okay. Turn to the second page, David and Steve. This is
15 Tina Curran's plan, right?

16 A Yes.

17 Q Okay. And who are we targeting? The target for Big
18 Saturday Night in 2009 wasn't women, it was adults 24 to 54, was it
19 not?

20 A Correct.

21 Q Right. And notwithstanding the fact that it was a
22 women's network, you launched an entire evening of programming
23 directed at adults, right?

24 A Yes, we did.

25 Q Okay. Now, turn to the first page. These are your

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1 thoughts. Now, actually your thoughts are the ones that are in
2 orange throughout the document, right?

3 A Yes, correct.

4 Q Okay. And your covering email says, I guess it's
5 supposed to be, I think it needs to have an opening. Our average
6 age is ■, right?

7 A Mm hmm.

8 Q And that was true in 2009, right?

9 A Yes.

10 Q And one of the things that you've struggled with in both
11 your marketing and distribution jobs at GSN is the average age of
12 your network, correct?

13 A I didn't struggle with it in my distribution job.

14 Q But in your marketing job?

15 A Yes, you're always trying to get younger.

16 Q Well --

17 A Yes.

18 Q If your principle target audience are women 18 to 54,
19 it's not a net plus, is it, to have an average age of ■, right?

20 A Yes. Your target is always younger than your actual,
21 yes.

22 Q I'm asking you a different question, ma'am. Is it
23 helpful to you in trying to sell marketing or advertising for a
24 network in the 18 to 54 demographic when the average is ■?

25 A Is it difficult?

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1 Q Yes.

2 A Yes, yes, it is.

3 Q Your marketing job would have been easier if the average
4 age was somewhere in your target demographic, right?

5 A Again, TV skews older. So, yes, yes.

6 Q It would have been easier, right?

7 A It would have been easier.

8 Q Right. And what you say is, and by the way, you were
9 targeting 18 to 54 year olds. Is it fair to say what you're saying
10 in this email is, we'll be lucky if we get the upper end of that 18
11 to 54 year old range. That would be good. Is that a fair
12 characterization of what you're writing?

13 A Yes. I say I don't expect to deliver 25 year olds,
14 hoping to get to the 25 - 49.

15 Q Hoping to get some 25 to 49, right?

16 A Correct.

17 Q Because at the time you joined the network the vast
18 majority of viewers were 55 and older, correct?

19 A I don't remember the exact percentage, but it was older.

20 Q Right.

21 A Yes. And getting younger.

22 Q Right. But do you know what the audience demographics
23 for the network were when you were the head of marketing?

24 A This was a representative of it.

25 Q Right. Okay. And it's fair to say that the largest

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1 group of viewers for GSN during your tenure in marketing, which
2 ended in March of 2011, were 55 and older viewers, correct?

3 A In the newer shows, in the new shows that we were doing,
4 which was rolling out, this being one of them, in Newlywed,
5 Baggage, Love Triangle, the younger women were showing up in our
6 original programming. The daytime numbers were still old.

7 Q Right.

8 A In our prime time original our marketing program was
9 directed to the women 18 to 51.

10 Q Right. And overall the network had an age of in the
11 60's, right?

12 A At this time.

13 MR. COHEN: Okay. You can put that -- I'll offer 713,
14 Your Honor.

15 JUDGE SIPPEL: Objection?

16 MS. FLAHIVE-WU: No objection, Your Honor.

17 JUDGE SIPPEL: Received.

18 (Whereupon, the document previously marked as Cablevision
19 Exhibit 713 for identification was received into evidence.)

20 BY MR. COHEN:

21 Q Now, we had a little bit of discussion about tag lines --

22 A Yes.

23 Q -- earlier. And in fact, one of the things that you did
24 as head of marketing is that you rolled out a new tag line, right,
25 for the network, correct?

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1 A It --

2 Q The world needs more winners?

3 A Yes, it was a campaign.

4 Q A campaign?

5 A Yes.

6 Q The world needs more winners.

7 A Yes.

8 Q And you testified in your direct testimony that, and by
9 the way, you were involved in selecting those words, the world
10 needs --

11 A Correct.

12 Q -- more winners, right?

13 A Correct.

14 Q Right?

15 A Yes.

16 Q And you testified, I think in Paragraph 8 if you want to
17 check, that you rolled out that campaign because you thought it
18 would connect to women, right?

19 A Yes.

20 Q Okay. In fact, the campaign was designed to connect with
21 everyone, was it not, men, women, tell stories? Isn't that true?

22 A Well, men weren't, you know, it was directed at women.
23 Because I knew that concept would resonate with women. But yes,
24 we, I'm sure we had men.

25 Q All right, I'll come back in a minute, after the break.

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1 Because I have the wrong document in front of me.

2 A Okay.

3 MR. COHEN: Your Honor, I probably have another hour. I
4 don't know whether you want to take a break now. The witness has
5 been on for two hours. I'm prepared to continue. Whatever Your
6 Honor's pleasure is.

7 JUDGE SIPPEL: Well, I think we definitely have to take
8 a break. It's a question of, I don't -- But if you're going to
9 finish in an hour, I would say come back in 15 minutes, finish up
10 with this witness, and then go to lunch. And then come back for
11 redirect. What do you think of that?

12 MS. FLAHIVE-WU: That's fine with us, Your Honor.

13 JUDGE SIPPEL: That work? But is this slowing down the
14 progress of the case? Are we, we're not moving along as quickly as
15 we hoped.

16 MR. SCHMIDT: That would be the concern, Your Honor.
17 Just to kind of sketch out the witnesses, we have --

18 JUDGE SIPPEL: Okay, let's go off the record --

19 MR. SCHMIDT: Okay.

20 JUDGE SIPPEL: -- so the reporter at least can take a
21 break. And you can take a break.

22 (Whereupon, the above-entitled matter went off the record
23 at 11:59 a.m. and resumed at 12:21 p.m.)

24 JUDGE SIPPEL: All right. Let's go back on the record.
25 I made some logistical decisions.

1 It's been pointed out to me by some security people who
2 were willing to talk to me that this building really, for all
3 practical purposes, shuts down by 5:30 and it's kind of oriented
4 that way and they would prefer not to have people wandering around
5 too late past 5:30.

6 Now, I've been going to 6:00 and I'm still going to go to
7 6:00 but I can't go - I've decided not to go beyond 6:00 for
8 reasons given to me and but what I will do is start an half an hour
9 early in the morning.

10 I'll come in at 9:30 and I will - we'll come back - we'll
11 only take an hour for lunch. So I save a half an hour there and a
12 half an hour in the morning so I've already added another hour to
13 this - to the universe - the time universe.

14 And I want to just ask counsel - I'm going to remind
15 myself to try and limit commentary and move things along. I want
16 to caution Mr. Cohen to be careful.

17 I note this is - you have a style of asking questions,
18 which I'm perfectly happy with, but I think witnesses get a little
19 bit off - get thrown off track a little bit by it, trying to rush
20 their answers and I think - and this morning with Ms. Wu that was
21 kind of getting spoken over occasionally, not too much but enough
22 to make it not - just not the right way to do it.

23 I'm not criticizing. I just want to comment and just ask
24 all of us to just think - just take a deep breath and think of the
25 witnesses, think of your opposing counsel and, for God's sakes,

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1 think of the reporter so we have a clean record.

2 Having said that, let's return. You're still under oath,
3 Ms. Hopkins.

4 THE WITNESS: Yes, sir.

5 JUDGE SIPPEL: So you're not going to stand up and do
6 that again. Go ahead.

7 MR. COHEN: Okay.

8 BY MR. COHEN:

9 Q Ms. Hopkins, do you remember you testified this morning
10 in response to Ms. Wu's questions about crossovers with WE?

11 A Yes.

12 Q Okay. And that's actually set out in your direct
13 testimony in paragraph 11. Do you want to just take a look at
14 that?

15 A Okay.

16 MR. COHEN: The small book, your Honor.

17 JUDGE SIPPEL: I got it. Thank you.

18 BY MR. COHEN:

19 Q Do you see that?

20 A Yes, sir.

21 Q And I think what you said this morning, the note that I
22 made was that on a number of occasions GSN and WE negotiated these
23 crossover or barter deals, right?

24 A Yes.

25 Q Now, a number of occasions was two or three times?

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1 A I don't really recall, honestly, if it was two or three,
2 Mr. Cohen.

3 Q Okay. But it wasn't - it wasn't more than three, was it?

4 A I think we - now, we tried to do more but it ended up not
5 working out.

6 Q Okay. So the universe of barter deals between these two
7 networks between 2009 or whenever and the present, it happened
8 three times, or twice?

9 A Yes, somewhere in that neighborhood.

10 Q Okay. Now, I also think that you say in paragraph 11 -
11 whether you say it in paragraph 11 or not let me ask you this.
12 Your view was that WE was a good network to do a barter deal with
13 because it had a similar audience, right?

14 A Correct.

15 Q Okay. Now, you are aware, are you not, that there were
16 people within GSN who thought that the point of doing barter deals
17 was not to do barter deals with your competitors, correct?

18 A I don't - I don't think so.

19 Q Okay. Let me show you a document that we've marked as
20 Exhibit 403 - Cablevision 403 and it's a series of emails in which
21 you participate in 2010.

22 A Yes, I remember this.

23 Q Okay. And just, again, to set the stage, the bottom
24 email is from Mr. Michell. I think you identified him. He's in
25 research, right? Starts down at the bottom of the page and he's

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1 got some data on the next page, right?

2 A Correct. Yes.

3 Q And Ms. Hamilton, she worked for you - the second email
4 - correct?

5 A Yes.

6 Q All right. And Ms. Hamilton was suggesting that there
7 would be a barter deal between GSN and Hallmark, correct?

8 A Yes.

9 Q Okay. And Ms. Ponce, she worked in ad sales, correct?

10 A Correct.

11 Q And she says in the top line of her email of which you're
12 a recipient, "I suggested a duplication run to demonstrate why we
13 should not pursue and we are the same audience," right?

14 A That's what she says, yes.

15 Q And what she is saying is you don't do barter deals with
16 your competitors, right?

17 A That was her perspective.

18 Q Right. And then you write, "Let's pass on it," correct?

19 A On this one, yes.

20 Q Right. So in effect, you were agreeing with Ms. Ponce,
21 right, in this instance?

22 A In this instance.

23 (Whereupon, the above-referred to document was
24 marked as Cablevision Exhibit No. 403 for identification.)

25 Q Okay. You can put that document.

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1 MR. COHEN: Your Honor, I'd offer 403.

2 MS. FLAHIVE-WU: No objection, your Honor.

3 JUDGE SIPPEL: Received. 403 is received in evidence.

4 (Whereupon, the above-referred to document was
5 received into evidence as Cablevision Exhibit No. 403)

6 MR. COHEN: Okay.

7 BY MR. COHEN:

8 Q Let me show you another document which we've marked as
9 404.

10 (Whereupon, the above-referred to document was
11 marked as Cablevision Exhibit No. 404 for identification.)

12 It's a series of emails that you've seen before. Now,
13 404 I'm going to take you to various parts of this document but
14 this is a series of emails also involving barter, right?

15 A Correct.

16 Q And if you'll look at the bottom of the first page, 1 of
17 10 of 404 you say, "Tina, I like Travel for us to do a deal with.
18 Let's push that as much as we can," right?

19 A Correct.

20 Q And Travel, which you wanted to do a barter deal with,
21 was not a women's network, correct?

22 A It didn't identify itself as a woman's network but it
23 reached females.

24 Q Well, every network reaches females, does it not?

25 A Yes, but they had a lot more female programming that they

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1 were adding and I was interested in them.

2 Q Okay. Would you look at the last page of Exhibit 404?
3 And would you agree with me - I've tried to do this efficiently as
4 we can - that this is a chart that your research department
5 developed in connection with analysis of barbers to look at the
6 composition of various networks?

7 A Yes.

8 Q Okay. So 10 of 10 on Exhibit 404, the last page, the
9 first column has GSN, right?

10 A Correct.

11 Q And it reports a skew of ■ percent female and ■ percent
12 male, correct?

13 A Correct.

14 Q And if we go over one column to Travel the skew is ■
15 percent male and ■ percent female. That's not a female skew,
16 right?

17 A Pretty close.

18 Q ■ -

19 A It's close to 50/50.

20 Q Okay. Well, is it your testimony, based on your
21 experience in the industry, that a network that skews ■ percent
22 men and ■ percent women is a women's network?

23 A Travel was changing - was in the midst of changing their
24 programming putting more female-related programming on. So I was
25 interested in watching them because I knew I was going to reach

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1 women. I may get some men but I was going to get women, too.

2 Q Could you please answer my question?

3 A Okay. Could you repeat the question?

4 Q My question is, is a network that skews 56 percent men
5 and 44 percent women a women's network?

6 A No. Not in that definition, no.

7 Q Was Travel in your competitive sell?

8 A It might have been. We may have added it at some - we
9 did subsets as well. So it may have been at one time. Can I look?

10 Q Do you want to look at the document there?

11 A Yeah.

12 Q Yeah. Sure. Of course. That Ms. Wu showed you.

13 A Let me just take a look.

14 JUDGE SIPPEL: Which number - what are you looking at
15 now?

16 THE WITNESS: This is in the small binder, Tab 3.

17 JUDGE SIPPEL: Okay.

18 THE WITNESS: It's not in there -

19 MR. COHEN: Okay.

20 THE WITNESS: - not this time.

21 BY MR. COHEN:

22 Q Now, would you -

23 A At that time.

24 Q Go back to the first page of -

25 JUDGE SIPPEL: It's GSN Exhibit 57 you're referring to?

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1 MR. COHEN: Yeah.

2 JUDGE SIPPEL: Okay. Go ahead.

3 BY MR. COHEN:

4 Q Go back to the first page of Exhibit 404 where you say
5 "Tina, I like Travel for us to do a deal with."

6 A Uh-huh.

7 Q Okay. Turn over to the second page. "Jeff, this is very
8 helpful. Can you please create a new one sheet that lays out GSN
9 versus nets." Nets are networks?

10 A Correct.

11 Q "That Tina wants to do deals with. WE, Travel" - is Dis
12 Sci Discovery Science?

13 A Yes.

14 Q And you said, "Put History in there as well," right?

15 A Yes.

16 Q And you thought that History was a good candidate to do
17 a barter deal with, right?

18 A I did.

19 Q Okay. Turn to the last page of Exhibit 404 - 10 of 10.

20 A Uh-huh.

21 Q So what your research department was telling you was that
22 History was ■ percent men and ■ percent women and you thought -
23 that's not a female-skewing network, is it?

24 A No.

25 Q And you thought it was a good network to do a barter deal

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1 with, right?

2 A I did.

3 Q Okay. Isn't it true that you don't just do barter
4 networks with networks that have audiences similar to yours?

5 A Yes.

6 Q Sometimes you do barter networks with networks that skew
7 women and sometimes you do barter deals with networks that don't
8 skew women, correct?

9 A Correct.

10 Q Now, can we just stay on this data? Are you familiar
11 with the information on Page 10 of 10 of 404?

12 A Yeah. I haven't looked at it in a long time, but yes.

13 Q Okay. And one of the things that it tracks is what
14 percentage of the audience is 55 and older, right?

15 A Correct.

16 Q And what it tells us is that GSN's audience 55 and older
17 - the third line up on top -

18 A Uh-huh.

19 Q - is ■ percent - was ■ percent of your audience, right
20 - 55 and older?

21 A Yes. This was as of 2007, yes.

22 Q Sorry. And WE was ■ percent 55 and older - half as
23 much, right?

24 A Correct.

25 Q And, now, people 25 to 54 this reports that ■ percent of

1 GSN's audience were people 25 to 54, right?

2 A Correct.

3 Q Now, some percentage of those were men, right? That
4 includes men as well.

5 A Correct.

6 Q And if we assume that the network then was two-thirds,
7 just to make an assumption - two-thirds women and two-thirds men,
8 that would mean that 20 percent of your audience was within the
9 target demographic of women 25 to 54, right - two-thirds?

10 A Yes, at this time.

11 Q At that time?

12 A Uh-huh.

13 Q And 80 percent was outside of that target demographic,
14 correct?

15 A Correct, in 2007, yeah.

16 Q And for WE the number of people - the percentage of the
17 audience that was within the 25 to 54 demographic was considerably
18 higher - ■ percent, right?

19 A Yes.

20 Q And that's just another way, isn't it, of saying that
21 your network skewed old at the time?

22 A In 2007, yes.

23 Q Well, the data goes through the end of 2008.

24 A 2008.

25 Q Right.

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1 A It's for the month of - oh, yes, through 2008.

2 Q And just so we're clear, if we go to the first page, this
3 email that you wrote was actually in March of 2009, right?

4 A Correct.

5 Q So the - this data, Page 10 of 10, was the data that you
6 were working with in March of 2009, right?

7 A Correct.

8 Q Okay. You can -

9 MR. COHEN: Your Honor, I offer 404.

10 JUDGE SIPPEL: Objection?

11 MS. FLAHIVE-WU: No objection, your Honor.

12 JUDGE SIPPEL: Received, 404 is in.

13 (Whereupon, the above-referred to document was
14 received into evidence as Cablevision Exhibit No. 404)

15 MR. COHEN: Your Honor, I think that basically everything
16 else that I have is probably for closed session.

17 JUDGE SIPPEL: Okay. Those who it applies to are excused
18 now. How long do you think we'll be in closed session, roughly?
19 Ma'am?

20 MR. COHEN: Probably until 1 o'clock, your Honor.

21 JUDGE SIPPEL: Okay. Until 1 o'clock.

22 MR. COHEN: Okay.

23 (OPEN SESSION ENDS)

24 (CLOSED SESSION STARTS)

25 BY MR. COHEN:

1 Q Now, do you remember the table that you showed your Honor
2 in your direct testimony that showed what you were calling the
3 penetration rates?

4 A Yes.

5 Q That was, right, Table 1, I think?

6 A Yes.

7 Q All right.

8 A Page 8. Table 1, small book.

9 Q Yes, thank you. It's not hard - it's easier to separate
10 the two books. And the point you were making here, I guess, is
11 that at the end of 2012 the average penetration rate was ■
12 percent, right?

13 A Yes.

14 Q Now, all of the MVPDs, right - cable operators, telecos
15 and the satellite companies that you list there - they're all
16 considerably bigger than Cablevision, aren't they - as Cablevision
17 was at the end of 2012?

18 A Yeah. Yes. I think that's fair.

19 Q Is it fair to say that Cablevision had about 3 million
20 subs?

21 A Yes.

22 Q And Time Warner had about 12 million at that time?

23 A Correct.

24 Q And Comcast had, what, an excess of 20 million?

25 A Close - close to it, yes.

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1 Q DISH had about 15 million?

2 A Uh-huh. Yes.

3 Q All right. Direct TV has about 18 million?

4 A Yes.

5 Q What about Charter? Five, 6 million?

6 A At this time, it was probably less. But somewhere around
7 4, yeah.

8 Q Okay. And Verizon was about 7?

9 A Oh, no. Not that high.

10 Q Smaller at that time?

11 A Yeah, smaller. Closer to 4.

12 Q Okay. And AT&T around -

13 A They were smaller, too.

14 Q Okay.

15 A They were in the Cablevision range as well.

16 Q Okay. And how did you select those cable operators?

17 A I selected these cable operators because these are the
18 major players -

19 Q Okay.

20 A - that we do business with, they represent, you know, the
21 vast majority of our carrier.

22 Q Did you prepare a version of this table in connection
23 with sworn testimony that you - that you gave in 2013 in this case?
24 Do you remember?

25 A I think we did.

1 Q Okay. Let me direct your attention. In your book you
2 have what's -

3 A In the thick book?

4 Q In the thick book. You have what's been marked as GSN
5 220, and 220, which is not in evidence, is the direct testimony
6 that you submitted in March of 2013 when they were going to try the
7 case in 2013. Just why don't you just confirm that for me, if you
8 will?

9 A Yes.

10 Q And would you turn to Table 1 in 2013? And if you can
11 keep it open next to your direct testimony of today I think that'll
12 be helpful.

13 JUDGE SIPPEL: What am I missing? 220?

14 MR. COHEN: No, your Honor. GSN 220. GSN.

15 JUDGE SIPPEL: Oh, GSN 220.

16 MR. COHEN: Yeah.

17 JUDGE SIPPEL: And they are in the back of the book?

18 MR. COHEN: Yes, sir.

19 JUDGE SIPPEL: I've got you.

20 MR. COHEN: Page 8.

21 JUDGE SIPPEL: I've got you. Thank you.

22 BY MR. COHEN:

23 Q And this was the penetration level that you gave then as
24 of June of 2011, correct?

25 A Correct.

1 Q And you see AT&T and Verizon, Direct TV, right? And -

2 A Correct.

3 Q - look at the one above Cablevision, Cox.

4 A Cox.

5 Q That was [REDACTED] percent.

6 A Yes.

7 Q Did Cox get dropped? Did they drop GSN between 2011 and
8 the end of 2012?

9 A No.

10 Q How many subscribers does Cox have?

11 A Close - north of - probably around [REDACTED]

12 [REDACTED].
13 Q Right. So as big as AT&T was then?

14 A Yes.

15 Q As big as Charter was then?

16 A Correct.

17 Q Okay. And did you deliberately omit Cox from the chart
18 that you submitted in your sworn testimony today because the number
19 was lower?

20 A No.

21 Q Why did you do it?

22 A Honestly, I don't know. I mean - I mean, Cox - I don't
23 know why that's not in here, to be honest with you.

24 Q Uh-huh.

25 A I don't know. Cox has a different kind of tiering

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1 structure. So I'm happy to report that actually we're at [REDACTED]
2 percent of Cox today and so they actually redid their tiering
3 structure. So we're much farther north. They had a very odd
4 thing. So -

5 Q But at the end of 2012 Cox was still down in the [REDACTED],
6 right?

7 A Correct. [REDACTED].

8 Q So if we added Cox to your penetration level chart in
9 today's testimony we'd get a number lower than [REDACTED] percent, right?

10 A Yes, during that time.

11 Q Right.

12 A It'd be higher today than this.

13 Q And I think you testified this morning that Cablevision
14 carried you at a very high level of penetration, right?

15 A Yes.

16 Q Right? From 1997 through the end of 2010?

17 A Correct.

18 Q Right? And Cablevision carried you, in fact, as highly
19 penetrated for those 15 years as any other cable operator or
20 satellite operator or teleco in the country, right?

21 A They were equal to them, yeah.

22 Q Right. Well, they were in the [REDACTED], were they not?

23 A Yes, correct. Yes.

24 Q All right. And all of the time that Cablevision carried
25 you at a [REDACTED] percent-plus penetration rate they were affiliated with

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1 Rainbow, correct?

2 A Yes.

3 Q And WE TV was on the air, was it not, all of the years in
4 which Cablevision was carrying Game Show at a ■-plus percent
5 penetration level, right?

6 A Yes.

7 Q Okay. You can put that down.

8 A Okay.

9 Q Now, can I show you GSN Exhibit 138, which I'm hoping is
10 in this book. It is. Okay. Now, do you remember when Ms. Wu and
11 I were discussing whether or not you had meetings this is the one
12 meeting - is this a meeting or a telephone call?

13 A Phone call.

14 Q Okay. So you had a telephone call with Mr. Montemagno
15 and these are your handwritten notes, 138, right?

16 A Yes.

17 Q Okay. That you took on the day - that you wrote them
18 March 8th?

19 A Yes.

20 Q All right. And this is the telephone call that you had
21 with Mr. Montemagno while you were continuing to have discussions
22 about how to get GSN restored to broader carriage, right?

23 A Correct.

24 Q Okay. Is this the first conversation you had with Mr.
25 Montemagno on this issue?

1 A I recall it was because I had just gotten into the job.

2 Q Okay. So we heard some testimony yesterday about some
3 meetings at Cablevision in February of 2011 with [REDACTED]

4 [REDACTED]. You weren't at those meetings?

5 A No.

6 Q And when the news was communicated to GSN by Cablevision
7 that the retiering was going to take effect, that news was
8 communicated to Mr. Gillespie, your predecessor, right?

9 A Correct.

10 Q Okay. Now, and - now, when you talked to Mr. Montemagno
11 that day, that wasn't the first time you'd ever talked to him,
12 right?

13 A Oh, no.

14 Q Right? You've known him for, what, 20 years?

15 A Yes.

16 Q And you'd agree with me, wouldn't you, that you've always
17 found Mr. Montemagno to be an honest and straightforward person?

18 A Very, yes.

19 Q And what you wrote in the first line is [REDACTED]

20 [REDACTED] right?

21 A Correct.

22 Q And what Mr. Montemagno was saying to you was that [REDACTED]
23 meant he didn't want to pay [REDACTED] for the network, correct?

24 A Correct.

25 Q He wasn't telling you, was he, that there couldn't be a

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1 [REDACTED] but, rather, that Cablevision [REDACTED]

2 [REDACTED],
3 right?

4 A Correct.

5 Q Okay. And he told you that - if you go down a few lines
6 - he said he was responding to Mr. Goldhill's proposal, right?

7 A Yes.

8 Q And then - and then you wrote "way short" meaning he was
9 rejecting it?

10 A Yes, that the proposal fell short.

11 Q Right. [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 A Yes. Uh-huh.

15 Q And then he said, "Happy to reconsider," right?

16 A Correct.

17 Q Meaning he was happy to reconsider the question of
18 putting GSN on a broader tier, right?

19 A Restoring our carriage, correct.

20 Q Okay. And then he said down - go down below the numbers.

21 A Okay.

22 Q Do you see a line that says Tom M.?

23 A Yeah.

24 Q [REDACTED]

[REDACTED] ?

1 A Yeah. My writing. Yes.

2 Q Right?

3 A Uh-huh.

4 Q [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]?

8 A Correct.

9 Q And the proposal - I'm just checking that we are closed

10 - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]?

14 A Correct.

15 Q [REDACTED]

[REDACTED] right?

