

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

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

Monday,
July 13, 2015

Volume V

Hearing Room A
Room TW-A363
445 12th Street, SW
Washington, DC

The above-entitled matter came on for hearing, pursuant to notice, at 9:38 a.m.

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

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

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Timothy Brooks				
By Mr. Schmidt	1134			1326
By Mr. Gordon		1276		
By Ms. Kane		1378		

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<u>GSN</u>			
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OTR: 9:38 a.m.

Lunch 1:00 p.m. to 2:22 p.m.

OTR: 5:12 p.m.

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

9:38 a.m.

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JUDGE SIPPEL: We are on the record.

Today is Monday morning of next week and we are in session.

Mr. Schmidt?

MR. SCHMIDT: Thank you, Your Honor.

JUDGE SIPPEL: Do you have a witness on the stand?

MR. SCHMIDT: Yes. May we present him?

JUDGE SIPPEL: Would you introduce him, please, yes.

MR. SCHMIDT: Mr. Brooks, would you mind introducing yourself for the record?

MR. BROOKS: Yes, my name is Tim Brooks. I am consultant to the television industry.

MR. SCHMIDT: May I go ahead and pass out some binders for Mr. Brooks?

JUDGE SIPPEL: Yes, please do.

MR. SCHMIDT: Thank you.

JUDGE SIPPEL: Would you please stand while I administer the oath?

MR. BROOKS: Yes, sir.

WHEREUPON,

TIMOTHY BROOKS

having been called for examination by Counsel for the Complainant, and having been first duly sworn, was examined and testified as

1 follows:

2 JUDGE SIPPEL: Thank you, sir.

3 Please be seated.

4 My oaths don't last from proceeding to proceeding. They
5 have to be done again. It was nice and quick, I must say.

6 MR. SCHMIDT: Yes, it was quick, quick and painless.

7 (Whereupon, the document was marked as GSN Exhibit No.
8 300 for identification.)

9 DIRECT EXAMINATION

10 BY MR. SCHMIDT:

11 Q Mr. Brooks, you've appeared here before. So, I am going
12 to very quickly walk through some of your qualifications, and it
13 goes to the substance of your opinions.

14 If you look at the binder that I put in front of you, tab
15 1 of the binder is your CV, your curriculum vitae, attached to your
16 expert report. And let's just start on the first and second page.
17 Am I correct that you list a number of television networks that
18 you've worked at?

19 A Yes, that's correct.

20 Q Has that included a women's network?

21 A Yes, it has.

22 Q If we continue through your CV to the second page,
23 there's a heading about two-thirds of the way down that says,
24 "Industry Leadership". I would like to ask you about, if you will,
25 those positions.

1 What is the second item, the Advertising Research
2 Foundation?

3 A That's an organization founded in the 1930s,
4 I believe, to promote the activity of advertising through research,
5 in support of advertising agencies and advertisers.

6 Q Is that a leading industry organization looking at the
7 question of advertising research in the United States?

8 A Yes, very much so.

9 Q What's been the senior-most position you have had with
10 them?

11 A I was Chairman of the Board.

12 Q And continue on to page 85. There's something called
13 Media Rating Council. Can you tell us what that is?

14 A That's an organization founded in the 1960s to oversee
15 and audit and accredit research companies that produce data that is
16 used as a currency in the television industry to make sure it is
17 impartial and fair.

18 Q Specifically, do they have any role with respect to
19 Nielsen ratings data?

20 A Very much so. They audit, the Commission audits and
21 evaluates audits of Nielsen.

22 Q What was your most senior role there?

23 A I was also Chairman of the Board of the MRC.

24 Q Is that another leading industry research organization in
25 the U.S. in the television industry?

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1 A Yes, it is.

2 Q If you look at page 85, about halfway down, it says,
3 "Honors and Awards". Have you been honored for your work in the
4 television industry?

5 A Yes.

6 Q Again, just to focus on a couple of examples, if you look
7 at the first entry, it says, "2008 Advertising Research Foundation
8 Lifetime Achievement Award". Could you tell us what that means?

9 A That is an award presented by the previously-mentioned
10 Advertising Research Foundation to an individual, individuals who
11 have contributed over the course of their career substantially to
12 the goals of the ARF and the advertising world.

13 Q And just because I'm jealous of this one, have you also
14 received a Grammy Award?

15 (Laughter.)

16 A Yes, I have.

17 Q Okay. The last question on your background. If we flip
18 to the last page, 86, have you published on the television
19 industry?

20 A Yes, I have.

21 Q To take one example, the first example, The Complete
22 Directory to Primetime Network and Cable TV Shows, could you tell
23 us what that is, please?

24 A That's an encyclopedia of all series that have run on any
25 of the major networks, either cable or broadcast since their

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1 inception in the evening hours.

2 Q Does that require you to watch a lot of TV published in
3 that book?

4 A A great deal of watching of TV and a very large DVR these
5 days.

6 Q Is that a leading industry publication?

7 A Yes, I'm trying to say it is the leading publication in
8 that field.

9 Q Let's go to your opinions. We've put at tab 2 of your
10 binder Exhibit 300, which is your testimony in this case.

11 MR. SCHMIDT: And I would like to go ahead and move this
12 into evidence. Your Honor, we have an agreement with Cablevision
13 that the whole document could come into evidence, subject to us
14 withdrawing without prejudice paragraph, I believe it's 128,
15 Subsection 2.

16 We'll go ahead and move that into evidence.

17 MR. GORDON: With that stipulation, no objection, Your
18 Honor.

19 JUDGE SIPPEL: Received.

20 (Whereupon, the document marked as GSN Exhibit No. 300
21 for identification was received in evidence.)

22 JUDGE SIPPEL: Let me get that again. Would you please
23 direct me to that?

24 MR. SCHMIDT: Yes, Your Honor. It is paragraph -- it is
25 on page 75 -- it is paragraph 128, sub 2. So, sub 1 and 3 remain,

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1 but just sub 2 goes away from 75 to 77.

2 JUDGE SIPPEL: Okay. Let me get to 75 then.

3 Now which remain and which goes?

4 MR. SCHMIDT: So, 1 remains, 2 goes; 2 is the only one
5 that goes, starting halfway down 75 and carrying over to the top
6 quarter of 77.

7 JUDGE SIPPEL: I have it. Okay.

8 BY MR. SCHMIDT:

9 Q I would like to dig into one aspect of your opinions. We
10 don't have time to go through all of them. So, I want to just get
11 a summary of the areas where you have given opinions.

12 In this case, did you reach an opinion as to whether GSN
13 is similarly-situated to WE tv and Wedding Central, and whether it,
14 in fact, competes with WE tv?

15 A Yes, I did.

16 Q What is that opinion?

17 A That they are, in fact, similar, similarly-situated and
18 they do compete with each other.

19 Q Did you look at that question both nationally and in the
20 New York area?

21 A Yes, I did.

22 Q Does your opinion apply in both places?

23 A Yes, it does.

24 Q Did you reach an opinion as to whether GSN was harmed and
25 WE tv was helped by Cablevision's decision to retier GSN?

1 A Yes.

2 Q What is that opinion?

3 A That, in fact, that was true, that GSN was harmed and WE
4 tv was helped.

5 Q Did you reach an opinion, finally, as to whether WE tv
6 and Wedding Central received favorable treatment from Cablevision
7 that was not available to GSN?

8 A Yes.

9 Q And what's that opinion?

10 A And that similarly, they did, in fact, receive favorable
11 treatment.

12 Q Do you hold the opinions that you're offering in this
13 case as expressed in Exhibit 300 to a reasonable degree of
14 professional certainty?

15 A Yes, I do.

16 Q Let's dive into them. And again, I would like to focus
17 on the similarly-situated opinion. We will stand on the testimony
18 with respect to the rest given the time rules that we have.

19 JUDGE SIPPEL: Excuse me. Is that like a, is that a
20 certification given, that a CPA gives financial statements?

21 MR. SCHMIDT: The reasonable degree of professional
22 certainty?

23 JUDGE SIPPEL: Yes.

24 MR. SCHMIDT: It's intended just to meet the general
25 expert standards of the level of certainty an expert has to have to

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1 offer their opinions. I don't view there being anything special
2 about that. I think all the experts in these cases are offering
3 their views on that basis.

4 BY MR. SCHMIDT:

5 Q Let's look at tab 3 of your binder, if we could. I would
6 like to start off by asking you if, in looking at the three
7 networks, GSN, WE tv, Wedding Central, if you have an opinion as to
8 whether they're similarly-situated in terms of audience.

9 A Yes, I believe they are similarly-situated.

10 (Whereupon, the document was marked as GSN Exhibit No.
11 312 for identification.)

12 BY MR. SCHMIDT:

13 Q What does tab 3 that we have marked for identification as
14 Exhibit 312 -- this is the chart that appears on page 15 of your
15 testimony -- what does this tell us on that question?

16 A This reflects Nielsen national data for the networks
17 shown and reflects the percent of their total adult audience which
18 is female. So, for example, on the first line it shows that GSN in
19 all of these years, for GSN, approximately ■ percent of its
20 audience was a female audience; the other ■ percent, obviously,
21 was male. And it shows similar numbers for each of the other
22 networks.

23 Q Okay. Why isn't Wedding Central on this chart?

24 A Wedding Central was never measured by Nielsen during its
25 short existence.

1 Q That's because it never got large enough?

2 A Well, that was a decision made by Cablevision not to
3 engage Nielsen. Nielsen would have measured it, although at the
4 levels it was distributed it would be very unusual to measure a
5 network that small.

6 However, I did look, if you want me to address Wedding
7 Central?

8 Q Sure.

9 A I did look at the programming on Wedding Central, all of
10 which had run previously on WE tv. And I looked at what kind of
11 audience those same programs got when they were on WE tv, and they
12 all got very strong female audiences when they had previously run
13 there. So, from that, I assumed that Wedding Central also as a
14 network was strongly female.

15 MR. SCHMIDT: Your Honor, we move this into evidence.

16 JUDGE SIPPEL: It's been received. Yes, it's received in
17 evidence. But which was that now?

18 MR. SCHMIDT: Exhibit 312.

19 JUDGE SIPPEL: Any objection?

20 MR. GORDON: No, I think it's just a chart from his
21 report which is already in.

22 JUDGE SIPPEL: Received; 312 is received.

23 (Whereupon, the document marked as GSN Exhibit No. 312
24 for identification was received in evidence.)

25 BY MR. SCHMIDT:

1 Q Do you consider this, does this speak to the question of
2 whether GSN and WE tv are similarly-situated in terms of they're
3 gender-skewed?

4 A Yes, this is one of the most important pieces that I
5 examined.

6 (Whereupon, the document was marked as GSN Exhibit No.
7 313 for identification.)

8 BY MR. SCHMIDT:

9 Q Let's look at tab 4 of your binder. It is a chart from
10 page 13 of your testimony that we've marked for identification as
11 Exhibit 313. Could you tell the judge what data this reflects?

12 A This, again, is national Nielsen data for GSN and for WE
13 year by year among both households and total women. What it shows
14 is that both were relatively stable over the five-year period shown
15 here, similar numbers each year, and that they were strongly
16 competitive at similar levels. Actually, GSN was [REDACTED]
[REDACTED] during each of those five years.
18 The averages are shown at the bottom.

19 Q Okay. And I think you touched on this, but I want to be
20 sure I have it. Does this speak to whether the networks performed
21 similarly in terms of reaching female viewers?

22 A Yes, it does.

23 Q Okay.

24 MR. SCHMIDT: Your Honor, we'll move this in evidence.

25 JUDGE SIPPEL: Any objection?

1 MR. GORDON: No objection, Your Honor.

2 JUDGE SIPPEL: Received into evidence. This is GSN
3 Exhibit 313.

4 (Whereupon, the document marked as GSN Exhibit No. 313
5 for identification was received in evidence.)

6 (Whereupon, the document was marked as GSN Exhibit No.
7 314 for identification.)

8 BY MR. SCHMIDT:

9 Q Let's turn to tab 5 of your binder. You mentioned at the
10 beginning that you looked at some of these questions nationally and
11 in the New York marketplace. Is what I've marked for
12 identification as Exhibit 314 a look at the ratings between GSN and
13 WE tv in the New York Cablevision footprint?

14 A Yes.

15 Q And what does this show?

16 A This shows one year prior to the retiering which took
17 place in the midst of the first quarter of 2011. One year prior to
18 that, when GSN was obviously more widely distributed, it was [REDACTED]
[REDACTED] within the Cablevision footprint.

20 MR. SCHMIDT: We would move this into evidence as Exhibit
21 314, Your Honor.

22 JUDGE SIPPEL: Objection?

23 MR. GORDON: No objection.

24 JUDGE SIPPEL: No objection to GSN Exhibit 314. It's
25 received in evidence.

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1 (Whereupon, the document marked as GSN Exhibit No. 314
2 for identification was received in evidence.)

3 BY MR. SCHMIDT:

4 Q Let's pause on this for a moment, Mr. Brooks. The judge
5 has heard testimony already about the idea of channel placement or
6 for neighborhooding. Is that a concept you're familiar with?

7 A Yes.

8 Q Do you have a view as to whether channel placement or
9 neighborhooding affects the ratings performance of networks?

10 A Yes. There is a good deal of research behind that, and
11 I believe that is accepted both by me and by the industry at large.

12 Q And what is your view on that relationship, if any,
13 between channel placement and ratings?

14 A If you use channel placement as a shorthand for
15 neighborhood, what kind of networks are surrounding the network in
16 question, being on a channel which is near strong networks,
17 particularly networks which have similar audience, helps the target
18 network. Conversely, being around networks or in the neighborhood
19 of networks which have much lower audiences and/or audiences which
20 are dissimilar will pull down the ratings of the target network.

21 Q Did you see documentation from WE tv where they
22 recognized that principle?

23 A Yes, I did.

24 Q Let's look, if we could, at Exhibit 6, tab 6 rather, in
25 your binder, which is GSN Exhibit 16, which has been marked into

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1 evidence. It is a November 2008 email from Kim Martin, the
2 President of WE tv, to various people within Cablevision, Jan Erik
3 Dietrichson, who is in Marketing; Robert Broussard, who the judge
4 is going to hear from. Is this one of those emails that you were
5 talking about?

6 A Yes, it is.

7 Q If we look at the third sentence of this email -- well,
8 let me just read from the start. She writes, "Thought you guys
9 would appreciate. See the attached data. Charlene found that in
10 the Cablevision footprint, where we as channel 42 and Lifetime as
11 channel 45, WE is [REDACTED], and Lifetime
12 [REDACTED]."

13 Tell us what you understand her to be talking about
14 there.

15 MR. GORDON: Objection, Your Honor. There is no
16 foundation for this witness to tell us what Ms. Martin thought when
17 she was writing this. If he wants to tell us what he thinks, not
18 the concept, which he already has, we have no problem with that,
19 but it would be inappropriate for him to comment on what was in her
20 head at the time she wrote this.

21 MR. SCHMIDT: I'm not asking him to do that. I was
22 asking just what he said.

23 JUDGE SIPPEL: Well, I'm not sure now that I've heard it
24 both ways. So, let's try it again.

25 MR. SCHMIDT: Sure. Thank you, Your Honor.

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1 BY MR. SCHMIDT:

2 Q What view do you understand to be being expressed here
3 with respect to neighborhooding?

4 MR. GORDON: Your Honor, that's my objection. I mean, I
5 think he has explained what he thinks about channel placement. I
6 have no problem with that. But now, he is trying to explain what
7 Ms. Martin thinks about channel placement, and I think it's
8 inappropriate. The document speaks for itself. And I think it
9 would be inappropriate for him to tell us and give us color on what
10 Mrs. Martin's opinions were.

11 JUDGE SIPPEL: Well, he can ask what does that language
12 to him, to Mr. Brooks.

13 MR. GORDON: Okay, Your Honor.

14 JUDGE SIPPEL: Can we do it that way?

15 MR. SCHMIDT: Yes.

16 BY MR. SCHMIDT:

17 Q What does that language mean to you, Mr. Brooks?

18 A It's an expression of what I just said, that proximity of
19 WE tv to the strongly-rated and similarly-skewed
20 Lifetime was of benefit to WE tv.

21 Q Look with me, if you would, at the second paragraph of
22 this email --

23 A Yes.

24 Q -- the one that begins, "I'll send a similar email to
25 both Ed and Josh." And if we jump to the second sentence in that

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1 email, "Any of the reverse is true, too," and this is the language
2 I want to ask you about. "Getting WE moved to a better channel
3 position is golden because we can monetize the increased viewership
4 on the ad sales side."

5 Do you see where I was reading there?

6 A Yes, I do.

7 Q Is that a concept you're familiar with, that getting
8 better channel placement can lead to increased viewership that can
9 be monetized on the ad sales side?

10 A Yes, that's the core of what I was just speaking of.

11 Q So, to round this line of questions out, did WE tv or GSN
12 enjoy better channel placement with Cablevision?

13 A WE tv very definitely.

14 Q If you, then, flip back to table 5, to tab 5, Exhibit
15 314, the ratings in New York for WE tv and GSN, how does the fact
16 that WE tv enjoyed better channel placement than GSN affect your
17 views on this data, if at all?

18 A Well, it tells me that GSN was able to achieve this
19 competitive position, despite the fact that it was in a very less-
20 desirable channel neighborhood on Cablevision.

21 Q Did you analyze whether, as the result of competing for
22 viewers and having similar programming, GSN and WE tv actually
23 ended up sharing a certain number of the same viewers?

24 A Yes, I did examine that.

25 (Whereupon, the document was marked as GSN Exhibit No.

1 315 for identification.)

2 Q Let's look at tab 7 of your binder, which we marked for
3 identification as GSN 315. And I would like to ask you if you
4 could tell the judge what this data shows.

5 A Yes. This is shared audiences. So, this is a way to
6 figure out how many viewers watch both networks versus how many
7 viewers watch only one or only the other. It is as if you take the
8 audience -- it is almost easier in a graph than it is in words to
9 explain -- but it is as if you take the audience for GSN, the
10 audience for WE tv, two big circles, and how much do they overlap
11 with each other?

12 The denominator here in shared audiences is the total
13 audience of both networks together. Okay? So, in this case, in
14 the upper lefthand corner or the top row where the numbers among
15 total day households are about [REDACTED], that is saying that, of
16 the total audience of WE tv and GSN together, [REDACTED] [REDACTED]
17 approximately watch both networks; the rest watch either one or the
18 other, but not both. So, [REDACTED] shared audience.

19 And then, there are similar figures for persons for a
20 total day on a most strict six-minute basis and for primetime. And
21 if you go horizontally across, in each case the numbers are rather
22 stable as you go from year to year.

23 Q And could you comment on what those numbers say to you
24 about the shared audience between these two networks?

25 A I should explain at this point that, in addition to

1 comparing GSN with WE, we compared GSN with all the other, one at
2 a time, all of the other networks that Nielsen measures and found
3 out how much overlap there was in each case. This [REDACTED] was
4 at the very top in terms of what any network overlapped with GSN.
5 And similarly, the other numbers were at the very top in terms of
6 overlap with GSN. So, from that, I take that WE is one of the most
7 duplicated networks among GSN viewers.

8 MR. SCHMIDT: Your Honor, I would move this into
9 evidence.

10 MR. GORDON: No objection, Your Honor.

11 JUDGE SIPPEL: GSN Exhibit 315 is received.

12 (Whereupon, the document marked as GSN Exhibit No. 315
13 for identification was received in evidence.)

14 BY MR. SCHMIDT:

15 Q Mr. Brooks, you have covered how GSN and WE tv both
16 target female viewers, how they perform in terms of reaching female
17 viewers, and how they actually overlap. Did you evaluate the
18 content of the programming on the networks?

19 A Yes.

20 Q What did you see when you conducted that evaluation?

21 A After I had gone through this data and seen how similar
22 the audience profiles were and how much overlap there was, I then
23 looked at the programming to see if there might be an explanation
24 for that. I have done a great deal of program research in my
25 career through product tests and focus groups and surveys to find

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1 out what it is that draws certain types of viewers to certain types
2 of programs.

3 And in evaluating the programming on GSN, I found that
4 many of the elements of that programming were very similar to the
5 elements of WE tv viewing. Do you want me to go into that?

6 Q Sure.

7 A First of all, they're both involving real people.
8 They're both non-scripted. They're both in essentially real time,
9 which means it is not like a documentary that is edited down;
10 rather, you are seeing what progresses over a span of time.

11 And they both include, many of the shows, not all, but
12 many of the shows include elements having to do with family
13 dynamics, having to do with romantic relationships. And that, too,
14 was similar on the programming on the two networks. Those are all
15 elements that are of great interest to women, in my experience, and
16 a reason, an underlying reason why these two networks are
17 duplicates.

18 Q We talked earlier about the fact that ratings data was
19 not available for Wedding Central. Just to I think reiterate
20 something, I think you said your views on the programming that you
21 just discussed with respect to WE and GSN also apply to Wedding
22 Central?

23 A Yes, because the programming of Wedding Central was
24 programming from WE tv. So, it is the same show, the same shows.

25 Q The judge heard from --

1 JUDGE SIPPEL: Wait a minute. You said non-scripted and
2 family dynamics. Wasn't there a second one? I missed it if there
3 --

4 THE WITNESS: Yes, non-scripted --

5 JUDGE SIPPEL: Yes.

6 THE WITNESS: -- real ordinary people.

7 JUDGE SIPPEL: Real ordinary people? Okay.

8 THE WITNESS: And real time.

9 JUDGE SIPPEL: And real time. By ordinary people, you
10 mean not actors?

11 THE WITNESS: Non-professionals.

12 JUDGE SIPPEL: Not actors? Okay. Non-professionals.

13 Thank you.

14 THE WITNESS: The viewers I found, if I could add to
15 that, the viewers that I found in my research tend to relate to
16 people like themselves. Therefore, if they see people like
17 themselves on the air as opposed to a professional actor, that
18 increases their attraction to that program.

19 JUDGE SIPPEL: Okay.

20 BY MR. SCHMIDT:

21 Q Let's move to a new topic. Did you look at, with respect
22 to advertising, whether GSN and WE tv focused on selling the same
23 target demographics?

24 A Yes, I did.

25 Q And I'm not going to go through it right now, but just so

1 we have it for the record, is that what you address on pages 15 to
2 16? Let's just take a look at it, just so we have it, pages 15 to
3 16 of tab 2, Exhibit 300, your report, this idea that they target
4 the same advertising demographics?

5 A Yes. The chart on the page, at the top of page 16,
6 addresses that directly for GSN.

7 Q Is that the chart that appears here in paragraph 24?

8 A Yes, that's correct.

9 Q I'd like to show you a document --

10 JUDGE SIPPEL: That's taken from Nielsen data? Is that
11 right?

12 THE WITNESS: No. This is --

13 JUDGE SIPPEL: I'm on - go ahead.

14 THE WITNESS: Sorry.

15 JUDGE SIPPEL: I'm on page 15. Where are you?

16 THE WITNESS: Sixteen.

17 JUDGE SIPPEL: Oh, my mistake. Sixteen?

18 THE WITNESS: The small chart at the bottom.

19 JUDGE SIPPEL: I see it. I see it. And where does that
20 data come from?

21 THE WITNESS: Those are the Nielsen age categories that
22 are most often guaranteed by GSN in their advertising sales in the
23 year 2010.

24 JUDGE SIPPEL: Okay.

25 THE WITNESS: All sales, almost all sales are on the

1 basis of these age categories that Nielsen establishes, and there
2 are many, many of them. But these are the [REDACTED] that they most
3 often sold.

4 BY MR. SCHMIDT:

5 Q To speak to His Honor's question, let's look at one of
6 the documents that you cite on page 16. I believe you cite it in
7 your footnote, GSN Exhibit 140. That appears as tab 8 of your
8 binder. If you could flip to tab 8 of your binder, GSN Exhibit
9 140?

10 Is this one of the documents that you cite in support of
11 your views regarding targeting the same advertising demographics?

12 A Yes, it is.

13 Q Look at the cover. It's an email dated March 22nd, 2011
14 between several individuals in the Research Department at the
15 Rainbow Networks. And do you see that attached to that is a list
16 of data entitled, "WE Target Account Master List," with the dates
17 running from the fall of 2011 up through spring 2011.

18 A Fall of 2010.

19 Q Thank you. Yes, fall of 2010 up through the spring of
20 2011. Is that what this is?

21 A Yes.

22 Q Okay. If you look at the --

23 JUDGE SIPPEL: Where is that? I'm missing this.

24 MR. SCHMIDT: It should be tab 8, right behind the email,
25 Your Honor.

1 JUDGE SIPPEL: Oh, I see. Yes, okay.

2 MR. SCHMIDT: Thank you.

3 BY MR. SCHMIDT:

4 Q So, if you look at the table, there is a column; it is
5 the one, two, third column from the right that says, "Buying Demo".
6 Is this that target sales demographic?

7 A Yes, it's what I understand it to be.

8 Q And as I read down that column, [REDACTED], it looks
9 like there's [REDACTED]

[REDACTED] and I could go on and keep reading through it.
11 But, hopefully, it is a mix of, continuing on to page 5, of women
12 demographics and adult demographics. Do you see that?

13 A Yes, I do.

14 Q Is it surprising to you that WE tv would be selling on
15 the basis of adults and not just women sales demographics?

16 MR. GORDON: Objection. This isn't in his report.

17 MR. SCHMIDT: Yes, it is. It is cited in footnote --

18 MR. GORDON: And he explained why WE tv has adult -- he
19 explains why WE tv is adults.

20 MR. SCHMIDT: At page 16 of this report, he says, "WE,
21 likewise, appears primarily to have targeted all four of these
22 demographic categories." And then, he cites this very topic.

23 MR. GORDON: Okay.

24 MR. SCHMIDT: And then, he says in the footnote, "Any
25 suggestion by Cablevision experts that, because GSN sold

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1 advertising on the basis of persons" --

2 MR. GORDON: Okay. I got it. Thanks.

3 BY MR. SCHMIDT:

4 Q So, back to my question, Mr. Brooks, is it surprising to
5 you that, when you look at a target account master list like this
6 for WE tv, that you see a mixture of them targeting women in a
7 specific age demographic and adults in a specific age demographic?

8 A Not at all. I would be surprised if they didn't.

9 Q Why is that?

10 A Well, I have a good deal of experience at Lifetime, which
11 is a women's network, and I have found that many national
12 advertisers which want to reach a broad audience, men and women,
13 for their products, nevertheless, because they are such large
14 advertisers, they want to be on women's networks and men's networks
15 as well.

16 So, when they came to a network like Lifetime or like WE
17 or like GSN, they would say, "We know that you're women-skewed, but
18 we want to guarantee our target against persons" -- against persons
19 -- "because that's our target." And the network, of course, would
20 comply with that. That was a major factor at Lifetime, and it's
21 apparently a major factor at WE as well.

22 Q Okay. Based on data like this and other data, do you
23 have a view as to whether WE tv and GSN and Wedding Central compete
24 for similar advertising demographics?

25 A Yes, I think this confirms that they do.

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1 Q Did you examine survey data on GSN's value to a cable
2 company like Cablevision?

3 A Yes.

4 (Whereupon, the document was marked as GSN Exhibit No.
5 316 for identification.)

6 BY MR. SCHMIDT:

7 Q Let's look at tab 9, if we could, which we have marked
8 for identification as GSN 316. And it says, "Beta Viewer
9 Satisfaction Measures, 2008 to 2010 Average". What is "Beta Viewer
10 Satisfaction Measures"?

11 A Beta Research is a company that has been around for about
12 40 years, and it is the principal company giving neutral and
13 partial measurements of the value of specific networks to viewers
14 of those networks. It has a number of reports, but that's the one
15 that is referenced here.

16 Q What does this data tell you about GSN and WE tv?

17 A This tells me that during the 2008-2010 frame, averaging
18 those latest three reports at that time, that GSN and WE tv were
19 very closely matched by viewers on measures such as satisfaction,
20 program quality, enjoyment of cable, those kinds of things; and
21 that on the rather important measure of how much value in dollars
22 viewers attributed to each network, that GSN was actually given a
23 somewhat higher dollar value, \$1.51, as compared to the value which
24 WE viewers attributed to WE, which was \$1.34.

25 Q Let's move to a new topic, Mr. Brooks. Are you familiar

1 with a concept called loyalty in the context of viewers of
2 television channels?

3 A Yes.

4 Q Tell us what you mean when you used the word "loyalty" in
5 that context.

6 A Loyalty, or passion as it is sometimes expressed, is the
7 degree to which or the strength with which viewers value that
8 channel. And that, in my experience, has been important to
9 networks, but also to MVPDs because they not only want a large
10 audience, but they want an audience that wants that channel very
11 much and will stick with them if they are given that channel and
12 potentially buy other products, of course, from the MVPD.

13 Q Did you see data that specifically spoke to the loyalty
14 of GSN customers in the context of the retier?

15 A Yes, I saw several pieces of data to that point.

16 MR. SCHMIDT: Before we turn to that, I would move
17 Exhibit 316 into evidence, if I may, Your Honor.

18 MR. GORDON: No objection.

19 JUDGE SIPPEL: GSN Exhibit 316 is received.

20 (Whereupon, the document marked as GSN Exhibit No. 316
21 for identification was received in evidence.)

22 MR. SCHMIDT: Okay.

23 BY MR. SCHMIDT:

24 Q We have two documents, Mr. Brooks, behind Exhibits 10 and
25 11 that the judge has seen relating to some of the customer

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1 complaints that Cablevision received in the wake of the retiering?

2 Let me jump ahead, if I may, in the interest of time, to
3 Exhibit 11, to tab 11 --

4 A All right.

5 Q -- which is GSN Exhibit 132. It's an email from Kathleen
6 Mayo in Cablevision's Consumer Department to John Bickham. And if
7 you turn to the second page of the document, she is forwarding an
8 email from Rocky Boler, who is also in Customer Service, to various
9 people in Customer Service and Government Business.

10 And Mr. Boler states that, as of about a week after the
11 tiering decision, they had received [REDACTED] [REDACTED] [REDACTED]
12 regarding GSN, and Cablevision had. Do you see that?

13 A Yes, I see that.

14 Q Can you comment on that reaction?

15 A In my experience, that is an extraordinarily-high
16 reaction against a dilution of a channel from the lineup where
17 viewers were used to seeing it. I've seen cases in my experience
18 where a handful of complaints could lead to a change in action by
19 the MVPD. So, certainly [REDACTED] --

20 JUDGE SIPPEL: So, how would you characterize a handful?
21 What number would you ascribe to a handful.

22 THE WITNESS: A dozen.

23 JUDGE SIPPEL: A dozen?

24 THE WITNESS: Ten.

25 JUDGE SIPPEL: Ten?

1 THE WITNESS: Ten or a dozen, yes.

2 BY MR. SCHMIDT:

3 Q Final topic, Mr. Brooks: did you evaluate how the
4 tiering affected by GSN's and WE tv's performance in the New York
5 market?

6 A The tiering decreased GSN's audience and ratings
7 considerably, the tiering did. And it did increase the audience to
8 WE tv, along with the audience to a lot of those networks.

9 Q Look with me, if you would, at tab 12.

10 A Yes.

11 Q This, as I understand it, is post-tiering ratings data in
12 the New York DMA for both GSN and WE tv. Could you walk me and the
13 judge through what this demonstrates?

14 A Well, this is pre- and post-.

15 Q Okay.

16 A The second quarter of 2010, which is actually the data
17 you saw earlier, is a clean quarter where there was full
18 distribution of, or potentially full distribution of GSN in the
19 second quarter of 2010. The same quarter of 2011 is the first
20 clean quarter after the tiering which took place in the midst of
21 the first quarter.

22 And what it shows is that on GSN, which is the top block
23 of numbers here, among all of those four principal sales
24 demographics, [REDACTED], GSN in the New York market
25 declined anywhere from [REDACTED]. At the

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1 same time, WE tv over the same period increased by ■ ■ ■
2 ■ ■ ■, depending on the demographic.

3 (Whereupon, the document was marked as GSN Exhibit No.
4 317 for identification.)

5 BY MR. SCHMIDT:

6 Q In your opinion, does this data speak to -- that we have
7 marked for identification as Exhibit 317, does this data speak to
8 the networks being similarly-situated?

9 A Yes, in the sense that a change in one, a decline can
10 trigger or appear to trigger an increase in the other. That would
11 indicate, again, that they're closely related to each other in
12 audience.

13 MR. SCHMIDT: Your Honor, we would move Exhibit 317 into
14 evidence.

15 MR. GORDON: No objection, Your Honor.

16 JUDGE SIPPEL: 317 is received. GSN 317 is received in
17 evidence.

18 (Whereupon, the document marked as GSN Exhibit No. 317
19 for identification was received in evidence.)

20 MR. SCHMIDT: And on that very high note, I will conclude
21 my direct examination.

22 JUDGE SIPPEL: Are you tendering the witness for cross?

23 MR. SCHMIDT: I am, Your Honor. Thank you.

24 THE WITNESS: Your Honor, may I follow your example and
25 take my jacket off? It's getting a little bit warm.

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1 JUDGE SIPPEL: Sure, you may.

2 Let's go off the record just a minute.

3 (Whereupon, the foregoing matter went off the record at
4 10:13 a.m. and went back on the record at 10:14 a.m.)

5 JUDGE SIPPEL: We're all set. Let's go.

6 CROSS-EXAMINATION

7 BY MR. GORDON:

8 Q Good morning, Mr. Brooks. My name is Andrew Gordon. We
9 have not met before, but we apologize; we are going to try to have
10 somebody different examine you each time you sit in the chair.

11 (Laughter.)

12 A That's all right. That's all right.

13 Q I want to start with your discussion of programming. And
14 I take it, based on your evaluation, there's no doubt in your mind
15 that WE is a women's network?

16 A That is correct.

17 Q Okay. And if I use throughout this examination the
18 phrase "women's network" or "network for women," you'll understand
19 we're talking about the same thing, correct?

20 A Yes. And I should say that when you say "a woman's
21 network," I'm interpreting that to mean a network that appeals
22 primarily to women.

23 Q Okay. And I take it, based on your review, you feel the
24 same way about GSN, that that is also a network that appeals to
25 women?

1 A That is correct.

2 Q Okay.

3 JUDGE SIPPEL: Let me ask you this question: is there a
4 difference between, in your answer to that one, is there a
5 difference between appealing to women and skewing towards women?

6 THE WITNESS: They're virtually the same thing. They are
7 very closely related.

8 JUDGE SIPPEL: Thank you.

9 BY MR. GORDON:

10 Q And in your report and in your testimony today you have
11 provided a general overview of the programming on both of these
12 networks, GSN and WE tv, correct?

13 A That's correct.

14 Q And that's an important component of your analysis which
15 leads you, in part, to say these are similarly-situated networks?

16 A It's supportive of the Nielsen data that I examined.

17 Q Support. So, let me start there. And again, you've said
18 you are familiar with the programming on these networks. I believe
19 it was a combination of your professional work in the industry and
20 as coauthor of your book, correct?

21 A That's correct.

22 Q So, I want to have you -- well, before I get there, I
23 believe in your report in paragraph 9 -- and you can check it, if
24 you would like --

25 JUDGE SIPPEL: What page is this, page 9?

1 MR. GORDON: Paragraph 9, Your Honor.

2 JUDGE SIPPEL: Paragraph 9?

3 MR. GORDON: Page 6.

4 THE WITNESS: Six and 7.

5 MR. GORDON: And are you there, Your Honor?

6 JUDGE SIPPEL: I am.

7 BY MR. GORDON:

8 Q And I think, if you look in that second line there, your
9 conclusion is, based on your evaluation, like GSN, WE tv targets
10 women by airing a range of women-oriented programs. Do you see
11 that?

12 A Yes, I do.

13 Q And you stand by that, correct?

14 A I do.

15 Q Okay. Now, sir, let me talk about what you did to
16 evaluate the programming on GSN and WE tv. In arriving at that
17 conclusion, sir, you did not conduct any systematic analysis of
18 GSN's programming over a period of time, correct?