17 A Correct.

18 Q [REDACTED]

[REDACTED]?

20 A Correct.

21 Q [REDACTED]

[REDACTED] Isn't that what he told you?

23 A He was happy to talk again if we could make terms that
24 worked for him.

25 Q Okay. And what does the next line say? Could you read

1 it to me? But they -

2 A [REDACTED] -

3 [REDACTED] .

4 Q Okay. Okay. And then down at the bottom he says,

5 [REDACTED] ?

6 A Correct.

7 Q [REDACTED]

8 A Yes.

9 Q [REDACTED]

10 [REDACTED]

11 [REDACTED] ?

12 A Correct.

13 Q And then he says, [REDACTED] ?

14 A Correct.

15 Q [REDACTED]

16 [REDACTED]

17 [REDACTED] ?

18 A Correct.

19 Q Okay. You can put that to one side.

20 A Okay.

21 Q Now, just to try to wrap this up as quickly as we can -

22 pardon me. Okay. Now, you testified, I think, in response to Ms.

23 Wu's questions that you've actually been quite successful in

24 signing up new subscribers since the time of Cablevision retiering?

25 A Yes.

1 Q All right. And I think Mr. Goldhill testified yesterday
2 that you've added 10 million new subscribers. Is that right?

3 A Close to it, yes.

4 Q Close to 10 million, correct? And you testified today
5 about a [REDACTED]

6 [REDACTED] ?

7 A Correct.

8 Q Right? [REDACTED] ?

9 A Correct.

10 Q Right? [REDACTED]

11 [REDACTED]

12 [REDACTED] ?

13 A I don't recall that.

14 Q [REDACTED] ?

15 A Oh, I thought you said Verizon. I'm sorry.

16 Q [REDACTED].

17 A I'm sorry.

18 Q [REDACTED]

19 [REDACTED]

20 [REDACTED] ?

21 A [REDACTED]

22 [REDACTED]

23 Q [REDACTED]

24 [REDACTED] ?

25 A Correct.

1 Q No one ever told you that they were watching this case so
2 they could retier you. Isn't that so?

3 A They did not say those words.

4 Q Now, you, in the course of these various negotiations,
5 and I think you've landed a lot of deals in your tenure since 2011
6 in distribution, right?

7 A Correct.

8 Q A new deal with [REDACTED], yes?

9 A Yes.

10 Q A new deal with [REDACTED]?

11 A Yes.

12 Q A new deal with [REDACTED]?

13 A Correct.

14 Q A new deal with [REDACTED]?

15 A Correct.

16 Q A new deal with [REDACTED], right?

17 A I think so, yes.

18 Q A new deal with [REDACTED]?

19 A Yes.

20 Q And also a new deal with [REDACTED], right?

21 A Correct.

22 Q Okay. And in these negotiations they bring up a lot of
23 arguments as to why they think your fees should go down, right?

24 A Correct.

25 Q They complain about the ratings of your network overall,

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1 right?

2 A Not really. That's not one thing they're complaining
3 about.

4 Q They don't raise ratings?

5 A No, they really don't.

6 Q Okay. Do they raise the age of the network?

7 A No.

8 Q Do they raise the reach of the network?

9 A No.

10 Q Never been raised?

11 A No, not to me.

12 Q Okay. Did they ever tell you that you didn't have
13 compelling programming?

14 A No.

15 Q Did they ever tell you they had tighter margins and -

16 A Yes.

17 Q Right?

18 A Yes.

19 Q Let me show you a document that I've marked, I hope, as
20 Exhibit - as Cablevision Exhibit 711 and it's an email exchange in
21 which you're involved in July of 2011. I'm going to give it to
22 you.

23 A Okay, thanks.

24 Q Okay. And you've seen this email before, right?

25 A Not in a while, but yes.

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1 Q Okay. Now, let's kind of go through this carefully and
2 then I'll be done with your cross examination, okay?

3 A Okay.

4 Q So let's look at the bottom.

5 A Okay.

6 Q The bottom is an email that you wrote on July 8th, 2011,
7 right?

8 A Correct.

9 Q It says, "Hi, everyone." Is it to your - is it to the
10 distribution team at GSN? You can't tell from this email.

11 A I can't.

12 Q Where did Mr. Meyer work?

13 A Mr. Meyer worked in our games division.

14 Q Okay. You say, "Hi" - in 2011?

15 A Yes, he did.

16 Q Okay. You says, "Hi, everyone - our [REDACTED]
[REDACTED]." Everyone is not just Mr. Meyer, is it?

18 A Correct.

19 Q So you don't - you just don't know who you sent this to?

20 A Yeah. I don't remember at all. It was an internal
21 email, though.

22 Q Yeah. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]?

24 A Correct.

25 Q [REDACTED]

3

5

A Correct.

6

Q

"

8

A I did.

9

Q Okay.

10

A I did.

11

Q Go down two paragraphs.

15

A True statement.

16

Q "We have no TV shows that are driving any interest for

17

our ratings." True statement, right?

18

A Any interest meaning a water cooler show that everybody's

19

talking about. Didn't mean we didn't have a loyal audience but we

20

didn't have any, you know, someone was going to come in the next

21

morning and talk about your shows so -

22

Q But what you wrote is "We have no TV shows that are

23

driving any interest or ratings," right?

24

A I wrote that.

25

Q And then you said, "Our cable affiliates are experiencing

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1 tighter and tighter margins and GSN is a network that can be easily
2 dropped without any objection from their customers as we have
3 experienced with Cablevision," and that's what you wrote in July of
4 2011 before this litigation was filed, right?

5 A I did write it, yes.

6 MR. COHEN: I have no further questions, your Honor.

7 JUDGE SIPPEL: Okay. Redirect?

8 MS. FLAHIVE-WU: Your Honor, could I take a short break
9 or perhaps we may want to break for lunch.

10 JUDGE SIPPEL: You're going to wait until it's all
11 finished, Ms. Kane?

12 MS. KANE: Correct.

13 JUDGE SIPPEL: How long is your redirect going to be?

14 MS. FLAHIVE-WU: I'd like to look at my notes and I'm
15 hoping I can keep it under an hour.

16 JUDGE SIPPEL: Okay. I think we said we were going to
17 break for lunch and it's - what time is it there? Five to 1:00?
18 We come back at 2 o'clock?

19 MR. COHEN: Yeah. Your Honor, I guess - this doesn't
20 have to be on the record. I do have a request about lunch, your
21 Honor, I'll tell you. But we don't have to do it on the record.

22 JUDGE SIPPEL: Okay. So yeah. Just be careful. This
23 witness should not be spoken to about what she's testifying to
24 right now. I mean -

25 MR. SCHMIDT: I think what we talked about yesterday,

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1 your Honor, was we're not going be talking with her about cross
2 but, obviously, we can talk with her about redirect.

3 JUDGE SIPPEL: Right. Exactly. Of course. Okay?

4 MR. SCHMIDT: That's what we agreed to yesterday.

5 JUDGE SIPPEL: All right. So yeah. So you just follow
6 what counsel's instructions with respect to talking to anybody.
7 Don't talk to anybody else. Don't talk to any other potential
8 prospective witnesses about your testimony until you're off the
9 stand.

10 THE WITNESS: Yes, your Honor.

11 JUDGE SIPPEL: Okay. Let's go off the stand. Oh, you
12 want to?

13 MR. COHEN: Yeah, I - off the record, your Honor.

14 JUDGE SIPPEL: Okay. Let's go off the record.

15 (Whereupon, the above entitled matter went off the record
16 at 12:55 p.m. and resumed at 2:11 p.m.)

17 JUDGE SIPPEL: Please be seated. Okay. Maybe I'll go
18 until 10 after 6:00.

19 (Laughter)

20 JUDGE SIPPEL: First witness?

21 MS. FLAHIVE-WU: Ms. Hopkins.

22 JUDGE SIPPEL: Ms. Hopkins, please come forward.

23 THE WITNESS: Okay. Thank you.

24 MR. COHEN: Your Honor, before we start the cross, I
25 neglected to offer Exhibit 711, which is the last exhibit we were

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1 using on cross.

2 JUDGE SIPPEL: Is there any objection?

3 MS. FLAHIVE-WU: No objection, Your Honor.

4 JUDGE SIPPEL: It's received in evidence.

5 (Whereupon, the above-referred to document was received
6 into evidence as Cablevision Exhibit No. 711.)

7 MR. COHEN: Thank you, sir.

8 JUDGE SIPPEL: This is 711?

9 MR. COHEN: Seven-eleven.

10 JUDGE SIPPEL: Welcome back, Ms. Hopkins.

11 THE WITNESS: Thank you.

12 JUDGE SIPPEL: Thank you. Okay. You may continue, sir.

13 MR. COHEN: No redirect. I pass the witness.

14 JUDGE SIPPEL: Redirect?

15 REDIRECT EXAMINATION

16 BY MS. FLAHIVE-WU:

17 Q Ms. Hopkins, I'd like to ask you ask you to look in Mr.
18 Cohen's -- the big binder at Cablevision Exhibit 73. I'd like to
19 call your attention to page 3 of 4. Ms. Hopkins, this morning --
20 or Mr. Cohen asked you some questions about an email here. It's
21 the second from the bottom. And No. 1 reads, "Female skewing nets,
22 not women's cable nets." Do all women's network skew female?

23 A Yes.

24 Q Do you consider all networks that skew female to be
25 women's networks?

1 A No.

2 Q In your view what is it that makes a women's network?

3 A A women's network to me is -- is -- your mission every
4 day is to program to and market to women.

5 Q Is GSN either a network that skews female or a women's
6 network?

7 A We're both.

8 Q Ms. Hopkins, I'd like to ask you to look, staying in the
9 big binder, at Cablevision Exhibit 212. It's noted, Ms. Hopkins,
10 on the first page that this is a DIRECTV media --

11 A I'm sorry. Let me -- let me just --

12 Q Oh, I'm sorry.

13 A -- get there. I'm sorry. Let me just get there.
14 Two-twelve.

15 MS. FLAHIVE-WU: Your Honor, I believe you have --

16 JUDGE SIPPEL: No, this is it.

17 MS. FLAHIVE-WU: Are we all at 212?

18 THE WITNESS: Correct.

19 BY MS. FLAHIVE-WU:

20 Q Great. Ms. Hopkins, on the first page of this document
21 it notes that this is a DIRECTV media kit from 2013. Could you
22 remind us what your role at GSN was as of 2013?

23 A Executive Vice President, Distribution.

24 Q In that role did you buy advertising for GSN?

25 A No.

1 Q Ms. Hopkins, I'd like to call your attention to page 5 of
2 18 of this document.

3 JUDGE SIPPEL: Five of 18? Is that right?

4 MS. FLAHIVE-WU: Yes, Your Honor.

5 THE WITNESS: Yes.

6 JUDGE SIPPEL: Okay.

7 BY MS. FLAHIVE-WU:

8 Q Earlier --

9 JUDGE SIPPEL: I --

10 MS. FLAHIVE-WU: I'm sorry, Your Honor. Please go ahead.

11 JUDGE SIPPEL: No, I'm sorry. I was just going to say I
12 have it. Go ahead.

13 BY MS. FLAHIVE-WU:

14 Q Ms. Hopkins, when showed this page by Mr. Cohen earlier
15 you testified that you never complained that DIRECTV had GSN
16 outside of its female cluster, correct?

17 A Yes, correct.

18 Q Why didn't you complain?

19 A It didn't matter to me where they put us. I had nothing
20 to do with DIRECTV or DISH's ad sales. Didn't weigh on my business
21 one way or the other where they put us. So I dealt with the
22 Programming Department. And that's who I dealt with, so it never
23 -- I never -- didn't matter to me.

24 Q Ms. Hopkins, this morning you also testified that if you
25 wanted to reach female viewers, you would use a strategy of

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1 purchasing advertising in more than one cluster, is that right?

2 A Yes, I would have purchased -- I did purchase multiple
3 clusters.

4 Q And why did you do that?

5 A Because as we were looking at it earlier, you can -- they
6 don't put all the women's networks into the female cluster. If you
7 look in the adult's, obviously where we are they have CMT there,
8 Bravo. In the Lifestyle they have Cooking, they have Food, they
9 have Hallmark, they have HGTV. So as I -- I think I said earlier,
10 that's -- you know, it's their business to put them where they
11 want, but obviously they want you to buy multiple clusters because
12 they're going to make more revenue. So that's -- that's why we
13 bought multiple clusters, because if we wanted to reach women, I
14 just couldn't by the female cluster.

15 Q Thank you. Ms. Hopkins, I'd like you to look at
16 Cablevision Exhibit 403. That's not in the binder. It's one of
17 the loose pages that Mr. Cohen circulated this morning.

18 A Four-oh-three? Bear with me. Four-oh-three. Okay.

19 Q Reading from the top of the page I'd like to call your
20 attention to the second email, which is from Cynthia Ponce dated
21 June 8th, 2010. Let's wait for His Honor to locate it.

22 JUDGE SIPPEL: Four-oh-three?

23 MS. FLAHIVE-WU: Yes, Your Honor.

24 JUDGE SIPPEL: In which book? It's not in a book, is it?

25 MS. FLAHIVE-WU: It's not in a book. It's one of the

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1 documents that --

2 JUDGE SIPPEL: One of the loosies?

3 MS. FLAHIVE-WU: Yes, it is.

4 MR. COHEN: Your Honor, you want another copy?

5 JUDGE SIPPEL: Well, just a second. I haven't exhausted
6 my stack yet.

7 (Laughter)

8 JUDGE SIPPEL: I have it. I have it. I knew Mr. Cohen
9 would not leave me in the lurch. Okay.

10 MS. FLAHIVE-WU: Certainly.

11 BY MS. FLAHIVE-WU:

12 Q If I could call your attention to the second email if
13 we're reading from the top, which is an email from Cynthia Ponce
14 dated June 8th, 2010. She writes, "I suggested a duplication run
15 to demonstrate why we should not pursue we are the same audience."
16 Ms. Hopkins did you agree with Ms. Ponce that GSN and Hallmark
17 captured the same audience?

18 A Yes.

19 Q What was that audience?

20 A That audience was women 25 to -- 25 to 54 in this
21 instance.

22 Q Now if we look to the top email, the latest in time in
23 this email chain, it's an email from you, Ms. Hopkins, and you
24 wrote, "Let's pass on it." Did you agree with Ms. Ponce that GSN
25 should pass on the deal with Hallmark because GSN and Hallmark

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1 target the same viewers?

2 A No, I didn't -- I didn't agree with her. Cynthia Ponce
3 is in the Ad Sales Department and the -- the way the Marketing
4 Department's saw it, which I was in Marketing, is that it made
5 sense to do it. And I wanted to do it and I probably -- I would
6 have done it if Cynthia wasn't so adamant about it. I just picked
7 my internal battles and took a pass.

8 Q Thank you, Ms. Hopkins.

9 MS. FLAHIVE-WU: I have nothing further.

10 JUDGE SIPPEL: Where were you at that time, in --

11 THE WITNESS: I --

12 JUDGE SIPPEL: Go ahead. Tell me.

13 THE WITNESS: I'm sorry. I was in the Marketing
14 Department.

15 JUDGE SIPPEL: Marketing? Okay.

16 MS. FLAHIVE-WU: Your Honor, I have nothing further.

17 Thank you, Ms. Hopkins.

18 THE WITNESS: Thank you.

19 JUDGE SIPPEL: Does that raise any questions?

20 MR. COHEN: No, Your Honor.

21 JUDGE SIPPEL: Ms. Kane?

22 MS. KANE: Just a few questions, Your Honor.

23 JUDGE SIPPEL: You may proceed.

24 MS. KANE: Thank you.

25 RE-CROSS-EXAMINATION

1 BY MS. KANE:

2 Q Good afternoon, Ms. Hopkins.

3 A Good afternoon.

4 Q I believe you were --

5 JUDGE SIPPPEL: You want to identify yourself, because she
6 might not know who you are?

7 BY MS. KANE:

8 Q Okay. Good afternoon. My name is Pamela Kane. I'm here
9 on behalf of the Enforcement Bureau of the Federal Communications
10 Commission.

11 A Thank you.

12 Q I believe you were testifying earlier today about
13 advertising clusters, correct?

14 A Correct.

15 Q Could you explain a little bit what it means to buy
16 advertising in a cluster?

17 A Yes.

18 Q Or from a cluster?

19 A So how it works is that a long time ago you used to be
20 able to buy single networks. Like if I wanted -- if I was a
21 southern county Maryland dealer, Honda dealer and I wanted to buy
22 time and I only wanted to buy ESPN, I could actually do that. Or
23 I wanted to buy CNN or Bravo or WE or GSN -- wanted to do that, I
24 could. But it got so cumbersome and it was -- it was very, very
25 difficult to do. So what DISH, DIRECT and others started to do was

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1 put these networks in a cluster so they can group them all together
2 and run the one spot across the various networks.

3 Q So if we for example look at -- I believe it was CV
4 Exhibit 212, page 5 of 22 --

5 A Page 5 --

6 Q I'm sorry. Not 5. Yes, 5. Let me see.

7 A Of 18?

8 Q Of 18, yes, sorry, where we have the various clusters
9 laid out. So you couldn't just buy a single one of those channels
10 if you wanted a channel in let's say the female cluster? You would
11 have to --

12 A No.

13 Q -- buy the whole cluster, correct?

14 A That's my understanding.

15 Q Have you had an experience where you've been able to?

16 A No.

17 Q Other than DIRECTV and I believe you said DISH Network,
18 correct, are there any other companies who offer advertising in
19 cluster form?

20 A I'd have to look, but I'm sure Spotlight does. I'm sure
21 they -- the rest of them do as well. I haven't bought those in --
22 I bought a lot of the -- the satellite companies, but I'd have to
23 look. I would assume so. I don't know if it's evolved over the
24 last few years, you know how it is. So I don't -- I would assume
25 so.

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1 Q Thank you.

2 A But I'd have to verify it for you.

3 Q If I could ask you to turn to the exhibit I believe you
4 were just testifying about, which is CV Exhibit 403. It was the
5 email chain that Ms. Wu was asking you about.

6 A Yes, 403. CV 403?

7 Q CV Exhibit 403.

8 JUDGE SIPPEL: That's this one.

9 THE WITNESS: Oh, that's -- that's loose. Thank you.
10 Okay. Sorry. Got it.

11 BY MS. KANE:

12 Q That's all right. And the sort of second bracket down
13 for the email from Ms. Ponce that starts "to Mindy Hamilton." Do
14 you see where I'm looking?

15 A Yes.

16 Q That first line says, "I suggested a duplication run."
17 Do you see where I'm reading?

18 A Yes.

19 Q Could you explain for the record what a duplication run
20 is?

21 A I hope so. Where your audiences are duplicated, like one
22 is watching one -- the audience that's watching GSN, how much of
23 them are also watching Hallmark? So for instance, 100 -- I'm just
24 -- you know, 100 percent of the audience watching Hallmark.
25 Twenty-two percent, 25 percent; I'm making up numbers here, would

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1 be inclined to overlap with Hallmark's audience, that they're
2 watching both channels.

3 Q And how do you measure that?

4 A That's done through various research analytics. Nielsen
5 has one I think. Some other services may, too, but I -- I'm not an
6 expert on the research.

7 Q Are there outside companies that provide that
8 information, or is that done internally at GSN?

9 A No, outside. Nielsen is an outside company.

10 Q I guess the question is was Mr. Ponce suggesting to you
11 that that crossover with Hallmark wouldn't make sense then because
12 you'd have the same audience being targeted? Is that the point
13 that you understood from her email?

14 A The reason she didn't want to do it is because she's in
15 ad sales and her job is to keep as many -- you know, as many
16 viewers as possible, as is her whole networks actually is, and she
17 just didn't want to do it because she thought here I am trying to
18 sell my own shows and now you're going to go and promote Hallmark
19 -- Hallmark's Movie Christmas special. I don't like that from an
20 ad sales perspective. She didn't like that.

21 In the Marketing Department, you know, we thought
22 differently. We thought it was worth it, that in fact since, you
23 know, we're -- we looked at every partner. It's important. For an
24 independent network I thought we want to partner with people who
25 have potentially duplicative audience and may be inclined to come

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1 watch us and Hallmark.

2 So I wanted to do it, but honestly this was such a -- she
3 was so upset about it internally, that it's one of those decisions
4 I just made that I said just -- it's not worth getting her that
5 upset. If she wasn't upset and if I really wanted to argue with
6 her, I probably could have won, but I just -- I pick my battles
7 internally with the Ad Sales Department.

8 Q But were there other situations in which there were
9 potential crossovers like this that Ms. Ponce had an issue with
10 that you passed on?

11 A No, I really can't remember when we passed on it all due
12 to Cynthia's objections. This was the only one I really remember.

13 Q Further down in that document I think one of the last
14 sentences in that same bracketed sections, it says, "I understand
15 our need for marketing partners, but we do not support partnerships
16 with Direct competitors." Do you see where I'm reading? It's
17 pretty much the last line of that same email we were looking at.
18 Not the chain, but in that same bracketed section.

19 A Are you talking about the Cynthia email to me?

20 Q The Cynthia email, correct.

21 A Yes.

22 Q It says, "I understand our need for marketing partners,
23 but we do not support partnerships with Direct competitors."

24 A That was the Ad Sales position.

25 Q Okay. No, I understand.

1 A Yes.

2 Q What I wanted to direct your attention to is that the "D"
3 in "Direct" was capitalized, and the question I had is whether that
4 was referring to DIRECTV or whether that was just "Direct" as a
5 typo?

6 A Oh, I understand. No, it was "Direct" as a typo. Yes.

7 Q Do you recall whether Ms. Ponce provided any concern or
8 resistance with regard to the WE crossover that GSN did?

9 A No.

10 Q You don't recall or she didn't have any such concern?

11 A It's my recollection she had no concerns. I think
12 because we also pushed back a lot, because in the Marketing
13 Department you have to do these things.

14 Q So do you recall that you had to push back for the WE
15 crossover?

16 A No, I don't recall pushing back on -- on -- her on that
17 one.

18 Q And you don't recall that she had any particular
19 concern --

20 A No, I don't.

21 Q -- with that one?

22 MS. KANE: I think that's all that we have, Your Honor.

23 JUDGE SIPPEL: Who is JZ?

24 THE WITNESS: John Zaccario is head of Ad Sales.

25 JUDGE SIPPEL: Right. I got it.

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1 THE WITNESS: I think you'll meet him later.

2 JUDGE SIPPEL: I will. Thank you.

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: Okay. That's all I have. We're all
5 happy? All satisfied?

6 (No audible response)

7 JUDGE SIPPEL: You're excused as a witness, ma'am.

8 THE WITNESS: Thank you, Your Honor. Glad meeting you.

9 MS. FLAHIVE-WU: Your Honor, if we might, there was a
10 question from the Enforcement Bureau that we just wanted to do a
11 quick clarification --

12 JUDGE SIPPEL: Yes.

13 MS. FLAHIVE-WU: Your Honor, if you'll --

14 JUDGE SIPPEL: Yes, go ahead.

15 REDIRECT EXAMINATION

16 BY MS. FLAHIVE-WU:

17 Q Ms. Hopkins, Ms. Kane asked a question about advertising
18 clusters, and this is just for clarity on the record. She asked
19 whether advertisers can buy time on GSN in particular. If an
20 advertiser wants to buy time from a distributor such as DISH or
21 DIRECTV, it's your understanding that they need to buy time in a
22 cluster, right?

23 A Correct.

24 Q But if that same advertiser wants to buy time directly
25 from a network such as GSN, they can go buy from the network

1 directly?

2 A Oh, of course. Yes. Yes.

3 Q Thank you, Ms. Hopkins.

4 A Thank you.

5 JUDGE SIPPEL: Thank you very much, ma'am.

6 THE WITNESS: Thank you. Thank you. It was a pleasure.

7 JUDGE SIPPEL: Safe trip back.

8 THE WITNESS: Thank you, sir. Thank you for hearing us.

9 (Whereupon, the witness was excused.)

10 MR. COHEN: Your Honor, can we take five minutes before
11 we --

12 JUDGE SIPPEL: Oh, sure.

13 MR. COHEN: -- I was expecting, because I have to just go
14 get my stuff from the other room?

15 JUDGE SIPPEL: Sure.

16 MR. COHEN: And, Your Honor, five-minute breaks --

17 (Laughter)

18 JUDGE SIPPEL: Ten minutes. Ten minutes. I'm giving you
19 10 minutes back.

20 (Whereupon, the above-entitled matter went off the record
21 at 2:27 p.m. and resumed at 2:36 p.m.)

22 JUDGE SIPPEL: We're back on the record.

23 Whereupon,

24 JOHN ZACCARIO

25 Was called as a witness by Counsel for the Complainant and having

1 been first duly sworn, assumed the witness stand, was examined and
2 testified as follows:

3 JUDGE SIPPEL: Please be seated and state your name,
4 please.

5 THE WITNESS: John Zaccario.

6 JUDGE SIPPEL: Okay. Your witness.

7 MR. SPERLING: Thank you, Your Honor. Your Honor, can I
8 approach to hand the witness and Your Honor a binder?

9 JUDGE SIPPEL: You may. Thank you.

10 THE WITNESS: Is it necessary to speak into that?

11 MR. SPERLING: It's probably better for the court
12 reporter?

13 COURT REPORTER: No, I'm not using that microphone.

14 JUDGE SIPPEL: What's it for?

15 COURT REPORTER: I don't -- it was here when I came in.

16 (Laughter)

17 JUDGE SIPPEL: Thanks for the question.

18 DIRECT EXAMINATION

19 BY MR. SPERLING:

20 Q Good afternoon, Mr. Zaccario.

21 A Good afternoon.

22 JUDGE SIPPEL: Does Mr. Zaccario know who you are?

23 MR. SPERLING: He does. As a matter of fact we've met
24 before, Your Honor. And, Your Honor, this is in fact JZ, since you
25 were inquiring just before the break.