19 A You'd have to define what you mean by a systematic
20 analysis of their programming.

21 MR. GORDON: Can I have his deposition binder, please?

22 Your Honor, may we pass out some binders?

23 JUDGE SIPPEL: For what purpose?

24 MR. GORDON: We have his deposition transcript, exhibits,
25 and the like in there.

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1 JUDGE SIPPEL: Oh, the type that Mr. Cohen used?

2 MR. GORDON: The type and size.

3 JUDGE SIPPEL: They're referred to colloquially as the
4 "big binders"?

5 MR. GORDON: Yes, and Mr. Brooks should take no offense.

6 (Laughter.)

7 JUDGE SIPPEL: You look like you'll have even bigger
8 ones. Mr. Brooks, so far, you're ahead I think in terms of -- but,
9 see, this is the weight of the evidence.

10 (Laughter.)

11 So far, you've got the heaviest binder.

12 BY MR. GORDON:

13 Q In the back of that binder, there is a label "Brooks
14 Deposition Transcript 2013".

15 JUDGE SIPPEL: Do you see it? Yes. Way, way --

16 THE WITNESS: Yes, I see that way in the back.

17 BY MR. GORDON:

18 Q Way in the back. And if you turn to page 339, sir, of
19 that transcript --

20 JUDGE SIPPEL: They always do it this way. They always
21 do this to you, and you start at the back and you have to move
22 forward.

23 2013 now we are?

24 MR. GORDON: 339, Your Honor.

25 THE WITNESS: Those are the numbers in the top corner.

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1 MR. GORDON: The 2013 transcript. Do you have it?

2 JUDGE SIPPEL: I have it. And the witness is looking
3 for?

4 MR. GORDON: 339.

5 THE WITNESS: Yes.

6 BY MR. GORDON:

7 Q And if you go to line 6, Mr. Cohen was asking you about
8 what you did to review the programming.

9 JUDGE SIPPEL: All right. Just wait for me now. 339,
10 I've got it.

11 MR. GORDON: Okay. Line 6, Your Honor.

12 JUDGE SIPPEL: Line 6, I do see that.

13 MR. GORDON: Okay.

14 BY MR. GORDON:

15 Q And Mr. Cohen asked, he said, "Let me see if I can be
16 more granular. Have you engaged in a systematic analysis of the
17 programming on GSN over a period of time?"

18 Do you see that?

19 A It says "systemic," but I assume that's a typo versus
20 "systematic".

21 Q Yes, yes.

22 A Yes.

23 Q I don't think you could do a systemic analysis.

24 A Well, that is a word, but I'm not sure what it means in
25 this context.

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1 Q And your answer -- you didn't ask him there what he meant
2 by a systematic analysis -- your answer was, "Phrased that way, I
3 would say no." Correct?

4 A Right, right.

5 Q So, the answer to my question as to whether or not you
6 conducted any systematic analysis of GSN's programming over a
7 period of time would be no, correct?

8 A Phrased that way, yes.

9 Q Yes. Okay. Now, sir, you have read and reviewed the
10 analysis conducted by Mr. Egan in this case?

11 A Yes, I have.

12 Q Sort of a look-and-feel analysis.

13 A Yes, I have.

14 Q You haven't undertaken any similar type of analysis,
15 correct?

16 A I do not undertake look-and-feel analyses typically.

17 Q And in fact, your conclusions that GSN and WE tv are not
18 based on any review of the programming that was actually on these
19 networks in the periods in which you compared GSN and WE, correct?

20 A No.

21 Q Turn to page 57, sir.

22 JUDGE SIPPEL: Can I ask you this question? Would you
23 distinguish for me what you do that is different from a view-and-
24 feel-type analysis? Just how is your analysis different from that?

25 THE WITNESS: Certainly. What I do is base my opinions

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1 as much as possible on data, survey data, or aggregated stated
2 opinions or viewers in focus groups and surveys.

3 Look-and-feel I take to mean a personal subjective
4 analysis, absent input from viewers or absent data from Nielsen;
5 just impressionistic data, impressionistic opinions without any
6 particular basis in data. And that's not what researchers
7 typically do.

8 JUDGE SIPPEL: Well, except for the last thing you said,
9 fair enough. I mean, that tells me what the difference between the
10 two is, as you see it. So, I know better now where you're coming
11 from.

12 THE WITNESS: Sure.

13 JUDGE SIPPEL: Go ahead.

14 BY MR. GORDON:

15 Q And just to follow up on the judge's question, viewing
16 programs from years past on GSN is not an underpinning of your
17 analysis, correct?

18 A Well, it's part of it. I certainly watched those
19 programs over the years, both on GSN and when they originally ran
20 in most cases.

21 Q Okay. If you turn to page 58 of your transcript, sir --

22 A Yes, I have that.

23 JUDGE SIPPEL: What's the page again?

24 MR. GORDON: Fifty-eight, Your Honor.

25 JUDGE SIPPEL: That's the little binder.

1 MR. GORDON: No, in the big binder. I'm sorry.

2 JUDGE SIPPEL: The big binder?

3 MR. GORDON: Right on the document you're at, Your Honor,
4 page 58 of that transcript.

5 JUDGE SIPPEL: We're in 2013?

6 MR. GORDON: Yes, sir.

7 JUDGE SIPPEL: Fifty-eight of this binder? Okay. I've
8 got it.

9 BY MR. GORDON:

10 Q And if you look, you're being asked whether you reviewed
11 programming of GSN.

12 JUDGE SIPPEL: What line?

13 BY MR. GORDON:

14 Q And if you look at line 3 -- I'm sorry -- 2, you're asked
15 at which networks of GSN. And if you go down to line 10, you see,
16 "Also, again, this is materials relied on. My viewing of programs,
17 particularly programming from years past on GSN was not an
18 underpinning of an analysis here."

19 Do you see that?

20 MR. SCHMIDT: I object, Your Honor.

21 JUDGE SIPPEL: What basis?

22 MR. SCHMIDT: It's a different context he is being asked
23 about here and that he is being asked about on the stand.

24 JUDGE SIPPEL: Well, is that right?

25 MR. GORDON: I don't think so, Your Honor.

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1 JUDGE SIPPEL: Well, let the witness -- can you answer
2 that question?

3 THE WITNESS: Yes. I believe this is referring, if you
4 go back --

5 JUDGE SIPPEL: Now when you say "this," tell me what
6 "this" is.

7 THE WITNESS: This is referring to a set of DVDs.

8 JUDGE SIPPEL: No, tell me exactly what the "this" is,
9 what page and what line.

10 THE WITNESS: On page 57, the prior page to the one that
11 we're being directed to, on page 57 --

12 JUDGE SIPPEL: Yes. Line what?

13 THE WITNESS: On line 22, it says, "Did you view any
14 programming of GSN and WE in connection with the preparation of
15 this report?"

16 Then, on line 25, I say --

17 JUDGE SIPPEL: And your answer is what?

18 THE WITNESS: A large set of DVDs.

19 JUDGE SIPPEL: Okay. Then, go ahead.

20 THE WITNESS: And then, the questions that follow on page
21 58 refer to that set of DVDs, or at least they did in my mind.

22 BY MR. GORDON:

23 Q Sir, let's back up to line 13 and let's put this in
24 context for the judge.

25 JUDGE SIPPEL: Now this is all 2013 testimony?

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1 MR. GORDON: Yes.

2 BY MR. GORDON:

3 Q You were asked whether or not your conclusion in line 13
4 was based on any way on a review of the programming that was
5 actually on the networks in the periods that you compare between
6 GSN on the one hand and WE on the other. After the objection, your
7 answer was, "No. As I said, it's based on Nielsen demographics."

8 That was truthful then, correct?

9 MR. SCHMIDT: And I'll object again, Your Honor. He's
10 missing the context.

11 MR. GORDON: Your Honor --

12 JUDGE SIPPEL: Well, it speaks for itself, does it not?
13 I mean, I'm looking at the transcript. But I'm being misled by
14 this?

15 MR. SCHMIDT: Well, just because I think the prior
16 question and answer gives the context he's talking about.

17 MR. GORDON: Your Honor, if Mr. Schmidt wants to clean it
18 up on redirect, he can. But if he feels more comforted with us
19 reading into the record the prior Q&A --

20 MR. SCHMIDT: I would. Thank you.

21 MR. GORDON: Okay. I will do that.

22 BY MR. GORDON:

23 Q Page 56, question, line 21: "Now, in connection with
24 this report, was it important for you to know what was on GSN and
25 WE for the periods for which you concluded that the networks appeal

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1 to the same or similar audiences?"

2 Page 57, your answer, "The underpinnings of my conclusion
3 that they appeal to similar audiences was based on Nielsen analysis
4 primarily, not on looking at their schedules. You were asking if
5 I knew their schedules and looked at them. And, yes, I followed
6 those schedules. But now, you've phrased the question in terms of
7 my conclusion as to who they were appealing to, and that is based
8 primarily on Nielsen information."

9 Did I read that accurately, sir?

10 A Yes.

11 Q Okay.

12 A And I think that's consistent with what I said earlier.

13 Q Yes. I'm not saying it wasn't. Mr. Schmidt wanted me to
14 read it.

15 And, sir, the next question, just to be clear, was
16 whether you reviewed programming that was actually on the networks
17 in the periods you compare, and your answer was, "No. It was based
18 on Nielsen demographics." Correct?

19 A That refers specifically to the DVDs. This was the
20 latter part of a long discussion that goes back on page 53, 55, 54.

21 Q Sir, you --

22 JUDGE SIPPEL: You're going into something that you don't
23 want to go into?

24 THE WITNESS: No. I'm trying to explain why the answer
25 to the specific question that you've pulled out is part of a much

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1 longer discussion where I talk about other things that I looked at,
2 other programming.

3 BY MR. GORDON:

4 Q Sir, there came a time when you were writing this report,
5 correct?

6 A Yes.

7 Q And you were describing the programming, right?

8 A Yes, that's right.

9 Q Now you received DVDs from programming on GSN, correct?

10 A Among other things, yes.

11 Q You did not review those DVDs until after you drafted
12 your report, correct?

13 A That's correct, the DVDs, yes.

14 Q Yes. And, in fact, you did not even review the DVDs you
15 received containing the WE shows, correct?

16 A Well, I did, but after that particular report.

17 Q Sir, take a look at page 61.

18 JUDGE SIPPEL: I'm sorry, I didn't mean to cut you off,
19 sir, but we do have to keep focused on the task at hand, and it can
20 get carried away if we broaden the question too much.

21 THE WITNESS: Right.

22 JUDGE SIPPEL: Your attorney, if the attorney is going to
23 be examining you on redirect, that may be a different approach; it
24 may be a different story. Right now, stay with the cross-
25 examination of Mr. Gordon.

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1 THE WITNESS: Okay.

2 BY MR. GORDON:

3 Q Look on page 61, sir. Let me see if I can refresh you as
4 to what you did. Line 4, are you there?

5 A Yes.

6 Q "Did anyone give you a DVD of shows that are on WE?"

7 Answer: "No. I'm just thinking I want to answer this
8 fully. No, I don't believe I got any DVDs from WE."

9 Right?

10 A That's correct.

11 Q So, when you came up with your conclusions about
12 programming on WE in this report, that was without the aid of
13 reviewing a DVD of shows on WE tv, correct?

14 A As of -- no, wait a minute. That's correct, as of 2013,
15 it was without reviewing DVDs of WE programming.

16 Q And the same was true of Wedding Central, correct?

17 A Yes, of course, for the DVDs and as of 2013, yes.

18 Q Okay. And the reason why you didn't review those DVDs is
19 because your analysis is based on Nielsen information, not a review
20 of the programming, correct?

21 A No, that's not correct.

22 Q Sir, you did not have any conversations with anyone about
23 GSN's programming strategy, correct?

24 A GSN's programming strategy? I saw documents to that
25 effect, but I don't recall any conversation about it.

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1 Q You didn't talk to anybody at GSN about their
2 programming, correct?

3 A That is correct.

4 Q And you certainly didn't talk to anybody at WE about
5 their programming?

6 A That is correct.

7 Q That was not relevant to your analysis, correct, speaking
8 to those people?

9 A Speaking to those people was not, that's correct.

10 Q Okay. Now, sir, you have written a book, and I would
11 like to talk to you about that book. And we actually, you'll be
12 happy to know we have bought copies of it.

13 A That makes me very happy.

14 (Laughter.)

15 Q You're a richer man, but we bought them secondhand.

16 (Laughter.)

17 JUDGE SIPPEL: This is not going to be offered into
18 evidence? Or it is going to be offered into evidence?

19 MR. GORDON: I'm sorry, we --

20 THE WITNESS: And I do thank counsel.

21 (Laughter.)

22 BY MR. GORDON:

23 Q Well, I've been told we bought it on Amazon. So, I'm not
24 sure that you're benefitted one way or the other.

25 Now, sir, this book is a --

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1 (Telephone rings.)

2 JUDGE SIPPEL: I'm sorry.

3 MR. GORDON: I'm sorry, Your Honor.

4 JUDGE SIPPEL: I'm just turning it off. I'm sorry. It
5 is my fault, my bad.

6 Let's go.

7 MR. GORDON: Okay.

8 BY MR. GORDON:

9 Q And although we don't have a sticky on it, Your Honor,
10 for the record, this is -- oh, it's CV 816.

11 (Whereupon, the document was marked as CV Exhibit No. 816
12 for identification.)

13 JUDGE SIPPEL: Oh, you have it right here?

14 MR. GORDON: Yes.

15 BY MR. GORDON:

16 Q This is a book; you authored this book. And on your
17 direct, you said it's basically a widely-used encyclopedia of
18 television programs, correct?

19 A Yes, that's correct.

20 JUDGE SIPPEL: 816, this is, yes, this is a Cablevision
21 exhibit?

22 MR. GORDON: Yes, Your Honor.

23 JUDGE SIPPEL: Okay. I just want to get it marked on the
24 tab on the sticky. Okay, CV Exhibit 816.

25 Go ahead, sir.

1 BY MR. GORDON:

2 Q And you would agree with me it's widely acknowledged as
3 a leading resource of its type?

4 A Yes.

5 Q Okay. And so, what you do in this book with regard to TV
6 networks and shows, as you write in your preface -- and we don't
7 have to look at it -- but you used, to quote a phrase from that
8 show, you "give them just the facts, ma'am," right?

9 A Well, I give them the content of the show as described by
10 me, but it is basically factual, yes, that's true.

11 Q Right. And it is based on your review of the programming
12 and the networks at that time that those shows and networks were on
13 the air?

14 A Yes, a long watching of TV.

15 (Laughter.)

16 Q Okay. And a lot, a lot of TV. You have a job my 9-year-
17 old would envy, in fact.

18 (Laughter.)

19 And you, obviously, tried to be accurate in your book?

20 A Yes, absolutely.

21 Q And as of today, you stand behind everything written in
22 the book?

23 A Well, that's a fairly sweeping statement. Some of these
24 were written in the 1970s, some of these writings, but as far as I
25 know, everything here, yes, I would stand behind.

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1 Q Right. And in fact, in your preface you write, to the
2 best of your knowledge, it is 99 percent accurate, correct?

3 A I don't know if I said that, but, yes --

4 Q You'd take my word for it?

5 A I will take your word for it.

6 Q And you have no doubt, as you sit here today, that as far
7 as you know, it is 99 percent accurate?

8 A Yes.

9 Q Okay.

10 JUDGE SIPPEL: Is this what you got the Grammy for?

11 THE WITNESS: No. I got the American Book Award for
12 that.

13 JUDGE SIPPEL: Oh, okay. All right. All right. You're
14 answering my questions.

15 BY MR. GORDON:

16 Q Now, sir, just so there's no doubt, there were multiple
17 editions of this book, but it was authored you were retained to do
18 work by GSN in this case?

19 A Yes. The edition you're looking at actually came out in
20 2007.

21 Q Okay. And in this book you describe, when you're talking
22 about networks, that certain networks appeal to women, correct?

23 A In some cases, yes.

24 Q And in fact, you refer to various networks in your book
25 as women's networks or networks for women, right?

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1 A On occasion, yes.

2 Q Okay. Well, let's look at some of those occasions. If
3 you could turn to page 1041?

4 JUDGE SIPPEL: Is this the latest edition?

5 THE WITNESS: It is.

6 MR. GORDON: Thank you, Your Honor. I should have
7 pointed that out.

8 JUDGE SIPPEL: 1041?

9 MR. GORDON: 1041. 1041 of the book, Your Honor, on the
10 lower righthand corner.

11 Is everybody with me? Have you got it?

12 JUDGE SIPPEL: I'm with you.

13 MR. GORDON: Okay.

14 BY MR. GORDON:

15 Q And there's an entry for Oxygen, right?

16 A Yes, that's right.

17 Q And then, next to Oxygen, you write "Network," and that
18 identifies that Oxygen is a cable network, correct?

19 A As opposed to a program, yes.

20 Q As opposed to programming. And then, in your parentheses
21 in italics you write, "General entertainment cable network," and
22 that is to give sort of the overarching genre of the programming,
23 if you will?

24 A That's correct.

25 Q Okay. And then, if you look in the first sentence, you

1 say Oxygen is a women's network that was founded with a great deal
2 of fanfare in 2000 to compete with long-time category leader
3 Lifetime, right?

4 A Yes.

5 Q Okay. And then, if you go down below -- so, first, you
6 describe Oxygen generally as a women's network, right?

7 A Yes.

8 Q And then, if you go down below to the carrier paragraph,
9 the one that starts, "Alas," on the bottom of that page --

10 A Yes.

11 Q -- you describe the programming on Oxygen, and you noted
12 that "None of this attracted much of an audience. So, the internet
13 connection was subsequently downplayed and many of the original
14 programs were replaced by rerun but female-appropriate fare, such
15 as Xena: Warrior Princess, La Femme Nikita, Cybill, and Absolutely
16 Fabulous, right?

17 A Yes.

18 Q So, there, you get a little bit more specific in terms of
19 the programming and you make clear that not only was Oxygen a
20 women's network, but it ran female-appropriate programs on its
21 network, correct?

22 A Yes, that's correct.

23 Q Okay. And there are other examples in here of women's
24 networks, correct?

25 A Yes.

1 Q Okay. So, if we turn to 794 -- and let me know when
2 you're there, please.

3 A I'm there.

4 Q There is an entry for Lifetime.

5 MR. GORDON: And let's just let everybody catch up; 794,
6 on the lower lefthand corner, Your Honor.

7 JUDGE SIPPEL: I'm getting there. It is a big book.

8 MR. GORDON: A big book, a lot of entries.

9 JUDGE SIPPEL: I've got it.

10 BY MR. GORDON:

11 Q There's an entry for Lifetime. Do you see that?

12 A Yes, I do.

13 Q Okay. And there, you say, "The Lifetime cable network
14 offers programming of special interest to women." Right?

15 A Yes.

16 Q And that was correct while you were head of Research for
17 Lifetime, right?

18 A Yes.

19 Q Okay. And if you look in the second paragraph, you have
20 Lifetime there. You say, it starts, "Lifetime has produced a
21 substantial number."

22 Do you see that paragraph?

23 A Yes.

24 Q And if you go down after the list of programming, you
25 write, "The schedule also featured reruns of female-appeal network

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1 shows ranging from sitcoms such as the Golden Girls and The Nanny
2 to Desperate Housewives and Grey's Anatomy."

3 Do you see that?

4 A Yes.

5 Q So, again, up top, you describe it as a women's network,
6 correct?

7 A Yes.

8 Q And then, when you describe the programming, you note
9 that it has shows that appeal to women, right?

10 A Yes.

11 Q And one of them is the Golden Girls, and that has women
12 appeal to it, right?

13 A Yes.

14 Q Okay. Now, sir, if you turn to 1477 of the book, that's
15 on the lower left.

16 JUDGE SIPPEL: Say that again, just give me the number?

17 MR. GORDON: 1477, Your Honor.

18 JUDGE SIPPEL: Got it. I'm with you.

19 BY MR. GORDON:

20 Q Under W, there's a description for WE, Women's
21 Entertainment, correct?

22 A Yes.

23 Q The subject of our dispute?

24 A Yes.

25 Q And they have made it into your book. Lucky them.

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1 A Lucky them.

2 Q And you describe it in the first sentence, "This Women's
3 Network was originally launched as a movie channel called Romantic
4 Classics, a subsidiary of American Movie Classics, specializing in
5 romantic movies, dramas, and specials." Do you see that?

6 A Yes, I do.

7 Q So again, you start off by saying right up front just
8 like you did with Lifetime and Oxygen, this is a women's network,
9 correct?

10 A Yes, that's true.

11 Q And then if I look in the second paragraph, again just
12 like as you did with the others, you begin by talking about the
13 programming. Do you see that?

14 A The paragraph starting "In 2000"?

15 Q Yes.

16 A Yes.

17 Q And you begin that paragraph that saying, "In 2000, the
18 network was relaunched as WE Women's Entertainment, a full service
19 women's network with movies still constituting a major part of the
20 schedule." Do you see that?

21 A Yes, I do.

22 Q That's now the second time you've called it a women's
23 network, right?

24 A Yes.

25 Q And that, of course, is completely consistent with your

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1 testimony today that it is, in fact, a women's network then and
2 now?

3 A Yes, I agree.

4 Q And then you talk about the programming and you talk
5 about an original series as Cool Women. Do you see that?

6 A Yes, I do.

7 Q And that was a documentary about women, right?

8 A Yes.

9 Q And then you talk about some of the programs at Advice on
10 Entertaining. You talk about a show about shopping, a show about
11 winning women's rights. In other words, you were trying to paint
12 the picture that WE had programming that appeals to women, correct?

13 A Well, in that paragraph I'm describing specific shows.
14 I'm not talking about -- women may be part of the title, but I'm
15 not talking -- I'm talking what were the shows.

16 Q Okay, but they all appeal to women, right?

17 A I assume they do, yes.

18 Q And then you go on to talk about its original signature
19 series, Bridezillas. Do you see that?

20 A Yes, I do.

21 Q And that depicts out of control brides to be in the
22 frantic days leading up to their wedding, right?

23 A Yes.

24 Q And again, that you would agree with me is a show that
25 appeals to women?

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1 A Yes. I don't say it here, but I would assume that's
2 true.

3 Q Okay. Now, sir, let's go to page 515.

4 JUDGE SIPPEL: If you have an extra book, by the way,
5 there's two gentlemen behind you who would --

6 MR. GORDON: I don't, but they can read --

7 JUDGE SIPPEL: No, that's okay.

8 MR. GORDON: I believe in hands on education. Let me
9 know when everybody is at 515, Game Show Network.

10 JUDGE SIPPEL: I'm there.

11 BY MR. GORDON:

12 Q Are you there, Mr. Brooks?

13 A Yes, I am.

14 Q And there in your description of the Game Show Network,
15 you do not use the phrase Women's Network at all, do you?

16 A I would have to read it through to recall. I don't
17 believe so.

18 JUDGE SIPPEL: All right, just take your time and read it
19 to yourself and let us know when you're ready.

20 THE WITNESS: Correct, this is a description of the
21 programming.

22 BY MR. GORDON:

23 Q Well, sir, the other networks, you gave us a description
24 of the network generally, right, for Oxygen, Lifetime, and what you
25 said these were women's networks, correct?

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1 A In those cases, I did, yes.

2 Q And in this case for Game Show Network, you did not use
3 the phrase women's network, correct?

4 A In this case, I did not.

5 Q In this encyclopedia, you did not, correct?

6 A In this particular case, I did not.

7 Q In the encyclopedia of programming, the one that people
8 rely on for this sort of thing, remember, you told me that?

9 A "This sort of thing"?

10 Q Yes, for this type of analysis, understanding what these
11 networks are, right? This is an encyclopedia for understanding
12 what these networks are, correct?

13 A It's not an encyclopedia for what their skews are or what
14 their audiences necessarily are. It's what programming, when do
15 they run, what kinds of programming and what specific programs do
16 they run. That's what it is. So we're not uniform in doing that
17 in this case.

18 Q You thought it was important in describing Oxygen and
19 Lifetime to describe them as women's networks, correct?

20 A When I did those write ups, yes.

21 Q And in fact, you thought it was so important to describe
22 WE as a women's network that you used the phrase twice, correct?

23 A Yes.

24 Q And for Game Show Network, just so everybody is clear,
25 you do not use the phrase women's network or network for women

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1 anywhere, correct?

2 A Right, as I don't in many other write ups.

3 Q Correct, sir. Well, sure, you didn't use one for ESPN.
4 You didn't call that a women's network either, correct?

5 A Women's programs --

6 Q Sir --

7 MR. SCHMIDT: Your Honor, Your Honor, he can't interrupt
8 the witness. That's not appropriate.

9 JUDGE SIPPEL: Well, wait --

10 MR. SCHMIDT: He couldn't even get a word out.

11 JUDGE SIPPEL: Well, I don't think he finished his
12 question.

13 MR. SCHMIDT: He did if you read back the transcript.

14 MR. GORDON: Let's re-ask him.

15 BY MR. GORDON:

16 Q Sir, for ESPN, yes or no, you didn't describe that as
17 women's network either?

18 A No, of course not.

19 Q Now sir, you did not use the phrase because the Judge
20 asked you some questions about what you meant by a network that
21 appeals to women and whether it was the same as skewing to women
22 and you don't talk about that either with respect to Game Show
23 Network in this encyclopedia. You don't say it appeals to women.
24 You don't say it skews to women, correct?

25 A That's correct. I did not refer to the type of audience

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1 this draws.

2 Q Okay, you didn't think it was important, right?

3 A In describing the network, no.

4 Q Okay. And you didn't know it targeted women by airing a
5 range of women-oriented programs like you said in your direct
6 testimony that I showed to you earlier, correct?

7 A In this case I did not think that important, that's
8 correct.

9 Q And you didn't even say that it focused on women,
10 correct?

11 A No. Or correct, pardon me.

12 Q And what you do say about the Game Show Network if we
13 look in that first paragraph that it's a network for game shows,
14 correct?

15 A Yes.

16 Q And sir, you do not note in this excerpts on the Game
17 Show Network that its programming had elements of family dynamics
18 or romantic relationships, right?

19 A That's correct. I rarely go into that level of analysis
20 here.

21 Q Okay, sir. Let's put the book away and talk about what
22 you saw in the record as far as GSN. Did you recall ever seeing
23 any documents in which GSN described itself as a women's network?

24 A I recall seeing documents in which they describe their
25 target for various programs as women. Off the top of my head, I

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1 don't recall if I saw a sweeping statement about the network in
2 that form. I just don't recall.

3 Q Sir, in your binder, there's an Exhibit 48.

4 A This is the large binder?

5 Q Yes, it is.

6 JUDGE SIPPEL: CV or GSN?

7 MR. GORDON: I'm sorry, Your Honor, CV 48.

8 THE WITNESS: Yes, I see that.

9 BY MR. GORDON:

10 Q And if you turn to that document, Your Honor, it's at the
11 beginning. We try to make this as complicated as possible.

12 JUDGE SIPPEL: Okay, okay. It's consistent anyway.
13 CV 48. I've got it.

14 BY MR. GORDON:

15 Q And if you turn to page 3. Do you see that?

16 A Yes, I do.

17 Q There's a slide entitled GSN's unique position, typical
18 cable line up by genre, right?

19 A Yes.

20 Q And if you turn to the front cover, this is how GSN was
21 describing itself to Comcast, do you see that?

22 A Comcast Spotlight specifically.

23 Q Yes. That is the advertising arm of Comcast?

24 A That's correct.

25 Q And Comcast is the largest cable operator, correct?

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1 A Yes, that's correct.

2 Q And you see under Women's NT period, you understand that
3 stands for entertainment, correct?

4 A Yes, on the right.

5 Q There's Lifetime, right?

6 A Yes.

7 Q There's WE?

8 A Yes.

9 Q And there's Oxygen Channel, do you see that?

10 A And SOAPnet, yes.

11 Q Well, okay, and SOAPnet, sorry. SOAPnet wasn't around
12 when you wrote the latest edition of your book, correct?

13 A Actually, it was around at that time.

14 Q You just didn't write an entry on it.

15 A No, I believe I did have an entry on it.

16 Q You had an entry for SOAPnet, okay. Now with regard to
17 Lifetime, WE, and Oxygen that is completely consistent with your
18 book that they are women's entertainment networks, correct?

19 A It's how -- I describe their audience orientation in
20 those cases, yes.

21 Q So it's consistent?

22 A Yes, in terms of audience orientation, yes.

23 Q And with regard to Games there, there's GSN, correct?

24 A I'm sorry, you're referring to the book?

25 Q No, I'm referring to this document.

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1 A Oh, yes, yes.

2 Q See, under Games, GSN, that's also consistent with how
3 you described GSN in your book?

4 A Yes, sir.

5 Q You can put that away. Now sir, you examined programming
6 lineup, guides, etcetera, from GSN during the period about which
7 you opined, correct?

8 A Yes.

9 Q And you also looked at WE tv?

10 A Yes, I did.

11 Q Sir, I'd like you to turn to CV Exhibit 133 in your
12 binder. Are you there, sir?

13 A Yes, I am.

14 Q And there's -- if you turn the page to page 2 of 2,
15 there's a programming grid for GSN.

16 A Yes.

17 Q From October 25, 2010, do you see that?

18 A Yes, I do.

19 Q That's the re-tiering, before the re-tiering, correct?

20 A That's correct.

21 Q And you saw this document at your deposition, do you
22 recall?

23 A I believe so, yes.

24 Q And these types of programming schedules were relevant to
25 your analysis, correct?

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1 A Yes, they were.

2 Q Now, sir, if looking at this Exhibit 133, do you agree
3 with me that consistent with the encyclopedia that you authored the
4 vast majority of the schedule at least at this time was comprised
5 of game shows?

6 A Game shows of various types, yes.

7 Q Yes. But by game shows just so that we're clear, hosts,
8 studios, contestants, winners, losers?

9 A Yes, broadly.

10 Q And have you done any analysis before telling the Judge
11 that you've evaluated the programming to figure out what percentage
12 of shows that aired on Game Show Network in the relevant time frame
13 were game shows as you -- even broadly speaking?

14 A Well, I analyzed the schedules. However, not every show
15 is equal. Some are more higher viewing period. Some are marquees,
16 some aren't. So I don't take percentages of a schedule such as
17 this. However, I looked at schedules such as this and determined
18 that most of the programs were competition based game shows, if you
19 will, of one kind or another.

20 Q When you say most, you mean the vast majority, correct?

21 A Yes. There were some examples I think I cited that
22 diverged from that, but most were, yes.

23 Q Now have you looked at WE's schedule, sir?

24 A Yes.

25 Q Okay, if it helps I've put in front of you CV Exhibit

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1 188. Are you there?

2 A Yes, I am.

3 Q And sir, if I go to page 3 of 8 there --

4 MR. SCHMIDT: Which one?

5 MR. GORDON: 188, CV Exhibit 188, 3 of 8.

6 MR. SCHMIDT: Thank you.

7 BY MR. GORDON:

8 Q There's the October 2010 calendar. Are you on that page?

9 A It seems to be a specific week in October, yes.

10 Q 10/25/2010, do you see that?

11 A That's correct, yes.

12 Q That's the same date as the document we just looked at
13 for GSN.

14 A Right.

15 Q Apples to apples, right?

16 A Yes.

17 Q And sir, how many game shows do you see appearing on this
18 scheduling grid?

19 A In this particular week, I don't see any that I would
20 consider to be a game show per se.

21 Q In fact, if we look at this, there are movies, correct?

22 A There are a few, yes.

23 Q And those are scripted, correct?

24 A Yes.

25 Q Not like the unscripted you talked about in your direct

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1 testimony, correct?

2 A That's correct. They're on a few nights.

3 Q And there are sitcoms, correct?

4 A Yes, there are.

5 Q And that's also scripted, correct?

6 A That's true.

7 Q And if you look at Monday night, right, in prime time, we
8 see the Golden Girls, right?

9 A Yes.

10 Q And that's the entry you noted on was it Lifetime or
11 Oxygen?

12 A Lifetime around the Golden Girls for quite some period.

13 Q Right, and that's an example of a woman-appealing sitcom,
14 correct?

15 A Yes.

16 Q And do you know what Charmed is?

17 A Yes. That's a pop network, scripted dramedy, I guess
18 you'd call it.

19 Q Also it's about three sisters, correct?

20 A That's correct.

21 Q Appeals to women?

22 A Yes.

23 Q And do you see the Ghost Whisperer above it?

24 A Yes.

25 Q That's also scripted?

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1 A On Friday, yes.

2 Q Now have you done any analysis of WE schedule to figure
3 out what percentage of WE schedule were competition-based game
4 shows?

5 A I did not do the analysis in that form, no.

6 Q Now sir, if you go back to CV Exhibit 133 which was GSN's
7 schedule.

8 A Yes.

9 Q The first entry I see under Monday, 10/25, is Family
10 Feud. Do you see that?

11 A You're looking at 9 a.m.?

12 Q I'm looking at 9 a.m. Family Feud.

13 A Yes.

14 Q And it appears throughout the day, correct?

15 A Yes. It's one of their top shows.

16 Q That is -- I'm sorry?

17 A It's one of their top shows. I'm sorry.

18 Q And that top show was a game show, correct?

19 A It's a relationship game show I would say.

20 Q Okay. Now sir, do you still have your book?

21 A Yes, I do.

22 MR. GORDON: And Your Honor, I'm going back to the
23 encyclopedia, Your Honor. And I'm turning to page 450 of your
24 book.

25 JUDGE SIPPEL: That's Exhibit 816, CV 816. And what is

1 the page?

2 MR. GORDON: And Your Honor, I'm going to offer the book.

3 MR. SCHMIDT: No objection, subject to the suitable
4 royalty damage --

5 JUDGE SIPPEL: I'm sorry?

6 MR. SCHMIDT: No objection. Just to back up, no
7 objection.

8 JUDGE SIPPEL: Well, subject to bad joking, it's received
9 in evidence as CV Exhibit 816.

10 (Whereupon, the above-referred to document was received
11 into evidence as CV Exhibit 816.)

12 MR. GORDON: Thank you, Your Honor.

13 JUDGE SIPPEL: The page, please.

14 MR. GORDON: Page 450, Your Honor, on the lower lefthand
15 corner.

16 JUDGE SIPPEL: I'm set.

17 BY MR. GORDON:

18 Q Are you there, Mr. Brooks?

19 A Yes, I am.

20 Q And there's an entry for Family Feud, right?

21 A Yes.

22 Q And remember I had asked you before about the genre in
23 period italics?

24 A Yes.

25 Q And so this is how your book describes Family Feud as a

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1 quiz/audience participation show, correct?

2 A Yes, that's actually a Nielsen categorization that we use
3 widely for programs of this type.

4 Q Okay, so that's how Nielsen categorizes it, right?

5 A It did at the time, yes.

6 Q And that's how you characterize it in the encyclopedia?

7 A Yes. This was written in the '70s, yes.

8 Q And you do not have anywhere listed that this was a
9 relationship game show, correct?

10 A Well, I talk about its emphasis on families, that's my
11 reference to relationships.

12 Q But let me stick with my question and then we'll move on.
13 You did not call it a relationship game show, correct?

14 A I did not use that word, that's correct.

15 Q And that term appears nowhere in this encyclopedia, does
16 it?

17 A That I don't know. That's a very large encyclopedia.

18 Q Sir, if you go back to the schedule which hopefully you
19 still have out, the next entry is Card Sharks, correct?

20 A We're talking about GSN?

21 Q Yes.

22 A Yes.

23 Q I just want to go through this. That is not a
24 relationship game show, is it?

25 A I would not characterize it as such, no.

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1 Q That is a game show with a host and a studio and an
2 audience, contestants, a winner, a loser, right?