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1 JUDGE SIPPEL: All right. Okay. There was a reference
2 to JZ in one of these short memos that was in the exhibits and I
3 asked Ms. Hopkins who JZ was. I've seen your name in many
4 exhibits, but I never saw JZ. I guess it's like asking who's DT if
5 you're Donald Trump or something. In the organization you'll --

6 (Laughter)

7 JUDGE SIPPEL: Go ahead.

8 BY MR. SPERLING:

9 Q Mr. Zaccario, if you'll look in the binder of documents
10 in front of you and turn to tab 1, you see GSN Exhibit 298?

11 A I do.

12 Q Okay. Is that your written direct testimony in this
13 case?

14 A Yeah.

15 (Whereupon, the above-referred to document was marked as
16 GSN Exhibit No. 298 for identification.)

17 MR. SPERLING: Your Honor, we ask that it be moved into
18 evidence.

19 JUDGE SIPPEL: Any objections?

20 MR. COHEN: Yes, only, Your Honor, with respect to --
21 I'll waive all of our other objections except for paragraph 17
22 where we have a hearsay objection with respect to the statements
23 made by advertising buyers. So if you just take a quick glimpse of
24 the paragraph, you'll see the gist of this paragraph is what he
25 heard during the 2011 up front presentation. And I would contend

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1 that everything that he heard is he obviously hearsay. And I'll
2 waive all the other objections we have.

3 JUDGE SIPPEL: Want to respond to that, counsel?

4 MR. SPERLING: Your Honor, the purpose of the testimony
5 is to show what Mr. Zaccario was hearing, what his experience has
6 been in his efforts to sell ads in the wake of the repositioning.

7 To the extent that Your Honor has any doubt, I'd ask that
8 you give us an opportunity in the course of the examination to lay
9 the foundation for it. It's really no different than some of the
10 other evidence that's come in including Ms. Hopkins' testimony
11 about her dealings with other distributors, other carriers and
12 affiliates, some of Mr. Cohen's questions to Mr. Goldhill yesterday
13 about the effect on him of conversations that Mr. Chang had with
14 others at Cablevision. This is really for precisely the same
15 purpose, to show the effect on Mr. Zaccario, his understanding, the
16 basis for his belief that the repositioning has impeded his ability
17 to sell ads on behalf of the company.

18 JUDGE SIPPEL: Okay. With that explanation the objection
19 is overruled. And certainly that explanation also materially
20 affects the weight to be given to that paragraph. I will have no
21 reason to suspect that the witness is now trying to tell the truth.
22 What I mean to say, recollection is not perfect. That's true of
23 all witnesses. You follow me?

24 MR. SPERLING: I do, Your Honor.

25 JUDGE SIPPEL: Okay.

1 MR. SPERLING: Thank you, Your Honor.

2 JUDGE SIPPEL: Your witness. Are you tendering him for
3 cross-examination now?

4 MR. SPERLING: No, not quite yet, Your Honor.

5 JUDGE SIPPEL: Not quite? Okay. Well, if that's the
6 only objection, then this exhibit, GSN Exhibit 298, is received in
7 evidence.

8 (Whereupon, the above-referred to document was received
9 into evidence as GSN Exhibit No. 298.)

10 MR. SPERLING: Thank you, Your Honor.

11 BY MR. SPERLING:

12 Q Mr. Zaccario, can you just tell the Court what is your
13 position at GSN?

14 A Executive Vice President of Advertising Sales.

15 Q What are your responsibilities in that position?

16 A I oversee all advertising sales activities for the
17 television network and for our online games business.

18 Q When did you first join GSN?

19 A January of 2008.

20 Q And have the responsibilities that you just described
21 been your responsibilities at the company since you started there?

22 A Yes.

23 Q How many years of total experience do you have in the ad
24 business?

25 A Over 20 years.

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1 Q Is some of that experience on the buy side as opposed to
2 on the sell side?

3 A Yes, it is.

4 Q When you first arrived at GSN in January of 2008 what was
5 your understanding of the network's program strategy?

6 A That we were developing original programming aimed at
7 women 25 to 54.

8 Q And what was your understanding of the ad sales strategy
9 that you were expected to pursue?

10 A That it should align with the programming strategy and we
11 should pursue advertisers targeting women 25 to 54.

12 Q What was the basis for that understanding that you had?

13 A Basis was several conversations I had with David Goldhill
14 prior to him offering and me accepting the job, and also a document
15 I found in my desk the very first day I arrived at GSN.

16 Q Let me ask you to turn to tab 2 in your binder. Do you
17 see GSN Exhibit 8 there?

18 A I do.

19 Q What is that document?

20 A That's the document I found the very first day I arrived
21 at GSN.

22 Q Waiting for you on your desk?

23 A It was.

24 Q Let me ask you to turn to the page with the Bates number
25 on the bottom right ending in 8182.

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1 A Okay.

2 Q Can you read aloud the text on the right side of that
3 page?

4 A "The resurgence of viewing by key ad-targeted demos
5 including those of higher income has vaulted GSN over several other
6 higher profile female-oriented networks."

7 Q And if you look on the upper left what is the key
8 ad-targeted demo that's being referred to here?

9 A Women 25 to 54.

10 Q And what was your understanding of the network's target
11 demographic on the day that you arrived at the network and saw this
12 sitting on your desk?

13 A Women 25 to 54.

14 Q If you look at the left side of the page, you see there
15 are two columns? Do you see that?

16 A Yes.

17 Q The right one has some numbers and the left one has a
18 series of letters or acronyms?

19 A Yes.

20 Q What are those acronyms in the left-most column?

21 A Those are acronyms for cable television networks.

22 Q And it looks like seven of those cable television
23 networks have boxes around them. Do you see that?

24 A I do.

25 Q And what was your understanding of what was signified

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1 with respect to networks that had boxes around their names?

2 A The boxed networks are those networks that we most often
3 compete with.

4 Q Is there a name for that set of networks?

5 A Yes, the competitive set.

6 Q The third network listed there, the letters are WE. What
7 did you understand that to refer to?

8 A WE tv.

9 Q And was it your understanding from the day that you
10 arrived at GSN that WE tv was part of the competitive set of GSN?

11 A Yes, it was.

12 Q When you say it's the competitive set, competitor
13 networks, what are you competing against those networks for?

14 A Advertising revenue.

15 Q And aside from having this deck telling it to you on the
16 day that you arrived, how would you or any network ad person know
17 who the networks are that you're competing most against for ad
18 revenue?

19 A Buyers identified, buyers and advertisers identify the
20 competitive set all the time in the course of ordinary business.

21 Q I'm going to ask you to turn to tab 3 in your binder.

22 JUDGE SIPPEL: The third tab -- but is this 11?

23 MR. SPERLING: Yes, it is, Your Honor, GSN 11.

24 BY MR. SPERLING:

25 Q Mr. Zaccario, is this exhibit, GSN 11, an email chain

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1 that you were part of?

2 A Yes.

3 Q Okay. You see in the middle of the page there's an email
4 from you to several persons with a date of Friday, July 11th, at
5 5:18?

6 A Yes.

7 Q And this is July of 2008, is that correct?

8 A This is July of 2008, that's correct.

9 Q So that's how many months after you started at the
10 network?

11 A Six months.

12 Q And you write, "Bill/Scott/John, please identify the nets
13 you go head to head with most frequently. Thanks." Can you just
14 tell the Court what did you mean by that?

15 A I was asking Bill Scott and John to identify the networks
16 that we compete most frequently with in the course of our ordinary
17 business.

18 Q And who are Bill, Scott and John?

19 A Bill, Scott and John at the time were the Regional Vice
20 Presidents of Sales who reported directly to me.

21 Q How would they know the networks that you go head to head
22 with most frequently?

23 A Their buyers, customers and advertisers would tell them.

24 Q And what did they tell you in response?

25 A Bill wrote Biography, Hallmark, Animal Planet, TV Guide,

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1 Oxygen, WE, Investigative Discovery, TV Land, Hallmark Movie
2 Channel and Lifetime Movie Channel. And then John added SOAPnet.

3 Q Given your 20-plus years of experience in the ad
4 industry, including your experience on the buy side, would the
5 other members of your competitive set also know that advertisers
6 view you as part of their competitive set?

7 A Yes.

8 MR. COHEN: Object, Your Honor.

9 BY MR. SPERLING:

10 Q How would they know that?

11 JUDGE SIPPEL: Wait.

12 (Simultaneous speaking)

13 MR. SPERLING: That's foundation.

14 JUDGE SIPPEL: What's the basis of your objection?

15 MR. COHEN: I'm objecting on the basis of the fact that
16 this witness is not competent to testify what the rest of the
17 industry knows. Similar to my objection all day.

18 MR. SPERLING: Your Honor, I'm not asking him to comment
19 on what the rest of the industry knows. What I'm asking is given
20 his experience in the industry would he expect that the other
21 members of his competitive set would know that he is part of their
22 competitive set.

23 JUDGE SIPPEL: Say again? Just repeat that again. What

24 --

25 (Simultaneous speaking)

1 JUDGE SIPPEL: Based on his 25 or 30 years of experience
2 in ads --

3 MR. SPERLING: What would he expect? Would he expect
4 that these networks that he views as being part of his competitive
5 set would also know that advertisers view him as part of their
6 competitive set?

7 JUDGE SIPPEL: I'll overrule the objection. Go ahead,
8 Mr. Zaccario.

9 BY MR. SPERLING:

10 Q Mr. Zaccario, again given your experience in the industry
11 would you expect that the other members of your competitive set
12 would also know from advertisers that those advertisers view you as
13 part of their competitive set?

14 A Yes.

15 Q What did you do in order to try and sell ads against that
16 target demographic of women 25 to 54 after you arrived at the
17 company?

18 A We used the original programming which was being
19 developed to target women 25 to 54 and the talent we were hiring to
20 host that programming as a calling card to advertisers to let them
21 know that we are in the -- in the business of reaching women 25 to
22 54.

23 Q Was the strategy effective?

24 A Yes.

25 Q During --

1 JUDGE SIPPEL: I want to go back a little bit a couple of
2 -- these people you say, these competitive sets considered you to
3 be a competitor. Do you think that GSN was big enough to be
4 considered a competitor, or they were big enough within the female
5 skew, or what was the -- how would you come to the conclusion that
6 they thought you were a competitor?

7 THE WITNESS: So in the ordinary course of negotiating --

8 JUDGE SIPPEL: Yes.

9 THE WITNESS: -- as a sales person we often ask for --
10 well, if you'd like my price to be lower, give me some direction.
11 What --

12 JUDGE SIPPEL: I see.

13 THE WITNESS: -- what are the other network -- where are
14 the other networks being priced? And so that's most often where
15 the competitive set comes out. Network X is at this price, network
16 Y at that price. And, you know, my presumption is that the other
17 networks, if they're doing their job, are also asking the same
18 questions we're asking and getting the same information.

19 JUDGE SIPPEL: Well, so are these -- the set of -- are
20 these -- the companies in the set are the ones you're negotiating
21 price on, or you look upon them in the big scheme of things as this
22 is the competition we're trying to meet so we're going to plan our
23 strategy accordingly? here's two kind of --

24 THE WITNESS: Well, yes. Well, both, but primarily the
25 competitive set comes out during the course of the negotiations

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1 when buyers are giving us competitive feedback to try to get us to
2 move off a price.

3 JUDGE SIPPEL: So it's basically price competition?

4 THE WITNESS: That's right.

5 JUDGE SIPPEL: Okay. The regional vice presidents, what
6 regions do they represent -- respective of the regions that they --

7 THE WITNESS: So Bill at the time represented the central
8 region.

9 JUDGE SIPPEL: Where does he have his office?

10 THE WITNESS: Chicago.

11 JUDGE SIPPEL: He's central? And?

12 THE WITNESS: Scott was the western region in Santa
13 Monica.

14 JUDGE SIPPEL: So he got the sweetheart deal, huh?

15 (Laughter)

16 JUDGE SIPPEL: Okay.

17 THE WITNESS: And John was in the eastern region.

18 JUDGE SIPPEL: And that's Avenue of the Americas?

19 THE WITNESS: That's right.

20 JUDGE SIPPEL: Okay. Thank you.

21 BY MR. SPERLING:

22 Q So, Mr. Zaccario, maybe just to help clarify in response
23 to the Judge's question -- so when advertisers are looking to buy
24 ad time, they have a range of options available to them, correct,
25 in terms of the networks from which they'll buy advertising?

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1 A That's right.

2 Q And typically will there be some number of networks that
3 they view as sufficiently similarly situated that a number of them
4 might meet the advertisers' desired targets?

5 A Yes.

6 Q But the advertiser is going to end up making a choice as
7 to any given dollar whether they're going to buy it from one
8 network rather than another, is that right?

9 A Whether or not they'll buy, how much they will buy.

10 Q And it's those networks that are competing for each of
11 those dollars that are members of the competitive set. Is that
12 fair to say?

13 A Yes.

14 Q So you had described your ad sale strategy of playing
15 with the company's original programming targeting women 25 to 54.
16 Was that strategy successful?

17 A It was.

18 Q During your tenure at the company what demographic has
19 represented the single largest proportion of the company's up front
20 ad sales?

21 A Women 25 to 54.

22 Q Has that been true of every year you've been at the
23 company?

24 A Yes.

25 Q At the time that Cablevision repositioned GSN to the

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1 sports tier in February of 2011, what percentage of GSN's up front
2 ad sales did women 25 to 54 represent?

3 A [REDACTED]

4 Q And what percentage do women 25 to 54 represent of GSN's
5 up front ad sales today?

6 A [REDACTED]

7 Q Let me ask you to turn to tab 5 in your binder.

8 JUDGE SIPPEL: What number? What's the exhibit number?

9 MR. SPERLING: It's Exhibit 174, Your Honor.

10 JUDGE SIPPEL: I have it.

11 MR. SPERLING: Your Honor, this is one of these native
12 format documents, so there's a cover page and then there's a
13 spreadsheet behind it. And the pages aren't numbered because this
14 is just a print from an Excel spreadsheet.

15 JUDGE SIPPEL: I'll accept that. I had my explanation of
16 a native document yesterday, so --

17 MR. SPERLING: Yes, I can't outdo Mr. Schmidt on that,
18 Your Honor.

19 (Laughter)

20 JUDGE SIPPEL: Everybody has their expertise.

21 BY MR. SPERLING:

22 Q Mr. Zaccario, can you tell the Court what this document
23 is, aside from a native document?

24 A This is a summary of advertising revenue for GSN from
25 2008 through 2012.

1 Q And it looks like there are four sets of tables here.
2 Halfway down the page the third one has a heading "Revenue by
3 Demo." Do you see that?

4 A Yes.

5 Q What is that table showing?

6 A That breaks out advertising revenue in the scatter and up
7 front markets by demographic for those years.

8 Q Thank you. The first row in that table says F25 to 54.
9 What does that represent?

10 A Females or women 25 to 54.

11 Q And what percentage of your up front and scatter
12 advertising revenue did they represent over the period 2008 to
13 2012?

14 [REDACTED]
15 Q And did I understand your testimony earlier that that
16 number has increased since then?

17 A It has.

18 JUDGE SIPPEL: What's it increased to?

19 THE WITNESS: In the up front it's increased to [REDACTED]
20 [REDACTED]. And I'm not sure when you go up to the other market, what
21 that number winds up being. But the up front is [REDACTED].

22 JUDGE SIPPEL: What does "up front" mean? The present?

23 THE WITNESS: So the up front is an auction-type
24 marketplace when -- where advertisers buy television advertising in
25 advance of the next year. So typically that auction happens in the

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1 late spring or summer and advertisers buy advertising for the third
2 -- the fourth quarter of the current year. So right now it's going
3 on and they're buying advertising for October of '15 through
4 September of '16.

5 JUDGE SIPPEL: That is quite an enlightenment for me. So
6 this [REDACTED] estimated up front is what's going up for bid now?

7 THE WITNESS: So the [REDACTED] was the actual number --

8 JUDGE SIPPEL: That's the real number.

9 THE WITNESS: -- for last -- for last year's marketplace.

10 JUDGE SIPPEL: Okay.

11 THE WITNESS: Yes. This year's marketplace is not
12 complete.

13 JUDGE SIPPEL: Correct. Thank you.

14 THE WITNESS: You're welcome.

15 BY MR. SPERLING:

16 Q Mr. Zaccario, following up on the Judge's question, why
17 don't you turn please to tab 4 in your binder?

18 A Sixty-five?

19 Q Yes, GSN Exhibit 65. Mr. Zaccario, do you see that there
20 is an email and then there's a slide deck behind it?

21 A Yes.

22 Q First of all, the email is from Adilla Francis. Who is
23 she?

24 A She's my assistant.

25 Q Do you recognize the slide deck behind the email?

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1 A Yes.

2 Q What is this?

3 A This is a summary of the results of the 2010-2011 up
4 front --

5 Q So just --

6 A -- that we --

7 Q Sorry. Go ahead.

8 A -- that we prepared for David Goldhill and -- and Steve
9 Brunell, who at the time was the CFO of GSN.

10 Q So just to make sure we're oriented, the 2010-2011 up
11 front, that's sales for the fourth quarter 2010 through the third
12 quarter of 2011?

13 A Yes.

14 Q And that up front sales period would have been completed
15 shortly before the time of this email?

16 A That's right.

17 Q And is that an up front sales period just for GSN or is
18 that typically when other networks in your competitive set are also
19 engaged in their up front ad sales?

20 A It's for the entire marketplace.

21 Q Why don't you turn to page 2 of the deck, the page with
22 the Bates number ending 6183 in the bottom right?

23 A Okay.

24 Q What does this page show in terms of how your up front ad
25 sales for 2010-2011 compare to your up front ad sales for the prior

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1 year?

2 A It shows that we grew on revenue volume and price by
3 nearly [REDACTED] in both cases.

4 Q Why don't you turn to the next page, page 3, Bates number
5 ending 184 in the bottom right?

6 A Okay.

7 Q Can you tell the Court what this page is showing?

8 A This is a breakout of the revenue by demographic for the
9 2010-2011 up front and it -- the table compares the results from
10 2010-'11 to 2009 and '10, the previous year.

11 Q What demographic represented the single largest
12 proportion of your up front ad sales at the 2010-2011 up front?

13 A Women 25 to 54.

14 Q And what percentage of your up front ad sales does that
15 demographic represent?

16 A [REDACTED]

17 Q How did that compare to the prior year?

18 A It was up [REDACTED].

19 Q What was the second largest demographic for your up front
20 ad sales 2010-2011?

21 A Women 18 to 49.

22 Q Was that also up over the prior year?

23 A It was.

24 Q In the aggregate what percentage of your up front ad
25 sales was bought on the basis of targeting women between the ages

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1 of 18 and 54?

2 A Just over [REDACTED].

3 Q Now --

4 JUDGE SIPPEL: Who prepares this? Is this document
5 prepared in your segment of the office or --

6 THE WITNESS: Yes, my direct reports would have prepared
7 this.

8 JUDGE SIPPEL: Your direct reports?

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: What does that mean?

11 THE WITNESS: People who work for me. Most specifically
12 the people who work in the pricing and planning and business
13 analytics function. And that was overseen by Cynthia Ponce.

14 JUDGE SIPPEL: Okay. Now I want to know the difference
15 between the Advertising Department and the Marketing Department.
16 Do they have common goals? Your goal is to sell ads to
17 advertisers, right?

18 THE WITNESS: Yes.

19 JUDGE SIPPEL: And Marketing wants to sell programs, I
20 gather, is that right? They're trying to market programs?

21 THE WITNESS: Exactly. The Marketing Department marks --
22 market -- markets programs with the objective of attracting more
23 viewers to GSN. So that -- that's a consumer business and we're
24 more of the business to business side of it.

25 JUDGE SIPPEL: Okay. So are there any projects in which

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1 you partner up, you combine? I can't think one in my own mind, but
2 I'm trying to think of -- how do you act with Marketing?

3 THE WITNESS: Yes, so our -- our objectives are aligned,
4 certainly.

5 JUDGE SIPPEL: Yes.

6 THE WITNESS: But, you know, most of the interaction
7 happens -- you know, we'd like to be in the market --

8 JUDGE SIPPEL: Yes.

9 THE WITNESS: -- telling a consistent story about the
10 network, the same story they're telling. So typically we would
11 take our cue in terms of how we position the network to the
12 marketplace. The logo, the colors they prefer to use, all those,
13 you know, qualitative-type of things that you'd put into a
14 presentation. We take our cue from them.

15 JUDGE SIPPEL: Okay. So they're interested in these
16 numbers, too? Marketing. Do they want to see these numbers? Do
17 they have an interest in these numbers at all?

18 THE WITNESS: They're interested in them to the degree
19 that they measure the performance of the company. There are two
20 ways GSN makes money: through advertising sales and distribution
21 sales. And so, you know, if someone would be interested in the
22 overall performance of the business, they would certainly be
23 interested in the advertising sales performance.

24 JUDGE SIPPEL: Would they want to see what -- this is
25 demo -- what demographic group that they're trying to duplicate?

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1 Would they be concerned about these numbers from the standpoint of
2 do we have the right kind of programming for this [REDACTED] group
3 that you just testified to?

4 THE WITNESS: Yes. I mean, these numbers would validate
5 their strategy. We have a strategy to reach women 25 to 54, and
6 the strategy is working as demonstrated by the -- the advertising
7 results. So they'd be interested in -- in these because that would
8 be a -- a way to validate what they were doing and the -- the path
9 they were taking.

10 JUDGE SIPPEL: Is there any time that you come up against
11 -- that you have a difference of agreement in terms of like say
12 these partnership arrangements or loosely called partnership
13 arrangements where your objectives would be threatened, you'd feel
14 your objectives were being threatened by something that they want
15 to do?

16 THE WITNESS: So typically when they, you know, plan to
17 approach a -- a partner rather than advertisers, they would check
18 in with us and they would share the terms that they were going to
19 propose and ask us if we would be okay with it. And in most cases,
20 you know, we are.

21 JUDGE SIPPEL: Who gets the last word if there's a
22 disagreement?

23 THE WITNESS: We have a management meeting every week and
24 we would probably -- where David Goldhill and his direct reports
25 meet.

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1 JUDGE SIPPEL: Yes.

2 THE WITNESS: And we would probably discuss it there and
3 come to some agreement.

4 JUDGE SIPPEL: Okay. That's all I have.

5 MR. SPERLING: Thank you, Your Honor.

6 BY MR. SPERLING:

7 Q Now, Mr. Zaccario, let me go back and orient us in time.
8 So this deck is prepared in the wake of the 2010-2011 up front
9 sales, correct?

10 A Yes.

11 Q And that is an up front sales period for all networks,
12 essentially. Is that what you testified to?

13 A Yes.

14 Q And this email was sent in July of 2010, is that right?

15 A Yes.

16 Q And if you go back to the page we were on, page 3, did
17 you testify that what this chart shows is that your share of women,
18 not only 25 to 54, but also to 18 to 49 was increasing year over
19 year?

20 A That's right.

21 Q What significance does that have for the other members of
22 your competitive set?

23 A It would come -- this -- these results would come at
24 their expense.

25 Q And they also would be coming out of the same up front

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1 sales period in July of 2010, right?

2 A Yes.

3 Q Let me ask you one thing about this, Mr. Zaccario. If
4 you'd turn to page 10. It's got the Bates number 191 in the bottom
5 right.

6 MR. COHEN: I'm sorry. Can you tell me which -- that
7 same document?

8 MR. SPERLING: Page 10. It's in document 191.

9 MR. COHEN: Thank you.

10 JUDGE SIPPEL: Daypart Strategy?

11 MR. SPERLING: That's the page, Your Honor.

12 JUDGE SIPPEL: Bingo.

13 BY MR. SPERLING:

14 Q So, Mr. Zaccario, there are three main bullets on this
15 page, Day Time, Fringe and Jackpot. Those are each names for a
16 daypart or a time slot during the day, is that right?

17 A Yes.

18 Q Okay. The second bullet under each of these headings has
19 some reference to people 25 to 54. I was curious what that meant.

20 A So it -- it references people 25 to 54 because that's
21 what the budget game plan is based on. Budget game plan is
22 distinct from the go to market strategy that we share with
23 advertisers.

24 Q Why are you budgeting on people 25 to 54 if you testified
25 that your sales pitch to advertisers is women 25 to 54?

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1 A So it's how they did it when we got there. And when we
2 examined it after we got there, we came to the conclusion that it
3 would still be prudent to do it on people 25 to 54 as we write a
4 variety -- we were selling a variety of demos and you can use
5 people 25 to 54 as a building block for the demos. So for example,
6 women 25 to 54 is a subset of people 25 to 54. And so it served
7 that purpose for us.

8 Q Why can't you do it the other way? Why can't you build
9 it on women 25 to 54 and then from there go to pricing for people
10 25 to 54?

11 A Mathematically you wouldn't be able to go from narrow to
12 broad, only from broad to narrow.

13 Q Did the fact that you built your budget based on people
14 rather than women 25 to 54 have an effect on who was buying the
15 bulk, or rather what demographic represented the bulk of your up
16 front ad sales?

17 A No.

18 Q And how do you know that?

19 A It's represented on the previous pages in the results.

20 THE WITNESS: On page 3, Your Honor.

21 JUDGE SIPPEL: Let's see. Okay.

22 THE WITNESS: Our revenue from women 25 to 54 and 18 to
23 49 grew and -- and continued to grow even though we budget on
24 people 25 to 54.

25 JUDGE SIPPEL: Okay.

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1 BY MR. SPERLING:

2 Q And actually, what happened to your revenue bought on the
3 demographic of people 25 to 54 as compared to the prior year?

4 A It decreased.

5 Q At the time of these up front ad sales and before did
6 Nielsen report GSN's median age as being within the 25 to 54
7 demographic?

8 A No, it didn't.

9 Q Did you think that was accurate?

10 A No, we didn't.

11 Q Why not?

12 A There were other sources that were measuring median age
13 that produced a number that had a wide discrepancy with Nielsen,
14 sources like Simmons and MRI. And also it was -- it was widely
15 known that Nielsen did a poor job of measuring smaller cable
16 networks due to an inadequate sample size and methodology.