3 A It's based on card games so, yes.

4 Q Okay, and if we go down we have the \$25,000 Pyramid,
5 right?

6 A Yes.

7 Q That's not a relationship game show?

8 A Well, it's a celebrity and a civilian playing together,
9 so much of it is on the relationship between those two, how a
10 celebrity relates to a civilian and vice versa. But I would not
11 call it a relationship show per se.

12 Q Okay.

13 A Quasi.

14 Q So now you're calling it a quasi relationship show, sir?

15 A If you're asking me to describe the mechanics of the
16 show, yes.

17 Q Okay. Well, I'm asking you whether you characterize it
18 as a relationship show. You said no, you'd call it a quasi-
19 relationship show.

20 A That's how I would analyze it.

21 Q Okay. So let's look at how you analyzed it in the
22 encyclopedia if we can. Page 1437.

23 A 1437?

24 Q Yes, sir.

25 A This show changed its name several times.

1 Q The money got bigger, right?

2 A Yes, exactly.

3 JUDGE SIPPEL: 1437.

4 THE WITNESS: Bottom right.

5 JUDGE SIPPEL: I have it.

6 BY MR. GORDON:

7 Q Okay, and in your book you call it a quiz show, correct?

8 A Quiz, yes.

9 Q Quiz. A quiz game show.

10 A Well, I just say quiz in this case.

11 Q But you don't say it's a relationship -- that's not what
12 appears in the parentheses, right?

13 A I don't think I ever used that as a genre in italics.

14 Q Okay. And you don't call it a quasi relationship?

15 A No, I describe the content of the show.

16 Q And in fact, nowhere in your book in italics would I see
17 the word relationship or for that matter quasi relationship,
18 correct?

19 A I doubt that I would have used the term quasi
20 relationship. Whether I used relationship or not, I don't know
21 frankly. Again, it's a large book.

22 Q And if you look, sir, going back to the schedule the next
23 shows are the Match Game, correct?

24 A Yes.

25 Q And that's not a relationship show, correct?

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1 A Similarly, I would not characterize it that way, no.

2 Q And then we have the Newlywed Game. Do you see that?

3 A Yes, I do.

4 Q The Newlywed Game and that, sir, I take it from your
5 testimony you would call that a relationship show?

6 A Yes, that's how I would analyze that show.

7 Q And sir, if we turn to the entry for the Newlywed Game at
8 977, page 977, lower right hand corner.

9 A I'm there.

10 Q Again, you characterize this one as quiz audience
11 participation, correct?

12 A That's the Nielsen category, yes.

13 Q Nielsen doesn't characterize those as relationship shows,
14 game shows, correct?

15 A At this time they didn't. They now have a much more
16 complex description matrix. But yes, at this time, they did not.

17 Q Now, sir, if I go through the rest of the schedule,
18 again, let's start with Baggage. That was a game show?

19 A That I would call a relationship game show.

20 Q Okay, but it's a game show, right?

21 A Yes.

22 Q I mean when you talk about relationship game shows,
23 that's just a sub genre, right?

24 A It's a type of game show.

25 Q Okay, in other words, you wouldn't argue or dispute that

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1 Baggage or the Newlywed Game or even for that matter Family Feud
2 are game shows?

3 A I tend to call them these days competition, but yes, call
4 them game shows.

5 Q Okay. And if you look down, just going down Deal or No
6 Deal, a game show?

7 A Yes.

8 Q Catch 21, game show?

9 A I can't remember what Catch 21 is.

10 Q I'm still on Monday. I'm just going down the list.

11 A I'm trying to remember the show. I believe that's not a
12 -- what I would call a relationship game show.

13 Q But a game show?

14 A Yes, everything is sort of under the huge umbrella of
15 game show.

16 Q Everything on the schedule is under that umbrella, right?

17 A In this week, I believe it was. Again, they occasionally
18 had shows that aren't game shows at all, but usually it's some
19 variation of a game show, whether it's relationship or something
20 else.

21 Q Well, just so the record is clear, do me a favor and look
22 at Monday through Friday real quickly and tell me if you see
23 anything that does not fall under the umbrella of competition based
24 game show. That's what you said you want to call it, right?

25 A Yes, with a caveat that some of them are based on

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1 relationships and some aren't. Monday through Friday is all the
2 same. They strip their programs as most networks do, so it's the
3 same thing that you get on Monday on a Friday.

4 Q Take a look at Monday. Anything you see there that's not
5 a game show?

6 A Under that broad umbrella, no.

7 Q So 100 percent of the shows airing on Game Show Network
8 for Monday through Friday were in your mind game shows?

9 A Under a very broad umbrella, yes.

10 Q And that was not true of the WE schedule which we looked
11 at 188, correct?

12 A They were not game shows, that's correct.

13 Q That is the difference, you would give me that, correct?

14 A On that definition, yes.

15 Q Okay.

16 A Certainly.

17 Q Now, sir, if we look at the weekend, we see from 9 a.m.
18 through 9 p.m., a similar slate of game show programming, correct?

19 A Game shows of various stripes, yes.

20 Q Right, and then at 9 p.m. we get to Doubles Poker
21 Championship, do you see that?

22 A Yes, I do.

23 Q And from 9 p.m. to what appears to 2:30 a.m. looks like
24 there is nothing but poker on the Game Show Network, correct?

25 A That is -- I think it's 2:30. Yes.

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1 Q Yes. And you have a lot of expertise in TV, correct?

2 A I think so, yes.

3 Q And poker is not normally considered to be a women's
4 program, correct?

5 A That is correct.

6 Q Lifetime never showed poker, correct?

7 A It never showed -- well, let me think. I don't believe
8 it ever showed poker. It did show non-women shows on occasion.

9 Q And it continued on Sunday at 9 p.m., correct?

10 A Yes.

11 Q And do you know how long poker ran for in primetime plus
12 for GSN?

13 A I can't tell you exactly how many years. It was limited.
14 It's off now. And I do know that it was a shorter time on Sunday
15 than it was on Saturday, but I can't tell you the number of years
16 specifically.

17 Q If you look at CV Exhibit 138.

18 A 148? I'm sorry, which number?

19 Q 138.

20 A Yes.

21 Q Do you see the front page talks about High Stakes Poker,
22 Season 7?

23 A Yes.

24 Q See it ran for seven seasons?

25 A Apparently so, yes. Well, yes. Seasons, I'm not sure if

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1 that's the same as years, but yes, it says seasons.

2 MR. GORDON: Your Honor, I'm about to go to a new module
3 which should take some time, so it's up to Your Honor if we can
4 take a break or we can press on.

5 JUDGE SIPPEL: What do you mean by a module?

6 MR. GORDON: A new section, a new area of cross
7 examination. It should take some time.

8 JUDGE SIPPEL: How much time will the new module take?

9 MR. GORDON: At least an hour.

10 JUDGE SIPPEL: It's 10 after 11.

11 MR. GORDON: Whatever Your Honor wants to do. I can
12 press on if you'd prefer.

13 JUDGE SIPPEL: We're going to take a 15-minute break.
14 We'll come back at 25 after 11.

15 (Whereupon, the above-entitled matter went off the record
16 at 11:08 a.m. and resumed at 11:27 a.m.)

17 BY MR. GORDON:

18 Q Okay, I want to shift gears, Mr. Brooks, and talk about
19 your work in using Nielsen data, okay?

20 A All right.

21 Q You analyzed the audiences of both GSN and WE tv using
22 data from Nielsen, correct?

23 A That's correct.

24 Q Just so we're all clear, because Nielsen has come up,
25 that you were somebody who's an expert in this type of analysis,

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1 correct?

2 A I believe I'm very knowledgeable about it, yes.

3 Q Nielsen's the industry standard for the measurement of TV
4 in the U.S.?

5 A Measurement of TV audiences, yes.

6 Q I'm sorry. I meant to say TV audiences.

7 A Yes.

8 Q It's the industry standard, just so the record is clear,
9 for the measurement of TV audiences in the U.S.?

10 A Yes.

11 Q Impartial?

12 A Yes.

13 Q Accurate?

14 A I believe to the degree possible, yes.

15 Q That is for both big and small networks?

16 A Probably more so for big networks, but they strive to be
17 accurate for all that they can.

18 Q Okay, but it's reliable data, and you felt comfortable
19 using that data with respect to the years you used it for?

20 A I did.

21 Q Sir, we can do whichever you want, but I'm going to use
22 your report. You also have some charts in your book that may make
23 it easier to read. Let's use the small book for just a moment.

24 A Alright, first ---

25 Q Just to make sure I understand what we're looking at, if

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1 you turn to Tab 4 in the small book, in the one that Mr. Schmidt
2 gave you.

3 A Yes, I have that.

4 Q This is your National Audience Summary Chart behind Tab
5 4?

6 A Yes.

7 Q I believe you said, in words of substance, that these
8 numbers are stable, and they're similar, and that led you to
9 conclude, in part, that there was similarity between the two
10 networks?

11 A Yes.

12 Q Now sir, here you look at households and women 18 and
13 plus, correct?

14 A That is correct.

15 Q Just at the outset, if I look at the National Audience
16 Summary with respect to both households and women 18 plus, the
17 national audience for GSN, in terms of measuring it by households
18 and women 18 plus, both before the retiering and after the
19 retiering, GSN outperformed WE tv.

20 A Moderately, yes.

21 Q Moderately or not, they outperformed -- before the
22 retiering they were outperforming.

23 A Yes, that's true.

24 Q And after the retiering, they still were outperforming.

25 A That is true.

1 Q As measured by, for instance, the household metric, they
2 were at a [REDACTED] in 2009 and a [REDACTED] in 2013, right?

3 A Well, they seem to have declined in the interim of that,
4 but yes.

5 Q Right, but you would agree with me that those
6 differences, at least according to your direct written testimony,
7 are so small as to be meaningless?

8 A This is on the national -- I said that for the local
9 sample. On the national sample, which is based on [REDACTED] plus
10 homes, they take on a bit more credibility.

11 Q Okay. Now sir, networks typically do not use household
12 ratings or women 18 plus ratings to market their networks to
13 advertisers, correct?

14 A That is correct, for households.

15 Q You've seen plenty of documents in this case where we and
16 GSN were presenting demographics to various constituencies, be they
17 advertisers or other cable operators. They typically use the age
18 ranges, correct?

19 A For advertising purposes, yes.

20 Q Okay. That's because those age ranges that you look at
21 in a little bit, those are what really drive the advertising
22 marketplace, right?

23 A The advertising market, that's correct.

24 Q Yes, in other words, households and women 18 plus don't
25 drive the advertising marketplace, correct?

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1 A As opposed to the carriage marketplace, yes, that's true.

2 Q Okay, now households, just so everybody is clear, that
3 measures the number of TVs that are tuned in to a network, correct?

4 A The number of households in which a TV -- there can be
5 several -- is tuned to the network.

6 Q It doesn't tell you anything about the people who are
7 watching or tuning in, correct?

8 A That is correct.

9 Q In other words, it doesn't tell you it's a man or a woman
10 or what age they are?

11 A That's correct.

12 Q That's why advertisers don't rely on this kind of
13 information in making decisions?

14 A Advertisers, that's correct.

15 Q Okay. The total women 18 plus only measures the women
16 viewers who are above the age of 18, and I think lower than the age
17 of 99, correct?

18 A Well, 99 is an arbitrary number, but above the age of 18.

19 Q Okay. Again, that is not an age range that advertisers
20 rely on when they're looking at these networks?

21 A I'd have to qualify that a bit. Within that 18 plus
22 women, there are numerous age ranges that are used for ad sales.
23 The principal ones we talk about here are 18 to 49 and 25 to 54,
24 but there are others that go higher than that.

25 Q Exactly, but an advertiser will use those date ranges, as

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1 opposed to just women over 18, in making its decisions, correct?

2 A Actually, some advertisers use 18 plus, as well, but the
3 predominant is the four that I mentioned.

4 Q Okay. That is why you also look at it using those 18 to
5 49 and 25 to 54 date ranges for advertisers, right, because it is
6 an important point of comparison for those advertisers, correct?

7 A Yes. It's important, yes, I would agree with that.

8 Q In fact, it's critical, correct?

9 A I don't know if it's critical or not, but it's important.

10 Q It's critical to advertisers because they wish to reach
11 viewers who are under age 55, correct?

12 A Many of them do. Not all of them, but many of them do.

13 Q They typically want to reach the 18 to 49 or 25 to 54
14 range, right?

15 A I have to qualify that, if I may. If you may recall that
16 the four demos that we talked about, persons and adults -- I'm
17 sorry, persons and women, 18 to 49, and 25 to 54 accounted for
18 about [REDACTED] of the demographic ad sales of GSN, in this case.
19 That means the [REDACTED] [REDACTED] were other demographics. I believe
20 right after -- if you [REDACTED], you'll find things
21 like 35 to 64, 18 plus, lots of demos that are sometimes bought by
22 advertisers at lower degrees. They add up, of course, [REDACTED].

23 Q Let me give you a statement. You tell me whether you
24 agree or disagree.

25 A Sure.

1 Q Let me try it this way. An important point of comparison
2 for advertisers is demographic information on the types of viewers
3 watching the network. Agree?

4 A Yes, I agree with that.

5 Q In fact, it is critical to advertisers because they wish
6 to reach viewers who are under age 55, in particular, typically the
7 18 to 49 or 25 to 54 age ranges you looked at?

8 A I would not use the word critical. I would say it's
9 important.

10 Q Let's look at what you told the judge in the Tennis
11 Channel. Go to CV 805.

12 JUDGE SIPPEL: In the big book?

13 MR. GORDON: Big book, sorry.

14 JUDGE SIPPEL: CV --

15 MR. SCHMIDT: We don't have it. Sorry, it's before; 805
16 is before.

17 JUDGE SIPPEL: AV 805?

18 MR. KROUP: CV 805.

19 MR. GORDON: Do you have it? Apparently they're out of
20 order in at least yours, right?

21 MR. KROUP: It's at the back, Your Honor. It's way at
22 the back, Your Honor.

23 JUDGE SIPPEL: Oh, I see. There's 804. Here it is.
24 It's the second from the bottom. Go way to the back.

25 MR. GORDON: All the way in the back, Your Honor.

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1 MR. GORDON: Don't be fooled by the chronological order,
2 Your Honor.

3 JUDGE SIPPEL: I wasn't out to get outfoxed by that. I
4 got it. Okay. Actually, I got it. Direct Testimony of Timothy
5 Brooks.

6 MR. GORDON: Right.

7 BY MR. GORDON:

8 Q This was your testimony in Tennis Channel, correct?

9 A In 2011, yes, that's correct.

10 Q Yes, and if you turn to Page 15, right?

11 A Yes, I see it.

12 Q Paragraph 29, you said, another important point of
13 comparison is demographic information on the types of viewers
14 watching each network. This is critical to advertisers, most of
15 whom wish to reach viewers under age 55 (typically 18 to 49 or 25
16 to 54) in a reasonable balance of men and women. Demographics thus
17 indicate the economic potential of two networks when they have
18 comparable distribution. Do you see that?

19 A Yes, I do.

20 Q You agree with that?

21 A I used the word critical here -- I was not using it now,
22 but yes, I agree with the sense of this.

23 Q Okay. Now you, in -- and I'm sorry to be jumping around,
24 but behind Tab 3 of the small book, you look at women as a
25 percentage of total day audience, correct?

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1 A Yes, that's correct.

2 Q What you do is you use women 18 plus over the total
3 number of people 18 plus for these years to figure out what the
4 percentage is, correct?

5 A Yes, that's correct.

6 JUDGE SIPPEL: Are you on 312 now?

7 MR. GORDON: Yes, sorry, Your Honor.

8 JUDGE SIPPEL: Yes, I needed 312?

9 MR. GORDON: Yes.

10 BY MR. GORDON:

11 Q So this information is not what you were talking about in
12 Paragraph 29 that was critical to advertisers, right? This isn't
13 looking at women, or even people 18 to 49 or 25 to 54, correct?

14 A This is not a sales analysis. That's correct.

15 Q Now sir, let's talk about this for a little bit. I
16 believe you said this was an important piece of information that
17 you examined, correct?

18 A Which, 312?

19 Q Yes.

20 A Yes, that's correct.

21 Q This is, just to be clear, not how advertisers look at a
22 network, correct?

23 A That is correct.

24 Q This is, just to be clear, not the percentage of women 18
25 to 49 who are watching GSN or WE or any of the other networks?

1 A Excuse me, I answered too hastily that previous question
2 that advertisers don't look at this. That's not strictly true. I
3 can explain if you wish.

4 Q We'll get to it. This is not a percentage of women 18 to
5 49 who are watching GSN or these other networks?

6 A Correct. It's a percentage of total women.

7 Q Okay, and it's not women 25 to 54, those critical age
8 ranges you were talking about in your Tennis Channel --

9 A That's correct.

10 Q Okay. You did not do, anywhere in your report, those
11 calculations, either on a national or local level, correct?

12 A I did not report that in my report. I looked at, but did
13 not report that.

14 Q Okay. You didn't tell the judge what the percentages
15 were, right?

16 A Within ad sales categories, that's correct.

17 Q Okay, and the same is true for WE tv and these other
18 networks. You did not report the 18 to 49 or women 25 to 54
19 percentages, correct?

20 A The female/male percentages within the demos?

21 Q Yes.

22 A Is that what you're referring to?

23 Q No, not the percentages of female to males, the
24 percentage of people who are women 18 to 49 or 25 to 54 who are
25 watching GSN or any of these other networks.

1 A I have to think about that. The percentage of total
2 people, no, I did not report that.

3 Q You didn't look at it as a percentage of total people or
4 the percentage of adults or the percentage of anything. You didn't
5 report, anywhere in your direct testimony, the percentage of women
6 18 to 49 or women 25 to 54, as against anything, who are watching
7 GSN or WE tv.

8 A The reason I'm hesitating is I did report that data from
9 New York, but it was not in the form of a percentage, that's
10 correct.

11 Q In fact, advertisers will figure out -- you know that --
12 they'll figure out the percentage of women 18 to 49 or 25 to 54 who
13 are watching a network. That is information that is of interest to
14 advertisers, correct?

15 A I would say that that is not of high interest to
16 advertisers.

17 Q I didn't ask you whether it was a high interest or a low
18 interest, sir. All I'm asking you is that is information that an
19 advertiser will consider, correct?

20 A I believe it's a minor factor, yes.

21 Q Whether it's minor or not, it goes into the mix.

22 A It goes into the mix.

23 Q Okay. Now sir, you know that the percentage of women 25
24 to 54, or even 18 to 49, who are watching GSN, as against all
25 people over 18, is considerably lower than the 69 and 70 percent

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1 that you present in this data, correct?

2 A I believe that it is. That's a sort of apples/oranges,
3 but I believe it is.

4 Q Whether it's apples or oranges we'll leave for another
5 day. Let's try to figure it out so we're sure. Why don't you turn
6 to CV 806 in the binder?

7 JUDGE SIPPEL: --- that's the big book.

8 MR. GORDON: In the big book.

9 JUDGE SIPPEL: Oh, that's the big book.

10 MR. GORDON: Big book.

11 JUDGE SIPPEL: As opposed to 816, which is a big book.

12 MR. GORDON: The question is what are we going to do with
13 these big books when we're all done.

14 THE WITNESS: This one's a good doorstop, actually.

15 JUDGE SIPPEL: We're on what, 806?

16 MR. GORDON: 806, Your Honor. It's probably ahead of
17 where you were.

18 JUDGE SIPPEL: There's 805, 804. I've got 804. I've got
19 these going backwards.

20 MR. GORDON: We're on 806, Your Honor.

21 JUDGE SIPPEL: We are on 806?

22 MR. GORDON: We are. So if you are there, you are
23 exactly --

24 JUDGE SIPPEL: I am there.

25 BY MR. GORDON:

1 Q This document starts off with -- just to make sure --
2 with this document is produced in native. Do you see that?

3 A Oh, yes.

4 Q If you flip through this, what this is the Nielsen data
5 that you used to calculate the various charts, at least in part,
6 that you present in both the small binder and in your direct
7 testimony, correct?

8 A Yes, that looks to be correct.

9 Q What you did was you went to GSN and you asked them to do
10 some data runs from Nielsen for you, correct?

11 A Yes.

12 Q If you turn to Page 5 and 6, the last two pages of the
13 document, that's the raw Nielsen data there?

14 A No, it's Pages 6 and 7, I guess, in mine, but yes.

15 Q Oh, I'm sorry. Different pages, but that's okay. It's
16 not the point is --

17 A Yes.

18 Q The last two pages is the raw data, correct?

19 A Yes, that's correct.

20 Q You used this to help prepare that chart of the percent
21 of total day adult audience that was GSN Exhibit 312, correct?

22 A Yes, I believe so.

23 Q As I understand it, what you basically did was, for
24 instance, in any year, you looked at GSN, you added up the total
25 number of females 18 to 99 for the year and put that over the total

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1 number of persons to figure out the percentage of women, right?

2 A Excuse me. I just have to find where we are here.

3 JUDGE SIPPEL: This is on 806, are we not?

4 MR. GORDON: Yes.

5 THE WITNESS: Perhaps you can point me, but I don't see
6 percentages on --

7 BY MR. GORDON:

8 Q I'm asking a more general question, sir. If I'm looking
9 at your backup --- the raw backup data, basically what you do is
10 you add up, for any year, the four quarters of females 18 to 99 and
11 persons, I can figure out what percentage -- I can get that 70
12 percent number? This is for that year.

13 A Yes, not here, but the other chart we're talking about.

14 Q Yes, that's how you did, right?

15 A Yes, that's correct.

16 Q I can do a same exercise to figure out what percentage of
17 the adult audience is women 25 to 54 and women 18 to 49 for GSN,
18 correct?

19 A You could, yes.

20 Q I could also do it for WE?

21 A Yes, there's six networks here or something.

22 Q I would like to do that. To avoid taking time here, I'm
23 going to give you a chart that has the numbers, and Paul and you
24 can look at it during a break and if I added wrong, which my
25 eighth-grade math teacher will tell you happens a lot, you'll let

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1 us know, but for at least today's purposes, what I would like to do
2 is distribute a 2009 and 2010 chart here that we created.

3 A Thank you.

4 MR. SCHMIDT: Your Honor, may we -- I'm not questioning
5 Mr. Gordon's math or his larger abilities, but I do think it's
6 unreasonable to give a chart and expect the witness to validate it
7 during a break, especially including when Your Honor said not to
8 discuss cross during the break. I just want to make that statement
9 for the record.

10 MR. GORDON: You can validate -- I think there's plenty
11 of time between now and the end of trial. I don't want to put him
12 under the gun. If there are any problems, I just want to make sure
13 we have the right percentages.

14 JUDGE SIPPEL: Okay, let's go. These are handled
15 separately, right, 817 and 818?

16 MR. GORDON: Yes, Your Honor, and we'll hold off until we
17 know --- until after the folks from the other side have a chance to
18 review it.

19 THE WITNESS: Should I put these to the side now?

20 MR. GORDON: I'll just ask you some questions on the
21 assumption that my math is correct, sir.

22 JUDGE SIPPEL: Who prepared these documents?

23 MR. GORDON: I did, Your Honor, using the raw data. I
24 just copied --

25 JUDGE SIPPEL: Raw Nielsen data?

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1 MR. GORDON: Yes, Mr. Brooks' backup.

2 JUDGE SIPPEL: Does that have an exhibit number, the
3 backup?

4 MR. GORDON: Yes, 806, Your Honor. That was 806 we were
5 looking at.

6 JUDGE SIPPEL: Oh, there is 806, it was ---

7 MR. GORDON: All I did was I took the women in 25 and 54,
8 and the females in 18 to 49, and I put them over the total number
9 of females, correct, to figure out what the total number of ---
10 are. The total audience, I'm sorry. I misspoke.

11 BY MR. GORDON:

12 Q Mr. Brooks, if I look at this data, this data purports,
13 at least, to reflect what the percentage for 2010 for GSN and WE,
14 what percentage of their audience are women in the 18 to 49 and 25
15 to 54 demographics. Do you see that?

16 THE WITNESS: I have to ask the judge or my counsel
17 whether I should be analyzing data that I have not been able to
18 validate and which even you seem to be struggling to describe.

19 MR. GORDON: I just misspoke, sir.

20 (Simultaneous speaking.)

21 MR. GORDON: This is your data, sir.

22 THE WITNESS: Should I answer? This is not my data, so
23 I'm asking should I answer.

24 JUDGE SIPPEL: Wait just a minute now. Are you going to
25 advise this witness as to what to do?

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1 MR. SCHMIDT: I think the witness should do what he's
2 comfortable doing. I've expressed my concern on the record. I
3 think if Mr. -- yes.

4 JUDGE SIPPEL: Express it again, just so --

5 MR. SCHMIDT: My concern is basically what Mr. Brooks
6 said, that we haven't had a chance to check this data. I don't
7 want to challenge a representation that Mr. Gordon has made. This
8 has been a very civil litigation in that regard, and forthright,
9 but I do want to note that the witness hasn't had the chance to
10 check this data.

11 MR. GORDON: Your Honor -- do you really want me to just
12 walk him through year by year to show how I did this? We can't
13 just all move on and -- do you really want me to add up the
14 quarters in front of him?

15 MR. SCHMIDT: No, but I'm not sure what else to do, given
16 the concern the witness has expressed.

17 JUDGE SIPPEL: I'm ready to rule on this. I'm going to
18 instruct the witness not to answer at this time. He can review the
19 numbers over lunch, come back, and he can be asked again after
20 lunch, after he's had a chance to familiarize himself with what's
21 going on here.

22 THE WITNESS: Okay.

23 JUDGE SIPPEL: So let's move on to another subject,
24 another area, another document.

25 MR. GORDON: Your Honor, would it help if I walked the

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1 witness briefly through the calculations, so he understood what we
2 did?

3 JUDGE SIPPEL: I think you can do that off the record
4 with Mr. Schmidt present.

5 MR. GORDON: Okay. Let me ---

6 JUDGE SIPPEL: I'm doing that in the interest of time.

7 MR. GORDON: Yes, I get it, Your Honor, but let me just
8 hand out, then, one more sheet, which is actually -- I think will
9 make it easier, so everybody can see what we did back here, and
10 then there'll be no debate.

11 JUDGE SIPPEL: Oh, there'll be debate.

12 MR. GORDON: At least not as to what I did. Whether I
13 got it right or wrong is a totally different subject matter. Just
14 so the record is clear, Your Honor, let me just explain, and then
15 everybody will know what they should look at during lunch. What we
16 did was we took for women 18 to 49 and women 25 to 54, we added for
17 2009 and 2010 in the total day, in the prime time categories, which
18 are reflected on the Brooks Exhibit we were looking at, your backup
19 Nielsen data. We added up, for each year, the four quarters of
20 people 18 plus, of females 18 to 49, and females 25 to 54, so we
21 could calculate a percentage for both GSN and WE of the audience
22 that Mr. Brooks has testified the advertisers care about, which are
23 women 18 to 49 and women 25 to 54.

24 (Whereupon, the above-entitled hearing went off the
25 record at 11:53 a.m. and went back on the record at 11:54 a.m.)

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1 JUDGE SIPPEL: All right, we're going to have to repeat
2 your last question with the commentary for the record because --
3 (Simultaneous speaking).

4 MR. GORDON: I don't know when you lost me. Did you get
5 any of me? Do you want me to repeat the whole thing?

6 COURT REPORTER: It was a fairly long question, I
7 believe. Let me see if I can go back and get the sentence.

8 MR. GORDON: It was not a question, Your Honor. I just
9 want to make sure everybody understood what we did in this, so
10 everybody knows what we're looking at. I'll repeat it, just so the
11 record is clear. What we did was --

12 JUDGE SIPPEL: Wait a minute. Wait just a second now.
13 Is it all out? Are you unable to pick up any of it, or where are
14 we --- how confused ---

15 COURT REPORTER: I'm sorry, Your Honor. I just lost
16 sound for a brief time. It's all back now, and everything is --

17 JUDGE SIPPEL: It's not one of those 18-second things.
18 You probably don't even know what I'm talking about.

19 COURT REPORTER: Unfortunately not.

20 (Laughter).

21 JUDGE SIPPEL: Never mind.

22 COURT REPORTER: Thank you.

23 MR. COHEN: You may not want to be on the table, Judge
24 and ask each person individually .

25 JUDGE SIPPEL: No, I'm not going any further than this.

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1 MR. COHEN: Of what percentage they're looking at.

2 JUDGE SIPPEL: I'm not going any further than that
3 thought.

4 MR. GORDON: With Your Honor's permission, what I will do
5 is I will just proffer what we did, and then they can look at it,
6 and we'll make sure it's on the record and everybody understands,
7 and then they can tell us whether they agree with the numbers or
8 not. What we did was in Brooks 806, the last two pages, there is
9 data that was used by Mr. Brooks to give us the percentage of
10 women, as a percentage of the total day adult audience for GSN and
11 WE. He used -- and Mr. Brooks, correct me if I'm wrong -- you
12 looked at women 18 plus, correct?

13 THE WITNESS: Yes.

14 BY MR. GORDON:

15 Q If I'm looking at Brooks 806, okay?

16 A Yes.

17 Q If I look at the second-to-last page, right?

18 JUDGE SIPPEL: Let me get to the second to the last page.
19 Yes.

20 BY MR. GORDON:

21 Q You were putting females 18 plus, right, you were looking
22 at that column, and you were putting -- you were adding the four
23 quarters in any year and putting that number over the same
24 calculation for persons, correct, 18 plus?

25 A Persons 18 plus, yes, that's correct.

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1 Q Okay.

2 JUDGE SIPPEL: Which is the numerator, Mr. Brooks?

3 THE WITNESS: Females 18 plus, or 18 to 99, as it's shown
4 here.

5 BY MR. GORDON:

6 Q The way you got your persons 18 plus was by adding
7 females 18 plus and males 18 plus, correct?

8 A Yes, because they don't show persons, but they do show
9 the two pieces of it. That's correct.

10 MR. GORDON: Right, okay, so Your Honor, what we did --
11 and we don't have to slog through it with Mr. Brooks. I think your
12 suggestion is quite right. All we did was we used the same persons
13 18 plus that Mr. Brooks used, and we put either females 18 to 49 or
14 females 25 to 54 over it, to give you a percentage of females 18 to
15 49 and females 25 to 54 of the total day adult audience, both total
16 day and in prime time for GSN and WE.

17 JUDGE SIPPEL: This is in 820 now?

18 MR. GORDON: Yes. You can see exactly what we did there.

19 JUDGE SIPPEL: I've got an idea what you did, yes. I can
20 see the percentages for 2009 and 2010. I'll review this with my
21 staff over lunch and whatnot. If we have any questions, we'll come
22 back.

23 MR. GORDON: Okay and all we did, Your Honor, in 817 and
24 818 was to put the percentages there to illustrates that while WE
25 has a roughly 40 percent 18 to 49 and 25 to 54 skew, GSN has a 15

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1 to 17 percent skew in those key demographics.

2 JUDGE SIPPEL: All right. Okay. I mean that's when I
3 say okay, I mean let's move forward.

4 MR. GORDON: Okay. Mr. Schmidt, you'll let us know if
5 the math is accurate and whether we can move those into evidence at
6 your convenience.

7 MR. SCHMIDT: Thank you.

8 JUDGE SIPPEL: You don't have to give him an assignment.
9 He's going to do that whether you ask him or not.

10 MR. GORDON: You never know, Your Honor.

11 JUDGE SIPPEL: Oh, we do know that one.

12 BY MR. GORDON:

13 Q Now, in your report, sir, which is Tab 2 in the little
14 book.

15 A Yes.

16 Q In Paragraph 26, which starts on Page 16 --

17 A Yes.

18 Q -- you actually go on to examine ratings for these four
19 demographic categories, right?

20 A Yes, that is correct.

21 Q Again, these are the categories that, at least for a
22 network that skews women, that advertisers focus on, correct?

23 A They're the top four that they focus on.

24 Q Advertisers do not pay for women 55 plus, correct?

25 A Well, a few do, most don't.

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1 Q Okay. In other words, just to be clear, most will buy on
2 the four that you analyzed in a network skewing for women, and they
3 do not generally purchase time for the women 55 plus demographic?

4 A In this analysis, [REDACTED] [REDACTED] would meet that
5 description, yes.

6 Q [REDACTED], sir?

7 A Of advertisers.

8 Q So [REDACTED] will buy on women 55 and over?

9 A No, [REDACTED] will buy on some other demographic than
10 these four.

11 Q Okay, and on the --

12 JUDGE SIPPPEL: I was telling this to my wife this
13 weekend. I told her not to worry about it. Go ahead.

14 MR. GORDON: I was telling it to my father, Your Honor.
15 He had similar reactions to me. He didn't understand it.

16 JUDGE SIPPPEL: (Simultaneous speaking) it was good news,
17 huh?

18 MR. GORDON: Yes, he didn't understand it because the
19 odds seem to be working in his home.

20 BY MR. GORDON:

21 Q You did not look at the demographic of women 55 plus,
22 correct?

23 A That's correct.

24 Q You present these four, but you didn't do any analysis of
25 ratings or audience percentages for women 55 and over, correct?

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1 A That is correct.

2 Q The reason is because as a general matter, sales, in your
3 view, are not done, except for the four demographics that are
4 listed here, in a woman skewing network?

5 A That wasn't the reason. The reason was that these are
6 the principal ones. Rather than a much longer and complicated
7 analysis, which involved much smaller categories, I focused on the
8 largest four.

9 Q When you say much smaller, you're talking in terms of
10 advertising sales revenue, correct?

11 A Yes, that's correct.

12 Q You're not trying to suggest that women 55 and over for
13 GSN is a small portion of the viewing audience, correct?

14 A That's correct. I'm talking about ad sales in --

15 Q In other words, with regard to ad sales, more money comes
16 in for these four buckets. [REDACTED] you said, correct?

17 A Approximately, yes.

18 Q That's because again, generally, you don't make a lot of
19 money selling to women 55 and over?

20 A In aggregate, you may make some money, but on individual
21 categories, you won't.

22 Q What you sell are the four that you're looking at?

23 A Again, the principal ones, yes.

24 Q That's not just for, though, GSN, for any women skewing
25 network, as opposed to ESPN, which I understand sells predominantly

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1 to men, but for women skewing networks, the four categories you're
2 generally going to sell are the four you mentioned here, the people
3 18 to 49, people 25 to 54, women 25 to 54 and women 18 to 49,
4 correct?

5 A Those are the principal ones, yes.

6 Q Now, in terms, though, of the percentage of viewing
7 audience, as opposed to revenue, you made no attempt to compare the
8 percentage of women 18 to 49 or women 25 to 54 at GSN who are
9 watching GSN, the percentage of women 55 and over who are watching
10 GSN?

11 A That is correct.

12 Q You understand, though, sir, that [REDACTED] of
13 GSN viewers fall into the women 55 and over category, correct?

14 A Depending on the period you pick, it may well, yes. I
15 didn't feel that was relevant to sales, however.

16 Q Well, whether you thought it was relevant or not is
17 besides the point, sir. You have no disagreement with me that GSN,
18 [REDACTED] of its viewing audience are women 55 and over,
19 correct?

20 A Again, I would have to look at the specific period
21 because that varies from period to period, but in general, I would
22 say that's true.

23 Q We'll look at some periods in a second. But again,
24 advertisers will look at the audience breakdown for a network as a
25 whole, correct?

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1 A I have to explain something about advertising sales are
2 done.

3 Q Let's see if you can first answer my question, sir.

4 MR. SCHMIDT: Your Honor, he was trying to. He shouldn't
5 be interrupted.

6 JUDGE SIPPEL: Yes, that's true. I missed that, yes. Be
7 careful about interrupting the witness. Let him finish
8 (Simultaneous speaking).