17 Q Well, be that as it may, was it a challenge then selling
18 on the 25 to 54 demographic given that the Nielsen number that was
19 out there for your median age was higher?

20 A It was a challenge, but we were able to overcome it.

21 Q How do you know that you were able to overcome it?

22 A The results of the up front. And when [REDACTED] or more
23 of the business that we sold we sold on demographics that were
24 outside of the median age that Nielsen was publishing. So we -- we
25 did a good job of persuading buyers in the marketplace that we were

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1 able to -- in fact the Nielsen that they were publishing was -- was
2 inadequate.

3 Q Why don't we move to the repositioning of GSN to the
4 sports tier by Cablevision? How many subscribers to your
5 understanding did GSN lose as a result of the repositioning?

6 A [REDACTED]

7 Q What was the effect on your ability to sell ads of having
8 [REDACTED] fewer homes to deliver?

9 A Well, distribution is enormously important to cable
10 television networks because distribution results in audience, and
11 audience is what we sell in the media business. So less
12 distribution is less audience and less audience means less revenue.

13 Q Okay. Has GSN quantified the amount of revenue that it
14 loses annually by virtue of not having those [REDACTED]
15 subscribers? Yes, before you answer that question, let me check
16 with Mark on that.

17 MR. SPERLING: Okay. Your Honor, we're going to call for
18 the witness to testify about some confidential information, so I
19 think we need to clear the courtroom of those that haven't signed
20 the agreement.

21 JUDGE SIPPEL: Okay. You all know the drill. Thank you
22 very much.

23 MR. SPERLING: Thank you.

24 CLOSED SESSION

25 MR. COHEN: Could we hear the question again?

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1 MR. SPERLING: Yes. Just want to make sure we're all
2 set.

3 BY MR. SPERLING:

4 Q Again, Mr. Zaccario, the question was has GSN quantified
5 the amount of advertising revenue that it loses annually as a
6 result of that reduction in subscribers?

7 A Yes.

8 Q And what is that number?

9 A At the time of the repositioning each subscriber was
10 worth about [REDACTED].

11 Q And so, that would add up to how many dollars?

12 A [REDACTED] [REDACTED] [REDACTED] at the time of the
13 repositioning.

14 Q Is each subscriber still worth [REDACTED]?

15 A No, it's worth more now.

16 Q How much?

17 A [REDACTED].

18 Q And so, today on an annual basis what are the advertising
19 losses that result from the repositioning?

20 A A little more than [REDACTED].

21 Q Let me ask you to turn back to your written testimony in
22 tab 1.

23 JUDGE SIPPEL: Roughly what percentage of that is of your
24 total income, of the company's total income?

25 THE WITNESS: Well, today we -- we produce about [REDACTED]

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2 JUDGE SIPPEL: Okay. All right. That's fine.

3 BY MR. SPERLING:

4 Q Mr. Zaccario, can you turn back to your written direct at
5 Tab 1. If you turn to paragraph 11 which is on page 4. If you
6 look at the third line of that paragraph, there's a sentence
7 beginning, "The repositioning delayed GSN's ability to achieve the
8 80 million subscriber threshold that is recognized as a key
9 benchmark for advertisers."

10 Can you explain what that benchmark is and what its
11 significance is?

12 A So advertisers, for a variety of reasons, set certain
13 thresholds of distribution that inform them as to whether or not to
14 either buy the network or how much to buy and what price to pay.
15 And so 80 million subscribers is a significant benchmark that
16 advertisers set.

17 Q At the time of the repositioning, had you reached 80
18 million subscribers yet?

19 A No.

20 Q Were you close?

21 A Yes.

22 Q Have you surpassed the 80 million subscriber threshold
23 since the repositioning?

24 A Yes.

25 Q Does that mean that the delay in reaching that threshold

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1 didn't harm the company?

2 A No. The delay in reaching that threshold harmed the
3 company, you know, up until the time where we reached it.

4 Q What was the harm?

5 A Advertisers, you know, who were seeking this 80 million
6 subscriber threshold either didn't buy us or wouldn't be willing to
7 pay our price.

8 Q Let me take you to the next sentence in that same
9 paragraph. You say, "Advertisers are particularly interested in a
10 network's progress in increasing distribution. And the [REDACTED]
11 [REDACTED] loss caused by the Cablevision repositioning signaled
12 that progress on that front had slowed."

13 What do you mean by that?

14 A So at the time of the repositioning, we were making a lot
15 of progress and we were -- we were marketing a strong growth story,
16 both on the output in original programming aimed at women 25 to 54,
17 the growth in achieving that audience and distribution growth. And
18 this was a hiccup that we had to explain. And it, you know, it
19 just hurt the story. We were firing on all cylinders, and this
20 sort of was a hiccup that hurt the story.

21 Q Are there particular examples you can tell the Court
22 about in terms of advertisers identifying the reduced distribution
23 at GSN that resulted from the retiering as a basis for them not
24 buying or buying less advertising on GSN?

25 A Yes.

1 Q Can you give a couple examples?

2 A So during the 2011 upfront, [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED] as a result of not -- of us not
4 being at the 80 million subscriber threshold. We were having a
5 hard time defending our projections as a result of the retiering.
6 And likewise Sears also. Sears is a major national retailer;
7 distribution is important to them, and they pushed us into a sort
8 of take it or leave it price negotiation. So while we wrote the
9 business, we wrote it at a reduced rate.

10 JUDGE SIPPEL: And what was the loss to [REDACTED]?

11 THE WITNESS: [REDACTED] loss -- don't know off the top of my
12 head. Like I said, Judge, Your Honor, we wrote -- we wound up
13 selling them the inventory but we sold it at a much less, at a
14 much, at a lower price, which made the sale less profitable for us.

15 JUDGE SIPPEL: Right.

16 THE WITNESS: I'm sure with the --

17 JUDGE SIPPEL: With [REDACTED]?

18 THE WITNESS: It was.

19 JUDGE SIPPEL: So it would be in the same ballpark with
20 [REDACTED]?

21 THE WITNESS: Slightly less. [REDACTED], we had
22 a smaller financial arrangement.

23 JUDGE SIPPEL: Thank you.

24 BY MR. SPERLING:

25 Q Mr. Zaccario, where is GSN headquartered?

1 A Santa Monica.

2 Q How many direct reports does Mr. Goldhill have?

3 A Seven.

4 Q Are you one of them?

5 A Yes.

6 Q Where are the other six located?

7 A Santa Monica.

8 Q If I understood correctly from the Judge, you're at
9 Avenue of the Americas in New York; is that right?

10 A I am.

11 Q Why are you the only one of Mr. Goldhill's direct reports
12 who is not based in Santa Monica?

13 A I oversee advertising sales, and New York is the most
14 important market for advertising sales.

15 Q What's the significance of GSN not being broadly carried
16 by Cablevision in the New York market in terms of your ability to
17 sell advertisers on your program?

18 A It hurts our ability to sell advertisers.

19 Q Can you tell the Court why?

20 A Buyers like to sample the program -- the programming they
21 like that they want to buy. It is a key function of theirs to go
22 out and watch the programs that they're buying on behalf of their
23 advertisers. Also, they use their social circle to understand, you
24 know, what the, what the buzz is around those shows and what the
25 chatter is around those shows.

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1 I mean television creates social currency and that social
2 currency is enormously important to buyers who are making
3 decisions. So not only were our buyers or a good portion of our
4 buyers unable to watch the new shows and sample them, but they then
5 hear their friends and family talking about them.

6 Q And do you give the buyers written descriptions of the
7 programming?

8 A We could. But, you know, the medium is sight/sound. We
9 could and we do, but the medium is sight, sound and motion and I
10 guess that would be like Emmy judges making a determination on the
11 programs they were judging based on written descriptions rather
12 than watching them.

13 Q Do any ad buyers that you deal with -- have any ad buyers
14 that you deal with told you that they've lost the ability to view
15 GSN's programming because their Cablevision subscribers no longer
16 receive the network?

17 A Yes.

18 Q Can you tell the Court about a couple of those instances?

19 A There's a buyer that buys on behalf of [REDACTED] [REDACTED]
[REDACTED] at a time who lived in a GS -- I'm sorry, lived in a
21 Cablevision household. And on several occasions, including the
22 upfront presentation and other meetings we had with her, she would
23 discuss how disappointed she was that she was unable to sample the
24 new programs and told us it did not help our prospects for selling
25 more advertising to [REDACTED].

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1 Q Any other examples of ad buyers who've told you they're
2 Cablevision subscribers so they don't get GSN?

3 A Yes. [REDACTED]. The
4 buyer there also told us a similar story. She lives or and still
5 lives in a Cablevision household and was unable to sample the
6 programming. And, you know, the fact that she was unable to do
7 that was particularly damaging to the [REDACTED] negotiation. We were
8 very close in landing that account and we were using new originals
9 as our calling card.

10 Q By the way, Mr. Zaccario --

11 JUDGE SIPPEL: Couldn't you send her a DVD of the sampled
12 programming?

13 THE WITNESS: Yeah, we could, Your Honor, and we did and
14 we do. But by doing that we're asking the customer to take the
15 extra step that other networks don't have to ask. And these are
16 busy people, and they oftentimes won't take that extra step. And
17 it's just -- you know, I suppose it would be as if you had a
18 catalog business and you asked your customer to pick the catalog up
19 from you rather than send him or her the catalog. It's just an
20 extra step that, you know, buyers may or may not be willing to
21 take. But --

22 JUDGE SIPPEL: That's the way it works. That's the way it
23 works, right? That's the way the industry goes?

24 THE WITNESS: That's the way it works. Yes.

25 JUDGE SIPPEL: It's like Mad Men.

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1 THE WITNESS: A little bit. Not so much anymore.

2 (Laughter.)

3 JUDGE SIPPEL: I want to be sure if I'm getting my viewing
4 dollar value. Not so much anymore.

5 BY MR. SPERLING:

6 Q Well, Mr. Zaccario, what do you think it would take to
7 overcome this lack of visibility that GSN has to ad buyers in the
8 New York market?

9 A Cablevision could put us back on expanded basic.

10 MR. SPERLING: Nothing further, Your Honor. Thank you.

11 JUDGE SIPPEL: Cross?

12 MR. COHEN: Yes.

13 JUDGE SIPPEL: Do you want or a break or are you okay?

14 MR. COHEN: We can start and then take a break.

15 JUDGE SIPPEL: Okay.

16 MR. COHEN: We're trying to move this along, so --

17 CROSS-EXAMINATION

18 BY MR. COHEN:

19 Q Hello, Mr. Zaccario, I haven't seen you since your
20 deposition. How are you?

21 A Hi. I'm doing well. How are you?

22 Q Good.

23 I just want to pick up something you said, pick up with,
24 just with a response that you said to the Judge. You said that
25 cable is a sight, sound and motion, is that what you said, medium?

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1 A I said -- I think I said television is, yes.

2 Q All right. And the best way to get a sense of the
3 network's programming is actually to watch the programming or watch
4 excerpts; right?

5 A Yes.

6 Q And in the ordinary course in connection with your
7 upfronts, you produce something called sizzle reels; right?

8 A Yes.

9 Q And the reason, and sizzle reels are little snippets of
10 programming that you put together, kind of highlights, like a
11 highlight show, highlight reel; right?

12 A Yes.

13 Q To give prospective advertisers a sense of what the TV
14 programming is like; right?

15 A Yes.

16 Q And you get a better sense from watching the sizzle reels
17 than you would just from turning through the programming guide and
18 looking at the names of the shows and descriptions; right?

19 A Yes.

20 Q That's why you do it?

21 A Yes.

22 Q And when you produce your sizzle reels on behalf of GSN
23 you try to actually convey to advertisers the sense of what the
24 programming is really like; right?

25 A We produce a sizzle reel with very short clips of our

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1 programming. In some cases, the program has not yet been produced.

2 Q Right.

3 A And so oftentimes there is even no clip or a clip of a
4 format that may have been produced in another country. And then
5 also oftentimes not every buyer is able to attend the upfront
6 presentation. But the best way to evaluate a television program
7 would be to watch the episode in its entirety.

8 Q And do you give sizzle reels to advertising buyers --
9 advertising buyers who can't attend the upfront?

10 A No, we tend not to give that presentation, you know, out.
11 It's a heavy presentation and so people who don't come to the
12 upfront presentations we would do, as I suggested to His Honor, try
13 to send them full episodes to watch.

14 MS. KANE: I'm sorry, I don't mean to interrupt the cross,
15 but should we still be in a closed session?

16 MR. SPERLING: Not from our perspective.

17 MR. COHEN: No, I do not. It's actually only somebody
18 that works for us that we'll go get to them.

19 MS. KANE: Okay. I just --

20 MR. COHEN: It goes to one person for one particular
21 matter.

22 MS. KANE: I just want to be sure as much as possible --

23 MR. COHEN: No. Thank you.

24 MS. KANE: -- that these proceedings can be open to the
25 public.

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1 MR. COHEN: I'd lost sight of that. Thank you.

2 MR. SPERLING: And for purposes of the record, following
3 the conclusion of Mr. Zaccario's testimony about the quantification
4 being at a loss, there's nothing confidential after that.

5 MR. COHEN: Right. And I don't think I'm trying treading
6 on anything. If there's anything I'll let you know.

7 (Whereupon, at 3:21 p.m., the CLOSED SESSION recessed,
8 and reconvened immediately in an OPEN SESSION.)

9 BY MR. COHEN:

10 Q So let, let me go back. We're in the New York market,
11 you live in the New York market?

12 A I do.

13 Q By the way, you're not alone in the New York office, as
14 Mr. Goldhill is there; right?

15 A He is sometimes there.

16 Q Right. And he lives in New York, does he not?

17 A He lives in Manhattan.

18 Q Right. And when he -- and people who live in Manhattan,
19 including the ad buyers who live in Manhattan, they don't get
20 Cablevision because that's a Time Warner Cable franchise; right?

21 A That's right. Most of the senior buyers as they get on
22 in years and have families and leave the city and live in
23 Connecticut and Long Island and parts of New Jersey.

24 Q Right. And if they live in New Jersey they would have --

25 A Westchester.

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1 Q -- if they live in New Jersey they'd have Comcast; right?

2 A Right.

3 Q And if they lived in Manhattan they would have Time
4 Warner Cable; right?

5 A Right. And if they lived in Westchester they would have
6 Cablevision. Or Fairfield County, as I do, Cablevision.

7 Q Unless they had FIOS or DISH or Direct or AT&T; right?

8 A Depending on whether those were available where they
9 lived, yes.

10 Q Now, the ad buyers, they don't deal just with one
11 demographic; right? So when you deal with somebody like, is this
12 [REDACTED]? I'm trying to remember who we're talking about, or was
13 it a different --- a different ad buyer you referred to in your
14 testimony.

15 A I referred to a couple of agencies in my direct, so I'm
16 not sure which one you want to talk about.

17 Q Well, let's take, let's take -- who did you say couldn't
18 get the programming, was it somebody from [REDACTED]?

19 A Yes. One of the buyers at [REDACTED].

20 JUDGE SIPPEL: [REDACTED] couldn't get it.

21 MR. COHEN: Right. Paragraph 17 of your testimony; right?
22 Right?

23 THE WITNESS: That's right.

24 BY MR. COHEN:

25 Q And the ad buyers for an entity like [REDACTED], since

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1 this is your business, they don't just buy advertising for clients
2 who want to place ads on female skewing networks; they buy across
3 the whole range. Right?

4 A It would depend on which client they represented.

5 Q Right.

6 A So, yeah.

7 Q For example, one of the clients that you mentioned,
8 [REDACTED], where you lost business; right?

9 A Yes.

10 Q [REDACTED] actually bought people from GSN, not women;
11 correct?

12 A Yes. And they buy GSN to balance out the female part of
13 that demographic.

14 Q Right. Just stay with my question.

15 [REDACTED] is a buyer of people, not females 25 to 54;
16 correct?

17 A They buy people 25 to 54 and that's inclusive of women,
18 25 to 54.

19 Q Sure. And it's inclusive of men; right?

20 A Yes.

21 Q But the buyers who are buying women are only getting
22 guaranteed women. A buyer like [REDACTED] that buys people, they're
23 being guaranteed a total number of people; correct?

24 A Yes.

25 Q Now, those ad buyers who live on Long Island, they're not

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1 barred from getting GSN at home; right?

2 A No.

3 Q If they're on Cablevision, all they have to do is get the
4 sports tier; right?

5 A Yes.

6 Q And if they have clients who also buy ads from networks
7 on that sports tier it might be that somebody in the ad business
8 actually would have all of the networks available on Cablevision;
9 right?

10 A Then it would be asking them to take that extra step that
11 other networks wouldn't have to ask.

12 Q So let's just be clear. You were retiered in 2011.

13 A Yes.

14 Q How -- total up for me the total number of ad buyers in
15 the last four years who told you they were Cablevision subscribers
16 and could not get programming on the service they have? How many?

17 A I'd have to think about that if I may.

18 Q Please do.

19 A I mean I can think of at least ten. And if I had some
20 more time to jot them down I probably could.

21 Q Could you give us any of their names?

22 A Sure.

23 Q Who?

24 A [REDACTED]

[REDACTED] Lives in Fairfield County.

1 [REDACTED] lives in Fairfield County.

2 [REDACTED] lives on Long Island.

3 Q And ad buyers like those three people --

4 A Yes.

5 Q -- do they have TV sets in their offices?

6 A Some do.

7 Q Right. And where are their offices? In Manhattan?

8 A Yes.

9 Q And if their offices are in Manhattan, they can get GSN
10 on their Time Warner Cable; right?

11 A Yes. But the program we wanted them to watch was the
12 original programming, and that programming didn't air necessarily
13 during the -- most of the daytime hours.

14 Q Well you have reruns of your programming, do you not?

15 A Not during most of the daytime.

16 Q So it was available to them in their offices. They could
17 look at sizzle reels; right?

18 A Again, they could see the sizzle reels for 30 second
19 clips, which oftentimes doesn't necessarily do the show justice.

20 Q Or they could pay \$6.95 a month if they thought it was
21 important to their business to actually be able to get GSN and the
22 other networks to make an informed ad buy; right?

23 A They could.

24 Q Right. And if you were an ad buyer, and it was important
25 to you to know what was on GSN, would you maybe subscribe to the

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1 sports tier for \$6.95 a month; would that be a good investment for
2 you clients to spend \$84 so you could make an informed judgment
3 about millions of dollars a year in advertising buys?

4 A I mean most of these people aren't owners of the
5 businesses; they're employees. So I would suppose it would depend
6 on what kind of economic crunch that created for them.

7 Q Right. They might be able to chit in for that as a
8 business expense; right? You're not suggesting the \$84 to the ad
9 buyers is what stopped them from understanding what stopped them
10 from understanding what was on GSN, are you?

11 A Well, I think you'd be surprised at how razor thin the
12 margins are at media services companies.

13 Q You think \$6.95 a month, that would push them over the
14 edge?

15 A Well, you're suggesting that it would be more than one
16 person asking to put in for \$6.95 a month.

17 Q Okay. So you think that would, that would be outcome
18 determined. Some of these ad agencies have hundreds and hundreds
19 of millions of dollars a year in billings; correct?

20 A Those are the billings. But the commissions they make
21 from those are razor thin.

22 Q So 6.95 you think is too much a month to spend?

23 A I don't know the exact economics; I just know the
24 commissions.

25 Q Turn to --

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1 JUDGE SIPPEL: Would there be any impediment for
2 Cablevision to pick up that tab if you had an important account?

3 THE WITNESS: We'd be happy for Cablevision to.

4 JUDGE SIPPEL: Oh, I'm sorry; I take that back.

5 (Laughter.)

6 JUDGE SIPPEL: That was not a test question.

7 Game Show. Let's say [REDACTED] was a really important
8 account to you, and to answer that problem you said, Okay, we'll
9 pick up your -- we'll pick up your \$6.95 a month, for a year let's
10 say, but we want you to watch this stuff?

11 THE WITNESS: It's interesting you ask that. She just
12 asked about a year ago if we would do that. And we did.

13 JUDGE SIPPEL: Great minds think alike.

14 THE WITNESS: Yes.

15 BY MR. COHEN:

16 Q Why didn't -- let's pick up on the Judge's question --
17 why didn't you suggest it? If a media buyer with millions of
18 dollars of ads to place said, you know what, I live in Connecticut
19 in Fairfield county, and although I could be a Verizon subscriber
20 and I could be a DISH subscriber, and I could be a Direct TV
21 subscriber, I'm actually a Cablevision subscriber.

22 A Uh-huh.

23 Q And it's an important buyer for you, and it never
24 occurred to you to do what the Judge just said and say, hey, pay
25 \$6.95 a month and we'll write you a check so you can look at our

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1 programming? That didn't happen, did it?

2 A It occurred to us. But I don't think anyone thought this
3 would go on for as long as it has.

4 Q Well, but you didn't do it; right?

5 A No.

6 Q Turn to Exhibit 174. I'm going to give you a book. And
7 maybe your eyes are better than mine, but I've blown up 174. All
8 right? You can use either version which I'll give you my --

9 A Okay.

10 Q -- set of exhibits. I'm going to give you the exhibits.
11 This is -- this may be unwieldy, but this is 174.

12 MR. COHEN: Your Honor, it's either way, I find it very
13 hard to read.

14 JUDGE SIPPEL: It think it's very numerous.

15 THE WITNESS: That's a good way to describe it.

16 JUDGE SIPPEL: I've never -- how do we handle exhibits
17 like this?

18 MR. COHEN: Oh, we have the original size. Why don't we
19 treat this as a demonstrative, and the original 174 is in evidence.

20 JUDGE SIPPEL: Excellent way to do it.

21 MR. COHEN: Is that all right?

22 MR. SPERLING: Fine.

23 (Demonstrative viewed.)

24 JUDGE SIPPEL: How did you get these past security?

25 MR. COHEN: Your Honor, we have a crack squad.

1 BY MR. COHEN:

2 Q If it's easier for you, you don't have to use this chart.

3 A Yeah, actually it's easier with the other one.

4 JUDGE SIPPEL: All right, whatever is easier for you.

5 THE WITNESS: I'm knocking the cups over and --

6 MR. COHEN: I'm not trying to make it hard for you.

7 THE WITNESS: I understand.

8 MR. COHEN: I'm trying to make it easier for you.

9 BY MR. COHEN:

10 Q All right. So let's stay on this first page -- first of
11 all, let's just go with this document. It starts on the first page
12 and says --

13 JUDGE SIPPEL: Let's identify for the record, what is it
14 this witness is looking at?

15 MR. COHEN: Okay. The witness is looking actually at GSN
16 Exhibit 174, not the demonstrative exhibit 174.

17 MR. SPERLING: Before Mr. Cohen goes on, thank you so
18 much. Mr. Cohen's colleague has just left the room since we need
19 to close it since this is confidential.

20 MR. COHEN: Thank you. Apologies.

21 MR. SPERLING: No problem.

22 JUDGE SIPPEL: Thank you.

23 (Whereupon, at 3:30 p.m. the OPEN SESSION was recessed,
24 to convene immediately in CLOSED SESSION.)

25 BY MR. COHEN:

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1 Q Now, just to set the table here, this document that has
2 all this advertising information, this wasn't put together by you,
3 was it?

4 A Me personally, no.

5 Q No. This was put together for the purpose of this
6 litigation; correct?

7 A That I'm not sure. Could have been. Can't be -- yeah,
8 I don't know for a fact.

9 Q Who put this together?

10 A I don't know for a fact. I could give you a subset of
11 people that might do it, but I don't know for a fact.

12 Q Okay. Do you know whether it was done by your lawyers or
13 by you, by your advertising department?

14 A I don't know for a fact, but I can't imagine our
15 attorneys would have this sort of detail at their disposal.

16 Q And you don't look at this sort of detail on a day to day
17 or week to week part of your business, do you, if it's something
18 called Weekly Ad Pacing Reports; correct?

19 A Right. It's rare that we would look at four years at
20 one, at one -- in one moment of time.

21 Q Okay. And I'm not suggesting, sir, that this information
22 is not accurate. Let me be clear, okay. I'm just trying to point
23 out that this is a document that's not produced, that's sort of not
24 a document you'd turn to in the ordinary course of your business
25 from week to week; fair?

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1 A That's right. That's fair.

2 Q Okay. And now --

3 JUDGE SIPPEL: Have we established whether or not it's
4 been prepared for use at trial?

5 MR. COHEN: I think you'd have to ask our own, GSN's
6 counsel. I just don't know, Your Honor.

7 MR. SPERLING: Your Honor, sitting here I don't know the
8 answer. We can certainly find out. I don't think that there's any
9 dispute as to the accuracy of the information that it contains.

10 MR. COHEN: I've treated this as a summary of voluminous
11 evidence. I'm assuming that this is a -- as long, as big as this
12 is I assume it's a summary of a lot of other information that GSN
13 has filed. That's the basis upon which we've been using it.

14 MR. SPERLING: Regardless of who prepared it, it is
15 certainly a summary of a lot of other information that's out of
16 date here.

17 JUDGE SIPPEL: Well, I know. But if it was prepared for
18 litigation, I would want to know that.

19 MR. SPERLING: We will find out for you, Your Honor.

20 JUDGE SIPPEL: I don't think there's anything -- I'm not
21 questioning the validity of the numbers at all. But the witness
22 hasn't seen this document in this format before, have you, Mr.
23 Zaccario?

24 THE WITNESS: I reviewed it in preparing for today's
25 testimony.

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1 JUDGE SIPPEL: Today's testimony.

2 THE WITNESS: I'm sorry.

3 JUDGE SIPPEL: Well, no. Yeah, that would cover it. But
4 you said that, in your answer to Mr. Cohen, you did not sit down
5 with the attorneys and prepare this document?