9 MR. GORDON: I'm sorry, Your Honor. I was just -- I
10 thought I'd asked --

11 JUDGE SIPPEL: Okay, fine. You did it wrong. You want
12 to finish?

13 THE WITNESS: If I may. The first stage of an
14 advertising agency's evaluation is on general factors, such as the
15 portion of the audience, as you say, that's in a particular
16 demographic, for example, where the audience skews overall. That's
17 called planning. A large number of networks will pass that test.
18 Distribution is another one, by the way, how many millions of homes
19 is it in? If it meets those general criteria, which are fairly
20 broad and liberal, then it'll be passed on to the buyers. They
21 don't look at that stuff. They just look at how many women 18 to
22 49 can you deliver, and how much are you charging for them, cost
23 per thousand, of the demographic they are interested in. What
24 you're referring to, I believe, which is the women 18 to 49 or 25
25 to 54 as a percentage of the overall audience might be looked at as

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1 one of several factors in the initial planning stage, but not in
2 the buying stage. Is that clear?

3 BY MR. GORDON:

4 Q Yes, in other words, to give an example, the fact that
5 ESPN pulls women 18 to 49 is not going to necessarily be the moving
6 factor for an advertiser in making a decision. They're going to
7 look at some general, overall demographics before making their
8 purchasing decisions, correct?

9 A Again, I have to qualify that because ESPN, which is 25
10 percent female, believe it or not, does sell female demographics,
11 and there are female sports categories that they buy. So for some
12 advertisers, yes, they do, in fact, sell that way. However, I
13 would agree with you that the predominant sales, predominant sales,
14 are men for ESPN, and women of these categories for WE or GSN.

15 MR. GORDON: I'm sorry, Your Honor. Do you have a
16 question?

17 JUDGE SIPPEL: Well, yes, let me ask it now, if you could
18 wait for your question. I was going to say all the entertainment
19 programming in this book, age 16 -- entertainment, I'm leaving out
20 sports and duck hunting and all that kind of stuff --- is that --
21 does all entertainment programming skew towards women, without
22 putting any percentage on it?

23 THE WITNESS: Yes, by a moderate percent. I just have to
24 characterize that. But, television viewing generally skews
25 somewhat to women.

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1 JUDGE SIPPEL: All right, that's all. That's all I have.
2 I heard that before, and I just wanted to be sure I heard it right,
3 but not from you.

4 BY MR. GORDON:

5 Q In fact, sir, if you look at the overall audience
6 composition of GSN, it has, you would agree with me, [REDACTED] 55 and
7 over, older women viewers, than it has 18 to 49 viewers, [REDACTED]
8 [REDACTED].

9 A Again, I believe that's very period dependent. I would
10 have to look at the data and which period you're looking at. I
11 think that changes --- ratio.

12 Q It never gets to one to one, right?

13 A I don't know. I frankly don't know that.

14 Q In the 2009 to 2011 time frame, you would agree with me
15 that [REDACTED], correct?

16 A That was a period where there was a more extreme than
17 usual imbalance between men and women within those demographics,
18 which they then addressed, I believe.

19 Q So you would agree with me, yes?

20 A Yes.

21 Q Before the retiering --

22 A During that period, yes.

23 Q Sir, just so there's no doubt, before the retiering
24 decision -- I'm not asking whether it was extreme or anything. I
25 was just looking at the data, the margin of women 55 and older, as

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1 compared to the 18 to 49 demographic that you're pointing to in
2 your work, that [REDACTED].

3 A I want to be precise and accurate in what I answer. I
4 can't validate [REDACTED] [REDACTED] [REDACTED] [REDACTED]. I would have to look at the
5 numbers to say that. That's in the period immediately before the
6 retiring, does not belong to those networks.

7 Q That is what I'm focused on, sir. Let's look at the
8 numbers, sir, and see whether we can't figure this out. If you
9 turn in your binder to CV 615.

10 A Yes, I have that.

11 MR. GORDON: Let's wait to see if Your Honor --

12 JUDGE SIPPEL: CV 615, all right. I'm just trying to --
13 I was looking at something else. CV 615, which direction do I
14 head, backwards?

15 THE WITNESS: It's toward the beginning.

16 JUDGE SIPPEL: Towards the beginning. I've got it.

17 BY MR. GORDON:

18 Q The cover page to CV 615 -- is an email from Michael
19 Michell to, I believe her first name is Amy Introcaso-Davis, dated
20 October 20, 2001. Do you see that?

21 A Yes, I do.

22 (Whereupon, the above-referenced document was marked as
23 Exhibit CV 615 for identification.)

24 MR. GORDON: Paul, any objection to my moving this
25 document into evidence?

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1 MR. SCHMIDT: No objection.

2 MR. GORDON: Your Honor, may I request to move this into
3 evidence?

4 JUDGE SIPPEL: Yes, okay. This is your CV Exhibit 615?

5 MR. GORDON: Yes, Your Honor.

6 JUDGE SIPPEL: Is that one page?

7 MR. GORDON: The whole thing.

8 JUDGE SIPPEL: No objection?

9 MR. SCHMIDT: No.

10 JUDGE SIPPEL: Yes, it's 615, Exhibit CV 615 is received
11 into evidence.

12 (Whereupon, the above-referenced to document was received
13 into evidence as Exhibit CV 615.)

14 MR. GORDON: Okay. And who is Mr. Michell?

15 MR. BROOKS: He's the head of research for GSN as I
16 understand.

17 BY MR. GORDON:

18 Q Okay. And he's actually the person who gave you the
19 Nielsen ratings information on which you rely in your testimony,
20 correct?

21 A He or his staff, yes.

22 Q Right. Now you didn't speak to Mr. Michell about the
23 information he relies on in connection with performing his duties
24 as head of research for GSN, correct?

25 A That is correct.

1 Q He just gave you the cold, hard data?

2 A That I requested.

3 Q Yes. And you know that Ms. Introcaso-Davis is the head
4 of programming for GSN, correct?

5 A Yes. She's from Lifetime. I know her.

6 Q Okay. Now sir, if you turn to -- let's flip through the
7 documents. The first couple of pages are Nielsen data. Do you see
8 that? And you can go blind looking at it, right?

9 A Frequently the case with Nielsen data, but yes.

10 Q Okay.

11 A I plus same day.

12 Q Right. Do you see that? And then, if you flip past
13 that, there are some summary information that Mr. Michell provides
14 Ms. Davis.

15 A That's the first pie chart?

16 Q Yes. That's where I'm beginning.

17 A All right.

18 Q Right. And there, with regard to at least based on the
19 information he provided, he summarizes for instance that the --
20 yes, I'm on 11 of 33. Let's just wait for the Judge to get there.

21 JUDGE SIPPEL: I have it.

22 MR. GORDON: All right. And there he begins by giving
23 some summary information of the GSN viewer profile. Do you see
24 that?

25 MR. BROOKS: Yes, I do.

1 MR. GORDON: And there he gives [REDACTED]
[REDACTED], do you see that?

3 JUDGE SIPPEL: Oops, no problem.

4 MR. GORDON: Are you okay, Your Honor?

5 JUDGE SIPPEL: I'm fine, no problem.

6 MR. GORDON: So page --

7 MR. BROOKS: In the upper left hand corner?

8 BY MR. GORDON:

9 Q Yes. So, I'm on page with the pie chart, it's right
10 there. Upper left hand corner.

11 Mr. Michell notes that the audience composition for GSN
12 at this time [REDACTED]

13 [REDACTED]. Do you see that?

14 A Yes. This appears to be over all viewers two plus.

15 Q Right. And he calculates the median age again of all
16 viewers over two plus as [REDACTED], correct?

17 A Yes. I see that.

18 Q Okay. Now, you didn't do any calculations for median
19 age, correct?

20 A No. I didn't feel it was relevant to my analysis.

21 Q Okay. And you didn't do any calculations for audience
22 composition like GSN is presenting here?

23 A Not in this form, no.

24 Q Okay. Now, if you turn to page, it has the Bates Stamp
25 433. And it is -- it's got the page number four on it. So, a

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1 couple of pages down. 14 of 33.

2 JUDGE SIPPEL: Is this in the same Exhibit?

3 MR. GORDON: Same Exhibit, Your Honor.

4 JUDGE SIPPEL: You want 14 -- oh, okay, I got 14 of 33.

5 Just a minute. Right after 13 it is. Okay.

6 MR. GORDON: All right.

7 JUDGE SIPPEL: GSN day part trend, total day.

8 MR. GORDON: Right. Okay. And this is a summary page of
9 the Nielsen data that he presented before. Do you see that?

10 MR. BROOKS: Yes.

11 BY MR. GORDON:

12 Q Okay. And let's take a look for instance the fourth
13 quarter 2009. So that's in that sort of middle of the page. Do
14 you see it?

15 A You mean the horizontal line? Yes.

16 Q Yes. And he presents some numbers in various demographic
17 categories. People 18 to 49. Women 18 to 49. Do you see that?

18 A Yes.

19 Q And he does it in the thousands of viewers, right?
20 That's what those three zeros mean, correct?

21 A That's correct.

22 Q So for instance in the fourth quarter 2009, [REDACTED]
23 who were 18 to 49 watched the network each day on average.
24 Correct?

25 A During this definition of total day, yes.

1 Q Yes. And [REDACTED] watched, correct?

2 A Yes.

3 Q And in the fourth quarter 2009 [REDACTED]

4 watched the day, right?

5 A Yes.

6 Q So at least for this period that's a roughly [REDACTED]

7 [REDACTED], correct? [REDACTED]

8 A [REDACTED]

9 Q [REDACTED]

10 A [REDACTED] --

11 Q [REDACTED]

12 A [REDACTED] something like that.

13 Q Okay. And almost [REDACTED] correct?

14 A [REDACTED] Yes, a little shy of [REDACTED].

15 Q Okay. And so, at least in the fourth quarter, it's

16 almost a margin of [REDACTED] and it's about

17 [REDACTED] right?

18 A In that quarter, yes.

19 Q Okay. And if we subtract in fact the women who are 55 or

20 older from the total people 55 and over who are watching, [REDACTED]

21 [REDACTED] do you see that?

22 A [REDACTED]

23 Q That would give us the total number of men 55 and over

24 who are watching, correct?

25 A Yes.

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1 Q And if I -- my math is right. And again, let me know if
2 I got it wrong, that means that roughly [REDACTED] were
3 watching in the fourth quarter of 2009?

4 A [REDACTED] yes.

5 Q So in this quarter, the 2009 quarter, there are [REDACTED]
6 [REDACTED]
7 correct?

8 A [REDACTED] compared --
9 and what are you comparing that with please?

10 Q So the women who were 25 to 54. Right? About [REDACTED] too?

11 A That's [REDACTED].

12 Q Now with women, sir.

13 A Oh, I'm sorry. I'm sorry. We're jumping around here.
14 [REDACTED], yes. There's a [REDACTED]
15 [REDACTED].

16 Q Okay. So in this women's network, right? If I'm looking
17 at fourth quarter 2009, the top [REDACTED]
18 [REDACTED]
19 [REDACTED], right?

20 A Out of -- it's a very unusual analysis. Out of these
21 limited number of categories, your statement is literally correct.

22 Q Okay. And if I look at the fourth quarter of 2010, and
23 let's just see whether or not that's a year to year analysis. You
24 do those in your work, right?

25 A Yes.

1 Q You look at one quarter in one year and compare it to one
2 quarter in another to see what's changed, right?

3 A In some cases, yes.

4 Q Yes. Okay. And so looking at the fourth quarter here,
5 here -- and again this is before the retiering, right?

6 A Well, the decision was taken somewhere around fourth
7 quarter, so.

8 Q Right. But the Nielsen wouldn't have reflected it as a
9 --

10 A That's correct.

11 Q Okay.

12 A Sure. During '11.

13 Q And so here [REDACTED] watched, correct?

14 A [REDACTED] -- yes.

15 Q And [REDACTED]

16 A Yes. That's correct.

17 Q Okay. And that compares to [REDACTED]

18 A Yes.

19 Q So, in this year to year comparison we go up to almost
20 [REDACTED] as many [REDACTED] who
21 are watching this, correct?

22 A Well, it seems like certainly there's some missing blocks
23 of women here. But, within -- literally comparing those two
24 numbers, that's correct.

25 Q Okay. And [REDACTED] as many [REDACTED], correct?

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1 A [REDACTED] as composed to [REDACTED] is that what
2 you're?

3 Q Yes.

4 A Yes.

5 Q Three times. And if you look at the other quarters on
6 this slide, it is fair to say from 2008 through the third quarter
7 2011, [REDACTED]
8 prior to the retiering, right?

9 A Of the categories shown here, yes.

10 Q Okay. Well, --

11 A No, that's not entirely true. Actually [REDACTED]

12 [REDACTED] But I get your point.

13 Q Okay. Well, just if we focus so the record's clear on
14 women as a category?

15 A Okay. So only the women on this. Yes, that would be
16 true.

17 Q [REDACTED]

18 [REDACTED]
19 A Of these selected three categories, yes.

20 Q And in each category it's roughly by [REDACTED]

21 [REDACTED]
22 correct?

23 A As between these three categories, yes.

24 Q Okay. Now sir, I can also use this data to figure out a
25 percentage of women 55 and older who are -- in terms of audience

1 composition, correct?

2 A Are we looking at page 14 still?

3 Q I'm still on page, Bates Stamp 122433, which is page 14.
4 I can use this to actually figure what percentage of women 55 and
5 older of total persons 18 and older, what percentage are watching
6 GSN, correct?

7 A Actually, I don't think so. Because I don't see the
8 persons of 18 plus or the components that would give you that.

9 Q I'm sorry. Go back -- well, sir, if you go back, sir, to
10 the raw Nielsen data in the front.

11 A Sure.

12 Q I'm getting too shorthanded. If I go back to that data
13 and you can pick any page. But you'll see there that the
14 information that Mr. Michell, the head of research forwarded to Ms.
15 Introcaso-Davis contains P 18 plus. Do you see that as a heading?

16 A Yes. On this page it does.

17 Q Right. And it also has women 55 and older, correct?

18 A Yes.

19 Q So if I was so industrious, I could add up for the
20 quarters those two numbers. And I don't want to put you on the
21 spot.

22 But just as a methodology, you could add up the quarters
23 and do a percentage, correct?

24 A From this table, yes.

25 Q Okay. Now sir, I would like to give you the thing --

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1 JUDGE SIPPEL: What page again are you referring to sir?

2 MR. GORDON: You can --

3 MR. BROOKS: Three of 33.

4 MR. GORDON: Three of 33, correct.

5 JUDGE SIPPEL: Three of 33.

6 MR. GORDON: I believe they're all -- have the same
7 headings on them.

8 JUDGE SIPPEL: I just want to be sure that the transcript
9 follows what I'm following.

10 MR. GORDON: I agree, Your Honor. So again, with the
11 same caveats that you have -- you haven't done those calculations,
12 correct?

13 MR. BROOKS: That's correct.

14 BY MR. GORDON:

15 Q And you didn't think it was relevant to figure out what
16 percentage of GSN's viewing audience was 55 and older, correct?

17 A In my analysis, exactly.

18 Q And so what I'd like to do though is give you a table
19 that has those percentages on it. And you can review it over the
20 course and then we can figure out whatever. Okay?

21 A All right.

22 JUDGE SIPPEL: Do you have any extras for the guys? For
23 the interns over here?

24 MR. GORDON: Yes. Sure.

25 JUDGE SIPPEL: I think they could share one.

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1 MR. GORDON: Well, we have extras.

2 JUDGE SIPPEL: Thank you.

3 MR. GORDON: And Your Honor, again so everybody knows
4 what we did. We took from page three of three, we took the -- for
5 each quarter in 2009, we added up the total number of women who are
6 55 and older.

7 We added up the total number of people who were 18 and
8 older. And we came up with a percentage of the viewing audience of
9 GSN who were 55 and older.

10 And that's where the [REDACTED] numbers come from.

11 MR. BROOKS: All right. This is women -- just so that
12 I'm clear if I may? So this is women 55 plus as a percent of all
13 viewers/persons 18 plus?

14 MR. GORDON: Right.

15 MR. BROOKS: Okay.

16 JUDGE SIPPEL: And that time period, total day 2009 to
17 2010. Is that the full calendar years?

18 MR. GORDON: Yes, Your Honor.

19 MR. BROOKS: Yes, I should alert everybody that there are
20 two definitions of total day. One is literally 24 hours.

21 This is on a slightly shorter period which eliminates the
22 overnight paid programming.

23 So there might be slight differences in numbers on those
24 two bases. I don't think that's material though.

25 BY MR. GORDON:

1 Q Right. It only -- in other words what you're saying is
2 it eliminates the infomercials?

3 A Yes.

4 Q Right. But that shouldn't move the needle as they say in
5 the advertising world. The differences should be miniature,
6 correct?

7 A No, not significantly.

8 Q Right.

9 JUDGE SIPPEL: Now, is this based on the -- is the data
10 in here on 819, is that based on 615 at page three of 33?

11 MR. GORDON: Yes, Your Honor. 615 I believe.

12 JUDGE SIPPEL: I'm sorry, CV Exhibit 615, page three of
13 33 has vast columns of data. And it's that data that's transferred
14 over to 819 in a different format. Correct?

15 MR. GORDON: Yes.

16 JUDGE SIPPEL: Computation wise?

17 MR. GORDON: Right.

18 JUDGE SIPPEL: Thank you.

19 MR. GORDON: Right. And so, Mr. Brooks, you'll check the
20 numbers later. But just in terms of the concept, you showed the
21 Judge a chart that had women as a percent of the total day adult
22 audience, which was women 18 and over, over people 18 and over.
23 Correct?

24 MR. BROOKS: Yes.

25 BY MR. GORDON:

1 Q Okay. And all the --

2 A I'm sorry. No, it was 18 plus I believe.

3 Q Yes. That's what I meant by over. I'm sorry, women --
4 let me be more precise. It was women 18 plus over people 18 plus,
5 right?

6 A That's correct.

7 Q And all we've done in these various charts, Your Honor,
8 is broken that down a little bit and looked at women 18 to 49,
9 women 25 to 54 and women 55 and over. Okay.

10 And those in comparison -- those aren't calculations you
11 did, correct?

12 A That's correct. I didn't think that was relevant.

13 Q And you didn't think it was relevant either to compare
14 the various demographic breakdowns to WE tv, correct?

15 A Since that's not how sales are done, that's correct.

16 Q Now sir, take a look if you will at 815.

17 JUDGE SIPPEL: Are you moving this into evidence?

18 MR. GORDON: Yes, Your Honor, we did be --

19 MR. SCHMIDT: No.

20 MR. GORDON: What?

21 MR. SCHMIDT: This has not been moved into evidence.

22 MR. GORDON: No, no. I'm sorry. I'm sorry. I thought
23 you said 615. You said 815, Your Honor, I apologize. 815 has not
24 been moved.

25 (Whereupon, the above-referred to document was marked as

1 CV Exhibit No. 815 for identification.)

2 JUDGE SIPPEL: All right, I'm on 819.

3 MR. GORDON: Oh no, Your Honor, that -- the charts
4 they're going to look at during a break and let us know.

5 JUDGE SIPPEL: That's right. That's right. You're
6 reading -- that's correct. I gave that instruction earlier.

7 MR. BROOKS: We're on 815 now?

8 MR. GORDON: Yes.

9 MR. BROOKS: Thank you.

10 MR. GORDON: This is another, do you see GSN viewer
11 profile document that came from the files of GSN. Do you see that?

12 MR. BROOKS: Yes, I do.

13 MR. GORDON: Okay. Paul, any objection?

14 MR. SCHMIDT: No objection.

15 MR. GORDON: Okay, Your Honor, so move this into
16 evidence.

17 JUDGE SIPPEL: 819?

18 MR. GORDON: 815, Your Honor. We've moved onto 815,
19 which is in your binder.

20 MR. SCHMIDT: And just so I ask, this is all one document
21 including the email?

22 MR. GORDON: Yes. That's the way it was produced to us.

23 MR. SCHMIDT: Okay.

24 JUDGE SIPPEL: And 815, you're moving into evidence with
25 no objection?

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1 MR. GORDON: Yes, Your Honor.

2 JUDGE SIPPEL: 815 is received into evidence.

3 (Whereupon, the above-referred to document was received
4 into evidence as CV Exhibit No. 815.)

5 JUDGE SIPPEL: And does this data tie in with some other
6 data like --

7 MR. GORDON: This is a new set of data that I'm going to
8 --

9 JUDGE SIPPEL: New set of data, okay. This is virgin
10 data?

11 MR. GORDON: Virgin data, yes. So this is another viewer
12 profile, do you see?

13 MR. BROOKS: Yes, I do.

14 BY MR. GORDON:

15 Q And this, if you look at the bottom underneath the pie
16 chart, it has an updated 10/4/10, do you see that as the date?

17 A Yes.

18 Q So October 2010. Do you see that?

19 A Yes.

20 Q And again, it has audience composition numbers. Do you
21 see that?

22 A In the upper left.

23 Q Right.

24 A Yes.

25 Q And so GSN at least for people thought it was important

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1 enough to call out what their audience composition was, correct?

2 A Yes, based on this period.

3 Q Okay. Now, you didn't do that for people either. We've
4 been focusing on women. But you didn't do it for people either,
5 correct?

6 A That's correct.

7 Q And they note here that the median age at this time was
8 ■?

9 A Yes.

10 Q Okay. And if you turn to page five of 14, there is a
11 program ranker.

12 A Yes. I see that.

13 Q Okay. And if I look at this program ranker, it again
14 gives me audience demographic delivery in the thousands. Do you
15 see it?

16 A The ranking seems to be on households. But then it shows
17 demographics, yes.

18 Q Yes.

19 A And in all of these documents what GSN is doing, is they
20 are looking at demographics not just in the four that you looked
21 at, correct?

22 A Right. I have to see what the purpose of this dec was.
23 It seems to be a management dec of some sort. So they're looking
24 at everything.

25 Q They were trying to figure out their audience, right?

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1 A Yes, irrespective of advertising.

2 Q Sure, you focused on advertising. But networks take a
3 much broader view, right? They want to know who's watching their
4 show.

5 They're not just interested in women 18 to 49 and women
6 25 to 54. GSN in the document before wanted to see their overall
7 audience. And now they're trying to figure out program by program,
8 right?

9 A Because they're serving many different advertisers with
10 different needs, yes.

11 Q Right. That's not unusual. You did that at Lifetime,
12 right?

13 A Yes.

14 Q And sir, if we look at this data, again, they don't just
15 focus on the four categories you focused on. They're looking at a
16 more holistic view of what the audience looks like, right?

17 A You might say 100 percent of the sales, yes.

18 Q 100 percent, right, and the same was true in the document
19 that Mr. Michell sent to Ms. Introcaso-Davis, right?

20 A Yes.

21 Q Now sir, if I take a look at the first show, Million
22 Dollar Password. Do you see that?

23 A Yes.

24 Q That's a type of game show?

25 A Yes, it is.

1 Q Okay. And if I look at this, we can see, again, it's in
2 the 100s because I've put thousands to that. [REDACTED] women 18 to 49
3 look at the top ranked show for this period of time in the women 18
4 to 49 category, right?

5 A Um --

6 Q Let me try it again because I messed up.

7 A I'm sorry.

8 Q If we look at this document, this is the [REDACTED]
9 [REDACTED], do you see that?

10 A Yes.

11 Q Million Dollar Password?

12 A Yes, yes.

13 Q And if we look at this, the number of women 18 to 49 who
14 are watching this show on average, [REDACTED].

15 A That's correct.

16 Q And the number of women 25 to 54, [REDACTED]. See that?

17 A During this period, yes.

18 Q [REDACTED] [REDACTED] [REDACTED] [REDACTED] the number of men 55 and older,
19 right?

20 A Men 55 plus is over on the right-hand side, yes.

21 Q [REDACTED]?

22 A Third from the end.

23 Q Right.

24 A [REDACTED].

25 Q And then women 55 and older, [REDACTED]. Do you see that?

1 A Yes, for that show.

2 Q So again, for this show, [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 A For that show in that period, yes.

7 Q Right, and the same is true of women 25 to 54?

8 A The same meaning?

9 Q [REDACTED]

10 [REDACTED]

11 A Yes.

12 Q Right, and if I did some other ones, sir, I don't want to
13 go through this whole chart. That would kill all of us.

14 But I'll do one more. Family Feud, which seems to be a
15 favorite here, and for there again, if I look at [REDACTED]

16 [REDACTED], do you see that?

17 A [REDACTED], yes.

18 Q And [REDACTED]?

19 A Yes.

20 Q And for women 55 and older, [REDACTED]?

21 A [REDACTED].

22 Q [REDACTED], sorry.

23 A Yes.

24 Q Do you see that?

25 A Yes.

1 Q That's roughly [REDACTED]?

2 A Yes.

3 Q So, at least looking at the data from this time period,
4 the ratios we were looking at before hold. It's a [REDACTED]
5 [REDACTED]n for these shows I just pointed out. Correct?

6 Between women 55 and older and the categories of women 18
7 to 49 and women 25 to 45.

8 MR. SCHMIDT: Objection to preamble.

9 JUDGE SIPPEL: Say what?

10 MR. SCHMIDT: There's a preamble there that I'm not sure
11 was right that I object to.

12 JUDGE SIPPEL: I missed. What's the preamble?

13 MR. GORDON: Should I try it again?

14 MR. SCHMIDT: I'd be grateful.

15 MR. GORDON: Okay. So for these two shows at least. I
16 mean, we can do more if you want.

17 JUDGE SIPPEL: No, no, no. We don't want to do more.

18 MR. GORDON: Exactly.

19 (Laughter)

20 MR. GORDON: It's roughly -- it's roughly [REDACTED],
21 right?

22 MR. BROOKS: The comparison of those two demographics
23 with the third demographic, yes.

24 MR. GORDON: Okay.

25 MR. BROOKS: That was chosen, yes.

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1 MR. GORDON: All right. And --

2 JUDGE SIPPEL: Is that okay, Mr. Schmidt?

3 MR. SCHMIDT: That's perfect. Thank you, Your Honor.

4 BY MR. GORDON:

5 Q And that is the same -- that is roughly the [REDACTED]
6 as the other data we looked at when we were looking at the data
7 quarterly, [REDACTED]?

8 A I think so. I'd have to look back. But I believe that's
9 true.

10 Q Okay.

11 A I'm hesitating because these are very unusual comparisons
12 in my experience. But I believe statistically you're correct.

13 Q Well, I understand you didn't do it, but that is what GSN
14 in effect is doing. They're trying to figure out what percentage
15 of their audience is comprised of women 18 to 49, women 25 to 54
16 and women over 55.

17 I mean, that's essentially what they're -- the number
18 crunchers are going to do back at the office, right?

19 A No, I don't see that kind of comparison anywhere on this
20 data. I see the data from which you can make that comparison if
21 you pick the proper categories.

22 Q And you know that at GSN they are making those kind of
23 comparisons. They want to know whether their network is skewing
24 older or whether their network is skewing younger, right?

25 A They want to know that. I don't know that they want to

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1 know [REDACTED] [REDACTED] [REDACTED] [REDACTED], this category versus that other
2 category.

3 Q Well, they're going to figure out percentages, right?
4 You don't dispute that. I mean, we could do that too, right?

5 A I think what they look at, certainly what advertisers
6 look at, is how many women 18 to 49 or 25 to 54 are delivered. Are
7 we -- do we have enough thousands, because the rest is all bonus.
8 So, I don't think you can --

9 Q Sure, but the network, when the network is looking at it,
10 that's what I'm talking about. They're going to figure out that
11 they're skewing older by [REDACTED], right?

12 And that's information the network is going to take into
13 consideration when it's doing its programing, making programming
14 decisions, right?

15 A My experience at Lifetime, a similar women's network, is
16 not that.

17 Q I'm going to interrupt, but --

18 MR. SCHMIDT: Your Honor, this is an interruption. Could
19 he not interrupt?

20 MR. GORDON: Well, let me tell you why. At your
21 deposition you were very clear that you couldn't get into
22 competitive information and data on Lifetime.

23 So I don't think it would be appropriate for you now to
24 start telling us what you did and didn't do at Lifetime when you
25 weren't prepared at your deposition to answer our questions about

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1 what you did and didn't do at Lifetime.

2 So, if we're going down this path, we're going to have a
3 problem, Your Honor.

4 MR. SCHMIDT: And I don't object to the interruption, but
5 I also don't agree to the characterization of what he said at his
6 deposition.

7 My recollection of what he said at his deposition is he
8 can't get into specific details. But of course he draws on his
9 Lifetime experience, which is all I understood him to be saying
10 now.

11 MR. GORDON: I don't know what he was going to. I don't
12 want to get into though, Your Honor, a situation where the witness
13 is talking about Lifetime in a manner in which he deems he can talk
14 and he did not answer our questions about Lifetime at the
15 deposition.

16 MR. SCHMIDT: Well, I think the proper remedy there would
17 be to let Mr. Books answer the question. If Mr. Gordon thinks it's
18 outside of what he was able to do at his deposition, he can move to
19 strike it by showing it.

20 MR. GORDON: Well, perhaps Your Honor, if we reread the
21 question, we can really see whether we have to get into the
22 Lifetime experience, which I don't think I asked about at any
23 event.

24 JUDGE SIPPEL: Well, I don't want to take the time to
25 reread the question. But, you can rephrase the question. Do you

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1 have a question outstanding?

2 Have you finished your answer? I should ask the witness.

3 Have you finished your answer?

4 MR. BROOKS: Yes, sir. I completely lost the question.

5 So, yes, I believe.

6 JUDGE SIPPEL: Yes, I'm kind of lost too.

7 MR. BROOKS: Yes, I'm finished.

8 JUDGE SIPPEL: All right. Let me ask you this question
9 then. What is it that you -- you say you've never seen numbers
10 presented in this way before.

11 MR. BROOKS: Yes, sir.

12 JUDGE SIPPEL: And you've said that several times. Tell
13 me exactly what you're seeing that you've never seen? That you're
14 not used to seeing and why you're making that distinction?

15 That is, what is there about that approach that's unusual
16 to you?

17 MR. BROOKS: Certainly. I have seen tables such as this.
18 What I have not seen is the kind of comparisons which I believe
19 we're going to look at here, which compares a demographic such as
20 25 to 54 or 18 to 49 with another category such as 50 plus.

21 That is what I have not seen done.

22 JUDGE SIPPEL: Is that something like 819?

23 MR. BROOKS: Yes, that kind of comparison. Because these
24 are --

25 JUDGE SIPPEL: CV 819. I'm showing the witness.

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1 MR. BROOKS: This is -- yes, that's right. These are to
2 me apples and oranges, the comparisons of women 55 plus versus the
3 first. And I have not seen an analysis like that done.

4 I'm not saying it can't be done. Or that he's
5 characterizing it wrong. But I've never seen that kind of
6 comparison of different --

7 JUDGE SIPPEL: Well, if it were being done, and it is
8 being done, for what purpose do you think it's being done? What's
9 your understanding of what purpose you're trying to accomplish?

10 MR. BROOKS: What does the evidence present?

11 JUDGE SIPPEL: Yes. What is it?

12 MR. BROOKS: I think he's trying -- well, I can't say why
13 he does what he does. But, it looks --

14 (Laughter)

15 MR. BROOKS: It looks to me like he's trying to
16 characterize the audience of GSN of having many older viewers.
17 More so than we -- as being relevant and important in terms of its
18 ad sales, a premise that I don't agree with.

19 That's what I take. I may be wrong. But, that's the --

20 JUDGE SIPPEL: But yet, there's no WE figures on this
21 document.

22 MR. GORDON: Not yet, Your Honor.

23 JUDGE SIPPEL: Not yet?

24 MR. GORDON: Not yet.

25 JUDGE SIPPEL: All right. Well, I don't -- I'm not --

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1 MR. BROOKS: It's just my guess.

2 JUDGE SIPPEL: I just want to be sure that I understand.

3 MR. BROOKS: Right.

4 JUDGE SIPPEL: It's just your -- okay. That's -- you
5 just took your best shot at it, that's all. And that's what he
6 did.

7 MR. BROOKS: That he did?

8 JUDGE SIPPEL: No, that you did. No, I want to know, you
9 looking at this document, what do you think it's all about? And
10 you've told me.

11 MR. BROOKS: Yes.

12 JUDGE SIPPEL: Okay. Do you have another question Mr.
13 Gordon?

14 MR. GORDON: Yes. Your Honor, let me follow up. Go to
15 the first page of 815. You see there in the upper left, we looked
16 before at the audience composition?

17 MR. BROOKS: Yes.

18 MR. GORDON: And do you see there, although they're doing
19 it with people and not women, they are trying to use the data, use
20 data, Nielsen data, to figure out what their audience composition
21 is, right?

22 JUDGE SIPPEL: It says right there, audience composition.

23 MR. GORDON: Yes.

24 JUDGE SIPPEL: This is GSN viewer profile.

25 MR. GORDON: Exactly, Your Honor.

1 JUDGE SIPPPEL: Sure.

2 MR. GORDON: And they are figuring out what percentage of
3 their viewers are over 55, correct?

4 MR. BROOKS: Yes.

5 BY MR. GORDON:

6 Q Right, and in the document I showed you before, there was
7 a similar set of information, correct?

8 A Yes.

9 Q And if you turned for instance in your book to CV Exhibit
10 109.

11 A I'm sorry, I'm looking at?

12 Q The big book.

13 A The big book.

14 Q Turn to Cablevision Exhibit 109.

15 JUDGE SIPPPEL: That would be towards the front of the
16 book.

17 MR. BROOKS: This is the presentation to Dish Network.

18 MR. GORDON: Yes.

19 MR. BROOKS: All right.

20 BY MR. GORDON:

21 Q And turn to page nine of 15.

22 A Yes.

23 Q And there's a pie chart there where GSN presents its
24 audience composition on the right-hand side to Dish, right?

25 A Yes.

1 MR. GORDON: Are you there, Your Honor?

2 JUDGE SIPPEL: Oh, yes. I'm with you. I'm with you.

3 BY MR. GORDON:

4 Q And the reason why they are going through this exercise
5 internally and showing Dish, is because for the network, leave
6 aside advertisers for a sec. For the network, the composition of
7 its audience is something that is of relevance to the network,
8 correct?

9 A I'm sorry, could you repeat that objective?

10 Q The reason why on the documents we are looking at --

11 A Yes.

12 Q They are looking at their audience composition is because
13 that is something that is of relevance to the network, right?

14 JUDGE SIPPEL: You talking about network, you mean Dish?

15 MR. GORDON: I'm talking about network meaning GSN. It
16 is of relevance to GSN because they want to be able to show network
17 cable operators like Dish what their audience composition is,
18 correct?

19 MR. BROOKS: I -- no. I think in this -- this appear --
20 context is everything. And this appears to be GSN presenting to
21 Dish. So they must think that Dish needs to know that information,
22 so of relevance to Dish in other words.

23 BY MR. GORDON:

24 Q Fair enough. I'll take that. It is of relevance to
25 cable operators, right? You've seen other ones of these where this

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1 is reflected, right?

2 A Well, I would say more specifically that GSN thinks that
3 it's relevant to Dish.

4 Q Okay.

5 A And I don't -- I can't -- I don't want to generalize.

6 Q Okay. And if the internal documents, the GSN viewer
7 profile, it is obviously of relevance to GSN, correct?

8 For whatever purpose, they want to know how their
9 audience composition makeup is. That's what they want to know.

10 A In the general statement, yes.

11 Q Okay. They're not getting this women 55 and older data
12 because it's irrelevant to them, right? They want to know how many
13 women 55 and older are watching their shows.

14 A Yes, of course, they're tracking that along with a lot of
15 other demographics, yes.

16 Q Right, and one thing they're tracking is, how many women
17 25 to 54 and how many women 18 to 49 and how many women 55 and
18 older are watching their shows, so they can figure out how these
19 numbers relate when they make programming decisions. Correct?

20 A Yes, they have a large number of categories that they
21 track. That doesn't say what the importance of each is.

22 But they have a large number of categories.

23 Q I'll leave it for the GSN witnesses to talk about the
24 importance, sir. All I'm saying is, it is not irrelevant, correct?

25 A It is not irrelevant -- they don't feel it's irrelevant

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1 to Dish in this particular case. And they don't think it's
2 irrelevant to themselves, a different presentation in this
3 particular case. That's right.

4 Q And sir, let me ask you, sir, you are not surprised are
5 you, that GSN skews older, are you?

6 A No.

7 Q And the reason why GSN skews older is because their
8 lineup is primarily game shows, right?

9 A Game shows tend to attract both younger and older
10 viewers. Whereas some other types of women's programming doesn't.

11 So in that sense, no, it doesn't surprise me that in
12 addition to the younger categories they would get older ones too.

13 Q Okay. For instance sir, turn to your direct testimony
14 please.

15 A Am I in the big book or small one?

16 Q You can look in either. It's in either one of the books
17 here, your direct testimony, whichever is easier for you.

18 A All right, less lifting if I look at this one.

19 JUDGE SIPPEL: Yes. The small is usually easier than
20 big, usually. Now, what is this? What's the reference?

21 MR. GORDON: Well, let me ask this one question and then
22 do we want a break?

23 Okay, so, the first document in the small book, or the
24 second document rather.

25 MR. BROOKS: The second document, yes.

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1 BY MR. GORDON:

2 Q Is your direct testimony, correct?

3 A Yes, Tab Two.

4 Q And if you go to footnote 123, and I'll give you a page
5 for that. Page 54, sir.

6 A Yes, I'm there.

7 Q You cite some academic literature there. Do you see
8 that?

9 A Yes.

10 JUDGE SIPPEL: I am there also.

11 MR. GORDON: Okay. Thank you, Your Honor.

12 JUDGE SIPPEL: On -- on footnote 123?

13 MR. GORDON: Yes. And the last thing you cite is a book
14 by Mr. Holbrook. Do you see that?

15 MR. BROOKS: Morris Holbrook, daytime television game
16 shows, yes.

17 BY MR. GORDON:

18 Q And you write the target audience for the audience on
19 daytime soaps and game shows is assumed to consist largely of
20 women. Do you see that?

21 A Yes, I do.

22 Q Now, I'd like to go to the Holbrook text itself, which is
23 behind CV 801 in the big tab.

24 JUDGE SIPPEL: We're going to CV 801?

25 MR. GORDON: Yes.

1 JUDGE SIPPEL: Okay. Now, while we're still in the big
2 book, I want to -- just for clarification sake, the witness
3 testified that -- that, excuse me. CV Exhibit 109, it was relevant
4 in its presentation to Dish. And by that -- and then he went --
5 referred to something else in the book that was the same -- similar
6 type document that was relevant to GSN.

7 MR. GORDON: CV Exhibit 815.

8 JUDGE SIPPEL: Okay. Thank you. I just want a number.

9 MR. GORDON: And now I'm on CV 801, Your Honor.

10 JUDGE SIPPEL: Right. And now you're on CV what?

11 MR. GORDON: 801.

12 JUDGE SIPPEL: 801 in the book. Okay.

13 MR. GORDON: You got it?

14 JUDGE SIPPEL: I'm getting there.

15 MR. GORDON: I'm sorry.

16 JUDGE SIPPEL: Daytime television game shows and the
17 celebration of merchandise. Is that it?

18 MR. GORDON: Yes.

19 JUDGE SIPPEL: Morris Holbrook. Go ahead.

20 MR. GORDON: And this is the document, the treaties or
21 the academic literature you cite in your footnote, correct?

22 MR. BROOKS: It's one of them, yes.

23 BY MR. GORDON:

24 Q Yes. And if I turn to page 5 of the document, do you see
25 that?

1 A Yes.

2 Q There's a section on the audience.

3 A Yes.

4 Q And I'm looking at the paragraph that begins supporting
5 this assumption. Do you see that?

6 A Supporting this assumption, yes.

7 Q Okay. And the text says supporting this assumption,
8 ComStat report that daytime viewing of quiz and game shows is
9 highest among women. Do you see that?

10 A Yes, I do.

11 Q And that's what you quote, right?

12 A Yes.

13 Q And then it goes on to say, and that older women are much
14 more likely to be interested in the daytime quiz and game programs,
15 correct?

16 A Yes.

17 Q You left that part out.

18 A Well, I'm focusing on the women here, so yes.

19 Q Okay. And if we look up ahead on -- the paragraph from
20 the logic of this focus, do you see that?

21 A Yes.

22 Q It also follows that the target audience for the
23 advertising on daytime soaps and games shows is assumed to consist
24 largely of women in general, right? You make that point, right,
25 for GSN?

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1 A Yes.

2 Q And it goes on to say, sir, and people over 50 years of
3 age in particular, including a few elderly men in retirement. Do
4 you see that?

5 A Yes.

6 Q You didn't quote that in your text, correct?

7 A It wasn't the point of the discussion here.

8 Q I understand it wasn't your point, sir.

9 JUDGE SIPPEL: Where was that reference again?

10 MR. GORDON: Well, at page five of five.

11 JUDGE SIPPEL: Yes, I'm at five of five.

12 MR. GORDON: The paragraph from the logic. And it's the
13 last --

14 JUDGE SIPPEL: Oh, from the logic.

15 MR. GORDON: Yes, right under audience. And it's the
16 last two lines, people -- you see the reference to people over 50
17 years of age.

18 JUDGE SIPPEL: Yes. I see that.

19 MR. GORDON: Okay.

20 JUDGE SIPPEL: But where is the reference to men who are
21 --

22 MR. GORDON: It goes on, people over 50 years of age, in
23 particular including --

24 JUDGE SIPPEL: Oh, I see, including a few elderly men in
25 retirement.

1 MR. GORDON: The other reference was to -- in the
2 paragraph to old, that game shows.

3 MR. BROOKS: May I add to my answer?

4 MR. GORDON: There's not a question sir.

5 MR. BROOKS: I'm adding to the answer to the previous
6 question.

7 MR. GORDON: There's no question.

8 JUDGE SIPPEL: Well, he doesn't have a question pending.
9 I'm see -- this has got me a little bit quisitive here.
10 Inquisitive.

11 And I don't want to say something bad, so please don't
12 hold it against me. But in my experience, my limited experience is
13 that women over 50, whether they were -- even women who were
14 working -- working mothers or working women who retire, are more
15 included to just be home.

16 Maybe not these -- I'm making an assumption here that I
17 say that I may get burnt on. As opposed to men, who have more of
18 a tendency to kind of wander whether they're retired or not over
19 50.

20 Now, I don't know if that means anything. I don't know
21 if there's any statistics on that at all. But, I'm -- unless a man
22 -- unless a man gets into an old age home, you know, he's almost
23 bed bound, he's had -- he's going to have a tendency to not hang
24 around, as a general rule.

25 Now there are men who do that of course. But I'm

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1 wondering, who do you -- you know, how do you know what these --
2 what women and men are doing over age 55 with respect to their
3 time?

4 MR. BROOKS: I think what you're referring to --

5 JUDGE SIPPEL: I'm confused.

6 MR. BROOKS: Was really true in past years.

7 JUDGE SIPPEL: In past years and also, yes.

8 MR. BROOKS: I believe this has been changing over time.

9 JUDGE SIPPEL: Yes.

10 MR. BROOKS: This book was written in 1993 or something
11 like that I think.

12 JUDGE SIPPEL: Yes, okay.

13 MR. BROOKS: And I believe in the '90s and the 2000s and
14 the more recent times, you're getting increasing numbers of men who
15 are available, if you will. Either because they're unemployed or
16 because they're house husbands or what have you.

17 And also, women of ages where it used to be that the
18 woman would be home all the time. She's not home all the time
19 because she's more likely to be in the workforce.

20 So those dynamics have changed.

21 JUDGE SIPPEL: Changed dramatically I think. I think
22 you're right. But I say it's a -- let's take it at -- let's take
23 a successful -- a successful middle aged couple. They're in their
24 mid 50's and they're retired.

25 They've done -- they've had good jobs and they've

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1 retired. The woman is just as likely these days to go off to the
2 golf course as the man.

3 MR. BROOKS: Yes. I think that's true.

4 JUDGE SIPPEL: So how do you lock her into the house with
5 these statistics?

6 MR. BROOKS: I think this -- I'm sorry.

7 JUDGE SIPPEL: Yes. Please go ahead.

8 MR. BROOKS: The statistics for game shows and quiz shows
9 in particular are that they appeal to middle class and down kinds
10 of viewers. Probably a very successful 55 or 60 year old couple,
11 retire and have made a lot of money starting a business or doing
12 something like that, they're probably either watching, you know,
13 tennis or golf, or going to the links themselves.

14 JUDGE SIPPEL: Well, yes, that's what I'm thinking.

15 MR. BROOKS: However, the other socioeconomic groups if
16 you will are very interested in game shows because it's a way of
17 sharing the good fortune of someone else in getting dates or
18 winning money, something like that.

19 So you tend to get a lot of middle class. You get a lot
20 of ethnic viewers as well, to -- these days particularly, to
21 competition shows where there's some kind of prize involved.

22 JUDGE SIPPEL: Well, they might be watching it in Spanish
23 or Greek or whatever.

24 MR. BROOKS: They could. They could also watch it on
25 portable devices. They do a lot of research on that now.

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1 There's ways to watch television without being confined
2 to the home now. So you can watch on the go.

3 You can watch on your iPhone. You can watch on lots of
4 -- lots of ways to get it. So that has changed over time.

5 JUDGE SIPPEL: But that's -- and that's -- but you're
6 saying that these are early -- you're talking about studies done in
7 the '90s or some matters in here that's referred to as -- is rather
8 out of date? Or did I not see that right?

9 MR. BROOKS: I think the general characterization and
10 what I was addressing here was, are they -- do they appeal to women
11 or are they gender balanced?

12 I was not going for age. That's the question I was
13 addressing in this paragraph. And to that extent, are they gender
14 balanced? No. They're not gender balanced.

15 Both my Nielsen data and the testimony of this and the
16 other books that I cited say they skew toward women. And that's
17 the only reason this was cited.

18 If I started the paragraph saying gender and age, excuse
19 me, then I would have included other information from this. But I
20 was specifically asked to address gender.

21 JUDGE SIPPEL: Okay.

22 MR. BROOKS: And I don't believe that has changed.

23 JUDGE SIPPEL: Okay. I've beaten that up enough. Go
24 ahead, sir.

25 MR. GORDON: I'm sorry, sir. When you say you don't

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1 believe that has changed, you would agree that you're saying that
2 game shows still attract largely a woman audience, correct?

3 MR. BROOKS: Yes.

4 BY MR. GORDON:

5 Q And also, they attract women over 50 years of age?

6 A That's the part that I think may have changed a bit since
7 that time. But still be true in the big picture.

8 Q And certainly in the pre-retiering period, you would
9 agree it would be true, correct?

10 A Well, that was 2010, so that's quite recent.

11 Q Yes.

12 A Changes had already begun to take place by then.

13 Q Okay. So it's changing, but still generally true?

14 A Yes.

15 Q Okay. Now sir, let me ask you one or two more questions
16 and then we'll break for lunch on this.

17 Sir, you have no doubt whether it's based on this
18 academic research or whether yearly or quarterly or the program by
19 program data we looked at, that because it shows game shows, GSN is
20 an older skewing network. That's not something you would dispute,
21 correct?

22 A Well, you'd have to be more precise about that statement.
23 Older skewing compared to other networks or WE or what?

24 Q Just looking at GSN, women 55 and older versus other
25 demographic categories. You have no doubt, I mean we've looked at

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1 a mountain of data, when it comes to the bottom line, where the
2 rubber hits the road, GSN is older skewing, right?

3 There are more women 55 and older viewers than anything
4 else?

5 A Yes, that is a true statement.

6 Q And you know that is not a true statement for WE tv,
7 correct?

8 A Compared to GSN, it's less older skewing, yes, if that's
9 correct.

10 Q Significantly less, correct?

11 A Well, we can argue significance depending on the period.
12 But, it's less. I will say that.

13 Q Would you give me much less?

14 A I have to look at the data and which period you're
15 talking about.

16 Q All right.

17 A 2010 was a rather special period. So, that's why I'm
18 being careful about what period.

19 Q The pre-tiering time frame, 2009/2010. Would you agree
20 with me that WE is significantly less skewing in the women 55 and
21 older category?

22 A I would only agree for the immediate pre-tiering period.
23 Not for the previous five years for example.

24 MR. GORDON: Okay. With that we can break for lunch.

25 JUDGE SIPPEL: Is this it? You want to break for lunch?

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1 MR. SCHMIDT: If that's okay.

2 MR. GORDON: Yes. I mean, if it's okay with Your Honor,
3 I mean, I was just looking at Paul.

4 JUDGE SIPPEL: Oh, no, that's fine. It's just -- it's a
5 good -- it's a nice time. It's 1:00, nice even time.

6 And 1:00 to 2:00, we'll be back at 2:15. Now, how are we
7 doing? How are we doing time wise here?

8 MR. GORDON: I'm going to obviously take my notes and try
9 to streamline this down. But I think we can get Mr. Brooks done
10 after lunch and then get our next witness on the stand.

11 JUDGE SIPPEL: Who will be?

12 MR. SCHMIDT: Mr. Montemagno. It's the first Cablevision
13 witness.

14 JUDGE SIPPEL: Obviously, you say it. I'm not going to
15 say it.

16 MR. COHEN: Montemagno.

17 JUDGE SIPPEL: Montemagno. I know. Okay. I remember
18 reading about that man. Mr. Montemagno. Okay, all right.

19 So let's not waste any time. It's 1:00. We're back at
20 2:15. Thank you very much.

21 (Whereupon, the above-entitled matter went off the record
22 at 1:00 p.m. and resumed at 2:22 p.m.)

23 JUDGE SIPPEL: Okay, where did we leave off now? Did we
24 talk together about these documents, these evidentiary documents?

25 MR. SCHMIDT: So I think we were -- our expert kind of

1 went off the reservation so to speak with us, and chose to spend
2 the lunch hour eating his lunch, so he couldn't check all the
3 documents.

4 JUDGE SIPPEL: I'm for lunch as well.

5 MR. SCHMIDT: I don't think there's a dispute over 819,
6 the numbers in 819.

7 JUDGE SIPPEL: That seems to look okay.

8 MR. SCHMIDT: Yes, we checked the numbers in 820, and we
9 had some trouble replicating them, but I think we figured out what
10 it was. I think Mr. Brooks was only able to check one of the
11 cells, and it matched up, but he hasn't had time to check the rest.

12 MR. GORDON: I don't think there's going to be any
13 dispute that the numbers are correct. I don't intend to question
14 Mr. Brooks on these charts. I'd like them to come into evidence,
15 so I'm not sure whether Mr. Brooks necessarily ---- I mean, I think
16 you can do the math just as much --

17 MR. SCHMIDT: Yes, we just haven't done it ---- so if we
18 can check it, we'll work with you on that, assuming you guys will
19 do the same thing on our end when it's our turn to do cross, which
20 I count on you doing.

21 JUDGE SIPPEL: I had a morning case one time years ago,
22 and that kind of appeal didn't work. They were going to go out and
23 duke it out. It seemed like he wouldn't carry out his half of the
24 bargain. 819 looks good, no objection to that.

25 MR. SCHMIDT: No objection, Your Honor.

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1 JUDGE SIPPEL: Okay, then 819 is received in evidence at
2 this time.

3 MR. SCHMIDT: Thank you.

4 (Whereupon, Exhibit CV 819 was received into evidence.)

5 JUDGE SIPPEL: And we know what those numbers all
6 represent, and I think we know where they're coming from too. This
7 one you're still working on? 820?

8 MR. SCHMIDT: Yes, Your Honor. And then the two that
9 went along with that were 817 and 818.

10 JUDGE SIPPEL: Okay. Well subject to you confirming on
11 this 820, 820 looks okay to us on this side, but I'm not going to
12 bring anything in until you're satisfied with the numbers.

13 MR. SCHMIDT: Thank you, Your Honor. I appreciate that.

14 JUDGE SIPPEL: And I think the other two, 818 and 817, I
15 don't see any purpose for those, but you see if you can convince me
16 of that. Are you willing to --

17 MR. GORDON: I think Your Honor ---- I mean those are
18 just a summary of what is on the other exhibits, so I only need one
19 to get in.

20

21 JUDGE SIPPEL: You'll be satisfied if 20 comes in --

22 MR. GORDON: Exactly.

23 JUDGE SIPPEL: ---- with 19?

24 MR. GORDON: Yes, Your Honor.

25 JUDGE SIPPEL: Okay, thank you.

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1 MR. GORDON: All of the information is derived there,
2 that was just sort of a summary sheet of what was on each one.

3 JUDGE SIPPEL: Yes, I was going ---- I mean, I would have
4 kept it out on the basis of confusion in that 400 whatever it is
5 evidentiary ruling because boy oh boy, that's really ---- it's
6 going to confuse this guy anyway.

7 MR. GORDON: Well, that's the guy that counts, so we'll
8 withdraw the ---- in fact, we're going to withdraw them on the
9 label.

10 JUDGE SIPPEL: All right.

11 MR. GORDON: Well, one other piece of housekeeping, Your
12 Honor, I'm told I did not offer Cablevision 806 into evidence.
13 This was Mr. Brooks' backup. I asked Mr. Schmidt during the break
14 if he had any objection, I believe the answer was no.

15 MR. SCHMIDT: The serious answer was no.

16 MR. GORDON: The serious answer was no, so we would like
17 to at this time, just for housekeeping, offer Cablevision 806.

18 JUDGE SIPPEL: All right, I'm going to take just a quick
19 ---- yes, I know exactly what that is now. 806, is this a CV?

20 MR. GORDON: Yes, Your Honor.

21 JUDGE SIPPEL: Exhibit 806 is received into evidence as
22 806.

23 (Whereupon, Exhibit CV 806 was received into evidence.)

24 MR. GORDON: Thank you, Your Honor.

25 JUDGE SIPPEL: Okay.

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1 MR. GORDON: And with that, I'm ready to start.

2 JUDGE SIPPEL: All right, so you're still on?

3 MR. GORDON: Yes, Your Honor.

4 JUDGE SIPPEL: In yet another subject area?

5 MR. GORDON: Yes, blessedly.

6 JUDGE SIPPEL: Okay. Let's proceed.

7 CROSS-EXAMINATION (CONT.)

8 BY MR. GORDON:

9 Q Sir, if you look in the small binder, tab 7, GSN Exhibit
10 315, that is your tiered audience analysis?

11 A Yes, I see that.

12 Q And that also gives by duplication? That's a duplication
13 run?

14 A Yes, it generally can be characterized that way, yes.

15 Q Yes, okay. And there's been a lot of testimony already
16 about this, so I don't want to belabor this too much, but this is,
17 to be precise, a both duplication analysis?

18 A Yes, that would be the technical term.

19 Q In other words, you look at the audience of one network
20 and the audience of a second network, and you see where it
21 overlaps?

22 A Yes, the denominator being the combined audience of the
23 two.

24 Q Okay. Now sir, you have looked at household and persons
25 equally plus for the fourth quarter 2010, 2013 and 2014, correct?

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1 A Yes.

2 Q And you looked at the fourth quarter of 2010 because
3 that's the period of time before or right around the re-tiering
4 decision, correct?

5 A Immediately before the re-tiering, yes.

6 Q Okay, and you didn't look at any other quarter in 2010,
7 correct?

8 A That's correct.

9 Q And you didn't look at anything in 2011?

10 A No.

11 Q Not correct?

12 A I didn't ---- I'm agreeing. I'm sorry, I'm agreeing I
13 did not look at anything in 2011.

14 Q Okay. Or 2012?

15 A Right. These are difficult and expensive runs, so I was
16 limited in what I did.

17 Q Okay. Now in terms of doing this, I get that it's
18 expensive, but you can get information from Nielsen that would
19 allow you to perform this analysis with respect to the women 18 to
20 49 or people 18 to 49 or women 25 to 54, people 25 to 54
21 demographics; correct?

22 A It has to be done on a ---- actually, you don't do it
23 yourself, they have to do it for you, hence the expense. But yes,
24 you could get that if you pay them to do it.

25 Q Okay, and with regard to what you call your four core

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1 demographics, you did not run that analysis, correct?

2 A That is correct.

3 Q So you have no basis for stating as you sit here today
4 that WE is a top network with which GSN shares audience in those
5 four demographics, correct?

6 A Not on the basis of shared audience, no.

7 Q Okay. Now, with regard to what you did, I'd like to
8 understand it a little bit more. So if I look, for instance, at
9 total day one minute shared, do you see that?

10 A Yes, I do.

11 Q And I'm looking at households, you get a [REDACTED]
12 number?

13 A Yes.

14 Q And I take it what that means is that for all households,
15 again, that's the number of people just tuning in, not -- right?

16 A Well, it's not strictly people, but it's the number of
17 households --

18 Q Households --

19 A ---- in which a set tuned to those two networks and how
20 much were tuned to both.

21 Q Okay, and what you say is that [REDACTED] [REDACTED] of those
22 households watch one minute at a minimum of both WE and GSN,
23 correct?

24 A Over the quarter, yes.

25 Q Okay. Over a period of 90 days?

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1 A Yes.

2 Q So that means if the TV goes on over a period of 90 days
3 for one minute on WE, and in that same 90 day period, it goes on
4 for GSN for one minute, they are counted as being a shared
5 audience?

6 A At least one minute, yes.

7 Q Well, let me just be precise. If somebody only watches
8 one minute a quarter of either WE or GSN, this analysis considers
9 them to be a WE or GSN viewer; correct?

10 A Yes, it can be as little as that or as much as it is.

11 Q Right, and that's my next question. So if I have a
12 viewer that watches one minute of GSN because they're flipping
13 through the channel and the phone rings and they get distracted,
14 and they watch 23 hours a day of WE tv, and they do that every day
15 for the quarter except for one minute where they're on GSN, that
16 household is counted as sharing an audience, s correct?

17 A That would be an outlier, but yes it could happen.

18 Q Well, you haven't done any analysis, you don't know
19 what's an outlier or not, right? You're just presenting numbers,
20 correct?

21 A Well, actually I can compare the first group of numbers
22 with the second group of numbers here, which is the same thing on
23 a six-minute basis. The difference between them is those who watch
24 between one and five minutes.

25 Q Okay, and then the number goes down, right?

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1 A Yes.

2 Q And with regard to that six minutes, the same thing,
3 that's in a quarter, right?

4 A Yes.

5 Q So if a Game Show Network viewer ---- I'm sorry, if a
6 woman ---- I'm sorry, if a household, right, is tuned in to Game
7 Show Network for a period of six minutes over 90 days, right, and
8 watches the rest of the time on WE tv, that is a shared viewer as
9 far as you're concerned?

10 A At least six minutes, yes.

11 Q At least six minutes.

12 A Yes, it's a very typical Nielsen cut-point.

13 JUDGE SIPPEL: At least six minute in what timeframe?

14 THE WITNESS: Over a quarter, this is.

15 JUDGE SIPPEL: Over a quarter?

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: Okay.

18 BY MR. GORDON:

19 Q But sir, just to follow up on what the Judge asked, when
20 we're talking about a person who watched one minute or six minutes,
21 that is over that 90-day period, correct?

22 A Yes.

23 Q So is it same day, or can it be broken up over that whole
24 period of time?

25 A I'm not sure I understand the question.

1 Q It is six minutes over a 90-day period, correct?

2 A Yes.

3 Q In one day?

4 A No, it could be six minutes aggregate over the 90-day
5 period.

6 Q So somebody could watch GSN for one minute on one day for
7 the one minute analysis, or two minutes for three days and they're
8 all counted the same, correct?

9 A In theory, yes.

10 JUDGE SIPPEL: What about 30-second intervals, could they
11 count?

12 THE WITNESS: No. Nielsen only reports to the minute
13 level. Their equipment is capable of reporting shorter, but that's
14 a special analysis which they rarely do and is not available on the
15 systems you get. So one minute is the building block for Nielsen
16 and all other systems.

17 JUDGE SIPPEL: All right, I'll accept that.

18 BY MR. GORDON:

19 Q And sir, you didn't do any calculation for any more
20 sustained lengths of time, correct? You did the one minute and the
21 six minute?

22 A So you're asking if I did for 12 minutes or 100 minutes
23 or something like that?

24 Q Yes, anything more sustained.

25 A No, these are the two most common Nielsen breaks.

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1 Q And so when we talk about ---- and you view these numbers
2 as being indicative of similarity, correct?

3 A Yes, but I have to qualify, it's not just the numbers you
4 see here, it's the ---- I did this for all networks, all 100 or so
5 networks, and in each case, this was at the [REDACTED] [REDACTED] of
6 duplication.

7 Q I just want to ---- I get that, but I just want to make
8 sure that everybody's clear on what we're looking at. So in the
9 fourth quarter 2010 --

10 A Yes.

11 Q ---- your one-minute analysis.

12 A Yes.

13 Q Okay, so that's October, November, December --

14 A Of 2010.

15 Q ---- of 2010, a viewer on one day, November 18th, watches
16 one minute, right?

17 A Yes.

18 Q And then watches a chunk of WE for the other 89 days in
19 that quarter. Let's say two hours, three hours, four hours. That
20 person is picked up in your [REDACTED] number, right?

21 A Yes.

22 Q You consider them the same as somebody who watches GSN
23 for a longer period of time, correct?

24 A They meet the minimum, yes.

25 Q Right. And if somebody is just flipping through on your

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1 household number, and pauses for whatever reason on GSN, even
2 though that person didn't intend to watch GSN, just starts
3 clicking, comes on GSN, and stops and does something else. Deals
4 with their -- in my house, nine-year-old kid, turns back and starts
5 flipping through, that person gets counted if they do the very same
6 thing on WE, correct?

7 A That's not how Nielsen positions this. The reason they
8 have a minimum of a minute is to eliminate surfing, which means
9 click, click, click the channel. Their studies indicate that a
10 minute is enough to get rid of the people who are clicking through
11 without stopping.

12 Q Sir, my ---- the answer to my question is correct,
13 correct? If that person ---- if my wife is flipping through to
14 get to WE, and she pauses on GSN, and my son, my nine-year-old son
15 starts yelling at her, and two minutes later, she comes back to the
16 TV and then goes back onto WE, she finally found what she's looking
17 for, you consider that person to be both a viewer of WE and a
18 viewer of GSN, even though my wife never had any intention of
19 viewing GSN, correct?

20 A The way you've structured it, yes.

21 Q Okay, thank you.

22 JUDGE SIPPEL: Can you tell me why do --- see maybe I'm
23 guilty of that because if a commercial comes up on, let's say
24 MSNBC, I immediately want to flip to CNN because the commercial --
25 -- first of all, I just don't really ---- don't want to --

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1 THE WITNESS: Right, right.

2 JUDGE SIPPEL: And then I go to CNN, and I get ---- it's
3 commercial time there also. Is that coordinated somehow so that
4 you won't do that?

5 THE WITNESS: That they have the commercials at the same
6 time?

7 JUDGE SIPPEL: Not the same commercial, but they have --

8 THE WITNESS: Yes, at the same time. In prime time, it
9 certainly is. In other day parts, less so. But in prime time, the
10 breaks tend to be at similar times. They don't literally
11 coordinate, sit in a room and say we're going to do it, but that's
12 the effect of what they do.

13 JUDGE SIPPEL: I mean it sounds like to me like it's some
14 kind of collusion, but it's not collusion? It's collusion, I mean
15 not -- I know it's not in the antitrust sense, but I mean it's ----
16 they get together and they say okay, this is how we're going to do
17 this. But they don't do that though?

18 THE WITNESS: They don't sit in a room. And if you're
19 flipping the channels, I think you'll find one that probably has
20 programming on at that time, but typically they --

21 JUDGE SIPPEL: Well, yes, I'll go to the Disney Channel
22 for example, you know I don't really care too much for that one.
23 That's true, I'm just using it as an example.

24 Yes, I'm aware of that, but the other thing that bothers
25 me is that these ---- when the commercial comes on then everything

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1 all of a sudden gets louder, the room gets louder.

2 THE WITNESS: That is a technical trick.

3 JUDGE SIPPEL: It is?

4 THE WITNESS: Yes. As you know, there is a federal rule
5 now, a law against having louder commercials than programming.
6 However ---- and I'm not an engineer, so I don't know exactly how
7 they do this ---- they found a way to make it sound louder, and yet
8 the meter doesn't bounce anymore. I don't know how they do it, but
9 they do it.

10 JUDGE SIPPEL: That's why Dodge Chargers go 90 miles an
11 hour, 90 miles an hour that fast. Okay. I'm educated. Let's go.

12 BY MR. GORDON:

13 Q Sir, let me ask you to turn if you will to the last tab
14 of your binder.

15 A Of this --

16 Q The small binder.

17 A Yes.

18 JUDGE SIPPEL: 12?

19 MR. GORDON: Yes, sir.

20 JUDGE SIPPEL: And this is Total Day Demographics New
21 York DMA, right? GSN Exhibit 317?

22 MR. GORDON: Correct.

23 JUDGE SIPPEL: Let's have it.

24 BY MR. GORDON:

25 Q So sir, here you're ---- I think you explained in your

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1 direct, you were talking about the effect of Cablevision's
2 repositioning on GSN's audience, right?

3 A And on WE's, yes.

4 Q And on WE's. And you're using New York audience data to
5 approximate the impact of the tiering decision, correct?

6 A That is correct.

7 Q So whereas before in these other analyses, we were
8 looking at national, you've now made a switch, and you're looking
9 to New York, correct?

10 A Well, I didn't make a switch. I'm drilling down from
11 national to top 10 market to New York, now we're in the New York
12 section.

13 Q But you're not using national data? You didn't do this
14 analysis using national data, correct?

15 A This is not ---- this is in ---- it's based on a national
16 sample, but it's the part of it that's in New York.

17 Q Okay. Now, Nielsen has a New York local sample, correct?

18 A They actually use the same sample, but they process
19 ratings differently for what they call their NSI service.

20 Q Okay. Well sir, let's just stick with my question.
21 Nielsen, you can call up Nielsen and say I want a sample of data
22 for the New York DMA, and they will deliver you a sample for the
23 New York DMA, correct?

24 A No, they'll ask you another question most likely if
25 you're a professional. They'll ask you do you want that based on

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1 New York -- NSI processing or national processing? There are
2 totally different ways to process the data from the same sample.

3 Q Okay. And what you looked at was the ---- I believe the
4 national sample cutback to New York, right?

5 A I looked at national processing, it's called a cutback.
6 It's literally the same sample of homes in New York, but the data
7 is processed differently.

8 Q Okay. Now, you looked at the second quarter 2010;
9 correct?

10 A Yes, that's right.

11 Q And that is different than what you did with your
12 duplication analysis, where you looked at the fourth quarter,
13 correct?

14 A Yes.

15 Q You told us before that the re-tiering period was the
16 fourth quarter, but this time you look at 2010 in the second
17 quarter, correct?

18 A Well, no. The re-tiering period was the first quarter of
19 2011, in the midst of a quarter. So the last clean quarter before
20 the re-tiering was fourth quarter. However, the first clean
21 quarter afterwards was the second quarter of 2011. So this is a
22 comparison of second quarter to second quarter.

23 Q I'm confused.

24 A I'm sorry.

25 Q The re-tiering decision was in the fourth quarter,

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1 correct?

2 A The decision, the actual re-tiering was after that.

3 Q The re-tiering decision was in the fourth quarter, and
4 that's why you used that quarter for the duplication analysis.
5 That's what you told us --

6 A No, that's not why I used it for duplication. That was
7 the last clean quarter of distribution as it has existed for prior
8 years, prior to the actual implementation of re-tiering.

9 Q Okay, but you thought when it came down to doing this
10 analysis, you wouldn't be consistent with how you did it with the
11 duplication analysis, you'd use the second quarter here, right?

12 A Yes, I wanted to make it second to second.

13 Q Okay. And here ---- this data here, you're looking at
14 women 25 to 54 and women 18 to 49 and people in those age
15 demographics, correct?

16 A Yes, that's correct.

17 Q Okay. Now sir, one of the things that you explained for
18 your rationale for taking ---- using the second quarter is because
19 you wanted to look at the post-tiering period, right?

20 A Second to second, yes.

21 Q Right, so you started with 2011, and you wanted to first
22 identify when ---- I think to use your word, there would be a clean
23 set of data, correct?

24 A Yes.

25 Q Okay, and by that, what you meant is that there's a

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1 period of time whereby Nielsen will reflect lineup changes or these
2 kind of tiering decisions in its records. So you want to make sure
3 you're getting the full effect of the repositioning, and that's why
4 you used the second quarter and not for instance the first quarter?

5 A It will certainly be much cleaner than the first quarter.
6 It won't be perfect, but it'll be much cleaner than the first
7 quarter, yes.

8 Q Right.

9 A And the viewership I should indicate, it doesn't matter
10 what Nielsen is considering a tier at home or not, it's how many
11 eyeballs are actually watching. So that should be clean in the
12 second quarter.

13 Q But in other words, you could have used the first quarter
14 of ---- I want to make this is clear ---- you could have used the
15 first quarter of 2011 and looked back at the first quarter of 2010,
16 but you didn't do that because you thought that that would not
17 reflect the full impact of the re-tiering decision in the Nielsen
18 ratings, so you went to the second quarter.

19 A I believe the actual tiering took place in February,
20 somewhere in the middle of the quarter, so there would have been
21 people still watching GSN on expanded tier, lots of them during the
22 early part of the first quarter. So it was not ---- that's what I
23 mean by not a clean quarter. That's why I went to second..

24 Q And in your view, Nielsen ---- the second quarter of
25 Nielsen data will reflect the repositioning?

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1 A Viewing after the repositioning, yes.

2 Q Did you speak to anybody about Nielsen in the context of
3 this assignment about that subject? As to how long it would take
4 Nielsen to truly reflect the re-tiering?

5 A I'm sorry, do you mean somebody at Nielsen?

6 Q Yes, did you pick up the phone, call somebody at Nielsen
7 and say hey, I got this assignment. I'm looking at GSN, they were
8 re-tiered on Cablevision. How long does it typically take your
9 data to reflect the full impact of the repositioning?

10 A No, I know the answer to that so I did not contact
11 anybody at Nielsen.

12 Q You know the answer is the second quarter?

13 A I know in terms of viewing, the answer would be the
14 second quarter, yes.

15 Q Okay. Did you speak to anybody at GSN to see what they
16 thought?

17 A No. Again, I didn't feel I needed to. I knew the
18 answer.

19 Q Of course, you knew the answer. Did you speak to Mr.
20 Goldhill?

21 A No.

22 Q Have you ever spoken to Mr. Goldhill?

23 A No.

24 Q Are you aware that Mr. Goldhill has testified in this
25 proceeding that the way Nielsen measures, for example, they don't

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1 capture distribution losses for six or seven months? Are you aware
2 of that testimony?

3 A Yes, and he's correct in terms of distribution, not in
4 terms of viewing, however.

5 Q Okay. And sir, take a look in the big binder.

6 A Which tab, sir?

7 Q Tab 161.

8 JUDGE SIPPEL: 161, CV or GSN? I think it was GSN.

9 THE WITNESS: CV.

10 JUDGE SIPPEL: CV?

11 MR. GORDON: Yes, sir.

12 JUDGE SIPPEL: What's the number again?

13 THE WITNESS: 161.

14 JUDGE SIPPEL: I got it. Okay, John Zaccario.

15 MR. GORDON: Do you know who Mr. Zaccario is?

16 JUDGE SIPPEL: Yes. By the way, if you see initialed JZ
17 on any of these pages, that means John Zaccario. I learned that
18 the hard way.

19 THE WITNESS: All right. Yes, I see that, and I believe
20 he's the head of sales.

21 BY MR. GORDON:

22 Q Okay, did you speak to him about his views as to when
23 Nielsen reflects the effects of a repositioning, like the one that
24 happened to Game Show Network?

25 A No. As a former chair of the people who out them, I'm

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1 well aware of how that works.

2 Q Okay. Now sir, I'd like you to ---- your view here as
3 expressed, going back to 317 in the little binder, is that GSN went
4 down, WE tv went up, and therefore the repositioning made a
5 difference?