6 THE WITNESS: No.

7 JUDGE SIPPEL: And your people -- well, you want to know
8 how many people are spending time, so I'm assuming that you knew
9 that people were involved in this project in some way, shape or
10 form?

11 THE WITNESS: Yeah. This is going back a few years, but
12 my presumption would be at this moment that members of my team
13 prepared this information. It looks like the format that we would
14 use in other materials that we produced through our ordinary
15 course.

16 JUDGE SIPPEL: Enough questions. Go ahead.

17 BY MR. COHEN:

18 Q Now, again what I want to do is I want to just make sure
19 we understand all of the terms. What you talked about today
20 originally was percentage of advertising sold in the 25 to 54
21 demographic in the upfront; right?

22 A Yes.

23 Q Okay. So again just so we all have our terms -- the
24 upfront it's not one event, right? It's a series of meetings that
25 you have with advertisers in the period of say spring of each year?

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1 A So I want to make a distinction between the pre-sell
2 period of time and the actual marketplace that happens when the
3 selling is done. So that period in the spring, that early spring
4 over a period of months, would be the pre-sell. The market when
5 the selling is actually done, you know, is a much shorter period of
6 time.

7 Q Okay.

8 A Probably a month or two.

9 Q Right. And you're having a series of meetings in
10 conference rooms and the like and you're trying to write ad sales
11 and you're making presentations and you're looking at sizzle reels;
12 all those things are happening?

13 A So that would all happen in the early months.

14 Q In the pre-sell.

15 A In the pre-sell. Once the sales period starts, typically
16 you wouldn't be meeting face to face with customers. That would
17 all happen over the phone, conference calls, things like that.

18 Q Okay. And I'm going to show you one of these upfront
19 scripts. So that takes place in the early, say in the spring,
20 let's just say 2010.

21 A Uh-huh.

22 Q That would be called, in the spring of 2010, that would
23 be called the 2010-11 upfront; right?

24 A That's right.

25 Q And it's 2010 to '11 because you're selling ads in the

1 spring of 2010 for the fourth quarter of 2010 and the first three
2 quarters of 2011; correct?

3 A Yes.

4 Q Now, in the upfront, you're only selling general rate
5 advertising; correct?

6 A For the most part.

7 Q All right. That's essentially the purpose of the upfront
8 -- it's not to sell direct response advertising; correct?

9 A No, but we have a couple of --

10 Q Okay.

11 A -- instances where we do.

12 Q And if we look at the second page, the first page after
13 it says, "This document is produced in native," the second page of
14 GSN Exhibit 174 -- and let's just use 2010 for an example.

15 A Okay.

16 Q What this tells us is that [REDACTED] -- which number counts to
17 you, gross or net? Net is what you --

18 A Net is what resonates most because that's the money we
19 realize.

20 Q Net of commissions?

21 A Yes.

22 Q Okay. So what this tells us thought is in 2010 the
23 network sold [REDACTED] in advertising; right?

24 A Yes.

25 Q And you have gross numbers above, so it makes it a little

1 complicated. So the [REDACTED] --

2 A So would you like to just work in terms of gross?

3 Q Let's just work in terms of gross.

4 A That's fine.

5 Q I understand that doesn't go into the pocket of the
6 network.

7 A I understand.

8 Q But out of the [REDACTED] -- thank you -- out of the [REDACTED],
9 a little less than [REDACTED] of the advertising in that year is
10 sold in the upfront; right?

11 A Yes.

12 Q And in that year, I think your recollection is about [REDACTED]
13 [REDACTED] of the upfront advertising was women 25 to 54, rough numbers?
14 I'm not trying to hold you to strict math.

15 A Yes.

16 Q So that means that out of the [REDACTED] [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED]
18 [REDACTED] is that upfront women's 25
19 to 54 advertising you were talking about; right?

20 A That's right. That would be the money attributable to
21 the upfront.

22 Q Okay. So it's not the predominant source of advertising
23 revenue for the network in 2010; right?

24 A Well, you'd have to look at what scatter accounted for
25 because that --

1 Q I'm going to come there next, yeah. But --

2 A So before I answer the question I'd have to -- I'd have
3 to figure out what scatter account it's for.

4 Q I'm going to take it for each of these.

5 A Appreciate that.

6 Q But I'm only focusing on the upfront because the first
7 part of your testimony, the first question was one I think that you
8 were asked by Mr. Sperling was about upfront and you said it was
9 our largest category in the 2010-11 upfront; right?

10 A That's right.

11 Q It was women 25 to 54. And the point that I'm making is
12 that that largest category that you referred to in that testimony
13 is [REDACTED] of your advertising sales for the year;
14 correct?

15 A Yes. The, that's -- yes.

16 Q Okay. Then scatter. Scatter is also general rate
17 advertising; right?

18 A It is.

19 Q So when you go to the upfront, you try to sell that -- if
20 you were, I don't know if any network does this, probably not,
21 right, but if you hit, you know, four grand slams in a row, you
22 would sell out every advertising spot for the whole year. And
23 maybe you wouldn't really want to do that?

24 A Right, you wouldn't want to.

25 Q You wouldn't want to do it; right? So what you want to

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1 do is you want to fill it in the scatter market which is over the
2 course of a year you're still doing advertising sales; right?

3 A Yes.

4 Q And the scatter market, like the upfront market, is sold
5 on the basis of demographics; right?

6 A That's right.

7 Q And what this shows us is that, in 2010, the scatter
8 market was actually larger than the upfront market; correct?

9 A Yes.

10 Q And I don't think -- I could be wrong, it's a big
11 document -- I don't think you present any information here that
12 would allow us to see in 2010 what percentage of the scatter
13 revenue was women 25 to 54?

14 A No. The only information you could use directionally
15 would be the breakout of revenue from 2008 to 2012, [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]
18 Q Okay. So let's just use [REDACTED] just to make it easy.
19 I'm not holding you to specific numbers. Let's just assume [REDACTED]
20 of the scatter revenue was also women 25 to 54; right?

21 A Okay.

22 Q Okay. So that means that would be about another [REDACTED]
[REDACTED]

24 A Sure.

25 Q -- for 2010?

1 So women 25 to 54 --

2 A Well, can I take a step back on that?

3 Q Absolutely. It's complicated. I'm not trying to --

4 A It, well, it --

5 Q Trying to get it right.

6 A Yeah, I understand. I'd have to say I'm not sure, right.

7 It was [REDACTED] in aggregate between 8 and 12. But as I testified
8 earlier, we were -- we were growing from 2008 to 2012 the amount of
9 women 25 to 54. So if the aggregate was [REDACTED]

[REDACTED] [REDACTED] [REDACTED] for the four years, it is possible that in 2010
11 scatter may have been more than [REDACTED]. I'm not sure. I don't
12 have that here.

13 Q Okay. But I'm not holding you. I'm just --

14 A I understand.

15 Q -- trying to get a sense of what it is directionally.
16 I'm not holding you to any specific number, I'm trying to be
17 directionally correct. Is that okay?

18 A Sure.

19 Q So what that means then is that a little less than [REDACTED]
[REDACTED] of your overall advertising revenue is sold in 2010 in
21 upfront and scatter to the 25 to 54 demographic; right?

22 A To the 25 to 54 demographic?

23 Q Women's demographic.

24 A Oh, women 25 to 54.

25 Q Thank you.

1 A Yes.

2 Q Okay. And [REDACTED] [REDACTED] is sold to other
3 demographics; correct?

4 A You get to [REDACTED] by adding the DR and --

5 Q Yes.

6 A -- and the balance of the scatter?

7 Q Yes.

8 A Well, on direct response, it's unclear from this document
9 what percentage. Again, direct response is not guar -- does not
10 have a guaranteed audience demographic, but there is a buying
11 target for each of those advertisers. And it's not clear from this
12 chart what percentage of the [REDACTED] had a buying target of
13 women 25 to 54.

14 Q Right. So you can't say one way or the other; correct?
15 I mean --

16 A I can't say that it was [REDACTED], and I can't say that
17 it was [REDACTED].

18 Q Right. So --

19 JUDGE SIPPEL: What does "DR" stand for?

20 THE WITNESS: Direct response, Your Honor.

21 MR. SPERLING: Yeah, I was just going to --

22 JUDGE SIPPEL: Can you help me on that?

23 THE WITNESS: Sure. So --

24 JUDGE SIPPEL: You were going to do that?

25 MR. COHEN: I was just going to do that now, but you can

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1 do it.

2 JUDGE SIPPEL: Go ahead.

3 BY MR. COHEN:

4 Q So up front and scatter in 2010, the [REDACTED], which is
5 a little less than half of your sales were in upfront in scatter.
6 And those ads are sold based on demographics; right? You have to
7 guarantee a certain number of people; right?

8 A We sell a guaranteed demographic, yes.

9 Q Right. And if you -- All right. And then there's
10 something called direct response revenue.

11 A Yes.

12 Q And direct response revenue has no demographic guarantee;
13 correct?

14 A Has no guarantee, but it has a target.

15 Q Right.

16 JUDGE SIPPEL: Has a what?

17 MR. COHEN: Target.

18 THE WITNESS: A target. Advertisers --

19 JUDGE SIPPEL: I understand.

20 THE WITNESS: Yeah.

21 BY MR. COHEN:

22 Q But you don't have to worry about that target; you just
23 negotiate a price. Correct?

24 A That's right.

25 Q Right. So if you under-deliver women 25 to 54, that will

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1 have implications for the upfront and scatter market to some
2 degree, but it will have no implications for the direct response;
3 correct?

4 A There's some implication because if the audience on the
5 delivery is severe enough to impact the response rate, less
6 audience, less people responding for traditional direct response,
7 they'll ask for a price concession.

8 Q Okay. But you don't do things like ADUs in the direct
9 response bargain?

10 A No.

11 JUDGE SIPPEL: ADU do what?

12 MR. COHEN: Audience -- yeah, I'm going to right into, I'm
13 getting there, Your Honor. Audience deficiency unit.

14 MR. SPERLING: Your Honor, the question of course is
15 appropriate but I would suggest that Mr. Cohen not testify and he
16 let the witness testify.

17 JUDGE SIPPEL: He's not testifying. I was just asking for
18 his terminology.

19 MR. SPERLING: Okay, Your Honor.

20 JUDGE SIPPEL: He knows that. I mean I got it -- I think
21 he got it the first time from your side of the table, not from a
22 witness. Maybe -- well, I don't know, I can't remember. I can't
23 remember now.

24 Let me have it once more, one more time?

25 MR. COHEN: Audience deficiency unit.

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1 JUDGE SIPPEL: Yes, I remember precisely what that means.
2 Okay, thank you. Go ahead.

3 BY MR. COHEN:

4 Q Now let me ask, let me ask you this: do you know -- let
5 me -- withdrawn.

6 In the course of your work, as in advertising sales for
7 GSN, you look at Nielsen data; right?

8 A Yes.

9 Q And you look at Nielsen data because your advertisers
10 look at Nielsen data; right?

11 A Yes.

12 Q Right. And in fact advertising transactions are done on
13 the basis of Nielsen data generally; right?

14 A Yes.

15 Q And what the Nielsen data showed in 2010 was that your
16 largest advertising group -- I'm sorry, largest audience group --
17 were women 25 and older; correct? Fifty-five and older.

18 Let me withdraw and ask a better question. Maybe I
19 should have taken a break.

20 What the 2010 Nielsen data showed was that the largest
21 share of the audience in any demographic group for GSN were women
22 55 and above; true?

23 A I don't know.

24 Q Okay. You don't know that to be true through the course
25 of the network that women 55 and above --

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1 A Are you asking me to go back five years on this
2 specifically?

3 Q Okay, let me help you out. I'm going to show, I'm going
4 to give you a book with some exhibits in it. I'm going to ask you
5 to turn to Cablevision 314.

6 JUDGE SIPPEL: Now you've hit the big time. Now you have
7 your own 3-ring binder notebook.

8 THE WITNESS: So I'm told.

9 JUDGE SIPPEL: If you don't get one of these, you're not
10 so important.

11 MR. COHEN: Apparently --

12 THE WITNESS: Thank you, Your Honor. Appreciate that.

13 MR. COHEN: It's not as big -- it's not as big as some of
14 the other books.

15 JUDGE SIPPEL: Make you feel better.

16 MR. COHEN: Let's just leave it at that; it's just going
17 to be easier for now.

18 BY MR. COHEN:

19 Q Can you view these, the Nielsen numbers? I'm going to go
20 back and forth with the advertising documents. I'm just trying to
21 --

22 JUDGE SIPPEL: Do you want to take a break before we do
23 this?

24 MR. COHEN: No, Your Honor. I'm only talking about
25 confidentiality.

1 JUDGE SIPPEL: Oh, okay.

2 MR. SPERLING: But the Nielsen data is not. But if you're
3 going to be moving back and forth --

4 MR. COHEN: I'm going to refer back.

5 MR. SPERLING: -- to the underlying accounting data --

6 MR. COHEN: I am.

7 MR. SPERLING: -- and the underlying sales data, I think
8 we need to keep it confidential.

9 MR. COHEN: And I will say for the record, Your Honor,
10 that 314 is public and it's been in the record. So I'm just
11 looking towards the Enforcement Bureau to see if you think it's a
12 problem to continue in closed session?

13 MS. KANE: No. I mean if you're going to go back and
14 forth it makes sense for efficiency purposes for us to not have
15 people coming in.

16 MR. COHEN: Okay.

17 JUDGE SIPPEL: Nobody has an objection to what you're
18 doing. Let's go.

19 BY MR. COHEN:

20 Q Okay. So let's go to page, there are little page numbers
21 at the bottom, 11 of 31.

22 JUDGE SIPPEL: What tab is this now?

23 MR. COHEN: 314, Your Honor. We've looked at this
24 document before.

25 JUDGE SIPPEL: All right.

1 BY MR. COHEN:

2 Q 11 of 31. I'm going to guess that you haven't seen --
3 have you seen Nielsen data in this form?

4 A I haven't seen this document; I couldn't be sure whether
5 I've ever seen Nielsen data in this form before. But maybe it
6 would be a good idea for me to just take a quick look at this
7 document before we talk about it?

8 Q Yes. Sure. And let me just ask you, I'm going to focus
9 on one quarter. So you tell me which quarter the upfront sales
10 were -- which Nielsen data would you have had at the time of the
11 '10/'11 upfront?

12 JUDGE SIPPEL: The time of the what?

13 MR. COHEN: '10/'11 upfront.

14 THE WITNESS: Well, it would have crossed, I mean, in the
15 second quarter of '10 and third quarter of '10.

16 BY MR. COHEN:

17 Q Okay. Why don't you look at second quarter of '10. Page
18 11 of 31.

19 A No, I understand. I just wanted to just take a -- I
20 hadn't seen this document before, I just wanted to --

21 Q Sure. Of course.

22 A -- understand the context of the presentation they were
23 making.

24 JUDGE SIPPEL: Maybe he doesn't trust you.

25 It's okay, Mr. Zaccario; take all the time you need.

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1 THE WITNESS: Thank you, Your Honor.

2 (Witness reviews document.)

3 THE WITNESS: Okay; sorry about that.

4 MR. COHEN: Not at all. Just let me know when you're
5 back.

6 THE WITNESS: Okay, 11 of 31?

7 MR. COHEN: Yes.

8 THE WITNESS: Okay.

9 BY MR. COHEN:

10 Q Does this document -- page 11 of 31 of Cablevision 314 --
11 refresh your recollection that in the second quarter, third quarter
12 of 2010 when you were doing 2010/2011 upfront, the largest audience
13 segment for prime time programming on GSN was women 55 and older?

14 A Yes.

15 Q Okay. And wasn't that true for most of the time you were
16 at the network that the largest segment -- according to Nielsen --
17 of viewers for the network were women 55 and older?

18 A That was true. That was the number that Nielsen was
19 reporting.

20 Q Right. Now I'm going to ask you to go back into the
21 little book to GSN 65 -- the book that Mr. Sperling gave you -- to
22 GSN 65, which is the 2010 to '11 upfront post analysis. Do you see
23 that, sir?

24 A I do.

25 Q Okay. So can you turn to page 3? That's a page that Mr.

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1 Sperling took you through. You see that? The one that he gave you
2 with females 25 to 54?

3 A Yes.

4 Q And the last category, the least sizeable number in
5 revenue for a demo is people 55 and above; right?

6 A Yes.

7 Q So people 55 and above made up the largest part of GSN's
8 audience but were insignificant in terms of general rate
9 advertising; right?

10 A I think you were asking about women before; right?

11 Q Yeah. Women aren't even on, broken out on here. Does
12 that mean you sold no ads 55 and above at the upfront?

13 A That's right.

14 Q Okay. So can you explain to us -- just trying to get an
15 explanation -- you've got a network where the plurality of viewers
16 are 55 and above women, why don't you target the women's 55 and
17 over demographic for sales?

18 A For sales?

19 Q Yeah.

20 A Well, frankly, for sales, you know, if -- if customers
21 during this period of time were looking to buy, women -- so it's
22 not a widely bought demographic, women 55-plus. As you can see
23 even on the people side, it's a very small percentage. But had
24 there been customers in the marketplace looking to write, looking
25 to, you know, buy 55-plus women, we would have sold it just like we

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1 sold people 50 -- 25 to 54.

2 Q Right.

3 A You know, we're salespeople. If we're doing our job, we
4 will sell inventory to customers who want to buy it regardless of
5 their demographic, as long as it makes economic sense for us.

6 Q Right. Meaning you can price it in a way that it doesn't
7 devalue the rest of your inventory?

8 A That's right.

9 Q Right. So let me go back to like the beginning of your
10 answer. In the ad business, women or people 55 and above, that's
11 tough sledding compared to 25 to 54 or 18 to 49; right? For
12 selling?

13 A Only, well, only because fewer marketers have that as a
14 demographic. So there isn't a lot of available budget for those
15 demographics.

16 Q Right. So if you're a network like GSN where most of the
17 viewers are 55 and above, according to Nielsen, you've got to
18 target, from an advertising point of view, 25 to 54 year olds, or
19 you won't make any money; right?

20 A Yes.

21 Q So when you target 25 to 54 year olds and you sell that
22 advertising, you get no credit at all for the large number of
23 viewers 55 and above; right?

24 A Well, that's not true because, you know, direct -- some
25 direct response advertising specifically targets the older

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1 demographic.

2 Q I'm on general rate advertising. So let me --

3 A Okay.

4 Q -- ask the question more clearly so we have a clear
5 record.

6 You have this general rate advertising and you've got
7 [REDACTED] of your viewers are 55 and older; right?

8 A Yes.

9 Q And you're sitting there as the head of ad sales and you
10 say, well, I can deliver a lot of people to general rate
11 advertisers for 55 and older but they won't pay me for it; right?

12 A Yes; that's correct.

13 Q So the reason you target 25 to 54 year olds is you can't
14 make any money selling to 55 and over; correct?

15 A The reason we target 25 to 54 from the very beginning --
16 as I testified to earlier -- was that I was on a mandate that our
17 sales strategy align with our programming strategy to reach women
18 25 to 54.

19 Q Right.

20 A That's really the genesis of, you know, the sales
21 strategy targeting women 25 to 54.

22 Q But it would be futile to sell 55 and above; right?

23 A For any network.

24 Q Right. Now --

25 JUDGE SIPPEL: As I understand it, or understood when you

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1 testified, that's the -- that's what the budget limits you to. In
2 other words, you budgeted for whatever activities your office does
3 for a year, that money's to be spent on targeting women 25 to 54,
4 and meaning that you have to go and -- because they know, I guess
5 Game Show knows that the ad agencies that you're trying to convince
6 to endorse this stuff, they all have the same problem: they're
7 limited to 25 to 54. Did I hear that right, or am I wrong?

8 THE WITNESS: That's right, Your Honor. They're limited
9 to buying the demographics that their clients articulated their
10 targets. And in advertising it's not fashionable to have a target
11 of 55 plus.

12 JUDGE SIPPEL: I mean, it seems to me that this given.
13 It's not that they have any option of trying to sell 55 and above;
14 there's nothing out there to sell to. All of a sudden we've
15 disappeared from the face of the Earth or something.

16 MR. COHEN: I'm in that demographic too, Your Honor.

17 JUDGE SIPPEL: Let me tell you something, I think this is
18 -- I think this is a bit unreal. Because I know that women 65 and
19 older spend a hell of a lot of money on women's products.

20 (Laughter.)

21 Why you don't want to use them as a demographic I -- it
22 boggles my mind. But I'm just as glad that you don't because
23 they're doing -- if somebody I know very dearly was being given a
24 jolt by an advertiser, you'd have bundles.

25 THE WITNESS: She's a working woman.

1 JUDGE SIPPEL: Yeah.

2 THE WITNESS: I understand. I have a similar situation at
3 home, Your Honor.

4 JUDGE SIPPEL: So we're all on the same page.

5 MR. COHEN: Your Honor, I'm not saying on the record, Your
6 Honor.

7 JUDGE SIPPEL: Let's get on to the case.

8 MR. COHEN: Okay.

9 BY MR. COHEN:

10 Q Now, you testified, in response to Mr. Sperling's
11 questions, the Nielsen numbers on age you thought were wrong;
12 right?

13 A Yes.

14 Q And that the MRI numbers were better?

15 A Not to say better but had a wide variance. We looked at
16 MRI and Simmons and saw that GSN had the largest delta in all of
17 cable between what was being published by Simmons and MRI and by
18 Nielsen.

19 Q Right. And you actually talked about that in one of your
20 up fronts; right?

21 A We did.

22 Q Right. I don't have Simmons but I've seen MRI data. So
23 is it your view, Mr. Zaccario, that the MRI data on age is more
24 reliable than the Nielsen data on age for the viewers of GSN?

25 A Yeah, I'm not sure that it's my view that it's more

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1 reliable, but the wide variance I think calls into question the
2 validity of the Nielsen, or called into question the validity of
3 the Nielsen data for us. It was more about that variance than what
4 the particular number is.

5 You know, as you know, we commissioned an independent
6 study that resulted in the publication of a number of ■ as our
7 median age. So I couldn't tell you which number is right, but I
8 think it calls into question the Nielsen number when there are
9 three other sources -- including Nielsen itself -- publishing
10 different numbers.

11 Q Did you ever look in the course of your advertising work
12 in the variance between the MRI numbers on gender skew and those of
13 Nielsen for GSN?

14 A I don't believe I have, no.

15 Q Have you ever seen MRI numbers on gender skew for GSN?

16 A I'm sure I must have but not that I can recall
17 specifically for gender skew. Again, gender skew really wasn't a
18 main marketing metric for us. It appeared maybe in, you know, a
19 couple of pieces of literature we produced but not -- not in stuff
20 we used widely.

21 Q And where -- from where you sat after your long
22 experience in the industry, you view MRI data as reliable; correct?

23 A Again, I'm not a scientist or a mathematician. You know,
24 for me the discrepancy between the two was the thing that I focused
25 on and the thing -- the thing that motivated me to approach Nielsen

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1 looking for a remedy.

2 Q I'm not asking you to validate the numbers. I guess
3 here's what I'm asking you: you used --- one of the reasons you
4 were able to present MRI data to your advertisers is that people in
5 the community understand that MRI is a recognized source for
6 information; correct?

7 A Yes. It's a certified measuring tool.

8 Q Okay. And you can put that document away.

9 Now, sir, do you prepare scripts for up fronts?

10 A I do; yes, sir.

11 Q And let me show you a document which we've been marking,
12 we've marked -- again let's just sit down for a second.

13 A Sure.

14 Q Let me just ask you this: and when you prepare a script
15 because you're making a series of presentations and it's a
16 multi-media presentation in which you're speaking and there are
17 sizzle reels, and I don't know what else goes on; right?

18 A Right. I want to make sure the salespeople stay on
19 point.

20 Q Okay. Let me show you what we've marked as Cablevision
21 Exhibit 500.

22 (Whereupon, the above-referred to document was marked as
23 Cablevision Exhibit 500 for identification.)

24 JUDGE SIPPEL: Are these like talking points scripts?

25 THE WITNESS: They are talking points, Your Honor.

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1 MR. COHEN: I think -- Your Honor, I think we can open the
2 courtroom now.

3 JUDGE SIPPEL: Okay. Do we want to take a break?

4 MR. COHEN: I would like -- I would take a break.

5 MR. SPERLING: Yes, Your Honor.

6 JUDGE SIPPEL: Yes, let's do it. Let's take a break.
7 Let's take a 15-minute break.

8 (Whereupon, at 4:01 p.m., the CLOSED SESSION recessed, to
9 reconvene in OPEN SESSION at 4:23 p.m.)

10 JUDGE SIPPEL: Let's go.

11 MR. COHEN: Have you seen Cablevision Exhibit 500 before?

12 MR. ZACCARIO: Yes. But not for a long time.

13 BY MR. COHEN:

14 Q Okay. And it was this script that was used in connection
15 with GSN's up front in 2008?

16 A Yes.

17 Q Okay. And again, so that's sometime in the spring of
18 2008 selling ads for the fourth quarter of 2008 through the third
19 quarter of 2009, right?

20 A That's right.

21 Q Okay. And are you usually the presenter in the Up Front?

22 A It depends. You know, I go to a good number of
23 presentations. But, you know, just you can't go to all of them.
24 You're double booked sometimes.

25 Q But when you are the person presenting for GSN, I'm not

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1 saying you read, but you tend to work from this script, right?

2 A Right. When I attend, I typically present. And I would
3 present based on this script that I wrote.

4 Q Okay. And look at the yellow on the first page, the GSN
5 promise. Do you see that?

6 A Yes.

7 Q Okay. So, always games. GS is the game brand. The
8 place where audiences experience all types of games. Casual games,
9 game shows, free games, cash tournaments.

10 That was true during the 2008 Up Front, right?

11 A Yes.

12 Q Turn over the page please. GSN has non-stop, enjoyable
13 competition with the kind of fun, active contests, quizzes and
14 challenges that appeal to adults age 25 to 54. Right?