6 A This is part of a longer analysis that shows a group of
7 other minority of networks in addition to WE tv, and all of them
8 went up, and GSN of course went down. So that was my analysis.
9 Here you're just seeing the two.

10 Q Okay. So you looked at other networks in terms of this
11 analysis?

12 A Yes, that's true.

13 Q And now in constructing those groups of networks, you
14 didn't concern yourself with the networks that GSN followed in its
15 ordinary course with respect to the networks it viewed as
16 competitive, right?

17 A No, I was looking at what Nielsen told me were similarly
18 skewed networks.

19 Q So I just want to make sure when you said no, you agree
20 with me you didn't look at what GSN thought were their competitors?

21 A That's correct.

22 Q Now, you believe that the fact that GSN -- just to ask it
23 in light of what you just said, that the GSN went down, and WE tv
24 and these other networks went up post re-tiering, you believe that
25 means that the re-tiering made a difference in terms of -- and

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1 negatively impacted, GSN, correct?

2 A Based on the larger set of data ---- I had some other
3 data that I cited in my report ---- I believe that, yes, it is most
4 likely that that in fact was the causal relationship.

5 Q Well you're a researcher, correct?

6 A Yes.

7 Q There's not most likely in research, right? Researchers
8 look at correlation and causation all the time, correct?

9 A Yes, but there's probability, 100 percent, 50 percent and
10 so forth.

11 Q Right, but you haven't done any statistical analyses to
12 tell us that the probability is 100 percent or 50 percent or
13 anything like that?

14 A I wouldn't put a number on it, I would just say that it's
15 highly likely that they're related.

16 Q Okay. Well, in research, there are actually tests you
17 can use to know whether something truly is highly likely and give
18 a percentage to it, and you didn't do any of those tests, correct?

19 A That would not be true in this case. There are some
20 cases where you are based on sample that you can do a statistical
21 analysis of sample deviation, that sort of thing. But in this kind
22 of case, it's a judgment of research whether you think that a whole
23 bunch of stuff did this, something else did that, are they related?

24 Q I get that, sir. You looked at these, you saw one moving
25 down, others moving up, and you have decided that it's likely that

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1 one caused the other.

2 A Well there's one other piece. I also looked at whether
3 the ones that went up were going up anyway based on their national
4 numbers, based on broader numbers, and they weren't. So there was
5 not any other explanation that this had some -- most likely was
6 causing it.

7 Q Events can correlate with each other, you don't dispute
8 as a researcher that events can correlate with each other, but not
9 have any causal relationship, correct?

10 A That's an important point. This is a correlation that
11 I'm pointing out here, and it does not prove causality.

12 Q You are ---- and to be clear, you are not telling the
13 Judge that the repositioning caused GSN to lose viewers, correct?

14 A I'm telling him that in my opinion, most likely it did
15 cause it, but that's not proof.

16 Q That's not my question. You're a researcher, and you
17 know the difference between correlation and causation, right?

18 A Yes.

19 Q So let's not fence here. You are not telling the Judge
20 as a researcher who knows the difference between causation and
21 correlation, that the repositioning caused GSN to lose viewers and
22 these other networks to gain viewers?

23 MR. SCHMIDT: Asked and answered several times, Your
24 Honor.

25 THE WITNESS: I'll answer it again if you like.

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1 JUDGE SIPPEL: I'm going to let the witness go on --

2 THE WITNESS: Because I've been in the same situation
3 with CEOs and many people I report to over the years. If there was
4 a strong correlation, and I believe that that correlation, based on
5 a whole bunch of data that I have, is likely causality, then I will
6 say this is most likely caused by that. That is very common in
7 research.

8 BY MR. GORDON:

9 Q Sir, I get that you are saying that it likely caused.
10 I'm looking for a more scientific answer here, and I'd like you to
11 answer my question if you can. You are not telling the Judge for
12 a fact, as a researcher who knows the difference between
13 correlation and causation, that the fact that GSN was repositioned
14 caused GSN to lose viewers and WE tv to gain viewers, correct?

15 A I'll answer it the same way I answered it twice or three
16 times before. I think most likely that is what happened.

17 Q I get what you most likely think.

18 A That's what researchers do. I'm sorry.

19 Q But researchers also can tell you if something in fact
20 caused something else to happen, sir. That's the difference
21 between correlation and causation, right?

22 A Actually, in television research, it's very seldom the
23 case that you can prove absolutely, 100 percent certainty,
24 causality. You're almost always looking at some kind of
25 correlation and seeing how strong their correlation is, you're

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1 looking at what the factors that might have caused that
2 correlation, and reaching a research judgment of whether that is
3 causation or not. That's very common in research.

4 JUDGE SIPPEL: He's answered that question, don't go back
5 to that.

6 MR. GORDON: I am not.

7 BY MR. GORDON:

8 Q You did not do any statistical tests of any kind to
9 determine whether these numbers are different in a statistically
10 meaningful way, correct?

11 MR. SCHMIDT: Asked and answered.

12 MR. GORDON: I'm not sure that this one was asked.

13 MR. SCHMIDT: It was asked about five minutes ago.

14 JUDGE SIPPEL: Can you answer that question?

15 THE WITNESS: Yes, my answer is that there are no
16 statistical tests that I know of that I could have applied in this
17 case, so I did not apply any.

18 BY MR. GORDON:

19 Q Okay. Sir, did you look at this group here, GSN or WE tv
20 to determine whether there were any programming changes, marketing
21 changes, promotional changes in any way that would explain the
22 change in the ratings from Q2 2010 to Q2 2011?

23 A Yes, I looked at the programming of all of those
24 networks. I follow it anyway.

25 Q Now sir, did you speak to anybody at GSN about why GSN's

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1 ratings went up or down in this period?

2 A No.

3 Q That wasn't relevant?

4 A That's correct.

5 Q Okay. I'd like to see what GSN was saying, so take a
6 look at Cablevision Exhibit 193 if you would.

7 JUDGE SIPPEL: Game Show Network Management Committee
8 Meeting of 2011.

9 MR. GORDON: Yes sir, and I'm looking at page 49 of 83.

10 JUDGE SIPPEL: I've got it.

11 MR. GORDON: Okay. You got it, Mr. Brooks?

12 THE WITNESS: Yes, I do.

13 BY MR. GORDON:

14 Q This is a 2011 original programming scoreboard, do you
15 see that?

16 A Yes, I do.

17 Q And do you see here there is a chart indicating [REDACTED]

18 [REDACTED]

19 A Yes.

20 Q Do you know what [REDACTED] was?

21 A It's [REDACTED], and yes, it was [REDACTED]

22 [REDACTED] --

23 Q That was a show that GSN had [REDACTED] in the
24 beginning of 2011, correct?

25 A I don't know what their hopes were for it, but I assume

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1 they thought it would work.

2 Q In any event as you can see here, [REDACTED] do you
3 see that?

4 A Well, I see it's characterized here [REDACTED]. I
5 don't know why they characterize it such or not.

6 Q That's fine. [REDACTED] that also was a show that
7 GSN thought would be a success and it came out in the first half of
8 2011, right?

9 A Yes.

10 Q And that was a [REDACTED]?

11 A It's so characterized here, so I assume they felt it was.

12 Q Okay, and did you look to see whether two ---- and these
13 are original programs, do you see that?

14 A I believe all of these are original productions, yes.

15 Q Right, and these are the shows that Mr. Goldhill ----
16 well, strike that. Original programs are the type of shows that
17 Mr. Goldhill told us was what moved the needle as far as the
18 network was concerned; that was the important thing to come out
19 with.

20 JUDGE SIPPPEL: Well which way did he moved the needle?

21 MR. GORDON: Well [REDACTED]
22 right?

23 MR. SCHMIDT: Your Honor, if I may, one of these shows I
24 was specifically barred from asking Mr. Goldhill about, so I don't
25 think it's fair to question this witness about what Mr. Goldhill

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1 did or didn't say about all these shows.

2 JUDGE SIPPEL: Well, I'm not paying any attention to that
3 question and answer on what this witness says.

4 MR. GORDON: Okay.

5 BY MR. GORDON:

6 Q [REDACTED], do you see it says [REDACTED]?

7 A Yes.

8 Q Did you make any effort to figure out whether GSN thought
9 that that programming that came out in the beginning of 2011 was a
10 [REDACTED]?

11 A No, I'm not particularly interested in what they thought.

12 Q It doesn't matter to you whether GSN thought the
13 repositioning was the cause of its ratings decline or the failure
14 of its original programming? That's irrelevant, sir?

15 A Their thought about it is irrelevant, I looked at the
16 numbers and make my own judgment.

17 Q So if GSN is saying, hey, the beginning of 2011 was
18 awful, we had a whole bunch of failures and that caused our ratings
19 to go down, that's of no moment to you?

20 A It looks like they had three, what they consider
21 successes, and two what they consider failures, that's a pretty
22 good hit rate for television.

23 Q I'm not asking you, sir, I'm asking you a different
24 question.

25 A I'm sorry.

1 Q Okay, because you haven't looked at whether there are
2 ones as well that were ratings failures, right?

3 JUDGE SIPPEL: You know, I think his answer is that he's
4 relying on numbers, not on commentary or editorializing. and if we
5 have to go through more of these examples and get the same answer,
6 it's going to be pretty time consuming.

7 MR. GORDON: Okay. Do you see on the next page, sir, of
8 that GSN, it says that the -- [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED], do you see that?

11 MR. BROOKS: I see that.

12 BY MR. GORDON:

13 Q And then that's of no moment to you in your analysis,
14 correct?

15 A Well, the part of that that says [REDACTED] [REDACTED] [REDACTED]
16 [REDACTED] is their judgment. I would have to make
17 that judgment myself based on the numbers.

18 Q But you didn't try to do that kind of an exercise,
19 correct? You just saw the numbers were going one way and you
20 didn't try to hold constant any programming issues GSN may have had
21 in trying to figure out whether or not the cause of the ratings
22 decline was from the repositioning or something else.

23 A Well, first, this is only prime time. Repositioning is
24 based on total days, much broader than that. So --

25 JUDGE SIPPEL: Finish your answer.

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1 THE WITNESS: I'm sorry. So, I look at the numbers and
2 my belief, based on my experience, that it takes a pretty major
3 change in either programming or positioning to move the needle on
4 a network, not a few shows that succeed and a few that fail. That
5 happens all the time.

6 JUDGE SIPPEL: He said that he doesn't -- he's not a view
7 and feel guy, he's just a Nielsen guy. That's what his expertise
8 is.

9 MR. GORDON: Well, Your Honor, my only point, and if I've
10 made it, I've moved on, is he is saying that there is a correlation
11 and that these numbers moved in one direction and these moved in
12 the other. And my point is, you know, programming impacts the
13 ratings, and that's what GSN was thinking at the time.

14 MR. SCHMIDT: Your Honor, I don't think we're doing
15 argument now on --

16 JUDGE SIPPEL: I mean, he's relying on numbers to show
17 these movements, he's not testifying to the things that you're
18 examining him on.

19 MR. GORDON: Okay, Your Honor, I'll move on.

20 JUDGE SIPPEL: Let's move on.

21 MR. GORDON: And, in terms of the numbers, sir, that are
22 reflected on this chart in 2010, you can see that --

23 JUDGE SIPPEL: Now, what's this chart?

24 MR. GORDON: The one we're on page 50 of 83, Your Honor.

25 JUDGE SIPPEL: This is a ratings, [REDACTED] ?

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1 MR. GORDON: Yes. You didn't look at prime ratings,
2 correct?

3 JUDGE SIPPEL: You've got the page?

4 THE WITNESS: Yes, that's correct. In most cases, no, I
5 looked at total day.

6 MR. GORDON: Okay. In terms of 2010 actual, do you see
7 there? GSN was on a [REDACTED],
8 correct?

9 THE WITNESS: Well, first of all, this is prime, this is
10 not total day. And secondly, they're on a great surge, apparently,
11 in '09 and then they came back to the same levels it used to be at
12 in '10. So, I would take the fourth -- actually, it's the fourth
13 quarter of 2009, here, that is the anomaly.

14 BY MR. GORDON:

15 Q Okay, sir. Well, you're data, you know, doesn't show
16 anything different than this slide shows. Your data shows that for
17 2010, GSN was on a [REDACTED], too, correct? It doesn't matter
18 whether I look at it in prime or --

19 A No.

20 Q -- you look at it the same way.

21 A I did not analyze the data within the quarters of 2010.
22 Certainly not for prime time only and for persons 25 to 54 only.
23 This is a very narrow measure that I'm looking at right here.

24 MR. GORDON: Sir, take a look at --

25 JUDGE SIPPEL: You're asking him what he doesn't know

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1 about.

2 MR. GORDON: I think he does, Your Honor. I'll show it
3 in the documents. Look at CV 810 for a second, please?

4 THE WITNESS: CV 810.

5 JUDGE SIPPEL: CV 810. I've got it right here, I think.
6 Okay, this looks like 2010 Total Day Households on that different
7 heading, that different sheet.

8 MR. GORDON: Yes, Your Honor.

9 JUDGE SIPPEL: And you want to direct him to?

10 MR. GORDON: Sure. This is your backup data for your
11 analysis on GSN Exhibit 317, correct?

12 THE WITNESS: You're referring to page 2?

13 BY MR. GORDON:

14 Q I'm just -- I'm referring, if you go to page 3 and 4,
15 this is your backup data, correct? This is how you looked at all
16 those networks to see, quarter over quarter what they -- page 3 of
17 42 and page 4 of 42.

18 A If you'd just give me a moment to look at it.

19 MR. GORDON: Yes, of course.

20 JUDGE SIPPEL: And that one, you say that was his backup
21 to what exhibit?

22 MR. GORDON: To Exhibit 317, the one we were looking on
23 the 2Q 2010 over 2Q 2011.

24 THE WITNESS: Yes, this looks like it's the backup for my
25 New York market second quarter '10 to second quarter '11.

1 BY MR. GORDON:

2 Q Right. All right, for instance, just so we're clear, on
3 page 4 of 42, you see on the left-hand side there's GSN?

4 A I'm sorry, we're looking at which page now?

5 Q Four of 42, page 4.

6 A Page 4 of 42, yes.

7 Q You seen GSN there?

8 A The third one down, yes.

9 Q Right. And, if I go to 2010, the second quarter by your
10 over to [REDACTED]?

11 A Yes.

12 Q And that's the number you reflect in your chart, right?

13 A Yes, that's one quarter -- that's one year prior to the
14 second quarter '11.

15 Q And, if I look at the third quarter of 2010, I get [REDACTED]?

16 A Yes.

17 Q Right? And, if I go to the fourth quarter of 2010, I get
18 [REDACTED], right?

19 A Yes.

20 Q So, you would agree with me that your data shows that GSN
21 was on a downswing in 2010 before the retiering, correct?

22 A I don't know that you can compare a demographic like as
23 narrow as that over four quarters as a downswing, because I see
24 it's going up right before that, then it goes down, then it goes
25 back up again in the first, then it goes down again.

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1 Q Well, I'm only looking at 2010, and what I see is there's
2 a reduction of [REDACTED] of the audience from Q2 of 2010 through
3 the fourth quarter of 2010 that had nothing to do with the
4 retiering by Cablevision, right?

5 A I would consider that an overreading of the data. The
6 numbers go down, but I consider that more than this data will
7 support.

8 Q All right. And, sir, did you look to see whether we
9 introduced any new shows in the second quarter of 2011 that were
10 not on the air in 2010 that might explain the differences for WE
11 between 2011 and 2010?

12 A I did track their introduction to new shows. As a matter
13 of fact, I tracked the introduction of all cable networks of any
14 new shows. I don't have that all on the top of my head, but I do
15 not see anything there that would indicate an upward or downward
16 pressure on the ratings.

17 Q Do you know what the Braxton Family Values is?

18 A Yes.

19 Q Do you know when that premiered?

20 A Not offhand, no.

21 Q Second quarter 2011.

22 A All right.

23 Q That was one of the WE tv's most successful shows in this
24 time frame, yes?

25 A Yes, it has been a successful show for them.

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1 Q And, in fact, it broke records for viewership as compared
2 to WE's prior history, you know that as a TV expert, correct?

3 A It was good in WE's terms, it was never a Top 10 show,
4 but it was good in WE's terms, yes.

5 Q Did you do any analysis to see whether the introduction
6 of Braxton Family Values in the second quarter of 2011 caused WE's
7 viewership overall to go up?

8 A I know that it had no significant effect on its overall
9 because it doesn't have enough hours, and they had failures to
10 offset it.

11 Q Do you have an analysis that you can show us that backs
12 that up, sir?

13 A I have that data. I looked at it. I don't have the
14 analysis on the top of my head, no.

15 JUDGE SIPPEL: Was that an original program for WE tv?

16 THE WITNESS: It was.

17 MR. GORDON: Yes.

18 JUDGE SIPPEL: The witness told me.

19 MR. GORDON: Now, sir, you haven't seen anything that
20 indicated that Cablevision expected to gain viewers as a result of
21 the retiering of Game Show Network, correct?

22 THE WITNESS: I don't know what their expectations were.
23 Nothing in writing said that.

24 BY MR. GORDON:

25 Q You haven't seen any documents, right?

1 A Correct.

2 Q You haven't seen any documents that WE tv where they came
3 to the conclusion that if Cablevision got rid of GSN or retired
4 them, that they would get a viewership change, did you?

5 A Actually --

6 JUDGE SIPPEL: A positive change?

7 MR. GORDON: Yes.

8 THE WITNESS: I had seen documents, very few documents,
9 there at all on what they were considering, or what they considered
10 the result of it. It's a very lone paper about that.

11 MR. GORDON: Okay. I'd like to talk to you about your
12 viewer attitudes.

13 JUDGE SIPPEL: Well, is there a Cablevision document that
14 reflects that? That's what you were asking him?

15 MR. GORDON: Yes, that's what I was asking him and I
16 believe the answer was he hadn't seen it.

17 JUDGE SIPPEL: But you don't have a document like that
18 that you're going to put in front of him?

19 MR. GORDON: No, Cablevision didn't do anything. I'd
20 like to talk to you about your Beta viewer satisfaction survey
21 which appears behind tab 9.

22 THE WITNESS: Tab 9?

23 JUDGE SIPPEL: In the rule book or the little book?

24 MR. GORDON: The little book. Back to the little book,
25 yes. It's GSN 316.

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1 JUDGE SIPPEL: That's GSN Exhibit 316.

2 MR. GORDON: Okay. And this is another measure where I
3 believe you concluded the networks were similar, based on the
4 similarity of values that were generated as a result of looking at
5 Beta viewer satisfaction measures.

6 THE WITNESS: This is the subjective evaluation of
7 viewers. This is not Nielsen, this is the subjective evaluation of
8 viewers of those two networks.

9 BY MR. GORDON:

10 Q Right. And based on the various categories you list
11 here, because of the similarity between GSN and WE tv, this is
12 another piece of evidence that you consider indicative of
13 similarity, correct?

14 A Yes, that's true.

15 Q And the data view satisfaction measures comes from a
16 document called the Beta Basic Cable Subscriber Study, correct?

17 A That's correct.

18 Q And as you explained, that's an impartial benchmark on
19 viewer attitudes, correct?

20 A Yes.

21 MR. GORDON: And, if you look in your big binder to 811,
22 CV 811 --

23 JUDGE SIPPEL: Right here, Beta Research Variable
24 Subscriber Study, November 2010, CV Exhibit 0811.

25 (Whereupon, the above-referred to document was marked as

1 CV Exhibit 811 for identification.)

2 MR. GORDON: And this the data study that you looked at
3 to generate the chart that's in 316, correct?

4 THE WITNESS: I believe so, yes.

5 BY MR. GORDON:

6 Q Okay, well, we'll go through it.

7 A I'll take your word for it, yes.

8 Q Okay. And the reason why you looked at the study was to
9 draw comparisons about how networks are perceived by viewers
10 according to this study, right?

11 A By their viewers, yes.

12 Q Yes. And Beta collects information from more than just
13 WE and GSN, there are a whole bunch of networks, correct?

14 A Absolutely.

15 JUDGE SIPPEL: What are these different color schemes
16 mean? I don't see a designation any place, green, pink, light
17 green, something, light green, looks like a light blue.

18 THE WITNESS: I don't think that has significance, Your
19 Honor.

20 JUDGE SIPPEL: It's just the way they drew it out?

21 THE WITNESS: Just pretty.

22 JUDGE SIPPEL: You see, my brain's been scrambled by all
23 this stuff.

24 THE WITNESS: I think I've had 40 years of it.

25 JUDGE SIPPEL: I was going to -- I didn't want to ask

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1 that, though.

2 MR. GORDON: Now, sir, if I turn to Table 14 of Exhibit
3 811, which is on page 25, let me know when you're there.

4 THE WITNESS: Average Perceived Value, yes.

5 MR. GORDON: Yes.

6 MR. SCHMIDT: What page?

7 MR. GORDON: Page 25. And this table is where you draw
8 your entries for the first line on your chart, right?

9 THE WITNESS: Yes.

10 BY MR. GORDON:

11 Q And what you did was you added the three up and came to
12 an average?

13 A Well, in a prior -- in my prior report, I showed the
14 three separately, and this latest report, I simply averaged them,
15 yes.

16 Q Okay. And so, you -- and you believe -- you averaged
17 them because I think you said in your report that a multi-year
18 average is the most appropriate way to look at this?

19 A Yes.

20 Q And, when you look at them, and even though the average
21 is 151 to 134, I take it your view was that's close enough for you
22 to conclude that the networks are viewed similarly, right?

23 A Actually, I think what I said is in that measure, that is
24 the perceived monthly value, GSN by a statistically significant
25 amount is higher -- is valued higher. But, overall, I would make

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1 that statement that they are similar.

2 Q Okay. And just going off what you just said, if you look
3 at the language underneath the chart, one of the things data tells
4 you in this report, and, again, it's what you just referred to, is
5 that most differences of less than 15 percent are not statistically
6 significant, right?

7 A It's actually 15 cents.

8 Q Fifteen cents, I'm sorry, I apologize. Right, 15 cents?

9 A Yes.

10 Q So, that means from a statistical point of view, what
11 you're looking for in terms of networks that might be similar is
12 bounded by 166 on the high side and 136 on the low side in terms of
13 your average, right?

14 A No, actually, it means that 166 and 151 would be the
15 bounds of networks that are at least 15 cents apart.

16 Q Well, it's differences of less than 15 cents on either
17 side of the boundary, right?

18 A No, no, it's a total different -- as I understand it,
19 it's a total difference of 15 cents between two numbers.

20 Q Okay. So, your testimony is, it is 166 and 151,
21 correct?

22 A Yes, if that's your example, yes.

23 Q All right. So, if I look at Versus on this chart, you
24 see that?

25 A Yes.

1 Q And I add up 101, 173, 220 divided by 3, I get the number
2 of 164, correct?

3 A Yes.

4 Q And in that range, that difference is not statistically
5 significant from GSN, correct?

6 A The 164 would be compared with 151.

7 Q Right.

8 A So, that's 14 cents, that's not statistically
9 significant.

10 Q Okay. And Versus is a men's number correct?

11 A Yes.

12 Q All right. And there are, in fact a number of networks
13 within 15 cents of GSN's average on this chart that are either
14 men's networks or certainly not women's networks, correct?

15 A Sure, this is all on viewers of the network.

16 Q Right. And if I turn to page -- the next line in your
17 chart, average satisfaction, do you see that?

18 A Yes.

19 Q And there, you have -- they both have an average of 3.3?

20 A Yes.

21 Q Do you see that? And, again, that's an average
22 satisfaction score?

23 A Yes.

24 Q And that comes from Table 5 on page 11, right?

25 A Let me just take a moment, yes.

1 Q And you added up, for instance, for GSN, 3.3, 3.4, 3.3
2 and divided by 3, right?

3 A Yes.

4 Q And if I do that same thing for Spike, I get the exact
5 same answer, correct, 3.3?

6 A Yes, among their viewers, different set of viewers.

7 Q Okay. They view it the same as GSN, correct? They're
8 satisfied to the same degree?

9 A Well, they don't -- they give the same -- the men who
10 watch -- mostly men -- who watch Spike give it the same dollar
11 value as the women mostly who watch GSN.

12 Q And Spike is a men's network?

13 A Yes, well, predominantly, yes.

14 Q Predominantly. And if I look at Versus, again, I get
15 3.3, correct?

16 A Yes, and that would be among their viewers.

17 Q Right.

18 A Or, again, men.

19 Q So, based on the first two categories here, in the same
20 way that GSN and WE tv, just on these scores view these items, they
21 view these networks similarly, the same can be true for Versus
22 where the networks, right, get a perceived monthly value of
23 network, within the range you gave us, and the very same average
24 satisfaction scores, correct?

25 A Their viewers give the same satisfaction, yes.

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1 Q Okay. And, if I go to the next line, very satisfied with
2 network, do you see that?

3 A Yes.

4 Q That comes out of the table on page 3, I'm sorry, Table
5 3 on page 9.

6 A Yes.

7 Q And there, the data tells us that less than a five
8 percent difference is not statistically significant, correct?

9 A That's correct.

10 Q So, in 2010, for this example, the difference between WE
11 and GSN is not statistically significant data and you can't
12 conclude that GSN viewers are more satisfied than WE's viewers
13 because GSN scores a little higher there, right, .355?

14 A In 2010?

15 Q The average. Right?

16 A I'm trying to clarify the question. Are you saying that
17 in 2010 -- could you repeat the question, please? I'm sorry.

18 Q Yes, sure. From a statistical point of view, the fact
19 that GSN is one percent higher doesn't mean that GSN viewers are
20 more satisfied than the other years, right?

21 A In 2010?

22 Q No, over the average. You're doing an average.

23 A Oh, I'm sorry, I thought you were pointing me to 2010.

24 Q No.

25 A The one percent difference, correct, is not statistically

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1 significant over the three reports. I think I said that.

2 Q And, sir, if I went through this chart here, we could
3 find men's networks or women's networks -- I'm sorry, we could find
4 men's networks or networks that are not women's networks that would
5 fall within those five percent boundaries, correct?

6 A Sure, of course.

7 Q And the same would be true for network program quality
8 being high, correct, there, if you turn to page 11, I'm sorry,
9 Table 11 on page 18?

10 A Okay, I'm there.

11 JUDGE SIPPEL: Give me that again, tab 11?

12 MR. GORDON: Table 11.

13 JUDGE SIPPEL: Oh. On page What?

14 MR. GORDON: On page 18. It's confusing because there's
15 an 18 and then there's a 20 at the bottom there.

16 THE WITNESS: It's Table 11 you're looking on?

17 MR. GORDON: It's Table 11, which is on page 20 on the
18 bottom, page 18, above the word Beta.

19 MS. KANE: Your Honor, I believe it's 20 of 49 if you
20 look at the CV Exhibit 811, those numbers that we've been using.

21 JUDGE SIPPEL: I think I have it here, 20 -- it says more
22 services are less than five cents are not statistically
23 significant. This is Table 11?

24 MR. GORDON: Yes.

25 JUDGE SIPPEL: Percentage of Viewers Rating Important to

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1 Enjoyment of Cable?

2 MR. GORDON: Right. And again, I could go through this
3 and find men's networks, or at least networks that are not women's
4 networks, that fall within that statistical boundary that would be
5 the -- would have a number that corresponded within that five
6 percent to GSN, correct?

7 THE WITNESS: Sure, this has nothing to do with gender.

8 MR. GORDON: Right. So, these scores, exactly, it has
9 nothing to do with gender, and it has nothing to do with any of the
10 demographics we were looking at, correct?

11 JUDGE SIPPEL: Does it have anything to do with the case?

12 MR. GORDON: Well, he says it does.

13 THE WITNESS: Of course. It has to do with the
14 satisfaction of -- elsewhere I address gender through, you know,
15 some ratings and other things. This is not about that. This is
16 about how the viewers of those two networks, that -- mostly women
17 in both cases, established elsewhere -- how they value the network.
18 This chart is not about gender, it's about evaluation of the
19 network.

20 BY MR. GORDON:

21 Q Sure, and I could use Beta to find viewers just in terms
22 of the numbers who value a men's network using the same criteria
23 you did the same as GSN, correct?

24 A Of course.

25 Q Or networks that aren't women's networks?

1 A Of course, it's not related to gender. That's addressed
2 elsewhere.

3 Q Okay. So, these scores by themselves from data don't
4 tell you anything about whether viewers see two networks as --
5 strike that. Let me, sir, move on to channel placement, if I can?

6 A All right.

7 JUDGE SIPPEL: Going back to this exhibit, though, this
8 Table 11, this was not put in with his direct testimony was it?
9 This is not one of his tabs in the direct testimony, is it?

10 MR. GORDON: Yes, Your Honor, it is.

11 JUDGE SIPPEL: It is? Which on?

12 THE WITNESS: I believe it is.

13 MR. SCHMIDT: It's tab 9, Your Honor, Exhibit 316.

14 MR. GORDON: Exhibit 316.

15 JUDGE SIPPEL: Well, wait a minute, wait a minute, 316?
16 Oh, I see, data viewer. Those data -- his statistics there are
17 taken from Table 11?

18 MR. GORDON: They are taken from various --

19 JUDGE SIPPEL: Various tables?

20 MR. GORDON: -- tables in this study.

21 JUDGE SIPPEL: Within the study?

22 MR. GORDON: Within the study.

23 JUDGE SIPPEL: Okay. I hear you. Okay, what's the next
24 one?

25 MR. GORDON: Could we offer 811? Any objections?

1 MR. SCHMIDT: None.

2 MR. GORDON: Now, sir, in terms of channel placement, you
3 gave some testimony earlier, do you know what --

4 MR. COHEN: I'm sorry, Your Honor, is 811 received? I
5 don't have it in my notes.

6 MR. GORDON: I'm sorry.

7 JUDGE SIPPEL: Is it offered?

8 MR. GORDON: Yes, we offered, there was no objection.

9 JUDGE SIPPEL: Received into evidence. Thank you. Thank
10 you, Mr. Cohen, 811 is received into evidence.

11 (Whereupon, the above-referred to document was received
12 into evidence as CV 811.)

13 MR. GORDON: In terms of channel placement, you talked
14 earlier about the difference in channel placement between WE and
15 Cablevision in a New York DMA, do you recall that?

16 THE WITNESS: Yes.

17 BY MR. GORDON:

18 Q You didn't do any study of channel placement between WE
19 and GSN for Cablevision, correct?

20 A I did.

21 Q You did a study linking channel placement to ratings?

22 A Well, I had data from their set-top box which indicated
23 what kind of audience tuning they got in their respective
24 locations, if that's what you mean.

25 Q And, can you show me where in your direct testimony you

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1 analyzed that data and you could tell me what the quantified --
2 what the benefit was?

3 A I didn't quantify what the amount of lift or drag would
4 be, according to it. I only stated, based on my experience and
5 based on Nielsen studies, actually, as well, that -- and we're
6 saying channel placement, it's actually neighborhooding, being near
7 strong channels, it helps the network, being near a weak channels
8 hurts the network.

9 Q But you, yourself, didn't do any analysis, correct?

10 A I didn't feel I needed to on that.

11 Q Okay. Did you look at the New York -- any other of the
12 operators in the New York DMA?

13 A In terms of?

14 Q In terms of channel placement or neighborhooding?

15 A Yes, I think I alluded to Time Warner and their channel
16 placement.

17 Q Okay. And did you examine for Time Warner -- did you
18 take a look at Time Warner? Do you recall what channel GSN was on?

19 A It's in my report. I think it's in the footnote. Off
20 the top of my head, I'm not sure what it was. It was close to WE
21 and close to Lifetime and I'm not sure what their numbers were.

22 Q So, for Time Warner, did you get -- did you try to figure
23 out for Time Warner what the ratings were for GSN, for WE, to see
24 whether or not channel placement in the New York DMA made a
25 difference? Did you do any kind of analysis where you looked just

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1 at Time Warner Cable?

2 A I looked at all New York outside of Cablevision, of which
3 Time Warner is the largest player, but I didn't isolate Time Warner
4 by itself.

5 Q Okay. So, the answer is no, you didn't look to see, to
6 test your hypothesis that channel placement made a difference? You
7 didn't look to see in Time Warner where they are neighborhooded
8 together, whether that made a difference, correct?

9 A I don't consider that a hypothesis. I consider that very
10 well known in the research world. So, I did not test it, no.

11 Q Okay. Did you look at Verizon FiOS?

12 A No.

13 Q Do you know what channel or neighborhood GSN or WE tv is
14 on?

15 A Well, actually, I happen to subscribe -- and this is not
16 in court, but I subscribe to FiOS, so, yes, I'm familiar with where
17 the channels are in that case.

18 Q Okay. And what channel is GSN on in the FiOS?

19 A GSN is on, I believe it's something like 35, 535,
20 something like that or maybe it's 635, and I'm forgetting which
21 block it's in. It's not terribly far away from some high rated
22 channels.

23 Q Do you know what high rated channels?

24 A I would have to go back and check that.

25 Q Okay. Did you get any data that would allow you to see

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1 whether that makes a difference for FiOS for GSN as opposed to WE?

2 A Ratings standard? No. It's such a well known factor f
3 research I did not feel it necessary to research it.

4 JUDGE SIPPEL: I take it that GSN didn't ask you
5 specifically to research that point?

6 THE WITNESS: That's correct. They gave me very little
7 in terms of specifics what they wanted me to research. They left
8 that up to me.

9 JUDGE SIPPEL: All right.

10 MR. GORDON: Now, sir, how about DIRECTV? Did you look
11 at DIRECTV?

12 THE WITNESS: Same answer.

13 BY MR. GORDON:

14 Q The answer is no?

15 A Correct.

16 Q Now, are you a FiOS viewer or a DIRECTV viewer?

17 A Well, I've had both. At the moment, I'm a FiOS -- I have
18 FiOS connection to my home. I had DIRECTV until a year or two ago.

19 Q Now, sir, let me move on and see if we can't wrap this
20 up. You spoke a little bit in your direct testimony about the harm
21 that has befallen the GSN from the repositioning, right?

22 A Yes.

23 Q Now, you haven't -- now, sir, in terms of the work you
24 have done, you haven't performed any kind of economic analysis or
25 analysis design to get at a quantification of that harm, correct?

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1 A In dollar terms?

2 Q In any terms, correct?

3 A Well, I give ratings quantifications, second quarter and
4 that kind of thing, but you can't take that to dollar value.

5 Q Right. Okay. And you didn't -- you're not telling us
6 what the ratings would have been but for the repositioning,
7 correct?

8 A I believe the implication of what I say is that it would
9 have been similar but for the retiering.

10 Q Well, I don't want to talk about implications, sir. I
11 want to know whether you did an analysis and you can say but for
12 the repositioning, the ratings would have been X.

13 A I'm not sure what analysis that would be if nothing
14 changed. So, I'm not sure What analysis that would be.

15 Q In other words, you can't -- strike that. Now, sir, you
16 recall in your Tennis Channel testimony that you testified about
17 the harm that the Tennis Channel suffered from its tiering,
18 correct?

19 A I believe in the Tennis Channel, it was a matter of
20 carriage as opposed to tiering.

21 Q Right. You talked about it falling below a certain
22 distribution threshold, correct?

23 A That's correct.

24 Q And in Tennis, I believe you said the Tennis Channel was
25 impacted because of distribution of roughly 430 to 50 million, if

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1 you are less than that, it becomes a hindrance to a network on a
2 few different levels, right?

3 A Yes, that's part of the cut that agencies make in their
4 planning stages.

5 Q Right. And, in this case, GSN has more than 50 million
6 subscribers, right?

7 A Yes.

8 Q So, the ills that you were talking about in the Tennis
9 Channel don't apply here, correct?

10 A On that metric they don't, that's correct.

11 Q Yes, okay. And, sir, you talked about in your direct
12 testimony the negative impact on the audience to whom GSN has to
13 sell to a national advertiser, right?