15 A Yes.

16 Q In the 2008 Up Front, you talked about the appeal of the
17 network to adults and not to women. Correct?

18 A We talked about the appeal to both.

19 Q But why if you're a women's network did you use the word
20 adults? Because you were trying to appeal to adults, right?

21 A Well, a few pages later we say we appeal to women 24. We
22 say we deliver women 25 to 54 as well as adults.

23 Q Right.

24 A So as I testified earlier, when given the opportunity to
25 do business on adults 25 to 54, we certainly would.

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1 Q Okay. So, I guess it hasn't -- so it hasn't been just a
2 while since you've seen this document, since you're reckoning.

3 A I just flipped -- well, I knew you were going to ask
4 about it, so I flipped through it earlier before we came to order
5 here.

6 Q All right. So, turn to number nine since you're ahead
7 of. Or you ask me the question, I'll respond. Five out of --

8 A I can say time out, I mean, I can take time now to read
9 it all.

10 Q Not at all, I appreciate it. Number nine this is GSN
11 core audience, right?

12 JUDGE SIPPEL: For your edification, we were in
13 conversation about high schools up in Westchester County. That's
14 all we were doing.

15 I wasn't interfering with anything. Don't blame me.

16 (Laughter)

17 MR. COHEN: I don't think I blamed you, Your Honor.

18 JUDGE SIPPEL: No, I mean, maybe I was distracting him
19 from reading this.

20 MR. COHEN: No, I mean, I'm complementing him for
21 actually being ahead of me.

22 MR. ZACCARIO: I appreciate that.

23 BY MR. COHEN:

24 Q So, GSN core audience.

25 A Which page are you on, sir?

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1 Q Five of 17. See that. You had a slide, 2008 Up Front.
2 And you've got three different options.

3 Women 25 to 54. Men 25 to 54. And adults 25 to 54.
4 Right?

5 A Yes.

6 Q And you'll sell to any one of those demos if people will
7 write the business. Right?

8 A Yes. Although on men I couldn't tell you why we would
9 put that in because we've never done a deal on them outside of
10 poker.

11 Q Right. But in 2008 poker was on a lot, right?

12 A It was on as an island. As it always was.

13 Q Saturday and Sunday night?

14 A Yes.

15 Q Two out of seven nights prime time, that's the island it
16 was on?

17 A Yes. The least important nights of the week for us.
18 Saturday night is typically a throw away.

19 And Sunday night there's so much competition everywhere
20 else, we sort of try to hit it where they ain't. And at the
21 moment, at that time, Desperate Housewives was killing it on ABC.

22 It wouldn't make sense to put our original programming
23 targeting women up against Desperate Housewives. So, that's why we
24 felt it was a safe place to put poker.

25 Q There's a lot of competition every night, isn't there?

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1 For a network like GSN?

2 A It's very competitive. But Sunday night against women
3 was especially competitive. Which is why we put poker there.

4 MR. COHEN: I offer 500, Your Honor.

5 MR. SPERLING: No objection.

6 JUDGE SIPPEL: Received.

7 (Whereupon, the above-referred to document was received
8 into evidence as Cablevision Exhibit No. 500.)

9 MR. COHEN: Go back to the bigger book that I gave you.
10 And the first Exhibit is Cablevision 65.

11 JUDGE SIPPEL: I'm just trying to think. In your
12 experience of making -- I'm going to call them pitches. Like you
13 probably made a lot of them with this script.

14 I noticed that I guess, it's WE tv is on Channel 42. And
15 you were on Channel 88. Am I right? Am I recollecting that right?

16 MR. ZACCARIO: In my household it was 75.

17 JUDGE SIPPEL: But it's still pretty high up.

18 MR. ZACCARIO: Yes.

19 JUDGE SIPPEL: And a big spread between.

20 MR. ZACCARIO: That's one of the advantages that MVPDs
21 have with their own networks, they're able to.

22 JUDGE SIPPEL: Yes. They can use their own address.

23 MR. ZACCARIO: Sure.

24 JUDGE SIPPEL: But, I'm wondering, if you ever ran into
25 that problem -- not that problem maybe, buy having that raised by

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1 some advertisers that, you know, we like some of your stuff. But
2 you're way the hell over on the other side of town. On the, you
3 know, on the dial.

4 And we like to deal with producers or programming that's
5 close to where the action is, down below.

6 MR. ZACCARIO: Um-hum.

7 JUDGE SIPPEL: Have you ever had that posed to you?

8 MR. ZACCARIO: That typically isn't a specific criticism
9 that an advertiser would make. Although having a higher channel
10 position does impact ratings.

11 And so, you know --

12 JUDGE SIPPEL: Good or bad?

13 MR. ZACCARIO: Bad.

14 JUDGE SIPPEL: That's what I would think.

15 MR. ZACCARIO: Yes.

16 JUDGE SIPPEL: Okay.

17 MR. COHEN: Let me just stay there for a second. So,
18 DIRECTV as you know, is one of your owners, right?

19 MR. ZACCARIO: Yes.

20 BY MR. COHEN:

21 Q What channel is GSN on, on DIRECTV? 233?

22 A I don't know. I don't know for sure.

23 Q Do you take my representation that's 233? I could get
24 you a document.

25 A Sure, I --

1 Q I mean, if I'm going to get you -- because you know it's
2 not down to two or four or seven, right?

3 A It's definitely not two, four or seven. But I don't
4 think any cable is in that neighborhood. But, I don't know.

5 Q And do you know where you're on DISH?

6 A I don't.

7 Q Okay. The documents will be in evidence. So we don't
8 have to take your time with it.

9 Turn back to 65. Now, this is a year later. This is
10 what -- this is your game plan, not your script. Right, your game
11 plan for the 2009/2010 Up Front. Right?

12 A Yes.

13 Q And would you turn please -- you can look at anything you
14 want. But I want to focus you on page four of nine.

15 2009/10 Up Front game plan. Adult 25 to 54 sales
16 strategy. Do you see that?

17 A I do.

18 Q And could you tell the court please -- or, Your Honor,
19 I'll wait for you to get to the document.

20 JUDGE SIPPEL: You're on page four?

21 MR. COHEN: I've moved onto the next document, sir.

22 JUDGE SIPPEL: Page five -- oh, you have?

23 MR. COHEN: I have. So 65.

24 JUDGE SIPPEL: In the book?

25 MR. COHEN: In the book. The first tabs. I'll wait for

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1 you to get there. Page four.

2 JUDGE SIPPEL: All right.

3 MR. COHEN: That first tab at 65.

4 JUDGE SIPPEL: So we're back to the -- back to your book.

5 MR. COHEN: Back to our book.

6 JUDGE SIPPEL: That's C what?

7 MR. COHEN: CV65. The first tab.

8 JUDGE SIPPEL: Okay.

9 MR. COHEN: Page four of nine.

10 JUDGE SIPPEL: All right. I got you.

11 MR. COHEN: Okay?

12 JUDGE SIPPEL: Let's go.

13 MR. COHEN: Okay. The Up Front game plan, just can you
14 tell us what that is?

15 MR. ZACCARIO: This is what I testified too earlier with
16 Mr. Sperling. This is the budget plan. This is the internal
17 economic analysis and not the customer-facing go to market
18 strategy.

19 BY MR. COHEN:

20 Q And the game plan, the budget that you did, the budget is
21 internal to GSN, right?

22 A Yes.

23 Q All right. The budget is entirely set in 2009/2010 on
24 the basis of adults, right?

25 A It is. And for the reasons I gave before. We -- that's

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1 the way they did it when we go there.

2 And when we analyzed whether or not to change it, we
3 determined we were doing enough business on a variety of different
4 demos that it made sense to remain broadly with people 25 to 54.
5 Knowing that we could use people 25 to 54 as a building block to
6 price women 25 to 54.

7 Q Didn't you tell me at your deposition that in 2011 you
8 switched your budget from adults to women?

9 A I may have, and I misspoke. We moved it in 2012.

10 Q Okay. So in 2012, three years after this?

11 A Yes.

12 Q You moved your budgeting from women to adults, right?

13 A Yes.

14 Q Do you still sell adults?

15 A Do we still sell adults?

16 Q Yes.

17 A Yes. We sell adult demographics.

18 Q Okay. So, I didn't understand one of your answers then.
19 I thought you told Mr. Sperling that the reason why you said adults
20 is you could go from broad to narrow but not from narrow to broad.
21 Do you remember that?

22 A That's right.

23 Q But now, when you're selling adults, you're going from
24 narrow to broad.

25 A Right. And we sell so many women 25 to 54 deals today as

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1 a result of executing that strategy and having it be successful.
2 That it now makes sense.

3 And I think, what did I say, we're up to [REDACTED] of
4 the business in the Up Front alone on women 25 to 54. That it now
5 makes to price it all -- price the entire budget off of women 25 to
6 54 rather than people.

7 Q But I just want to make sure I understood your testimony
8 earlier. I thought you were saying, that it was mathematically
9 impossible --

10 A Probably should.

11 Q To budget in women and then price adults. You said --

12 A I should have probably said it was easier. Not
13 mathematically impossible.

14 Q Okay. All right, so if you -- at the time that you were
15 budgeting adults, which is 2009/2010 and 2010/2011, right?

16 A And 2010/2011, yes.

17 Q And 2011/2012?

18 A Yes.

19 Q You're always budgeting adults. You were selling [REDACTED]
[REDACTED] of your Up Front to women?

21 A When we were budgeting adults it was increasing as we
22 went along.

23 Q Right.

24 A So, through 2011, yes, [REDACTED] in 2011.

25 Q Okay. All right. And so again, just so the record's

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1 clear, it's not impossible or even difficult to go from narrow to
2 broad, right?

3 A It's not impossible. It's easier to go from narrow to
4 broad. I mean, so it's easier to go from broad to narrow.

5 Q Broad to narrow, right.

6 A Excuse me.

7 Q So --

8 A But it -- you know, when the balance of the book of
9 business changes, it becomes less im -- you know, budgeting women
10 25 to 54 makes the entire plan more accurate if you have a larger
11 book of business in women 25 to 54.

12 Q Okay. But just so we're clear. The date in which you
13 change your budget from people 25 to 54, which are all adults, to
14 women 25 to 54, was the spring of 2012, right?

15 A Well, so it would have been -- it would have been for the
16 budget year 2012. That budget starts in January of '12 and
17 probably got completed in November of '11.

18 Q Okay. But, the --

19 JUDGE SIPPEL: So how does your fiscal year work?

20 MR. ZACCARIO: We're on a calendar year, Your Honor.

21 JUDGE SIPPEL: A calendar year, okay.

22 MR. ZACCARIO: So the budget for the calendar year is
23 typically prepared in November of the previous year.

24 JUDGE SIPPEL: Okay.

25 MR. COHEN: So, I just want to understand, you were --

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1 your first Up Front, and I'll do this very quickly and we'll move
2 on.

3 Your first Up Front in your current job was 2008/2009.
4 That was budget on adults, right?

5 MR. ZACCARIO: Yes.

6 BY MR. COHEN:

7 Q 2009/2010 adults?

8 A Yes.

9 Q 2010/2011 adults?

10 A Yes.

11 Q 2011/2012 adults?

12 A 2011/2012 adults. Again, for the fiscal year '12, we
13 were budgeting on women. So for a portion of that, yes.

14 Q All right. And then in 2012 women?

15 A That's right. But again, that was not transparent to
16 advertisers or the -- you know, or competitive networks. That was
17 internal budgeting.

18 Q I understand they were internal budget documents.

19 A Yes.

20 Q Let me show what we've marked as Exhibit 504.

21 (Whereupon, the above-referred to document was marked as
22 Cablevision Exhibit No. 504 for identification.)

23 MR. COHEN: Did I offer 500?

24 MS. WEISLER: Yes.

25 MR. COHEN: Okay.

1 JUDGE SIPPEL: Did you get the other one into evidence?

2 MR. COHEN: I did, Your Honor. I was just checking.

3 JUDGE SIPPEL: Thank you.

4 MR. COHEN: Thank you, sir.

5 JUDGE SIPPEL: Was I aware of it?

6 (Laughter)

7 MR. COHEN: I think you received it.

8 JUDGE SIPPEL: This is not in evidence.

9 MR. COHEN: This is 504, a new document.

10 JUDGE SIPPEL: I hear you.

11 MR. COHEN: Now, --

12 JUDGE SIPPEL: This is called 2010 Ad Sales Pacing Report
13 for Multimedia Executive Summary.

14 MR. COHEN: Yes. Right. So let's just spend a minute so
15 we can understand what this document is, Mr. Zaccario. We won't
16 spend long.

17 You've get a weekly report that looks something like this
18 that kind of tracks ads against all metrics?

19 MR. ZACCARIO: Yes.

20 BY MR. COHEN:

21 Q Okay. And however Exhibit GSN Exhibit 174 was prepared,
22 the big giant one that I put in front of you that killed all of
23 those trees.

24 A Right.

25 Q This is actually the kind of document that you look at in

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1 the ordinary course, right?

2 A Yes.

3 Q Exhibit 504. And one of the things that it tracks are
4 your ADUs. Right. So, we're going to talk about that.

5 A Okay.

6 Q And would you turn to page three of 11. And in the
7 middle of the page on three of 11, it has something called ADU
8 liability, right?

9 A Yes.

10 Q Okay. And this -- and then below, there's some more --
11 there's something that says Research 4Q 2010. All right?

12 A Yes.

13 Q So again, just so we have it clear, you get -- for your
14 general rate advertising, you guarantee a certain demographic. Say
15 you're guaranteeing 50,000 women 25 to 54, just to pick a number.

16 A Yes.

17 Q And if in fact you only deliver 40,000, right. You
18 actually owe money. You owe make ups to the advertisers, correct?

19 A That's right. ADUs.

20 Q ADUs. So you're going to replace those 10,000 eyeballs.

21 A Right.

22 Q Pairs of eyeballs.

23 A Yes.

24 Q All right. And when you do the ADU budget, you don't try
25 to hit 100 percent. You try to -- you budget what, 90/95 percent?

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1 A Well, I'm not sure, I think I know what you're talking
2 about. So, when I do the ADU budget -- I'm not sure what you're
3 asking.

4 Q Let me ask you a different question. Look down at the
5 bottom where it says research. And it says [REDACTED]
6 [REDACTED].

7 A All right.

8 Q Now the C3 index is a Nielsen rating that takes into
9 account same day viewing plus DVR viewing for a three day period,
10 roughly?

11 A Yes. The C3 measurement does.

12 Q Right. And what the [REDACTED] is telling us is that in the
13 fourth quarter of 2010, the network was [REDACTED]
14 [REDACTED] that hit had budgeted for its advertisers,
15 correct?

16 A No.

17 Q What does it tell you?

18 A So, it budget -- it tells you that we're delivering [REDACTED]
19 [REDACTED] that we sold.

20 However, when you do the budget, you -- you don't want to
21 leave money on the table in the event of over-delivery. Because
22 you wouldn't be paid on over-delivery.

23 So, you always add some level of protection. And you set
24 those -- you set the ADU inventory aside outside of the budget for
25 the protection in the event that you under-deliver.

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1 Q You don't think you lost women viewers 25 to 54 in 2010?

2 A Not -- it's not indicted in this document. I don't
3 remember over the course of 2010 how the 25 to 54 delivery was.

4 Q Let me help you out.

5 A But those in that index is for fourth quarter only.

6 Q Let me help you out.

7 A Sure.

8 Q Turn to Exhibit 193 in your book. CV93. Which is
9 Management Committee --

10 MR. SPERLING: Did you say CV 93 or --

11 MR. COHEN: 193. Thank you. The Management Committee
12 Report.

13 JUDGE SIPPEL: Okay. 2011 Management Report.

14 MR. COHEN: I'm sorry, I'm steering you to the wrong
15 document. Give me a second, sir. I made a mistake.

16 MR. ZACCARIO: Okay.

17 MR. COHEN: 143. My mistake. Which is the 2010. I took
18 you to the wrong year. Management Committee Report.

19 Do you know what the Management Committee is of GSN?

20 MR. ZACCARIO: The Management Committee? Yes.

21 BY MR. COHEN:

22 Q Okay. And those are the directors, correct?

23 A Yes.

24 Q Okay. And you were asked -- you prepared some slides of
25 that advertising for Mr. Goldhill that he presents as part of the

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1 Management Committee presentation?

2 A Yes.

3 Q Okay. Turn please to Exhibit -- in this Exhibit to page
4 29 of 57. Are you there?

5 JUDGE SIPPEL: I am.

6 MR. ZACCARIO: Yes.

7 MR. COHEN: And there's a bullet down at the bottom of
8 the page that says ad sales strategy -- this is for 2010. Ad sales
9 strategy of selling more female demos in Up Front coincided with
10 the drop in female ratings.

11 Does that refresh your recollection that you were
12 actually under indexing women as to what you promised your
13 advertisers?

14 MR. ZACCARIO: I'm not sure that's what that bullet says.

15 BY MR. COHEN:

16 Q Okay.

17 A It says conclusively there was a drop in female ratings.
18 And sale strategy of selling more --

19 Q If you don't know what it says, you don't know what it
20 says.

21 A I mean, I -- it looks like.

22 Q You don't need to interpret it. That's not a document
23 you're familiar with? That's not a slide that you presented?

24 A I believe Mr. Goldhill presented this.

25 Q Did you prepare it for him?

1 A So this slide was probably prepared by someone else in
2 the finance department who would typically produce slides like this
3 for the Management Committee.

4 Q Okay. You can put that document up.

5 A Okay.

6 Q Now, would you look at your direct testimony at paragraph
7 five. And here you list a bunch of programs that you say related
8 to the slate of original programming on the network, right?

9 A It does.

10 Q Targeting women 25 to 54?

11 A Yes.

12 Q Okay. Do you know when these programs were launched?

13 A Yes.

14 Q It Takes a Church, when was that launched?

15 A It Takes a Church was probably launched two years ago.

16 Q Okay. 2013?

17 A That sounds right.

18 Q Skin Wars?

19 A Skin Wars launched a year ago.

20 Q The Mind of Man?

21 A Mind of a Man, probably three years ago now.

22 Q 2012?

23 A That one I'm unsure of the exact date.

24 Q Love Triangle was in the spring of 2011?

25 A That sounds right. It was in development far, you know,

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1 before that.

2 Q Right.

3 A As you know, the development cycle for some of these
4 shows, you know, lasts a year to 18 months.

5 Q Right.

6 A And we probably had annou -- I know we had announced that
7 show, you know, prior to it launching.

8 Q Cancelled after one season?

9 A Yes.

10 Q Okay. You can put that document aside. Look at Exhibit

11 --

12 JUDGE SIPPPEL: These are all original shows?

13 MR. ZACCARIO: They are, Your Honor.

14 JUDGE SIPPPEL: Okay.

15 BY MR. COHEN:

16 Q Could you turn to 193? Exhibit 1A, it's the 2011.

17 A This one?

18 Q Yes. Thank you. I'm sorry to make you go back and
19 forth.

20 A No. Not a problem.

21 Q 193 is the 2011 Management Committee Report. And I'm
22 going to focus you on page 62 of 83.

23 JUDGE SIPPPEL: I'm sorry. I lost track of what --

24 MR. COHEN: 193. Go back to the big book.

25 JUDGE SIPPPEL: The big binder again?

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1 MR. COHEN: We're looking at 62.

2 JUDGE SIPPEL: 193?

3 MR. COHEN: Exhibit 193.

4 JUDGE SIPPEL: Oh, that's the --

5 MR. COHEN: Another Management -- same management
6 presentation.

7 JUDGE SIPPEL: That's your 2011?

8 MR. COHEN: Yes, sir.

9 JUDGE SIPPEL: Okay. I've already been here before.
10 Okay. What page?

11 MR. COHEN: 62 of 83.

12 JUDGE SIPPEL: All right. All right, I'm with you.

13 MR. COHEN: Do you see it?

14 JUDGE SIPPEL: I'm with you.

15 MR. COHEN: Let me know when you've had a chance to
16 review that.

17 JUDGE SIPPEL: Did we move 504 in?

18 MR. COHEN: No. But I'll move it in Your Honor.

19 JUDGE SIPPEL: Any objection?

20 MR. SPERLING: No objection, Your Honor.

21 JUDGE SIPPEL: It's in.

22 (Whereupon, the above-referred to document was received
23 into evidence as Cablevision Exhibit No. 504.)

24 MR. ZACCARIO: Okay.

25 BY MR. COHEN:

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1 Q All right. Does this refresh your recollection that in
2 2011 you had unbudgeted ADU liabilities because of low ratings?

3 A In 2011?

4 Q Correct.

5 A Let's see. Where -- where does that say that here?

6 Q How about the heading.

7 A Okay. That's the one thing I didn't read. TV ad sales
8 adversely impacted in 2011 by low ratings in ADU. Yes. In 2011 we
9 had a difficult year.

10 I believe the document we reviewed before though was for
11 2010.

12 Q I understand.

13 A Okay.

14 Q And now I was moving on.

15 A Okay.

16 Q I wasn't trying to imply that that related to that.

17 A I understand.

18 Q Okay. And actually, you wrote a memo to your team on
19 January 5, 2012, kind of reviewing the disappointments in ad sales
20 in 2011, right?

21 A That sounds familiar.

22 Q Okay. Let me show you what we've marked as Exhibit 502.

23 (Whereupon, the above-referred to document was marked as
24 Cablevision Exhibit No. 502 for identification.)

25 JUDGE SIPPEL: This is entitled Right Category from John

1 Zaccario to John Zaccario. January 5, 2012.

2 MR. COHEN: Let me know when you've had a chance to look
3 at this.

4 JUDGE SIPPEL: I've heard of people talking to
5 themselves, but I've never heard of people writing emails to
6 themselves. That does happen. Now that I think about, it does
7 happen.

8 MR. COHEN: Let me know when you -- whenever you're
9 ready. Take your time.

10 JUDGE SIPPEL: Do you have much more to go?

11 MR. COHEN: This is it, Your Honor.

12 JUDGE SIPPEL: Okay.

13 MR. ZACCARIO: Okay.

14 BY MR. COHEN:

15 Q Okay. So, focus on the fourth paragraph. It was a tough
16 year for television and we all know that. Do you see that?

17 A Third paragraph. I was -- Happy New Year to me was one
18 -- paragraph one.

19 Q Oh, sorry.

20 JUDGE SIPPEL: So we're talking about 2011?

21 MR. ZACCARIO: I'm talking about 2011, yes.

22 MR. COHEN: So, 2011 -- just to put this in place, 2011,
23 this is an email -- is this supposed to be an email to your team?
24 Or a talk you're going to give to your team?

25 MR. ZACCARIO: So, these are notes that it seems like I

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1 pecked out on my gmail and emailed to my GSN. And yes, they are
2 notes.

3 BY MR. COHEN:

4 Q Okay. And you're talking about the year 2011, correct?

5 A Yes.

6 Q The year in which Cablevision retiered you, right?

7 A Yes.

8 Q And you say it was a tough year for television and we all
9 know that. True statement?

10 A Yes.

11 Q TV missed by nearly [REDACTED]. Right?

12 A Yes.

13 Q Over [REDACTED] of that miss is attributable to ratings'
14 performance. True statement?

15 A Yes.

16 Q And what you mean is that the ratings of the network were
17 lower then you had expected, which impacted your ability to sell
18 ads, correct?

19 A Yes. And so we had -- the ratings were lower and that
20 impacts revenue. And it's one of the [REDACTED], you know or
21 roughly [REDACTED] [REDACTED] [REDACTED] [REDACTED] was due to a combination of the
22 retiering and other miscellaneous items. Probably sales
23 performance.

24 Q You didn't write anything down in your notes about the
25 retiering, did you?

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1 A No. I hit the high points. And [REDACTED] was the high
2 point.

3 Q And that was low ratings, right?

4 A Yes.

5 MR. COHEN: I pass the witness.

6 JUDGE SIPPEL: And I assume that --

7 MR. COHEN: I've got to move 502 into evidence.

8 JUDGE SIPPEL: I'm asking?

9 MR. COHEN: Of course.

10 JUDGE SIPPEL: The poor ratings killed us. You're
11 referring to Nielsen ratings?

12 MR. ZACCARIO: That's right, Your Honor.

13 JUDGE SIPPEL: Okay. That measures the number of people
14 who are watching your programing at a certain given time. Is that
15 correct?

16 MR. ZACCARIO: That's right.

17 JUDGE SIPPEL: Okay.

18 MR. COHEN: And Your Honor, I'm going to move in 502 and
19 I have no further questions now for the witness.

20 MR. SPERLING: No objection, Your Honor.

21 JUDGE SIPPEL: Received, 502.

22 (Whereupon, the above-referred to document was received
23 into evidence as Cablevision Exhibit No. 502.)

24 JUDGE SIPPEL: This is probably evident. Do a little bit
25 of redirect. Do you want to take a break to do it?

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1 MR. SPERLING: Your Honor, I wouldn't mind taking just
2 ten minutes. I think it would be more efficient if I get it
3 organized.

4 I know the Enforcement Bureau has some questions as well.
5 But I think we can get it all done by 6:00.

6 JUDGE SIPPEL: You're on. We're in recess for ten
7 minutes.

8 (Whereupon, the above-entitled matter went off the record
9 at 4:52 p.m. and resumed at 5:04 p.m.)

10 JUDGE SIPPEL: Let's go back. Mr. Sperling, have you got
11 some questions to ask?

12 MR. SPERLING: Yes, Your Honor, thank you.

13 JUDGE SIPPEL: Your welcome. Go ahead. You're still
14 under oath, you know.

15 REDIRECT EXAMINATION

16 BY MR. SPERLING:

17 Q Mr. Zaccario, Mr. Cohen asked you about the significance
18 of not being carried by Cablevision in New York and whether that
19 couldn't just be rectified by GSN paying 77 bucks so that they
20 could subscribe to the sports tier. Why isn't that an adequate
21 fix?

22 A Because it creates a question a buyer's mind about the
23 value of GSN. They see other female-oriented networks like Bravo
24 and WE and Lifetime being carried by Cablevision in the home market
25 and it creates a question in their mind about the value of GSN by

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1 Q And Mr. Zaccario, what did the results of that custom
2 Nielsen study that showed GSN having a median viewer age of 38,
3 what effect did that have on your confidence in the general Nielsen
4 data that it showed a substantially higher median age?

5 A I think it validated our suspicions about the accuracy of
6 the median age that Nielsen was previously reporting and it created
7 a lot of doubt in buyers' minds about the validity of the age that
8 Nielsen was reporting. And that is how we used it.

9 Q Let's follow up on that a little bit. Let me take you
10 back, please, to tab 5 in your binder. That is the small one. It
11 is GSN 174. It is the same as the ridiculously large one that Mr.
12 Cohen gave you.

13 Let's focus on 2010, as Mr. Cohen did. So, in 2010, what
14 was the split between your general rate ad sales and your direct
15 response ad sales, on a percentage basis?

16 A Roughly [REDACTED].

17 Q Let's make sure that we all understand the terminology.
18 So, when you sell general rate advertising, you are guaranteeing to
19 the advertiser that delivery of the specific number of impressions
20 in a particular demographic. Correct?

21 A Yes.

22 Q And when you sell direct response, you are not
23 guaranteeing that delivery. Correct?

24 A Yes.

25 Q Does that make the demographic of your viewers irrelevant

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1 to your sale of direct response advertising?

2 A No.

3 Q Why not?

4 A Because, again, if the audience of their target
5 demographic falls off, they will get the lower response rate and
6 they will either cut the rate or cancel the buy altogether.

7 Q So, even when you sell a direct response advertising, are
8 you selling it on the basis of demographic, although you are not
9 guaranteeing delivery of the specific number of impressions?

10 A Yes, each of those advertisers have a target demographic
11 and they track internally what the performance is.

12 Q Okay. In this document, you said roughly [REDACTED] in
13 2010 between an advertising revenue from guaranteed rate and your
14 advertising revenue for direct response. Correct?

15 A Yes.

16 Q Guaranteed rate has two components in it, right, upfront
17 and scattered?

18 A Yes.

19 Q If we go back to the third set of tables that we were
20 looking at on this page, revenue by demographic, do you see that?

21 A Yes.

22 Q Let's look at the bottom on the total. That totals
23 [REDACTED]. Correct?

24 A Yes, it is.

25 Q And that represents your total upfront and scatter

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1 revenue for the four-year period 2008-2012. Correct?

2 A Yes.

3 Q And we can actually see that in the second set of tables
4 that are ratable a quarterly revenue summary. If we go to the far
5 right column, which says "total" and look at the gross total figure
6 in that figure. Right?

7 A Yes.

8 Q Those two figures match [REDACTED].

9 A Yes, they do.

10 Q So, if we go back now to the third table, revenue by
11 demographic, this is showing the total sales by demographic of all
12 of your ad sales that were based on delivering a guaranteed
13 demographic. Correct?

14 A Yes.

15 Q Out of all of your ad sales, for which you guaranteed to
16 the advertiser a demographic, which is to say which the advertiser
17 insisted, I must receive a certain number of impressions in a
18 certain demographic. The highest proportion was from what
19 demographic?

20 A Women 25 to 54.

21 Q And what percentage of that represent of all of your ad
22 sales over this four-year period that were based on guaranteeing
23 delivery of a demographic?

24 [REDACTED]

25 MR. SPERLING: Let's go back to the previous tab in the

1 binder, Tab 4, which is GSN Exhibit 65.

2 JUDGE SIPPEL: I heard you testify that it is actually
3 better than [REDACTED]. It could be confirmed but in the auction,
4 what is it, there is a [REDACTED] shown. Am I correct on
5 that?

6 THE WITNESS: Yes, Your Honor, today it is [REDACTED].
7 That table shows the activity from 2008 through 2012. But today,
8 the upfront account, women 25 to 54, today, accounts for [REDACTED]
9 [REDACTED].

10 JUDGE SIPPEL: Okay.

11 BY MR. SPERLING:

12 Q Mr. Zaccario, further to that, that [REDACTED] figure
13 doesn't include your scatter sales on the basis of women 25 to 54.
14 Correct?

15 A That's right.

16 Q And so with the proportion of your overall ad sales on
17 the basis of guaranteed delivery of demographic, would be at or
18 above [REDACTED] with respect to women 25 to 54?

19 A It would be.

20 MR. SPERLING: Okay. Let's go back to Tab 4, GSN,
21 Exhibit 65.

22 Your Honor, we will wait until you are ready.

23 JUDGE SIPPEL: I'm ready. I'm just writing.

24 MR. SPERLING: Oh, okay.

25 BY MR. SPERLING:

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1 Q Mr. Zaccario, let's go back to page 3 of this exhibit,
2 the one with the Bates number ending 184.

3 A Is the number 65?

4 Q Correct.

5 JUDGE SIPPEL: Are we in the big book?

6 MR. SPERLING: We are in the small book, Your Honor.

7 JUDGE SIPPEL: Okay.

8 MR. SPERLING: It's Tab 4.

9 JUDGE SIPPEL: Sixty-five?

10 MR. SPERLING: Correct.

11 JUDGE SIPPEL: Okay.

12 MR. SPERLING: And it's the page with the Bates number
13 ending 184.

14 JUDGE SIPPEL: Okay. All right.

15 BY MR. SPERLING:

16 Q Mr. Zaccario, this is the page showing your increased
17 sales to women 25 to 54 in the 2010-2011 upfront. Correct?

18 A Yes.

19 Q Mr. Cohen asked you a bunch of questions based on Nielsen
20 data that was inconsistent with the custom study that showed you
21 having a large portion of your audience is women 55 and above. Do
22 you remember that?

23 A I do.

24 Q Could you deliver significant numbers of women 25 to 54
25 if the average age of your viewers, the median age, rather was

1 actually 55 and above?

2 A No.

3 Q Would advertisers continue to increase the amount of
4 advertising that they were buying on your network for guaranteed
5 delivery of women 25 to 54 if they thought that the median age of
6 your viewers was substantially above that?

7 A No.

8 Q Let's go back to the page before this one for a second.

9 A If we look on the left-hand side of this box, the
10 left-most box, the second bullet says CPM. That is the pricing
11 that you achieved in your upfront ad sales. Correct?

12 A Yes.

13 Q And it was up [REDACTED] over the prior years' pricing.
14 Correct?

15 A Yes.

16 Q Would advertisers continue to be willing to pay more to
17 you to reach women 25 to 54 if they thought that what you
18 principally delivered more than any other audience was women 55 and
19 above?

20 MR. COHEN: Your Honor, if I may, I haven't objected to
21 a series of leading questions. As long as we understand the rules,
22 I don't want to hear during our redirects that we are leading. I
23 mean, he has led him through all of this. It's ten after five. I
24 get it. But we have to have an equal application of the rules or
25 else I am going to start pressing it, Judge.

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1 JUDGE SIPPEL: Well, it's like the umpires that have the
2 -- so they call them high strikes sometimes; sometimes they don't.
3 I'm going to try and be consistent.

4 MR. COHEN: Okay.

5 JUDGE SIPPEL: I mean, I am really leaning towards moving
6 things along.

7 MR. COHEN: And that's why I haven't been objecting.

8 JUDGE SIPPEL: I appreciate that. I appreciate that.

9 MR. SPERLING: Is there an objection pending now?

10 JUDGE SIPPEL: There's no objection pending.

11 MR. SPERLING: Thank you, Mr. Cohen.

12 JUDGE SIPPEL: It's an editorial comment. Go ahead.

13 MR. SPERLING: Did we get an answer to that question?

14 MR. COHEN: The same goes for foundation on cross.

15 MR. SPERLING: Okay.

16 BY MR. SPERLING:

17 Q Mr. Zaccario, let me ask you the question again. In your
18 view, would advertisers be willing to pay you increasing amounts of
19 money to guarantee delivery women 25 to 54 if they felt that the
20 demographic you were delivering more than any other was women 55
21 and above?

22 A No, they wouldn't.

23 Q Now, because direct response advertising isn't sold on
24 the basis of guaranteed delivery of demographic, demographic isn't
25 listed in GSN 174 with respect to your direct response ad sales.

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1 Correct?

2 A That's correct.

3 Q Is there anything about guaranteed rate advertising that
4 is better for than direct response advertising?

5 A No.

6 Q Do you sometimes get better pricing for direct response
7 ad sales that don't guarantee delivery of a specific number of
8 impressions in a demographic than you get for guaranteed response
9 ad sales that do?

10 A We do.

11 MR. SPERLING: I have one question that I think calls for
12 confidential information, so if we could excuse your colleague just
13 for a moment.

14 (Whereupon, the above-entitled matter went off the record
15 in at 5:15 p.m., ending the open session and resumed in closed
16 session at 5:15 p.m.)

17 BY MR. SPERLING:

18 Q Mr. Zaccario, can you give the court an example -- well,
19 let me ask a question.

20 Have you ever had a case in which a single ad buyer has
21 actually been willing to pay you more for direct response
22 advertising, which doesn't guaranteed delivery of a specific number
23 of impressions in a demographic and they were willing to pay you
24 for a guaranteed rate?

25 A Yes.

1 Q Can you tell the Court an example of that?

2 A Yes. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Q And so --

11 JUDGE SIPPEL: What would prompt them to do that? I'm
12 sorry.

13 MR. SPERLING: Please, Your Honor.

14 JUDGE SIPPEL: Why would they do that in the business
15 sense?

16 THE WITNESS: It's inexplicable, Your Honor. I mean,
17 part of it has to do with the efficiency of buying direct response
18 versus buying general rate. It takes a lot more labor to buy
19 direct response via general rate than it does direct response. The
20 stewardship is a lot more onerous. And there have been occasions,
21 and [REDACTED] is one, where the media buying service has decided, as a
22 buying strategy, to shift the buying over to direct response, even
23 though it was brand advertising.

24 And my only presumption is they can reconcile the price
25 difference with their fees somehow. And since they are able to buy

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1 it cheaper from a manpower perspective, it makes sense. But all
2 that is not transparent to me. We are certainly grateful for it.

3 JUDGE SIPPEL: Yes, it sounds like a gift.

4 THE WITNESS: It is a gift -- it is an inefficiency in
5 the business, quite honestly, Your Honor, on that side of the
6 business.

7 JUDGE SIPPEL: Well, I appreciate that. Something tells
8 me that was a government issue. That is the same kind of
9 inefficiency. Let's go.

10 Thank you.

11 THE WITNESS: You're welcome, Your Honor.

12 BY MR. SPERLING:

13 Q So, in that example, Mr. Zaccario, your sale of direct
14 response advertising doesn't contribute to the numbers that you are
15 able to report, in terms of sales based on a specific demographic.
16 Correct?

17 A That is correct.

18 Q But it doesn't mean that you didn't sell that advertising
19 based on that demographic, does it?

20 A No.

21 Q Mr. Zaccario, during your tenure at GSN, has GSN ever
22 sold any advertising on the basis of the target demographic of men,
23 other than with respect to poker?

24 A No.

25 Q To your knowledge, does GSN have a policy of not doing

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1 cross-promotions with similarly situated other networks?

2 A No.

3 Q Do you know one way or the other whether GSN has ever
4 done a cross-promotion with WE tv?

5 A I believe we have.

6 Q Do you consider WE tv to be similarly situated or not?

7 MR. COHEN: Your Honor, now I'm going to object as it
8 being beyond the scope of the cross. And really, if we are going
9 to ask witnesses whether networks are similarly situated, exactly
10 what we are fighting about? The head of ad sales is going to now
11 testify, having to put nothing in his direct, being asked no
12 questions on cross, about promotion? I object.

13 JUDGE SIPPEL: Where are you going with this?

14 MR. SPERLING: Your Honor --

15 JUDGE SIPPEL: Without testifying.

16 MR. SPERLING: I believe that there was some prior
17 testimony that raised a question about whether the advertising
18 people at GSN were of the view that there is a policy against
19 cross-promoting with similarly situated networks.

20 JUDGE SIPPEL: Well, the witness before this witness
21 testified to that at some length.

22 MR. SPERLING: And I believe, Your Honor, that there was
23 a document that communicated, arguably, something about that, that
24 came from one of Mr. Zaccario's direct reports.

25 So, all I am trying to elicit with the witness is

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1 whether, from the perspective of the head of advertising, there was
2 some policy for or against it.

3 JUDGE SIPPEL: Can you rephrase that? Can you rephrase
4 the question?

5 MR. SPERLING: Sure. Let me start the line of
6 questioning from the top, Your Honor.

7 JUDGE SIPPEL: Give him some kind of a competitive
8 sector.

9 MR. SPERLING: Sure.

10 BY MR. SPERLING:

11 Q Again, Mr. Zaccario, in your experience, as the Executive
12 Vice President for Advertising Sales at GSN, is there a policy
13 against doing cross-promotions with networks that you believe you
14 are competing against for ad dollars?

15 A No.

16 Q Has GSN ever done a cross-promotion with WE tv, to your
17 knowledge?

18 A I believe we have.

19 Q Do you consider yourself to compete with WE tv for
20 advertising dollars?

21 A Yes.

22 Q Let me take you to your written direct testimony for a
23 second. It is Tab 1 in your binder, GSN 298. And if I could ask
24 you please to turn to paragraph 5.

25 Do you remember Mr. Cohen asked you about the launch

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1 dates of some of the programs that you referred to in that
2 paragraph?

3 A Yes.

4 Q Prior to Cablevision's repositioning of GSN to the sports
5 tier, did you sell any advertising to advertisers on the basis of
6 any of these programs being in development?

7 A Yes.

8 Q Let me ask you to turn to Cablevision Exhibit 504. That
9 is one of the loosies, as the Judge accurately refers to them.

10 JUDGE SIPPPEL: If you are going to write a textbook, feel
11 free to use my term. I'm not going to try and copyright it.

12 MR. SPERLING: I'm going to credit you no matter what,
13 Your Honor.

14 JUDGE SIPPPEL: 504?

15 MR. SPERLING: 504 is the one, Your Honor. And if we
16 could turn, please, to page 3 of 11.

17 BY MR. SPERLING:

18 Q Mr. Zaccario, do you remember that Mr. Cohen asked you
19 some questions about the numbers towards the bottom under the
20 heading research?

21 A Yes.

22 Q Let's make sure we understand what is going on here. The
23 C3 index that is indicated in that table -- well, let's sort of lay
24 some groundwork here so that we all understand what we are talking
25 about. For any given year, you have an inventory of units of ads

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1 to sell. Is that correct?

2 A Yes.

3 Q What is a unit?

4 A A 30-second spot, a 30-second commercial.

5 Q When you sell your upfronts, do you try to sell your
6 entire inventory of units?

7 A No.

8 Q Do you divide up your inventory into some number of
9 different types of units?

10 A Yes, there are probably four categories of inventory that
11 we look at in the budget process.

12 Q What are those four categories of inventory?

13 A Upfront, scatter, direct response, and ADU liability.

14 Q When you sell the upfront portion of your inventory, do
15 you have an expectation that you will satisfy all of the
16 impressions that you guarantee, solely through the upfront or the
17 upfront and scatter portions of the inventory?

18 A No.

19 Q How do you intend to satisfy the impressions that you
20 don't satisfy through the inventory that you have designated
21 upfront in scatter?

22 A We used the pool of inventory that is set aside. That
23 was the fourth bucket I mentioned earlier.

24 Q That is the ADU bucket?

25 A Yes, the ADU bucket.

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1 ad sales for 2010-11 cover what period?

2 A It would be the fourth quarter of '10 through third
3 quarter of '11.

4 Q So, this [REDACTED] reflects how much of the guaranteed
5 impressions you have delivered through your budgeted upfront bucket
6 for what portion of the period, the year-long period for which you
7 have guaranteed?

8 A So, that would be two months plus a week. So, nine weeks
9 of the 52 weeks.

10 Q Nine weeks of the 52 weeks that you have in which to
11 deliver the guaranteed number of impressions.

12 A That's right.

13 Q Okay, that is the number that Mr. Cohen was pointing to
14 to suggest that you were under-delivering on your guarantees for
15 2010-11?

16 A Yes.

17 Q Let me take you up higher on this page. Under the
18 heading TV ad sales forecast, if you go down, there is a
19 highlighted line, it is a forecast revenue net. Do you see that?

20 A Yes.

21 Q And beneath that, there is some other data with a box
22 around it. Do you see that?

23 A Yes.

24 Q The third line in that box says percent of budget.
25 Correct?

1 A It does.

2 Q In each quarter of 2010, is that number greater or less
3 than 100 percent?

4 A Greater.

5 Q What does that mean?

6 A That we were over delivering on revenue in each of those
7 quarters. And at this moment in time, we were delivering [REDACTED]
8 [REDACTED] over for the year.

9 Q Just to make sure I understand that, does that mean that
10 you required fewer ADUs than you budgeted in order to deliver the
11 impressions that you had guaranteed in various demographics?

12 A Yes. In the next box down it says that the ADU liability
13 actually went down over the course of the year from [REDACTED]
14 [REDACTED]

15 MR. SPERLING: So, nothing further, Your Honor.

16 MR. COHEN: I have a few questions, Your Honor, if I may.

17 JUDGE SIPPEL: Yes.

18 RE-CROSS EXAMINATION

19 BY MR. COHEN:

20 Q In paragraph five of your direct testimony, Mr. Sperling
21 asked you if you sold advertising for some of the shows in
22 paragraph five. Alright, for any of the shows in paragraph five
23 prior to the retiering.

24 A Right.

25 Q Do you remember that?

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1 A Yes.

2 Q You said yes, for one show, right, Life Triangle?

3 A No.

4 Q You sold advertising in 2011 for shows that were launched
5 in 2013 and '14?

6 A The Newlywed Game was launched in 2008.

7 Q I didn't ask you about the Newlywed Game. The Newlywed
8 Game was on the air. Of the shows that were not on the air as of
9 the time of the retiering in February of 2011 --

10 A Yes.

11 Q -- did you sell any advertising for any of those shows
12 before they were launched?

13 A The Love Channel launched in 2012. So, we would have
14 sold inventory for Love Triangle in advance of that year.

15 Q Okay, let me try to be clear. The retiering was in
16 February of 2011.

17 A Yes.

18 Q Prior to February of 2011, did you sell any advertising
19 for It Takes a Church?

20 A No.

21 Q Did you sell any advertising for Skin Wars?

22 A No.

23 Q Did you sell any advertising for The Mind of a Man?

24 A No.

25 Q Did you sell any advertising -- so the one that you just

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1 sold for advertising for The Newlywed Game, it was on the air
2 before and after. Right?

3 A Before and after the retiering?

4 Q Yes.

5 A Yes.

6 Q And you are saying you think you sold some advertising in
7 advance of the launch of Love Triangle.

8 A Yes.

9 Q Okay, put that away. Now --

10 JUDGE SIPPEL: My notes show the last time we went
11 through this with you, Mr. Cohen, he testified that, well, I don't
12 know if it was The View or The Mind of a Man -- I'm sorry. Love
13 Triangle was 2011. Which is it, 2011 or 2012?

14 THE WITNESS: So, I believe Love Triangle launched in
15 2011 -- 2012.

16 JUDGE SIPPEL: In 2012.

17 THE WITNESS: It would have been in development
18 throughout 2011.

19 JUDGE SIPPEL: Right.

20 THE WITNESS: And we would have sold it in advance in
21 2011 for 2012, during the upfront period.

22 JUDGE SIPPEL: So, in 2011 in advance.

23 THE WITNESS: Right, we would sell it in the previous
24 year. We would sell it in 2011 for the following year, I should
25 say.

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1 JUDGE SIPPEL: For 2012?

2 THE WITNESS: Yes, sir.

3 JUDGE SIPPEL: Okay. Go ahead, sir.

4 BY MR. COHEN:

5 Q The 2011 upfront was after the retiering by Cablevision.

6 Correct? Which was in the beginning of February 2011?

7 A Yes.

8 Q Correct?

9 A Yes.

10 Q Okay. Now, you testified in response to questions from
11 Mr. Sperling that you compete with WE for ad dollars.

12 A Yes.

13 Q You compete with dozens of networks for ad dollars, do
14 you not?

15 A We compete with other female-targeted networks like WE
16 and Lifetime and Bravo.

17 Q And every other one in your competitive set?

18 A And the others in our competitive set.

19 Q And ones that are not in your competitive set that also
20 can sell women 25 to 54, right?

21 A Yes.

22 Q USA sells women 25 to 54, right?

23 A Yes.

24 Q They are not in your competitive set?

25 A No.

1 could be available that is attributable to the increase [REDACTED]

2 [REDACTED] Right?

3 [REDACTED]
4 Q Okay. You can put that away. The Nielsen custom study
5 that you described, that is not the Nielsen data that your
6 advertisers were getting on a regular basis if they wanted to see
7 the ratings of the network. Correct?

8 A No, the Nielsen custom study didn't measure ratings.

9 Q Right. But the Nielsen data that was generally available
10 to advertisers was not the custom study. Correct?

11 A We made it available to advertisers.

12 Q If they checked Nielsen data on an ongoing basis, they
13 wouldn't be looking at the custom study, they would be looking at
14 the ordinary Nielsen data. Correct?

15 A Yes.

16 Q And you continued to sell on the basis of the non-custom
17 Nielsen data. Correct?

18 A Well again, that custom data measured median age and we
19 don't sell median age.

20 Q Okay, but you sell off the number of households that you
21 deliver. Correct?

22 A We rarely sell households.

23 Q People that you deliver.

24 A People and women, yes.

25 Q People and women. And the information with respect to

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1 people and women that you deliver is not contained in the custom
2 study. It is contained in the Nielsen data that you testified is
3 inaccurate. Correct?

4 A Those are two separate measurements. What I testified as
5 being inaccurate was the median age data that Nielsen supplied and
6 the custom study was our remedy for that inaccurate data. The
7 impression currency is something different. The custom study
8 didn't address the impression currency.

9 Q So the impression currency is not in the custom data.
10 Correct?

11 A That's right.

12 Q And when you had to guarantee a certain number of homes
13 to advertisers, they were using the same Nielsen data that you
14 think was incorrectly reporting your age. Right?

15 A So, again, I don't think we ever guaranteed homes.

16 Q Guaranteed viewers.

17 A So, we guaranteed viewers. I'm sorry, would you repeat
18 the question?

19 Q Of course. It is late and I will do it slowly.

20 A Okay.

21 Q Okay. When you were guaranteeing advertising by
22 demographic, the measure for that guarantee was Nielsen data.
23 Correct?

24 A Yes.

25 Q And it was the same Nielsen reports that were used to

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1 guaranteed demographics that had the age data that you felt was
2 inaccurate. Correct?

3 A No, that is -- I mean so the impression measurement and
4 the median age are two separate measurements. The currency is
5 impressions currency. We never really guaranteed a median age. We
6 only guaranteed delivery of impressions.

7 Q I'm not sure it is worth the fight, but let me ask one
8 more question.

9 A Sure.

10 Q The Nielsen data that advertisers looked at on a regular
11 basis to determine impressions --

12 A Yes, right.

13 Q -- that Nielsen data also has demographic data. Correct?

14 A It is demographic data.

15 Q Right and the demographic data contained in the data that
16 people used to measure impressions had the older age, not the
17 younger age, in your custom study. Correct?

18 A So, again, the demographic data for a particular show or
19 a particular day part is expressed in impressions on a particular
20 demographic. The custom study and the number that we disputed with
21 Nielsen was a median age.

22 Q Okay.

23 A And it was unrelated to the transaction.

24 Q I will move on. We have four experts who are going to
25 deal with this. So, we will move on.

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1 One last question. The ad buyers, one little line, the
2 ad buyers in New York that you testified about who couldn't get GSN
3 --

4 A Yes.

5 Q -- they weren't buying ads for the New York market. They
6 were buying national advertising. Correct?

7 A That's right.

8 Q The overwhelming majority of the advertising that your
9 network sells is national, not local advertising. Correct?

10 A All of it.

11 Q It is all national. So, you don't sell advertising in
12 the New York market. Right?

13 A We don't sell -- we are located in New York and we sell
14 up there.

15 Q Okay.

16 A But we don't sell local market impressions.

17 Q Right. So, when you are selling ads, either in the
18 upfront or in the scatter and you are guaranteeing demographics,
19 that is nationally. Correct?

20 A That's right.

21 MR. COHEN: No further questions.

22 MS. KANE: Your Honor, the Enforcement Bureau has some
23 questions.

24 JUDGE SIPPEL: I'm waiting to hear them.

25 MS. KANE: I just wanted to clarify for the record.

1 JUDGE SIPPEL: Thank you.

2 BY MS. KANE:

3 Q Good afternoon, Mr. Zaccario. My name is Pamela Kane.
4 I represent the Enforcement Bureau of the Commission.

5 A Good afternoon, Ms. Kane.

6 Q And with me is my colleague, Mr. Knowles-Kellett, as
7 well.

8 A Hello, Mr. Knowles.

9 Q Some of the questions that we might ask, I just wanted to
10 give you sort of a heads up, may sound pretty basic to you, for
11 somebody of your experience in both the advertising world and in
12 the television world. But part of what we are trying to do is
13 ensure that when the public reads this record, that they can
14 understand as much as possible of what has gone on here.

15 So, I apologize if they seem very basic to you but that
16 is why we are asking some of them.

17 A Okay.

18 Q So, here is our first basic question.

19 JUDGE SIPPEL: I think you should worry more about being
20 in the public --

21 (Laughter.)

22 MS. KANE: Well, Your Honor, I am aware of your
23 experience in this avenue but I believe these will help you as
24 well.

25 JUDGE SIPPEL: Okay.

1 BY MS. KANE:

2 Q We just want to clarify what I'm sure you will think is
3 a very basic question, which is exactly what are you selling when
4 you were saying you are the Director of Ad Sales. Are you selling
5 time on GSN to advertisers?