14 A Yes.

15 Q And you talked about impacting the ability of the network
16 to develop in marketing programming?

17 A Yes.

18 Q And you talk about the disproportionate effect on GSN's
19 national viability as an advertising medium?

20 A Yes.

21 Q Okay. Now, sir, you haven't performed any analyses where
22 you could tell me what the world would look like, in terms of ad
23 sales, had the repositioning not taken place? You haven't
24 quantified that, correct?

25 A I've not quantified it in dollar terms, that's correct.

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1 Q And the same is true of development marketing? You
2 couldn't tell me what the world would look like had the
3 repositioning -- ?

4 A Only that it would be less, but I didn't quantify it in
5 dollars how much less.

6 Q Right, you haven't quantified anything, correct?

7 A That's right. I did not do an economic analysis.

8 Q Okay. And the same is true about -- you haven't
9 identified particular media buyers who have stopped placing ads on
10 GSN or anything like that, correct?

11 A No, I concentrate on what's available, not what's
12 ultimately sold.

13 Q And I believe we talked earlier that if you look at your
14 ratings data, if you turn to GSN 313 which appears behind tab 4.

15 A I'm sorry, where are we? The small binder?

16 JUDGE SIPPEL: GSN 313?

17 MR. GORDON: Right, which is behind 4 in the small
18 binder.

19 THE WITNESS: The small binder? Which tab, sir?

20 BY MR. GORDON:

21 Q I'm sorry, tab 4.

22 A Yes, I see that.

23 Q Okay. And we talked earlier there was no difference
24 between the 2000 and 2013 ratings, right?

25 A The 2000?

1 Q 2010 and 2013 ratings, no difference?

2 A No significant difference.

3 Q Okay. And, if we looked at -- this is on a national
4 audience, if we looked in the New York DMA and the work you did
5 there, we'd also find that the ratings following the re-tiering for
6 GSN did not change, correct?

7 A Well, they went down and back up again.

8 Q They were the same in 2010 and 2013?

9 A On the two ends, yes.

10 Q Yes. And you're saying they followed a similar pattern
11 as here?

12 A Nationally?

13 Q Yes.

14 A Yes.

15 MR. GORDON: Okay. Give me one second. Nothing further,
16 Your Honor.

17 JUDGE SIPPEL: Did you want to wait until, Ms. Kane, do
18 you want to wait until redirect is finished before you ask your
19 questions?

20 MS. KANE: Yes, we believe that's been effective, Your
21 Honor.

22 JUDGE SIPPEL: Okay. Do we want to take a short break
23 here? It's going to be a ten minute break. So, we're in recess
24 for ten minutes.

25 (Whereupon, the above-entitled matter went off the record

1 at 3:35 p.m.)

2 JUDGE SIPPEL: Let's go back on the record. We're on
3 recross now. Mr. Schmidt?

4 RECROSS EXAMINATION

5 BY MR. SCHMIDT:

6 Q Mr. Brooks, thank you for bearing with us. Let me start
7 off with audiences and audience metrics. You were asked a question
8 by His Honor about TV shows skewing generally female. What kind of
9 skew were you talking about?

10 A Overall television viewing is roughly 52 percent female
11 to 48 percent, sometimes 51 to 49, that degree of difference.

12 Q Would you call a network with that skew a women's
13 network?

14 A No.

15 Q Look with me at tab 3 of your binder, Exhibit 312, where
16 you have data on audience skew for various networks, including GSN,
17 ranging from 69 percent to 71 percent.

18 A Yes.

19 Q Is that different than the general skew you were talking
20 about?

21 A Definitely.

22 Q Are these networks in terms of this level of skew, up to
23 70 percent or higher, are they what you would call women's
24 networks?

25 A Definitely.

1 Q Let's look at tab 7 of your binder, Exhibit 315, the
2 duplication analysis.

3 First of all, do you remember being asked questions about
4 the fact that some of this duplication is measured in terms of one
5 minute/six minutes?

6 A Yes.

7 Q Are those recognized Nielsen metrics?

8 A Yes.

9 Q Is that why you used them?

10 A They're widely used as the two principal duplications,
11 although you can set things to different levels.

12 Q Now you were asked about the raw numbers and you were
13 given some hypotheticals, including regarding someone who
14 accidentally stumbles on a channel and stays for a minute and,
15 then, goes somewhere else. Is there something else you did beyond
16 just looking at these raw numbers to put them in context?

17 A Yes. I did this duplication analysis not only between
18 GSN and WE, but between GSN and every other network, virtually
19 every other network measured by Nielsen, which add up to about 100
20 or so networks. And I found that, taking the first line, for
21 example, that 40 percent is at the very top tier in overlap that
22 any network has with GSN.

23 Q So, did you come to a view as to whether the numbers you
24 saw reflected in tab 7, GSN 315, are notable, looking at GSN versus
25 WE as compared to GSN and other networks?

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1 A Yes, they are very notable.

2 Q In what way?

3 A Well, as I just said, it is one of the highest
4 duplications that any other network has, top-tier duplication with
5 GSN.

6 Q Look with me, if you would, to tab 9 of your small
7 binder --

8 A Yes.

9 Q -- GSN Exhibit 316, tab 9, please, Mr. Brooks.

10 A Yes, I have it.

11 JUDGE SIPPEL: I'm with you.

12 BY MR. SCHMIDT:

13 Q This is the Beta data that you were asked about
14 extensively.

15 A Yes.

16 Q As I recall the questions, you were asked on some of
17 these individual metrics that you report here, perceived monthly
18 value, average satisfaction, about men's networks that may be
19 similar in terms of individual one of those numbers to GSN and WE?

20 A Yes.

21 Q Was that the point of your review of this data?

22 A No.

23 Q What is the point of your review of this data?

24 A In this data, I'm moving away from demographics, which
25 I've addressed elsewhere, based on Nielsen largely, to the value

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1 placed by the viewers of each network on that network, irrespective
2 of what their gender is. And on that basis, I found that the
3 viewers of GSN were presumably mostly female, based on my prior
4 research, and the viewers of WE, also presumably mostly female
5 based on prior research, rate those or value those networks very
6 similarly, except for dollars.

7 Q And what's the relevance of that?

8 A It shows another measure of how the networks compare in
9 terms of the value or, if you will, the passion the viewers have
10 for that network. And it puts them in the same category; hence,
11 another evidence of substantially similar.

12 Q All right. In terms of the people actually performing
13 these ratings in the beta survey for these two networks, do you
14 have an understanding from your other data as to whether you would
15 expect to see a large number of common viewers, given these ratings
16 for GSN and WE?

17 A Yes, the other data would suggest that there probably is
18 a good deal of commonality.

19 JUDGE SIPPEL: Do they conduct a survey like on the
20 telephone surveys?

21 THE WITNESS: I believe in two of these they were
22 telephone, and then, in 2010 they switched to an online
23 methodology.

24 JUDGE SIPPEL: Being sent an email, the customer gets an
25 email?

1 THE WITNESS: No. That's where -- well, yes,
2 essentially, they're recruited to participate in surveys. First,
3 they go into the pool, being willing to participate in surveys.
4 And sometimes they will get premiums for that. And then, they get
5 a specific questionnaire from Beta about this. I mean, the
6 questionnaire is about other things, too, online.

7 JUDGE SIPPEL: All right. I mean, I've never received a
8 phone call, but I guess I don't have to worry about that.

9 MR. SCHMIDT: We can arrange for that.

10 JUDGE SIPPEL: No, no, no. I'm not volunteering anything
11 on that stuff.

12 (Laughter.)

13 THE WITNESS: Telephone surveys are gradually being
14 phased out.

15 JUDGE SIPPEL: Glad to hear it. I think it is a good
16 idea.

17 THE WITNESS: Yes. Okay. I'll tell them that.

18 (Laughter.)

19 BY MR. SCHMIDT:

20 Q Let me turn to a different metric, to a different cross-
21 check. When you looked at shared audience, did you look at gender-
22 skewed general?

23 A Shared audience, yes, I did on the basis of women as well
24 as total.

25 Q When you looked at advertising demographics, was that the

1 place where you looked at specific ages?

2 A Yes, that's where I turned to the Nielsen sales
3 demographics.

4 Q Now you were shown some data regarding the female 25-to-
5 54 demographic and how GSN did with that demographic versus WE.
6 Isn't it, in fact, the case that you analyzed that very question in
7 your report?

8 A I have looked at the delivery of 25 to 54, yes, and I
9 have alluded to it in my report.

10 MR. SCHMIDT: May I approach, Your Honor?

11 JUDGE SIPPEL: Yes, please do.

12 (Whereupon, the document was marked as GSN Exhibit No.
13 319 for identification.)

14 BY MR. SCHMIDT:

15 Q Exhibit 319 comes from page 17 of your -- I keep saying
16 "report" -- but your testimony. And while I'm passing this out, is
17 this your analysis of ratings data for key sales demographics for
18 GSN and WE tv?

19 A Yes.

20 Q So, this is something you looked at?

21 A Yes, it is.

22 Q And can you speak to what this shows?

23 A It shows that GSN and WE are closely placed, within
24 hundredths of a rating point, on all of these categories. They are
25 reports on women 18 to 49, or persons 18 to 49 and 25-plus, and,

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1 also, reasonably close on the basis of women of those categories.

2 MR. SCHMIDT: Any objection to moving this into evidence?

3 MR. GORDON: No objection.

4 JUDGE SIPPEL: Received.

5 (Whereupon, the document marked as GSN Exhibit No. 319
6 for identification was received in evidence.)

7 JUDGE SIPPEL: Is this data based on the Beta?

8 THE WITNESS: No, this is based on Nielsen.

9 JUDGE SIPPEL: So, you go back to Nielsen?

10 THE WITNESS: Back to Nielsen, yes, sir.

11 JUDGE SIPPEL: Okay. Thank you. That's all I wanted to
12 know.

13 BY MR. SCHMIDT:

14 Q Now you -- and I won't go over this again; you have it in
15 your report, page 16 of your testimony -- but you focused on the
16 demographics that WE tv and GSN actually target, is that correct?
17 In terms of advertising sales?

18 A I focused on the ones that [REDACTED]

19 [REDACTED]

20 Q Okay.

21 A That's my interpretation of what target means.

22 Q Okay. Why is it important to you what they [REDACTED]
23 as opposed to what they deliver in terms of older viewers, from an
24 advertising perspective?

25 A I'm sorry, why is it important to me?

1 Q Yes. You were asked questions about not doing
2 calculations on viewership above 55 --

3 A Yes.

4 Q -- from an advertising perspective. So, my question to
5 you is, why is it important to you what they sell in their target
6 demographic in terms of advertising as opposed to 55-plus?

7 A Because in the advertising sales world, you are placed
8 according to the target demographic that the specific advertiser
9 wants. If that advertiser, in addition, gets other viewers, such
10 as 55-plus viewers they're not paying for, that is essentially
11 bonus, free bonus audience that they are getting. Advertisers know
12 that. So, what is important in sales is, did you deliver the
13 needed number of people within the demographic, and that is all the
14 advertiser has to pay for.

15 Q Let's look at Exhibit 820. It hasn't yet been marked in
16 evidence, but it was marked for identification as Exhibit 820.

17 A I'm sorry, that's where? This?

18 Q I believe so.

19 A 820. Yes, sir, I've got it.

20 JUDGE SIPPEL: Is that in?

21 MR. SCHMIDT: Oh, no, it's not in yet. I'm just going to
22 ask him about some of the numbers on it.

23 MR. GORDON: Your Honor, I was not allowed to question
24 him on 820 until they were comfortable with it. So, I would object
25 to now questioning --

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1 JUDGE SIPPEL: Well, he might be helping us get to the
2 comfort level we want.

3 MR. GORDON: If he is.

4 MR. SCHMIDT: I hope I'm not.

5 (Laughter.)

6 MR. GORDON: I suspect he's not.

7 MR. SCHMIDT: It's not my goal.

8 JUDGE SIPPEL: Well, let's see. Let's take the questions
9 one at a time.

10 MR. SCHMIDT: Okay.

11 BY MR. SCHMIDT:

12 Q A few simple questions. If you look at the total number
13 of adults, between GSN, you see it is [REDACTED];
14 it's about [REDACTED], is that correct?

15 A This is represented as average. It is actually not
16 average according to my check of these numbers. It is the gross
17 total, the delivery in the four quarters. So, you would have to
18 divide this by four --

19 Q Okay.

20 A -- in order to get the average. Therefore, the
21 difference between the two of 300 is really a difference of 75 or
22 one quarter of that.

23 Q Got it. Does that explain part of the percentage
24 differences in terms of the female demographic that WE tv -- that
25 GSN is just delivering more total viewers?

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1 A Yes, it does speak to that.

2 Q If you look at the numbers, the raw numbers for females
3 25 to 54, they appear to be [REDACTED], and maybe you need to
4 divide it again by four. Is that material, in your view?

5 A No.

6 Q Look at the primetime calculations. Do you see where it
7 says "Primetime 8:00 to 11:00 p.m."?

8 A Yes.

9 Q Do you understand that to be primetime?

10 A Yes.

11 Q Well, let's take a look at a document in terms of how GSN
12 defined it. You were shown -- do you understand that to be the
13 full primetime range?

14 A It's one definition of prime time. There are also more
15 expansive definitions of primetime, 7:00 to midnight, that kind of
16 thing.

17 Q Let's look at a GSN definition that you were shown. Look
18 at CV 615 in your big binder.

19 JUDGE SIPPEL: What's the number again?

20 MR. SCHMIDT: CV 615. This was one he spent a good bit
21 of time on.

22 THE WITNESS: All right.

23 BY MR. SCHMIDT:

24 Q Look with me, if you would, at page 15 of 33.

25 JUDGE SIPPEL: What page again?

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1 MR. SCHMIDT: Page 15 of 33, Your Honor.

2 JUDGE SIPPEL: Okay.

3 THE WITNESS: Okay.

4 BY MR. SCHMIDT:

5 Q Do you see where it defines ad sales prime in the upper
6 left corner?

7 A Yes.

8 Q And it says 7:00 p.m. to 12:00 a.m.?

9 A Yes.

10 Q Is that a different range than you see on Exhibit 820?

11 A Yes.

12 Q You can put that to the side.

13 Let's stick on this page. Could you look at page 14?
14 You were asked some questions about page 14.

15 A Yes.

16 Q And Cablevision Exhibit 615.

17 JUDGE SIPPEL: Sorry. Okay, I'm with you. I'm with you.

18 MR. GORDON: Thank you, Judge.

19 BY MR. SCHMIDT:

20 Q Do you recall Mr. Brooks being asked some questions about
21 the data on page 14?

22 A Yes, page 4. Yes.

23 Q Yes, if you look at the bottom, it says page 14 of 33.

24 A Yes.

25 Q If you look at -- do you see there's a column that says

1 "Persons 25 to 54"?

2 A Yes.

3 Q And then, next to it there is one that says "Women 25 to
4 54"?

5 A Yes.

6 Q If you look at those numbers, how many of the persons 54
7 -- let me start the question again. If you look at how many
8 persons there are 25 to 54, and then, of those persons, how many
9 are women 25 to 54 --

10 A Yes.

11 Q -- are you with me?

12 A Yes.

13 Q Is it correct that the percentage moves back and forth,
14 around 60 percent, from a little above to make the high 50s --

15 A Yes.

16 Q -- as you go through?

17 And just so I have it clean for the record, that's the
18 percentage of female viewers versus total viewers in the 25-to-54
19 age demographic?

20 A That's correct.

21 Q Now, sticking with this document for a moment, you were
22 shown some of these documents that had different age categories --
23 well, strike that.

24 Let me just ask one more question on the percentages. Is
25 it normal for a television network that its rating, whether it is

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1 on a demographic basis or overall, will kind of go up and down a
2 little bit from quarter to quarter?

3 A Yes. Moreover, it is not infrequent that a network has
4 a decline which is unexplained by programming and asks Nielsen to
5 evaluate that. And then, the numbers usually come back to previous
6 levels. That happens, too.

7 Q Did that, in fact, happen here to your understanding?

8 A That's what happened in my understanding during 2010 and
9 '11 on GSN --

10 MR. GORDON: Objection. This isn't in his report.

11 MR. SCHMIDT: It is in response to something you asked
12 him. You asked him about the ratings about 2010.

13 MR. GORDON: I don't believe I asked him anything that
14 would lead to this line. I mean, this was not disclosed. This is
15 an expert witness on the subject of Nielsen. If he was going to
16 cast aspersions on Nielsen data for any period of time, that should
17 have been in his report, Your Honor.

18 MR. SCHMIDT: I'm pretty sure he was questioned about it
19 in his deposition, Your Honor. But I don't think it is fair to put
20 a witness on and make a false suggestion that the ratings change
21 was somehow linked to the Cablevision tiering decision in late
22 2010, and then, not let the witness explain what was happening
23 then.

24 JUDGE SIPPEL: Well, he's gone far enough. Are you set?
25 Can you handle these questions?

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1 THE WITNESS: Certainly.

2 JUDGE SIPPEL: Can you handle them? That's all I want to
3 know.

4 THE WITNESS: Yes.

5 JUDGE SIPPEL: You're comfortable with it?

6 THE WITNESS: I'm comfortable with it.

7 JUDGE SIPPEL: Okay. Okay. I'm going to overrule the
8 objection at this time, but I'm going to listen. I mean, I really
9 can't recall, but there was a heck of a lot of cross-examination.

10 MR. GORDON: Yes, Your Honor, but not on this subject.
11 And it's a little bit unfair because we haven't had a preview of
12 this.

13 JUDGE SIPPEL: You weren't expecting this at all?

14 MR. GORDON: I was not expecting this witness to tell us
15 that there were issues with the 2010 data. I was not. There's
16 nothing that I've seen that would suggest --

17 JUDGE SIPPEL: Is that what you're getting into?

18 MR. SCHMIDT: All I asked him was does he know what he
19 just said, that there have been questions sometimes raised that
20 didn't, in fact, happen here. We have seen documents on that in
21 this trial already. Mr. Goldhill gave testimony on that point.

22 JUDGE SIPPEL: Yes, I remember that. I do remember that.
23 I do remember that.

24 But you never did talk to Mr. Goldhill, you're saying?

25 THE WITNESS: No, I did not.

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1 JUDGE SIPPEL: Are you aware of documents in this case
2 which reflect some dissatisfaction?

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: You do? So, you've seen the documents?

5 THE WITNESS: I've seen a presentation that was given by
6 Nielsen to GSN addressing this very issue.

7 JUDGE SIPPEL: Is that in the record? Is that in
8 evidence?

9 THE WITNESS: No, it's featured heavily by --

10 MR. GORDON: Yes, Your Honor, we put it in evidence. My
11 problem is this witness --

12 JUDGE SIPPEL: I don't think he's going to surprise you
13 beyond that. I'll be surprised if he surprises.

14 MR. GORDON: I'm already surprised.

15 JUDGE SIPPEL: Well, wait a minute. It's already in the
16 record. It's already in evidence. You know what their position is
17 with respect to that one incident on Nielsen, and you've gotten all
18 kinds of testimony on it, all kinds of ability to cross-examine.
19 There's all kinds of access to evidence, to documents.

20 I'll be very surprised if there's much more other than
21 this witness.

22 Sir, I mean, the best you can I think is confirm it,
23 concur with it, concur with it.

24 MR. GORDON: With all due respect, Your Honor, I think
25 the problem is this is an expert witness. His opinions are

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1 supposed to be disclosed, and we have not --

2 JUDGE SIPPEL: I agree with you.

3 MR. GORDON: We have not had a chance --

4 JUDGE SIPPEL: I agree with you.

5 MR. GORDON: -- to cross-examine him on this. So, I
6 don't know what he relied on to come up with this opinion.

7 JUDGE SIPPEL: Let's find out. Let's find out. That
8 will go to the weight, and I'm going to have a very careful ear
9 after that.

10 But I'm really unhappy that -- there's two things that
11 are supposed to happen. There's supposed to be full disclosure in
12 a Rule 26 statement that they prepare, and they did prepare those,
13 right? They're in the record someplace, are they?

14 MR. GORDON: Yes.

15 JUDGE SIPPEL: And in their direct testimony. There
16 should be no slippage. Why are we getting these questions about
17 slippage?

18 MR. SCHMIDT: I think the reason we're getting these
19 questions about slippage is because the witness was asked a very
20 specific line of questions about events and ratings in late 2010,
21 and I'm trying to follow up on that. This wasn't something I put
22 in in my direct because it is not in his direct as a specific
23 point. It is directly responsive to something he was asked about
24 on cross.

25 JUDGE SIPPEL: Well, as I say, I don't have that good of

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1 recall. I'm not going to go back into direct to figure it out.

2 MR. SCHMIDT: I'm ready to move on.

3 JUDGE SIPPPEL: You've heard my ruling. Yes, I'm going to
4 listen carefully to what he says, and I want to see what everybody
5 heard.

6 Let's go. Let's go.

7 BY MR. SCHMIDT:

8 Q Do you recall being asked questions on cross-examination
9 about how ratings were in late 2010?

10 A Yes.

11 Q Around the time of the tiering decision?

12 A Yes.

13 Q Did you ever see any Cablevision documents that
14 identified specific Nielsen rating concerns in late 2010 as an
15 explanation for the tiering?

16 MR. GORDON: I think you misspoke. I think you meant to
17 say "Game Show".

18 MR. SCHMIDT: No, I actually meant to say Cablevision
19 documents.

20 MR. GORDON: Oh, I'm sorry.

21 BY MR. SCHMIDT:

22 Q Did you see any Cablevision documents that identified
23 concerns Cablevision had about ratings in late 2010 as a reason for
24 the tiering?

25 A Cablevision documents?

1 Q Yes, that's what I said.

2 A Produced by Cablevision you mean?

3 Q Yes, yes.

4 A Yes.

5 Q Did you see documents where they identified Nielsen
6 ratings in late 2010 as their reason for tiering, performance and
7 specific age demographics?

8 A No.

9 Q Okay. Let me go back to page -- do you still have in
10 front of you Exhibit 615?

11 A Yes.

12 Q Page 14 specifically.

13 A Yes.

14 JUDGE SIPPEL: Page 14 of 33?

15 MR. SCHMIDT: Yes, Your Honor.

16 JUDGE SIPPEL: Yes, and Day Part Trend.

17 MR. SCHMIDT: 615.

18 JUDGE SIPPEL: Total Day.

19 BY MR. SCHMIDT:

20 Q You were shown a few documents like this where GSN would
21 look at ratings or viewership across different demographic groups.
22 Do you recall that?

23 A Yes, I do.

24 Q If we look at 819 -- and strike that.

25 Have you seen in your experience television networks look

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1 at ratings across a wide range of groups?

2 A Yes, certainly.

3 Q If you will look at either 820 -- that's the one we were,
4 the loosie we were looking at, and then, we have got this one.

5 A Yes.

6 Q Yes. Or 819, which is in evidence --

7 A Yes.

8 Q That's the comparison of women 54-plus as a percentage of
9 people 18-plus.

10 A Yes.

11 Q Have you seen comparisons like these done with television
12 networks?

13 A No, I have not.

14 Q Is that the reason Mr. Gordon had to create his own
15 chart, because this doesn't exist in the GSN documents?

16 MR. GORDON: Objection.

17 JUDGE SIPPEL: I'm going to sustain that objection. I
18 already asked him that question about that, that document, I mean
19 that line of questioning.

20 MR. SCHMIDT: I'll defer to Your Honor's better
21 questions.

22 JUDGE SIPPEL: Well, no, they're not better. I'm not
23 saying that. But it has been covered and this witness has clearly
24 -- well, he has explained the situation and his take on it.

25 BY MR. SCHMIDT:

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1 Q Before we leave this document, could you look at the
2 fifth page? This is exhibit Cablevision 615.

3 A The page 5?

4 Q Yes, page 5. It is the one that folds out.

5 A Yes.

6 Q If you look at this page, as I read it, it has
7 demographic data, performance data, for a range of demographics.
8 Do you see that?

9 A Yes.

10 Q And that's true of the pages that follow?

11 A Yes.

12 Q Seven, 8, 9? Are the only two columns that are
13 highlighted the poor sales demographics you talked about for GSN,
14 women 25 to 54 and women 18 to 49?

15 A Yes, those are two of the four that I talked about.

16 JUDGE SIPPEL: What page is that on?

17 MR. SCHMIDT: That's on page 5 -- I think it's on every
18 one of these, Your Honor -- 6, 7, 8.

19 JUDGE SIPPEL: All right, I'll find it. Five, 6, 7?

20 MR. SCHMIDT: Nine and 10.

21 JUDGE SIPPEL: Okay.

22 BY MR. SCHMIDT:

23 Q Now you were asked questions about whether you considered
24 the portion of the calculations like Mr. Gordon did about the
25 portion of WE tv and GSN's audience that were 55-plus. Do you

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1 remember those questions?

2 A Yes.

3 Q And I think you said, from an advertising sales
4 perspective, that wasn't relevant to you. Why is that?

5 A Because advertising sales, in my experience, targets and
6 focuses on the demographics that the advertiser wants to reach, not
7 the ones that the advertiser doesn't want to reach. So, it focuses
8 on how many 18 to 49, 25 to 54 persons are women the subject
9 network wants to deliver. Anything outside of that, below or above
10 that, is essentially free audience because the pricing is just done
11 on the target.

12 Q Let's talk about channel placement. Is the idea that
13 neighborhooding can benefit a channel? Is that controversial in
14 the television industry?

15 A Not in my experience.

16 Q Did you see a number of WE tv documents recognizing that
17 very proposition?

18 A I did.

19 Q Just so the judge has those -- we marked one on direct
20 -- but if you flip to tab 2 of your binder, your testimony, the
21 slender binder, and look with me, if you would, at page 40.

22 JUDGE SIPPEL: Forty it is.

23 BY MR. SCHMIDT:

24 Q And do you see -- are you with me, Mr. Brooks?

25 A Yes.

1 Q Do you see in footnote 80 and 81 you say Cablevision
2 documents, WE tv documents, and neighborhooding, with quotes like
3 "Neighborhooding seems to help networks. WE greatly benefits.
4 This indicates another network that benefits from neighborhooding.
5 Movement to a better neighborhood would increase our viewership and
6 we can monetize."

7 Is that consistent with this view in the television
8 profession neighborhooding work?

9 A Absolutely consistent.

10 Q Let's talk about programming. We've covered audience.
11 We've covered advertising sales demographics. What did you do to
12 review programming for these channels?

13 A I watched the network broadly, both networks, and I
14 watched the premiers of all new shows on those networks, and
15 virtually every other network, too, for that matter. And I kept
16 track of premiers on both of those, all networks.

17 Q Did that guide your views on the similarity of
18 programming?

19 A Yes, because the programming, much of which, most of
20 which I was familiar with, had the elements that I have talked
21 about previously in common.

22 Q I want to come back to when you were shown some of your
23 deposition testimony right in the beginning of the day. Did your
24 look at programming, was that what you primarily looked at in
25 determining the relevant audience or were you looking at Nielsen

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1 data for the relevant audience?

2 A When I looked at programming, I looked at -- after
3 looking at the Nielsen data and establishing the similarity of the
4 audiences, similar audience profiles and audiences of the networks,
5 I then moved to programming to explain why those audiences, why
6 those numbers would, in fact, be true.

7 Q Look with me, if you would, at Cablevision Exhibit 48 in
8 your large binder.

9 A All right.

10 Q And I would like to direct your attention, if I may, to
11 page 3 of that document.

12 A Yes.

13 JUDGE SIPPEL: What's the number again?

14 MR. SCHMIDT: It's Cablevision 48, Your Honor.

15 JUDGE SIPPEL: 4-8?

16 MR. SCHMIDT: 4-8, page 3 of 31.

17 JUDGE SIPPEL: It's in the beginning?

18 MR. SCHMIDT: I apologize?

19 JUDGE SIPPEL: I see it is in the beginning, yes.

20 MR. SCHMIDT: I'm sorry, it is.

21 JUDGE SIPPEL: And the number of the page is what?

22 MR. SCHMIDT: Page 3.

23 JUDGE SIPPEL: Okay. Oh, this is the Comcast
24 presentation?

25 MR. SCHMIDT: Yes, Your Honor.

1 JUDGE SIPPEL: Thank you.

2 BY MR. SCHMIDT:

3 Q If you'll look at the third page, do you remember being
4 asked this question about why GSN is in its own box and not with
5 the women's entertainment?

6 A Yes.

7 Q Is it common in your experience for networks that are
8 competing to try to look for ways to distinguish themselves from
9 their competitors?

10 A Yes, especially in a presentation like this.

11 Q Poker, you were asked a question or two about poker. Is
12 it remarkable to you that a women's network like GSN would have a
13 discrete block for poker programming?

14 A No. I've seen other cases where networks have non-
15 typical programming for, it's mostly for financial reasons.

16 Q Let's see if we can end by going to the book.

17 (Laughter.)

18 Was your book intended to be an exhaustive demographic
19 survey of all the networks addressed in your book?

20 A No, most definitely not.

21 JUDGE SIPPEL: Just heavy, that's all.

22 MR. SCHMIDT: Just heavy.

23 (Laughter.)

24 BY MR. SCHMIDT:

25 Q Have you had a chance to review testimony from WE tv

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1 witnesses on who they considered their competitors to be?

2 A Yes.

3 Q Did you review the testimony of Ms. Martin, WE tv
4 President?

5 A Honestly, I don't recall.

6 Q Okay. Let me show it to you and see if that can refresh
7 your recollection. I'm just going to ask you one question about
8 this.

9 A Sure.

10 Q This is just an excerpt that we have marked it 388, but
11 it has been admitted into evidence as 237 in its full form.

12 JUDGE SIPPEL: And Kimberly Martin is who?

13 MR. SCHMIDT: Kim Martin is the President of WE tv, Your
14 Honor. Or she was; she no longer is, but she was.

15 BY MR. SCHMIDT:

16 Q And I've given you just a page of her testimony. You can
17 read it over, if you want. What I would like to invite your
18 attention to is page 32, line 18, where I ask her -- so, I have
19 [REDACTED] And if you look
20 above, this is talking about the competitive set. And I say,
21 "Anything else that I'm missing?" And she says no, and then, she
22 identifies E! as well.

23 Are these channels you understand WE tv to consider to be
24 part of their competitive set?

25 A Yes.

1 Q Let's look at some of those. First of all, do you
2 remember being asked whether [REDACTED] was in your book?

3 A Yes.

4 Q The suggestion was it wasn't.

5 A It is.

6 Q It is? Okay. Let's look at page [REDACTED] of your book where
7 [REDACTED] appears. Is that a female, a women's network?

8 A Yes, it was. It's off the air now.

9 MR. SCHMIDT: At [REDACTED]

10 JUDGE SIPPPEL: [REDACTED] One page. Okay, here we are.

11 BY MR. SCHMIDT:

12 Q Does this network that Kim Martin identifies as part of
13 WE's competitive set, does your write-up for this network identify
14 it as a women's network?

15 A No.

16 Q Was that your purpose, to identify every women's network
17 in your book?

18 A No.

19 Q Another example you mentioned or, rather, Ms. Martin
20 mentioned, [REDACTED] Would you look at the E! entry on page [REDACTED] of your
21 book?

22 JUDGE SIPPPEL: Well, hold on just a second. I've got
23 page [REDACTED]

24 MR. SCHMIDT: Yes, Your Honor, that's [REDACTED]

25 THE WITNESS: [REDACTED]

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1 JUDGE SIPPEL: Oh, [REDACTED]

2 MR. SCHMIDT: Yes.

3 BY MR. SCHMIDT:

4 Q Did you mention it being a female network?

5 A I did not.

6 Q Did you need to?

7 A I didn't until I needed to for this purpose, no.

8 Q Okay.

9 JUDGE SIPPEL: Okay, let me get that down.

10 THE WITNESS: It's actually called [REDACTED]

11 JUDGE SIPPEL: [REDACTED]

12 BY MR. SCHMIDT:

13 Q Is [REDACTED] one of the networks Ms. Martin identified as a
14 women's network that competes with WE tv?

15 A Yes.

16 JUDGE SIPPEL: What page is that?

17 MR. SCHMIDT: That is on page [REDACTED], Your Honor.

18 JUDGE SIPPEL: [REDACTED], okay. Go ahead. Continue. I'll
19 find it.

20 MR. SCHMIDT: Okay.

21 BY MR. SCHMIDT:

22 Q Does your write-up for [REDACTED] reference that it's a women's
23 network?

24 A No.

25 Q Did you feel like you needed to?

1 A No.

2 Q One more that she mentioned, and then, we will move on.

3 Do you recall her mentioning [REDACTED]

4 A Yes.

5 Q Is that a women's network that Ms. Martin identified as
6 one of her competitors at WE tv?

7 A It is.

8 Q Look with me, if you would -- and this one is important,
9 so look at the page, please -- look with me, if you would, at page
10 [REDACTED] where you discuss [REDACTED]

11 JUDGE SIPPEL: [REDACTED]

12 MR. SCHMIDT: Yes, please.

13 JUDGE SIPPEL: [REDACTED]

14 BY MR. SCHMIDT:

15 Q Do you reference [REDACTED] being a women's network there?

16 A No.

17 Q Did you need to?

18 A I didn't feel a need to, no.

19 Q I guess my point in looking at this is, was your purpose
20 in talking about [REDACTED] to identify every one
21 that is a women's network and every one that is not?

22 A No, it was not. It was not our rule to include that
23 information routinely in the write-ups.

24 Q Before we leave [REDACTED], could you look in the second
25 paragraph of the [REDACTED] entry where you identify one of their hits,

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1 which was [REDACTED] Do you see that?

2 A Yes.

3 Q And then, in the next sentence you identify others
4 included [REDACTED] Do you see that, where they
5 talk about showing poker on this women's network [REDACTED]

6 A Yes.

7 Q Did that change [REDACTED] from being a women's network?

8 A No.

9 Q Did you see anything in Ms. Martin's testimony where she
10 said, "Oh, they've shown poker. They're not a competitor of
11 ours."?

12 A No.

13 Q By the way, when was your book published?

14 A In 2007.

15 Q Are you aware of testimony in this case where or evidence
16 in this case where, after 2007, GSN made a specific effort to theme
17 shows towards women?

18 A I believe I have seen documents to that effect, that they
19 have been doing that, yes.

20 Q Okay. Now let's talk about game shows. You say in your
21 testimony, and I think you said on cross-examination that game
22 shows skew women. Is that correct?

23 A Yes.

24 Q Did you look at specific data on how more traditional
25 game shows perform in terms of gender skew even when they are

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1 carried by networks other than GSN?

2 A I did.

3 Q Let's look at that.

4 MR. SCHMIDT: If I may approach, Your Honor?

5 JUDGE SIPPEL: Yes, you may.

6 (Whereupon, the document was marked as GSN Exhibit No.
7 328 for identification.)

8 BY MR. SCHMIDT:

9 Q I have marked as Exhibit 328 a document or a chart that
10 comes from page 54 of your testimony. And I would like to ask you
11 what this shows.

12 A Tell me when I should proceed.

13 Q Okay. Please.

14 A This is drawn from Nielsen, and it is the female skew,
15 i.e., females as a percent of total adults, for all of the shows
16 which were coded by Nielsen as being quiz shows in 2010 and what
17 their skews were. The average at the bottom, as you can see, is 62
18 percent female. And you can see the list of what the shows were
19 there as well.

20 Q Okay. Well, let's take an example of one of those shows
21 that I think you got questioned about on cross-examination, Family
22 Feud. What was the female skew for Family Feud?

23 A In its syndicated version, it was 65 percent. In its run
24 on the Ion network, it was 64 percent.

25 MR. SCHMIDT: I move this into evidence, Your Honor.

1 JUDGE SIPPEL: Any objection?

2 MR. GORDON: No objection, Your Honor.

3 JUDGE SIPPEL: It comes in as GSN Exhibit 328. And what
4 page of the testimony does this appear?

5 MR. SCHMIDT: It appears on page 54, Your Honor.

6 JUDGE SIPPEL: Thank you.

7 MR. SCHMIDT: Thank you, Your Honor.

8 (Whereupon, the document marked as GSN Exhibit No. 328
9 for identification was received in evidence.)