6 A Yes.

7 Q So, when we have been talking about all of this
8 advertising that you are selling, whether it is direct response,
9 whether it is general rate, that is what we are talking about is
10 time, portions of time on GSN during its lineup. Correct?

11 A Yes, during the commercial breaks of our programming.

12 Q Thank you for the clarification. If I could ask you to
13 turn to Tab 2 of the smaller notebook --

14 A Is that eight?

15 Q Yes, it's GSN Exhibit 8, for clarification.

16 A Okay.

17 Q I believe this is a document you testified you found on
18 your desk when you started at GSN. Is that correct?

19 A That is correct.

20 Q And if I could have you turn to what I believe is
21 internally noted as page eight but the Bates number ends in 82.

22 JUDGE SIPPEL: What tab is this again?

23 MS. KANE: This is Tab 2 of the small notebook, Your
24 Honor.

25 JUDGE SIPPEL: Okay.

1 MS. KANE: And it's --

2 JUDGE SIPPEL: Exhibit 8.

3 MS. KANE: Exhibit 8, correct.

4 BY MS. KANE:

5 Q Do you recall reviewing this page during your testimony
6 earlier today?

7 A I do.

8 Q You didn't prepare any of the information on this page,
9 correct, because this was just sitting on your desk when you
10 arrived at GSN?

11 A That's right.

12 Q What did you understand female-oriented networks to mean
13 when you reviewed this document?

14 A Networks that targeted women.

15 Q And what did you understand the boxed channels or
16 networks on the left-hand side to mean?

17 A Those networks that we most often compete with for
18 advertising money.

19 Q And this document was prepared in 2007. Correct?

20 A It was.

21 Q Would you consider those same networks as networks with
22 which you compete most, currently?

23 A Yes.

24 Q And how about through your tenure at GSN?

25 A Those have been the competitive set that have been most

1 articulated to us by customers.

2 Q Have you ever been approached by the marketing folks to
3 identify the competitive set?

4 A Yes, I testified earlier, I'm not sure whether it was
5 under direct or cross, to an email where Michael Michell, who is
6 our head of research, who worked for the marketing department,
7 reported through to the marketing department, was doing a project
8 and asked me that very question, which are the networks that you
9 most often compete with?

10 Q Is that something that you are asked in sort of the
11 regular course, on a regular basis from others in GSN?

12 A It happens less frequently today. You know, the context
13 of that was Michael Michell was relatively new. We were all
14 relatively new. And so, I suppose he was getting his bearings at
15 the time.

16 Q So, you would testify today that the boxed networks here
17 on this page are consistent with your understanding of who have
18 been historically some of the top competitors for advertising
19 against GSN. Correct?

20 A Yes.

21 Q If you note on this document, it says the source of this
22 information is NMR, as dated by NPOWER. Do you see where I am
23 reading?

24 A Yes.

25 Q And that is not an acronym that we have referred to

1 previously. So, I was wondering if you are familiar with what that
2 acronym refers to?

3 A I don't know exactly. I know NPOWER is a Nielsen product.
4 So, I would presume that the N in NMR stands for Nielsen but as to
5 the last two letters of that acronym, I'm not sure.

6 Q Thank you. I believe that it might have actually been a
7 question from Your Honor asking you whether there was a correlation
8 between the amounts of viewership that you would obtain on GSN and
9 your position in the advertising buy world. Do you recall that
10 line of questioning?

11 A The amount of viewership and our position -- oh, I think
12 he asked about dial position, what would formerly be called the
13 dial position.

14 Q Oh, I don't mean position as in position, I meant
15 position as in -- let me try to rephrase it so I can make it
16 clearer to you.

17 I believe His Honor asked you whether there was a
18 correlation between the advertising group at GSN and the marketing
19 group at GSN. Do you recall that line of questioning?

20 A Yes.

21 Q And I believe that you said that there was some
22 correlation between marketing success and your success as an
23 advertising branch. Correct?

24 A Yes, I believe I said that our success would validate
25 their work, in so much as our success would be tied to marketing's

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1 ability to attract women 25 to 54 to the network. And the better
2 we did on selling against women 25 to 54, that would validate the
3 effort that they have made to bring those women to the network.

4 Q Would the related success of the marketing group in
5 obtaining viewership in a particular demographic also correlate to
6 success for the advertising branch of GSN in terms of visibility to
7 continue to advertise to that demographic?

8 A So, I'm not sure what you mean by advertising branch.

9 Q So, in other words, if they were able to increase the
10 viewership of a particular demographic, would that assist the
11 advertising line of GSN in being able to sell to that particular
12 demographic?

13 A Absolutely.

14 Q And would the converse be true, which is a loss of
15 viewership in that demographic, would that ultimately impact the
16 ability of the advertising arm to sell the advertisements in that
17 demographic?

18 A Yes.

19 Q Now, I know we've talked a lot about demographics in
20 advertising segments. Is there in fact a demographic segment of
21 advertising that is more important than others to GSN?

22 A Well, to GSN women 25 to 54 is the most important because
23 that is where we write the overwhelming majority of our business.

24 Q And is that an important segment throughout the industry,
25 or is that just for Game Show Network?

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1 A Well, it is for Game Show -- it is for GSN and other
2 networks that are producing programming and targeting women 25 to
3 54. So, for example, it wouldn't be as important for ESPN.

4 Q I believe earlier today you made a comment, when we were
5 talking about the difference between women or females 25 to 54, and
6 P, person or adult 25 to 54, I believe you suggested that if an
7 advertiser or a buyer was purchasing a P or adult 25 to 54, there
8 would be an assumption that they would get some portion of that
9 audience would also be women 25 to 54. Do you recall your
10 testimony on that point?

11 A Yes.

12 Q And is that an accurate statement?

13 A It is.

14 Q Do you have an estimate as to how many women an
15 advertiser would expect to achieve in purchasing a P 25 to 54 or an
16 adult 25 to 54?

17 A No, I don't.

18 Q Are there any -- does anybody do any sort of statistical
19 analysis on that point, that you are aware of, like a Nielsen or
20 somebody of that nature?

21 A No, that would be done by the marketer themselves, in
22 terms of what that expectation might be.

23 Q I believe you testified -- and I'm not going to say the
24 number because I believe it is confidential -- but I believe you
25 testified that after the retiering there was a number of

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1 subscribers that were lost from GSN. Correct?

2 A Yes.

3 Q Just to clarify for the record, those were subscribers
4 that had been on Cablevision's subscribers. Correct?

5 A Yes, those were Cablevision subscribers that were lost.
6 Yes.

7 Q Is there any portion of that number that reflects any
8 subscribers who were on other distributors?

9 A No.

10 Q Okay, well, I guess -- well, I don't think we have
11 anybody who is confidential, but I think we probably should go on
12 the confidential record for this. You guys can just let me know at
13 GSN if that's not accurate.

14 But I believe the Judge asked you at some point earlier
15 today -- I believe you testified -- let me give you some
16 background. I believe you testified [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Correct?

19 A That's right. And -- I'm sorry.

20 Q Go ahead.

21 A In economic terms from 2011.

22 Q So, we are talking at the time of retiering, [REDACTED]

[REDACTED]
24 A That's right.

25 Q And I believe the Judge asked you what percentage that

1 was of the total income. [REDACTED]

2 [REDACTED] Do you recall that?

3 A I do. So, [REDACTED] is today's advertising revenue.
4 And I think the [REDACTED] that I spoke to the judge
5 about was -- well, so, in today's marketplace, our marketplace, we
6 bill [REDACTED] [REDACTED] of advertising revenue and those Cablevision
7 subscribers are worth [REDACTED]. So, a loss of [REDACTED] of
8 Cablevision subscribers, which we still sustain, would be roughly
9 worth [REDACTED] [REDACTED]

10 Q And that is in today's value?

11 A In today's value. [REDACTED]
12 [REDACTED]

13 Q Do you have a recollection of what the advertising income
14 was at the time of the retiering?

15 A Yes, it was around [REDACTED]

16 Q So, do you have a rough estimate -- math is not my
17 specialty -- of what the percentage would be?

18 A [REDACTED]

19 Q Yes.

20 A Anybody?

21 (Laughter.)

22 THE WITNESS: Let's see. Mark?

23 MR. KNOWLES-KELLETT: It's good enough.

24 MS. KANE: That's good enough, since we are in a room of
25 lawyers and not mathematicians.

1 BY MS. KANE:

2 Q So, about [REDACTED]

3 A About [REDACTED].

4 Q So, the [REDACTED] that you were talking about,
5 again, that was advertising income, and that was based on national
6 advertising. Is that correct?

7 A Yes.

8 Q And when you say the [REDACTED], again, was that based
9 on local subscribership or a national subscribership?

10 A So, when I say [REDACTED] [REDACTED] in terms of dollars or
11 subscribers?

12 Q In terms of dollars.

13 A That is national. So, GSN -- well -- it's all -- we sell
14 all national inventory. And that [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

15 [REDACTED]
16 Q So you don't estimate or track revenue on a regional
17 basis, correct?

18 A No.

19 Q I believe you also testified earlier today about several
20 advertisers who had concerns about the, and raised concerns with
21 you, about the retiering on Cablevision. I believe, in particular,
22 [REDACTED]. Correct?

23 A Yes.

24 Q And I believe you had testified that each of these
25 advertisers had raised concerns with you that you were on this

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1 sports tier. Do you recall the time frame of those statements and
2 those comments?

3 A Yeah, their concern was that they didn't receive the
4 service, because they didn't have the sports tier. And the timing
5 of those comments would have been the spring of 2011. The
6 conversations we were having from March through, you know, call it
7 late May or June, certainly for [REDACTED]. And [REDACTED], they were
8 ongoing conversations for the balance of that year.

9 Q And have you quantified, or been able to quantify, the
10 financial impact of the conversations that you had with them about
11 that -- or, frankly -- let me rephrase it.

12 Have you been able to quantify the financial impact of
13 those advertisers in particular not having access to GSN as they
14 were making their buying decisions?

15 A It's hard to know specifically for those two, because it
16 would be -- it's hard to know what budget might have been available
17 to us, had they been willing to buy. So, I can't quantify that.

18 Q Has there been an advertiser since the retiering who has
19 decided not to purchase time on GSN because they did not have
20 access to be able to view GSN on Cablevision?

21 A Like I said, [REDACTED] [REDACTED] [REDACTED] would be two of the
22 examples.

23 Q So they didn't purchase advertising at all with GSN after
24 the retiering?

25 A [REDACTED] [REDACTED] [REDACTED] [REDACTED] we weren't able to grow the

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1 business that we were in a good position to grow prior to the
2 retiering.

3 Q Have there been any other companies beyond those two?

4 A Not that I was personally involved with that I can speak
5 first-hand on.

6 Q Did you have an expectation from [REDACTED] prior -- had you
7 been in negotiations with [REDACTED] prior to the retiering?

8 A Yes.

9 Q And did you have an expectation of what the revenue
10 stream would look like, if the retiering hadn't occurred?

11 A Negotiations hadn't gotten that detailed by the time of
12 the retiering. We were sort of in the pre-sell stage, you know,
13 selling stage, by selling the virtues of the original programming
14 to them. But we hadn't gotten to the details that would include a
15 specific budget that might have been allocated to us.

16 Q Again, here's probably another one of those questions
17 that you might deem pretty basic, but we would like to understand
18 for the record the differences between scatter advertising and the
19 upfront advertising. We do understand that they both address the
20 requirement to provide guarantees. But beyond that, how are they
21 different?

22 A So, the upfront is an auction-style marketplace that has
23 its roots at the very beginning of the television business. And
24 the reasons for it, beginning back in the '60s and '70s, really
25 don't exist today. The timing of the market coincides with the

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1 development slate of television programming.

2 So, throughout the winter months, networks -- back then,
3 broadcast networks, there weren't cable networks -- would put
4 programs into development. They would announce what programs they
5 were going to schedule, because there's a small subset of what they
6 were developing that would ultimately make the schedule. They'd
7 make that schedule announcement for primetime in May.

8 And because there were only three networks way back,
9 there was a finite amount of inventory available for sale. And
10 once that schedule was announced, the auction for that inventory
11 began. And it happened in a matter of days, and sometimes in a
12 matter of hours, because of the finite nature of the inventory
13 available at that time. And that's the way business was done and
14 continued to be done.

15 As cable emerged, there became a greater supply of
16 television inventory. And the reasons for doing the upfront
17 changed from the necessity of having an auction in order to sell
18 the finite amount of advertising fairly, to an efficient way to buy
19 a lot of inventory at one time. And today that's what it is.

20 There's a lot of chatter among pundits and journalists
21 and editorialists that the upfront is sort of an antiquated way to
22 buy advertising. It is asking advertisers to make commitments far
23 in advance before they truly know what their objectives might be
24 for those particular periods where they are committing.

25 So, like I said, today it has more to do with efficiently

1 buying a lot of inventory at one time and shrinking the workload
2 for media services agencies whose economic margins are razor thin
3 at the moment.

4 Q And how would you breakdown in terms of how much GSN
5 budgets for both types of advertising?

6 A So, it's roughly been [REDACTED].

7 Q And that's consistent over your tenure at GSN?

8 A Roughly.

9 Q If I could have you turn to document 4 in the small book,
10 which is Exhibit 65. I know we've been there a couple of times
11 today.

12 And, again, I believe you've previously testified that
13 this reflects sales from fourth quarter 2010 through third quarter
14 2011. Correct?

15 A Yes.

16 Q And in what year is this revenue reported? Is it
17 reported for both years or is it reported at the close of 2011?

18 A It's reported for both years. So, the fourth quarter '10
19 revenue would have been reported in 2010, and the three quarters of
20 '11 reported in '11.

21 Q We just want to clarify that when you say revenue numbers
22 on -- I guess I'm on page three of this document, which is the
23 Bates number ends in 84. And there are revenue figures that are
24 listed from both '10-'11 and '09-'10. Do you see where I am
25 looking?

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1 A Yes.

2 Q First of all, just for purposes of clarification, and
3 maybe it is earlier in this document and we've missed, it but when
4 it is talking about [REDACTED]. Correct?

5 A Yes.

6 Q And is this actual booked revenue at this point, by the
7 time it is on this spreadsheet, or is this projected revenue?

8 A It's virtually booked. So, the process is, there's a
9 period where the inventory is held until the advertising agencies
10 have the opportunity to present what they have purchased to their
11 clients and get a sign-off by their clients. In 99.9 percent of
12 the cases, the agencies have enough insight as to what the clients
13 want that held goes to order.

14 It's a widely-held convention that if you are going to
15 hold the inventory, you are almost certain that your clients going
16 to sign off on it. But, ultimately, that agency doesn't have the
17 authority to do that without checking with their client first.

18 Q Understood. So, ultimately, though, one could look at
19 these numbers as the actual revenue that's coming in to GSN for
20 this time period. Correct?

21 A Yes.

22 Q And is this a document that is prepared year-to-year for
23 each upfront, or after each upfront?

24 A A document like it is prepared year-to-year. I'm not
25 sure that we use the same form every year, but something like it.

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1 Q And are you involved in the preparation of this document?

2 A Members of my team prepare it and I would review it
3 before we made the presentation to David and the finance team at
4 GSN.

5 Q And would there have been a document that would have
6 reflected the '11-'12 upfront year?

7 A Probably.

8 Q And do you have a recollection of where the percentages
9 were in demographics, if there was any raise in the female 25 to 54
10 between '10-'11 and '11-'12?

11 A I don't off the top of my head, no.

12 Q Do you have any recollection whether these numbers
13 generally went up or went down?

14 A I know they generally went up, because, as I testified
15 earlier, the most recent upfront, which happened a year ago, we
16 were at [REDACTED] and this year's upfront hasn't happened yet.

17 Q Now, when we are talking about these revenue numbers for
18 these sales, this is a collective time period, correct, over GSN's
19 lineup?

20 A Yes.

21 Q So, this isn't necessarily reflective of a particular
22 time period, like primetime or something of that nature. Correct?

23 A No.

24 Q If I can have you turn to either one you feel more
25 comfortable with, either Tab 5 of that smaller notebook or 174 or

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1 the larger of the two of that version. We just have a few
2 questions on that document.

3 A Okay.

4 Q The first thing I wanted to point your attention to on
5 that very first page, it says Annual Revenue Summary. Do you see
6 where I am reading on the left-hand side?

7 A Yes.

8 Q And can you just confirm for the record that's talking
9 about annual advertising revenue. Correct?

10 A It is.

11 Q Now, I believe you testified that the upfront guarantee
12 revenue that we just looked at in the previous exhibit would be
13 reflected, because it straddles two financial years, it would be
14 reflected in both years. Correct?

15 A Yes.

16 Q So, is there a way to figure out which year -- you know,
17 sort of how much of the amount in 2010 is reflected in the document
18 we just looked at on the upfront revenues?

19 A How much -- we might have broken it out by quarter. Let
20 me take a quick look.

21 Q Is that what is reflected, I guess, in the sort of second
22 graphic there, the second section, where it's broken out by
23 quarter? Would that be consistent?

24 A Oh, yeah, there it is.

25 JUDGE SIPPEL: Quarterly revenue summary, is that --

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1 THE WITNESS: Yes. So, those are the upfront and scatter
2 combined numbers by quarter. So, here it doesn't break out the
3 upfront quarterly for you, which I think is what you're asking.

4 BY MS. KANE:

5 Q Right, so if we -- and I'm not saying we should use a
6 calculator, but to your best understanding, the amount that is
7 identified for fourth quarter 2010 and through third quarter of
8 2011 should add up to what is on page three of the previous
9 document that we looked at, GSN 65.

10 Are we reading those together correctly?

11 A So, it wouldn't tie back to GSN 65. GSN 65, because is
12 discussion of upfront revenue only. And it looks like the
13 quarterly revenue summary combines upfront and scatter. So, the
14 only quarterly breakout that we have on this document is a
15 combination of upfront and scatter. So, those numbers wouldn't
16 have that.

17 Q Okay, thank you for that clarification.

18 A Sure.

19 Q The last question I believe we have is on that same
20 document, the larger exhibit 174, there's a chart at the sort of
21 middle bottom of the page that says Revenue by Demo. Correct?

22 A Yes.

23 Q That is not broken down over any particular year. Is
24 that correct?

25 A So, that is a revenue by demo for the period of 2008

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1 through 2012. And the [REDACTED] that is highlighted in yellow at the
2 bottom of that table would tie it back to the [REDACTED] in the second
3 table, the quarterly revenue table under gross total.

4 Q Is there anything on this document, on this page, that
5 you are aware of, that breaks out the revenue by demo per year over
6 those four-year time periods?

7 A No.

8 MS. KANE: If you could just give us one second, Your
9 Honor.

10 JUDGE SIPPEL: Yes.

11 MS. KANE: That's it for the Bureau, Your Honor. Thank
12 you very much for your patience.

13 THE WITNESS: You're welcome. Thank you.

14 MR. COHEN: Your Honor, I have a couple of questions.

15 JUDGE SIPPEL: Based on?

16 MR. COHEN: Based on what the Bureau --

17 JUDGE SIPPEL: What the Bureau asked.

18 MR. COHEN: Absolutely.

19 FURTHER RECROSS EXAMINATION

20 BY MR. COHEN:

21 Q You were asked questions about the advertisers who you
22 talked to in 2011 upfront, [REDACTED]. Do you
23 remember them?

24 A Right, the [REDACTED] buy were the same, yeah.

25 Q Right. [REDACTED] had never advertised on your network before

1 the retier. Correct?

2 A Not in the time that I was there.

3 Q All right. And [REDACTED] had never advertised on the
4 network before the retiering. Correct?

5 A That I'm not sure. I think they might have. I mean,
6 there may have been some inventory there from 2008 through 2011.

7 Q Do you want to --

8 A Sure.

9 Q Well, [REDACTED] of Exhibit 174. And, here, I'm going to
10 give you this big one, if you will bear with me.

11 A Sure.

12 MR. COHEN: And it's marked, Your Honor.

13 JUDGE SIPPEL: Page [REDACTED]

14 MR. COHEN: Let me just -- I want to do the same thing
15 for our friends on the other side so we can all follow.

16 BY MR. COHEN:

17 [REDACTED]
[REDACTED] [REDACTED]

19 A Yes.

20 Q Okay. And what this shows us is that, prior to the
21 second quarter of 2012, [REDACTED] had never made a buy on GSN.
22 Correct?

23 A Yes.

24 Q And the first buy that [REDACTED] made was after the
25 retiering.

1 A Yes, from 2008 through 2012. Again, I can't speak for
2 the entirety.

3 Q Well, we don't know anything before 2008, based on this
4 chart. Right?

5 A Right.

6 MR. COHEN: Your Honor, are you able to see that? It is
7 a little hard to see.

8 JUDGE SIPPEL: Well, I can't find any page numbers on
9 this.

10 MR. COHEN: Yeah. It's flagged, Your Honor. May I
11 approach? Do you mind if I show him the page?

12 MR. SPERLING: I do not mind.

13 MR. COHEN: Do you need help finding the page?

14 MR. SPERLING: We've got it.

15 MR. COHEN: Okay.

16 (Pause.)

17 JUDGE SIPPEL: Where are we? ████████████████████
████████████████████

19 BY MR. COHEN:

20 Q Alright, so, ██████████ -- just to clarify, ██████████ from the
21 time you joined through the retiering, didn't buy any advertising?

22 A Did you identify ██████████ on this chart?

23 Q No, I can't find it anywhere on the chart.

24 A Yeah, I don't think they did, no.

25 Q Okay. And ██████████, according to this chart, ██████████ of

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1 for GSN?

2 A No.

3 Q What advertising revenue for GSN does this show?

4 A General rate.

5 Q Does this page include direct response advertising?

6 A No.

7 Q From looking at this page, can you determine, one way or
8 the other, whether there were additional prior purchases by [REDACTED]
[REDACTED] on GSN?

10 A No.

11 MR. SPERLING: Nothing further.

12 JUDGE SIPPEL: Where is the direct response advertising?

13 THE WITNESS: So, Your Honor, traditionally, direct
14 response advertising had been advertising that included some call
15 to action. So, Premier Bath is a bathroom fixture company that
16 tries to sell baths to elderly people who need assistance in and
17 out of the shower, for example. And there's a 1-800 number that
18 they ask you to call if you're interested in buying that. That
19 would be what would be called traditional direct response
20 advertising. It includes a call to action.

21 JUDGE SIPPEL: The customer calls?

22 THE WITNESS: The customer calls to either get more
23 information or to make a purchase, traditionally.

24 More recently, brand advertising has begun to be bought
25 out of the direct response buying mechanism. And so that was the

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1 Merck -- for an example of that was the [REDACTED] I spoke
2 to earlier. We have had other advertisers, like [REDACTED] [REDACTED],
3 [REDACTED]. They're brand advertisers
4 but they buy through a direct response buying arm, again, for
5 reasons of efficiency, or inefficiency, as we talked about with
6 [REDACTED].

7 JUDGE SIPPEL: Yeah, okay. Good enough. Anybody else?

8 MR. SPERLING: No, thank you, Your Honor.

9 JUDGE SIPPEL: You're all clear? Okay, you are excused,
10 sir.

11 THE WITNESS: Thank you, Your Honor.

12 JUDGE SIPPEL: Have a good trip back.

13 THE WITNESS: Thank you very much.

14 JUDGE SIPPEL: Yankee fan?

15 THE WITNESS: I'm a Mets fan, Your Honor, and a Jets fan.
16 (Laughter.)

17 JUDGE SIPPEL: Good luck with it. Good luck.
18 Look, tomorrow, we've got Dr. Singer. Right?

19 MR. SCHMIDT: Yes, Your Honor.

20 JUDGE SIPPEL: We're going to start with him at 9:30. I
21 mean, the rules I've been imposing -- well, I don't know if I've
22 been imposing rules -- but the rules you have been following on the
23 examination of these witnesses may not apply with Dr. Singer and
24 the experts. I've got to see how that goes.

25 MR. SCHMIDT: In what sense, Your Honor?

1 JUDGE SIPPEL: In what sense? I want to hold them to a
2 higher standard. They are more experienced witnesses. And what
3 they are testifying to, you know can be kind of slippery stuff.
4 They are not fact witnesses.

5 So, I want to be able to go a little slower with them and
6 I want to hold them to a higher standard, certainly of hearsay, and
7 particularly laying foundations for what their assumptions might
8 be. And they generally have a lot of assumptions. We'll see how
9 that goes. But that's how I want to start off.

10 MR. SCHMIDT: One question on that.
11 We have been very aspirational so far, but we have been trying to
12 do the directs in half an hour, obviously, relying on the written
13 testimony.

14 JUDGE SIPPEL: Right.

15 MR. SCHMIDT: I would be concerned that if we do a lot
16 more on our direct, it's going to explode our time. We have got
17 two and they've got, I think, three, four.

18 MR. COHEN: Four.

19 MR. SCHMIDT: Should we be doing more in our directs? Is
20 that what Your Honor is looking for? Or is it more we just will
21 count on Your Honor to ask the witness where Your Honor has
22 questions?

23 JUDGE SIPPEL: You've got the written testimony in
24 evidence.

25 MR. SCHMIDT: Yes, that's what I am asking.

1 JUDGE SIPPEL: You don't have to spend any more time on
2 it than that.

3 MR. SCHMIDT: Okay, good.

4 JUDGE SIPPEL: Is that okay?

5 MR. SCHMIDT: I understand, Your Honor. Yes, of course,
6 Your Honor.

7 JUDGE SIPPEL: Well, in my world, it all comes down to
8 cross-examination.

9 MR. SCHMIDT: I understand, Your Honor.

10 JUDGE SIPPEL: We have a static record with the
11 testimony.

12 MR. SCHMIDT: Yes, okay, that helps.

13 JUDGE SIPPEL: That's all I have to say on it. Okay, so,
14 everybody have a nice night.

15 (Whereupon, the hearing recessed at 6:12 p.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: GSN v Cablevision

Before: FCC

Date: 07-09-15

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

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Court Reporter

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