10 BY MR. SCHMIDT:

11 Q These are general game shows we see on Exhibit 328. I
12 think you also testified about game shows that have thematic
13 elements, and I think you referred to them at one point as
14 relationship-oriented thematic elements intended to appeal to
15 women. Are you familiar with those shows, and do you discuss those
16 in your report?

17 A Yes, I do.

18 Q I believe you were asked on cross about one example of
19 those being the Newlywed Game. Do you recall that?

20 A The Newlywed, yes.

21 Q If I may pass you a document --

22 MR. SCHMIDT: May I approach, Your Honor?

23 JUDGE SIPPEL: Yes, you may.

24 BY MR. SCHMIDT:

25 Q This is Exhibit 273, which is in evidence. And my

1 question to you is, does this document, this internal GSN document
2 speak to their efforts to theme the Newlywed Game to female
3 viewers?

4 MR. GORDON: Objection. Is he just reading the document
5 or are you going to lay some foundation to recall that he actually
6 relied on this document?

7 BY MR. SCHMIDT:

8 Q Did you rely on this document?

9 A Did I rely on this document?

10 Q I mean, I can stop and look through where he cites --

11 A If can you give me a moment to look at it?

12 JUDGE SIPPEL: Have you read it before?

13 BY MR. SCHMIDT:

14 Q Why don't I direct you, since the objection has been
15 raised, would you look with me at page 52 of your direct testimony?

16 A All right.

17 Q And do you see there is a very large footnote, footnote
18 120, starting on page 52, carrying through to page 53?

19 A Oh, yes, I see.

20 Q Do you see in that footnote you discuss a range of shows
21 that are targeted towards women 25 to 54?

22 A Yes.

23 Q Mind of a Man, Minute to Win It, Wendy Williams for Love
24 Triangle, Baggage, Newlywed Game, Family Feud, Baggage, Newlywed
25 Game, Minute to Win It, Dancing with the Stars, American Bible

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1 Challenge, and that takes us up to this document, GSN Exhibit 273.

2 Do you see what you said in this very document?

3 A Yes, that's sort of toward the end of that footnote.

4 Q Yes, it is right before the second sentence in that
5 footnote.

6 A I see it, yes.

7 Q Okay. So, going back to the document, I think my
8 question was -- and I'll try to streamline it. Look at the second
9 page with me, if you would, of the document.

10 A Yes.

11 Q Of the email, Exhibit 273. About halfway down there is
12 an email from Tina Curran. Does she describe the Newlywed Game in
13 a way that is consistent with this opinion you have offered, that
14 there were specific shows that had thematic elements directed
15 towards female viewers?

16 A She describes the Newlywed Game and she says its target
17 is women 25 to 54. So, I did see that, yes.

18 Q Did you actually see where Wedding Central looked at
19 carrying the Newlywed Game?

20 A I believe they did, yes, or at least they intended to.

21 JUDGE SIPPEL: Is this in evidence?

22 MR. SCHMIDT: Yes, it is.

23 JUDGE SIPPEL: It is in evidence?

24 MR. SCHMIDT: It is.

25 JUDGE SIPPEL: Okay. An exhibit was 273.

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1 MR. SCHMIDT: Yes. That is correct.

2 JUDGE SIPPEL: No, I mean this, 273.

3 MR. SCHMIDT: That 273 is in evidence.

4 JUDGE SIPPEL: Okay. Thank you.

5 MR. SCHMIDT: This is Exhibit 76.

6 JUDGE SIPPEL: This is 76? Okay.

7 MR. SCHMIDT: And you see that this is --

8 JUDGE SIPPEL: This is also in evidence?

9 MR. SCHMIDT: Yes.

10 JUDGE SIPPEL: This is also in evidence?

11 MR. SCHMIDT: Yes, Your Honor.

12 JUDGE SIPPEL: Thank you.

13 BY MR. SCHMIDT:

14 Q If you look at the bottom corner, you see the numbers.
15 There is a number 343 probably about 10 pages in.

16 A Ten pages in? Yes.

17 Q It says, "And in 2011, Wedding Central" -- right below
18 the slide -- "will air a new series and specials that include the
19 following." And then, the one, two, three, four, fifth bullet is
20 the Newlywed Game. Do you see that?

21 A Yes.

22 Q That is the same GSN program you were talking about?

23 A Yes.

24 Q Does it surprise you to see a channel like Wedding
25 Central looking at some of the same programming as GSN?

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1 A Not at all.

2 Q Did you actually see in one instance WE tv carried a game
3 show?

4 A Yes, I believe they did.

5 MR. SCHMIDT: May I approach, Your Honor?

6 JUDGE SIPPEL: Yes, you may.

7 MR. SCHMIDT: This is GSN 25. This is in evidence, also
8 in evidence.

9 JUDGE SIPPEL: Thank you.

10 MR. GORDON: Thanks.

11 JUDGE SIPPEL: This is GSN Exhibit 25. It says, "WE tv
12 premier's most popular game show." That's what it says at the
13 heading.

14 BY MR. SCHMIDT:

15 Q Does this document reflect that WE tv actually announced
16 that it was premiering a game show?

17 A Yes.

18 Q Does that surprise you, that you would see that kind of
19 overlap between WE tv and GSN?

20 A No. I remember watching this show.

21 Q Let's look at another specific example of that, 225,
22 please, 228. I'm sorry.

23 MR. SCHMIDT: May I approach, Your Honor?

24 JUDGE SIPPEL: Yes, you may.

25 MR. SCHMIDT: This is my last document, and then, I have

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1 one more line of questions, and I might be finished in record time.

2 JUDGE SIPPEL: Thank you, sir.

3 BY MR. SCHMIDT:

4 Q Have you seen this document before, sir?

5 A Yes, I have.

6 Q Does this describe the on air media strategy for a GSN
7 program called It Takes a Church?

8 A Yes.

9 Q Look with me, if you would, about halfway down the
10 document. It references there, it does an audience analysis, and
11 it says women 25 to 54?

12 A Yes.

13 Q Is that consistent with the target advertising
14 demographic we discussed for WE tv?

15 A Yes, it is.

16 Q If you'll look at this document -- and I'll invite your
17 attention to the second page of the document -- do they actually
18 compare themselves to what appear to be comparable shows in terms
19 of audience, including Mary Mary on WE tv and the show we heard
20 about on cross-examination, the Braxton Family Values?

21 A Yes.

22 MR. GORDON: Comparable shows, your words or his?

23 MR. SCHMIDT: I think it's my question. I think they're
24 my words.

25 MR. GORDON: Okay.

1 BY MR. SCHMIDT:

2 Q Did you see a similar show to It Takes a Church on WE tv
3 in terms of a show designed to match people together with some
4 religious influence?

5 A Yes. It's called Match Made in Heaven.

6 Q Does it surprise you that you would see shows, It Takes
7 a Church on GSN, Match Made in Heaven on WE tv, that you would see
8 shows that share those similarities across those two networks?

9 A It does not surprise me, no.

10 Q Why is that?

11 A Because both of those shows appeal to female viewers, and
12 both networks, of course, wish to appeal to female viewers. So,
13 they're quite similar in a way.

14 JUDGE SIPPEL: Which of those was produced first, It
15 Takes a Church or Match Made in Heaven?

16 THE WITNESS: It Takes a Church went on the air first.
17 However, the other one came on rather shortly afterwards. So, it
18 may have been in production at the same time.

19 JUDGE SIPPEL: Okay.

20 BY MR. SCHMIDT:

21 Q And just to put a slight exclamation mark on that point,
22 look with me, if you would, at the third page of this document,
23 where they have some feedback, it looks like, from focus groups or
24 something.

25 JUDGE SIPPEL: This is on 228, Exhibit 228?

1 MR. SCHMIDT: Yes, Your Honor.

2 JUDGE SIPPEL: The third page.

3 MR. SCHMIDT: It's the final page, page 390.

4 BY MR. SCHMIDT:

5 Q Do you see where they have good quotes, takeaways?

6 A Yes.

7 Q And do you see the second bullet from the bottom, A Match
8 Made in Heaven, when asked what title other than It Takes a Church
9 would they name it? Do you see that?

10 A Yes.

11 Q They came up with the same title in focus groups?

12 A Yes, apparently.

13 JUDGE SIPPEL: And what was the year that It Takes a
14 Church came out? It was in '14 or whatever, 2014?

15 THE WITNESS: 2014. I'm sorry?

16 JUDGE SIPPEL: 2014, is that right?

17 THE WITNESS: I think it's '14, isn't it? Yes, I might
18 be a year off. I believe it's 2014.

19 BY MR. SCHMIDT:

20 Q Did it make WE tv any less of a women's network when it
21 aired a comparable program called A Match Made in Heaven?

22 A Not at all.

23 JUDGE SIPPEL: I am going to accept this as being a 2014
24 when It Takes a Church I guess was released as a production?

25 THE WITNESS: Yes.

1 JUDGE SIPPEL: Was off to the public as a production?
2 And this is one of those timeframes that you are contending is not
3 relevant?

4 MR. SCHMIDT: Absolutely, Your Honor. This is post-
5 retier.

6 JUDGE SIPPEL: I hear you. All right, that's going to be
7 taken into consideration as we consider the case.

8 MR. SCHMIDT: Thank you, Your Honor.

9 JUDGE SIPPEL: But, certainly, it's relevant and it's in
10 evidence.

11 BY MR. SCHMIDT:

12 Q The last line of questions. Tab 12 in your binder, the
13 ratings changes that you saw in the New York demographic comparing
14 the second quarter before the tiering and the second quarter after
15 the tiering.

16 JUDGE SIPPEL: Tab 12?

17 MR. SCHMIDT: Tab 12, GSN 317.

18 JUDGE SIPPEL: In the small book?

19 MR. SCHMIDT: In the small book, Your Honor.

20 JUDGE SIPPEL: And that is, then, the Total Day
21 Demographics and the New York DMA?

22 MR. SCHMIDT: Correct, Your Honor.

23 JUDGE SIPPEL: Exhibit 317.

24 BY MR. SCHMIDT:

25 Q If you'll look at the drops according to different

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1 measures, in GSN it looks like they range from an [REDACTED] drop
2 to an [REDACTED] drop. Is that pretty notable to you, that
3 magnitude?

4 A Yes, very notable.

5 Q If you will look at the WE tv increases that you see in
6 the same window, from [REDACTED] to [REDACTED], is that notable to
7 you?

8 A By itself it might not be because there are the
9 hundredths of a rating form. But, taken in the context of half a
10 dozen networks, female-oriented networks that I looked at, all of
11 which except for one, which had special things going on, were up as
12 well, then it does take on significance.

13 Q You were asked questions about whether maybe something
14 special was going on at WE tv or at other women's networks. Did
15 you look at data that spoke to that question of whether something
16 else explained the WE tv increase?

17 A Yes. I looked at what each of those networks was doing
18 during the period, what they were premiering, and how those
19 premiers did, and determined that in all of the networks I was
20 looking at, none of them did anything large or major enough to
21 shift the ratings by itself. A single show won't do that, of
22 course.

23 Q Did you compare these high ratings changes in the New
24 York market with what was going on nationally?

25 A Yes, I did.

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1 Q What did you see when you did that?

2 A Nationally, there was no broad rise of these networks.
3 In fact, most of them were flat or down, another piece of evidence
4 that there was nothing going on in programming that would drive the
5 changes over that period.

6 Q So, is there any basis you saw in the data for a
7 hypothesis that the Braxton Family Values was leading a nationwide
8 tsunami of ratings for WE tv --

9 MR. GORDON: Objection, Your Honor.

10 JUDGE SIPPEL: I'll sustain that.

11 BY MR. SCHMIDT:

12 Q Was there any basis you saw for Braxton Family Values
13 dramatically increasing WE tv's ratings?

14 A No.

15 MR. SCHMIDT: That's all, Your Honor.

16 JUDGE SIPPEL: Okay. Do we have any recross, a little
17 bit?

18 MR. GORDON: I'm sure we might, but if we do, I need
19 absolutely 30 seconds, two minutes or we can --

20 JUDGE SIPPEL: That's like a five-minute break. That's
21 like a five-minute break; it doesn't exist.

22 You're waiting until he finishes?

23 MS. KANE: That's how we have been doing it, Your Honor.

24 JUDGE SIPPEL: Okay.

25 MR. GORDON: I need to run to the restroom. I didn't

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1 want to put that on the record.

2 (Laughter.)

3 JUDGE SIPPEL: I'm sorry. We're off the record.

4 (Whereupon, the foregoing matter went off the record at
5 4:37 p.m. and went back on the record at 4:40 p.m.)

6 JUDGE SIPPEL: Are you ready to go?

7 MR. GORDON: Yes, Your Honor.

8 JUDGE SIPPEL: Let's go.

9 BY MR. GORDON:

10 Q Sir, you were asked some questions about WE tv premiering
11 Most Popular. Do you recall that?

12 A Yes.

13 Q And that was a game show?

14 A It was a competition show I would say, yes.

15 Q Yeah. How many episodes of Most Popular actually aired?

16 A Offhand, I don't know.

17 Q Do you know when the show was canceled?

18 A I believe it ran for one season, but I don't know the
19 dates.

20 Q And it ran for six episodes in that season, right?

21 A If you say so. I don't know.

22 Q And you're familiar with the testimony in this case that
23 Most Popular did not work for WE because it was inconsistent with
24 what its viewers wanted to see, are you not?

25 A I don't know that that's the reason it didn't work. I

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1 don't know.

2 Q You didn't look into that?

3 A No. No, of course not.

4 Q Now, sir, you also testified about GSN 273, which is a
5 document dealing with 1 vs. 100. When did that show start airing
6 on GSN?

7 MR. SCHMIDT: Objection. I don't think I asked him about
8 this show.

9 MR. GORDON: Yes, your document 273 --

10 MR. SCHMIDT: I asked him about -- I'm going to object,
11 outside the scope. I asked about Newlywed Game.

12 MR. GORDON: I didn't know we were so confined.

13 JUDGE SIPPEL: Go ahead. Go ahead and say --

14 BY MR. GORDON:

15 Q Do you know what I've asked?

16 A No, I don't recall when it started. It's -- it's a
17 complicated history. It started as reruns, I believe, from a
18 network show, and then they have since then produced originals of
19 their own. But I don't know what the time period is for that.

20 Q Sir, and you were asked some questions about the target
21 audience about the Newlywed Game. Do you remember that?

22 A Yes.

23 Q Turn to 815 if you would, please, CV 815.

24 A 815?

25 Q Yeah.

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1 A Alright.

2 Q Right. And if you look at 815 on page 5 of 14, it
3 provides some information on the Newlywed Game. Do you see that?

4 A I assume it's in this list somewhere. Yes.

5 Q You see that?

6 JUDGE SIPPEL: This is the Year to Date Program Ranker?

7 MR. GORDON: Right. Exactly, Your Honor.

8 BY MR. GORDON:

9 Q And this ranker shows that Newlywed was [REDACTED]
10 [REDACTED] highest-ranked show in terms of households,
11 right?

12 A [REDACTED], yes.

13 Q Yes.

14 JUDGE SIPPEL: The Newlywed Game?

15 MR. GORDON: Right.

16 THE WITNESS: Well, it's tied I guess [REDACTED]. But,
17 yes.

18 BY MR. GORDON:

19 Q And you were asked some questions about its target
20 audience being in the 25 to 54 demographic, correct?

21 A I believe that was a statement of the target that GSN had
22 for it, yes.

23 Q Right. And you can see that what it actually delivered
24 in this were women over 55 by nearly a [REDACTED], correct?

25 A Comparing those two, yes.

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1 Q And from the network, in a programming perspective, that
2 would have significance if you were targeting one demographic but
3 actually delivering almost [REDACTED] [REDACTED] as many from another
4 demographic, correct?

5 A No. What I think they're referring to is how did it do
6 vertically in that women 25 to 54 column. It seems to be one of
7 the highest deliveries of women 25 to 54.

8 Q Sir, there's a reason why there's a women 55 and over
9 column on this document, right?

10 A I don't know what that reason is. I think they're
11 targeting and delivering for sales purposes on 25-54.

12 Q And from a programming perspective this network,
13 consistent with Mr. Goldhill wanted to get younger, he would use
14 this to see that, with regard to his top 10 shows, he is averaging
15 [REDACTED] as many older viewers over 55 as he is in the target
16 demographic, correct?

17 A I don't know how he would interpret this. The
18 programming people I have worked with do not look at it that way.
19 If there's lots of older viewers, fine. They want to deliver a
20 particular target.

21 Q Right.

22 A And it doesn't matter what else they deliver.

23 Q They don't want to increase viewership and change the
24 skew at all, sir, right?

25 A No.

1 Q That's what you're saying?

2 A What I'm saying is they're not focused on skew, they're
3 focused on delivery of the target demographic, 25-54 in this case.

4 Q Sir, if a goal of the network, GSN, is to target women 25
5 to 54 and they are getting women who are over 55 by nearly a [REDACTED]
6 [REDACTED], you would expect a programmer to potentially make some
7 changes to try to get a younger skew. That's where they make their
8 money, correct?

9 A No. What I'm trying to tell you is that what they're
10 focused on is increasing the number under women 25 to 54. They're
11 not concerned with what goes on in other demographics.

12 JUDGE SIPPEL: What is this [REDACTED]? What
13 does that measure?

14 MR. GORDON: Women 55-plus, Your Honor, to the demographic
15 of women 25 to 54.

16 JUDGE SIPPEL: Thank you.

17 BY MR. GORDON:

18 Q Sir, I will ask this one more time then I'll move on, and
19 see whether you agree with me. Networks try to deliver as large of
20 a percentage of the audience as possible in their target
21 demographic, do they not?

22 A That is a very secondary goal. What they really want is
23 the largest number possible in the demographic they're aiming for.

24 Q And it's your view that women who are 25 to 54 like to
25 watch things that women who are over 55 like to watch, as a general

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1 matter. Those two audiences don't care what they're watching, is
2 that what you're saying?

3 A Audiences don't care what they're watching?

4 JUDGE SIPPEL: I don't think that's what he said.

5 MR. GORDON: Okay.

6 THE WITNESS: I'm trying to understand the question.

7 JUDGE SIPPEL: Try it again. Try that one again.

8 MR. GORDON: I'll move on, Your Honor.

9 BY MR. GORDON:

10 Q You talked a little bit about the total day ratings,
11 which was this chart on 319. GSN Exhibit 319. I don't believe
12 it's in a binder. It was a handout during --

13 A It's this here, yeah.

14 Q Right. And this was your comparison of total day
15 ratings?

16 A Yeah, that's taken from my report based.

17 Q And --

18 JUDGE SIPPEL: Hold on just a second.

19 MR. GORDON: I'm sorry, Your Honor.

20 JUDGE SIPPEL: 319. 76, I've got. 273, I've got. 228,
21 I've got.

22 MR. GORDON: Okay. 319, Your Honor?

23 JUDGE SIPPEL: Thank you. Alright, yes, I've got it.

24 BY MR. GORDON:

25 Q Okay. And here, for women 25 to 54, you show that WE tv

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1 has a [REDACTED] rating and GSN has a [REDACTED] rating. Do you see that?

2 A [REDACTED]?

3 Q Did I -- I'm sorry, let me try it again. It's getting
4 late. I should wrap up. Here you show for women 25 to 54 that WE
5 tv has a [REDACTED] rating in 2009 and 2010, correct?

6 A Yes.

7 Q And GSN, in those same years, has a [REDACTED]?

8 A Yes.

9 Q Okay. And those numbers, right, those ratings,
10 correspond to actual thousands of viewers, right?

11 A Those can be multiplied out if you know the base to find
12 what the thousands are.

13 Q Right.

14 A They're not themselves thousands, of course.

15 Q No, right. But in other words, if I go to your backup,
16 which is CV Exhibit 806. If you could do that in the big binder.

17 JUDGE SIPPEL: I have 805.

18 THE WITNESS: It's in the middle.

19 MR. GORDON: It's in the middle of the binder, Your Honor.

20 JUDGE SIPPEL: Okay, okay. I've got it. Thank you.

21 Thank you.

22 BY MR. GORDON:

23 Q And if I go to page 6 of 7, Mr. Brooks, I can go to the
24 underlying data for those total day ratings we were just looking
25 at, correct?

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1 A I believe so, yes.

2 Q So, I don't want to burden everybody, but, for instance,
3 we can look at females 25 to 54, right, and we can see, on a
4 quarterly basis, that -- let's take the -- you could go blind doing
5 this -- let's take the third quarter of 2010. If we look at GSN,
6 I see a [REDACTED] rating. And then next to it is a [REDACTED], and that's
7 thousand, that's [REDACTED] viewers, correct?

8 A The third quarter. Now, we're talking about GSN?

9 Q Yes.

10 A Third quarter of '10. Sorry, these numbers are very
11 small.

12 Q Yeah.

13 A It says [REDACTED].

14 Q Right. And if I go down to the WE SN.

15 MR. KROUP: WE.

16 MR. GORDON: What?

17 MR. KROUP: WE, just WE, not WE SN.

18 MR. GORDON: Oh, WE tv.

19 BY MR. GORDON:

20 Q If I go down to the WE column in that, for the third
21 quarter in 2010, the rating is [REDACTED]. Do you see that?

22 A I'm sorry, third quarter of 2010. Yes, [REDACTED].

23 Q And so that's like a [REDACTED] difference, right?

24 A Well, I mean, it is. I would maintain that's not very
25 meaningful on hundredths though.

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1 Q Well, putting aside whether you think it's meaningful, I
2 just want to know if my math is correct.

3 A Yes.

4 Q And in fact if, I were to compare GSN's to WE's ratings
5 in this demographic I'd get a range of [REDACTED] for each of
6 them, correct?

7 A I'll take your word for it. Makes sense.

8 Q Okay. And in terms of viewers, next to it is [REDACTED]
9 [REDACTED]. Do you see that?

10 A [REDACTED], yes.

11 Q Right. So that's a difference of [REDACTED] women in the 25
12 to 54 demographic that we're talking about when you're comparing
13 the numbers for this quarter?

14 A [REDACTED]. So, this is [REDACTED]. I'm sorry. So

15 --

16 Q [REDACTED].

17 A [REDACTED].

18 Q [REDACTED]. Sorry. Correct?

19 A Yes.

20 Q And, of course, when advertisers pay for advertising,
21 it's on a CPM basis, correct?

22 JUDGE SIPPEL: What does that mean?

23 MR. GORDON: I was just going to ask the witness.

24 THE WITNESS: Cost per thousand viewers.

25 JUDGE SIPPEL: Okay.

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1 BY MR. GORDON:

2 Q And I won't belabor us with the mathematics for each of
3 these, sir, but in each of the demographics 18 to 49 and females 25
4 to 54, WE, for the 2009, 2010 and even 2011 timeframe, generally,
5 in terms of number of viewers, has anywhere from [REDACTED]
6 more women in those demos, correct?

7 A I believe that's true.

8 Q For each quarter?

9 A Well, I'm not sure. I would have to analyze it to be
10 definitive on that. But I'll take your word for it.

11 Q Alright. We'll all add it up in our spare time. Now,
12 sir, you gave some testimony about 2010 being a special year with
13 regard to Nielsen.

14 A Yes.

15 Q And I think you were talking about a Nielsen special
16 study. Did I hear you correct?

17 A I'm talking about a Nielsen special investigation that
18 was done on the request of GSN.

19 Q Okay. And you didn't participate in that investigation
20 on behalf of GSN, did you?

21 A No, not at all.

22 Q Okay. And you didn't talk to Nielsen about it?

23 A No. I read their reports.

24 Q Okay. You didn't talk to anybody at GSN about it, right?

25 A That's correct.

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1 Q And as far as the issue, whatever the issue was, you have
2 no idea one way or the other whether there was a problem or not,
3 correct?

4 A Well, the report says that there was a problem.

5 Q Exhibit 314, you're talking about?

6 A I don't know the number of it. The first page of it lays
7 out what the problem is, and it's rather explicit about [REDACTED]
8 [REDACTED]. And
9 that's what the presentation was about, to investigate that.

10 Q And that was GSN-specific, correct?

11 A It's a Nielsen presentation, but that was what Nielsen --
12 that's what GSN was saying to Nielsen, yes.

13 Q And the study goes on and Nielsen says that they didn't
14 admit any error in that study, correct?

15 A Oh, they never do. Well, hardly ever do.

16 Q And you haven't done any analysis of the data in Exhibit
17 314 to figure out who was on the right side of this one, GSN in
18 their claim that there was an issue and Nielsen in their claim that
19 there was no error, correct? You haven't crunched the numbers or
20 anything like that, did you?

21 A I don't think -- I've been in many such situations myself
22 at other networks, and I don't believe, from reading this, that
23 Nielsen was being accused of wrong numbers. They were asked to
24 investigate a seeming anomaly in the numbers not explained by
25 programming. And they did that. And I investigated the numbers,

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1 not only within that report but subsequent to that report, and
2 observed that they came back to historical norms of [REDACTED]
3 female.

4 Q But you didn't do any analysis of this so-called anomaly
5 yourself, did you?

6 A Analysis of the so-called anomaly? Only what they
7 presented in their deck.

8 Q I get you looked at the deck, sir. I'm trying to focus
9 on what you did, and you didn't look into this so-called anomaly to
10 figure out whether it existed or not, correct?

11 A Well, I analyzed the numbers in the deck. Sorry, I'm not
12 sure what you mean by did I investigate it.

13 MR. GORDON: Nothing else.

14 JUDGE SIPPEL: Ms. Kane.

15 MS. KANE: We're ready to go, Your Honor.

16 JUDGE SIPPEL: Let's go.

17 CROSS-EXAMINATION

18 BY MS. KANE:

19 Q Good afternoon, Mr. Brooks, how are you?

20 A Good afternoon. Fine.

21 Q Can you hear me okay?

22 A Yes, yeah.

23 Q I believe we met earlier this morning, but my name is
24 Pamela Kane. I represent the Enforcement Bureau.

25 A Yes.

1 Q I'm working with my colleague William Knowles-Kellett.

2 A Yes, sir.

3 Q We just have a few follow-up questions just to make sure
4 that the record is clear on a few points. Throughout the day,
5 we've been using terms such as audience share and ratings. Would
6 you consider those to be synonymous?

7 A No.

8 Q How would you distinguish between the two?

9 A A rating is literally a percent. It's a percent of a
10 total audience, available audience, that is watching a given
11 network or program at a given time. So, a 1 rating means 1 percent
12 of the potential audience is watching at that time.

13 A share is generally based on not the total audience
14 possible, but on the viewing audience at that time, which will
15 never be 100 percent, of course. Not everybody is watching TV
16 simultaneously. So, a share will be based on a different
17 denominator.

18 Q Can I have you turn in the small book to what is behind
19 Tab Number 4, which I believe is GSN Exhibit 313, and is a chart
20 from your report?

21 A Yes.

22 Q Can you explain what those numbers represent, each of the
23 units? Is that a ratings number or is that an audience share
24 number?

25 A This is Exhibit 313?

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1 Q Correct.

2 A These are ratings, not shares.

3 Q So, this would then be, if I understand this correctly,
4 this would be ratings information that was done over a course of a
5 year, so an average of the ratings for that time period, which is
6 total day -- let me restart. So, this would be an average of the
7 total ratings for the total day audience percentage of the possible
8 viewership during that time period, correct?

9 A Yes. Yes. The top left number, [REDACTED], literally means
10 that in the average unit over a course of that whole year, total
11 day basis, [REDACTED] of the entire available audience to GSN
12 were in fact watching. Of all households that could tune to them,
13 [REDACTED] were watching.

14 Q And did you draw conclusions from the numbers on this
15 table?

16 A Yes, I did.

17 Q And what were those conclusions?

18 A The conclusions are twofold, first of all that GSN
19 exceeded WE tv in its average minute audience, in both households
20 and women, by a moderate amount I would say, first. And secondly,
21 that that relationship did not change over the five-year period,
22 except for a small dip in 2011, coming back eventually by 2015.

23 Q And did you consider either of those conclusions in
24 determining whether GSN and WE tv were similarly situated?

25 A No. This does not go to similarly situated. This goes

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1 to size of the two networks relative to each other.

2 Q If I could have you turn to Exhibit Number 5 in that same
3 book, which is GSN Exhibit 314. And again this seems to be a chart
4 from your written direct testimony.

5 A I'm sorry. If I could add to my previous answer to this.
6 And I'm sorry, it's just a little late.

7 Q When you say "this," the document we were just looking
8 at?

9 A The document we were just looking at, Exhibit 313. In
10 the sense that it shows them to have similar sized audiences, GSN
11 and WE, then, yes, this would speak to are they similarly situated
12 in a broad sense. They're about the same size.

13 Q Did you consider this particular chart in making that
14 conclusion?

15 A It was one of many charts I used in making that
16 conclusion, yes.

17 Q If you could turn now to Tab 5, which is GSN Exhibit 314.

18 A Yes.

19 Q And I would have the same questions for you as to what
20 those units represent?

21 A Once again, these are ratings, not shares. So these are
22 ratings specifically within the New York market, and within the
23 Cablevision footprint within the New York market, as reported by
24 Nielsen. Nielsen has metered homes within that geography. And
25 what Nielsen reported at that time was that GSN had [REDACTED] among women

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1 18-plus and WE tv had a [REDACTED] during the second quarter average
2 minute rating.

3 Q Did you consider those conclusions in reaching the
4 conclusion that GSN and WE tv were similarly situated networks?

5 A Yes. In the same way as my amended answer to the
6 previous one, that they are similar size.

7 Q I'd like to have you turn to the document behind Tab 7.

8 A Yes.

9 Q This is GSN Exhibit 315 and also reflects a chart from
10 your written direct testimony, is that correct?

11 A Yes.

12 Q Did you draw any conclusions from this document in terms
13 of your opinion that GSN and WE tv are similarly situated?

14 A Yes. This was even stronger evidence, in my mind.

15 Q Is one minute shared over a three-month time period, or
16 a quarter period, enough to be similarly situated?

17 A When compared with the same metric for 90 other networks,
18 it is, yes. They're not shown here, but this is in the context of
19 90 to 100 such comparisons.

20 Q And did you previously testify that you conducted the
21 other 90 and 100 in order to give that one minute share some
22 perspective?

23 A Yes. I believe I referred to that in my testimony and
24 gave numbers, comparable numbers, for some of the networks.

25 Q Is there a difference in your mind with having a one

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1 minute shared and a six minute shared? Does it make it more or
2 less likely to have a six minute shared over that same time period
3 to be similarly situated?

4 A No, I don't think either of those biases the finding one
5 way or the other.

6 Q Do you recall testifying earlier today about a look and
7 feel analysis?

8 A I believe I was asked about that, yes.

9 Q And I believe you testified that that's not something you
10 conducted, correct?

11 A That's correct.

12 Q Do you have an idea of what is involved in conducting a
13 look and feel analysis?

14 A Yes. My understanding is -- it's not something that's
15 done very often in research, and my understanding is it's
16 impressionistic judgments of programming without a statistical
17 basis.

18 Q Is it something that's regularly done by advertisers in
19 the television industry?

20 A No.

21 Q Do you recall testifying earlier today about the
22 difference of processing on a national basis and processing on a
23 local basis for Nielsen data?

24 A Yes.

25 Q Can you explain what the differences are between those

1 two processes?

2 A Certainly. On a national basis, Nielsen processes its
3 data on a minute-by-minute basis. That is, they identify whether
4 a person is watching each minute: minute one, two, three, four,
5 five, and they go all the way down. Same thing for, is the house
6 turned minute-by-minute? And then they average those minute-by-
7 minute throughout the day.

8 On an NSI basis -- NSI is the acronym for the Nielsen
9 Local Service -- they take exactly the same meter data that's
10 coming out of the same set of homes, only this time within a
11 market, obviously. And they calculate based on a 15-minute basis.
12 And there certain rules applied. A person or household must be
13 tuned for at least five minutes out of the 15 minutes in order to
14 count. If they watch for four minutes, they're counted as not
15 viewing at all. They're ignored. If they watch for six minutes,
16 or 15 minutes, they're counted as watching that 15-minute block.

17 And this can have biases in terms of networks which are
18 viewed for longer periods or shorter periods, typically. And the
19 reason they do that is historical. The Nielsen people that I've
20 spoken to about it aren't terribly happy about it, but it's what
21 the local clients of Nielsen want, primarily the broadcast
22 stations. So, that's a difference in processing. And it's
23 important to understand it's from the same set of metered homes,
24 it's just the data coming out of them is processed on a minute
25 basis or on a 15-minute basis.

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1 Q And in relying on Nielsen data for your report, you
2 relied on the national processing, correct?

3 A Primarily, in order to be consistent as I went from
4 national to top ten to local market, I kept the methodology the
5 same, doing it all on the Nielsen national processing rules, one
6 minute rules. However, since the NSI 15-minute processing was
7 brought up, I also mentioned that, too, that I looked at that for
8 the New York market to see if I would get any significantly
9 different results from doing it that way. And that's in my direct
10 report, my conclusion being that that would not make a difference.

11 Q Can I have you turn in the large notebook to CV 810?

12 A 810, is that correct?

13 JUDGE SIPPEL: 810, yeah.

14 BY MS. KANE:

15 Q Now, I know, Mr. Brooks, you have looked through a lot of
16 documents today. Do you recall reviewing this document earlier?

17 A Yes, I do, actually.

18 Q And do you recall that this was the backup data for what
19 is behind Tab 12 of the smaller book, which is the total day
20 demographics of the New York DMA?

21 A It's the second quarter/second quarter comparison. Yes.
22 And that's Tab 12 or Exhibit 317, yes.

23 Q So, just to clarify for the record, CV 810 was in fact
24 the backup that you used to prepare what is behind Tab 12, GSN
25 Exhibit 317, correct?

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1 A Yes. That looks like it.

2 MS. KANE: Thank you very much, Mr. Brooks. The Bureau
3 has no further questions.

4 MR. GORDON: Your Honor, one moment of housekeeping, if we
5 may. I've been told that 810 was not formally offered into
6 evidence.

7 JUDGE SIPPEL: That's what I wanted to find out.

8 MR. SCHMIDT: So I'd like to offer it.

9 JUDGE SIPPEL: 810 is received in evidence at this time.

10 (Whereupon, the above-referred to document was received
11 in evidence as CV Exhibit 810.)

12 MR. GORDON: Thank you, Your Honor.

13 JUDGE SIPPEL: That's CV Exhibit 810.

14 MR. GORDON: Thank you, Your Honor.

15 JUDGE SIPPEL: And, again, I want to, just to refresh my
16 own recollection, CV Exhibit 820 and 819 have been received in
17 evidence. Am I right about that?

18 MR. SCHMIDT: 820 has not, Your Honor. If I have my
19 numbers right. Yeah, that's the one we were going to check.

20 JUDGE SIPPEL: 819 is in?

21 MR. SCHMIDT: Yes, sir.

22 JUDGE SIPPEL: Any objection to 820 coming in?

23 MR. GORDON: No. We put it in before, Your Honor. Mr.
24 Schmidt has indicated that if he has any problems with the numbers
25 we'll make whatever changes we have to make.

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1 JUDGE SIPPEL: No, no, he's indicated to me now he has no
2 problems.

3 MR. SCHMIDT: Oh, I'm sorry, I misspoke if I said that.
4 I meant to say we're looking at the numbers and we'll let them know
5 if we have no objection.

6 JUDGE SIPPEL: Well, subject to that examination 820 is
7 received in evidence as CV Exhibit 820. Accuracy of numbers, we'll
8 wait until we hear from you on that.

9 (Whereupon, the above-referred to document was received
10 in evidence as CV Exhibit 820.)

11 MR. GORDON: Thank you, Your Honor.

12 MR. SCHMIDT: May I raise one other housekeeping issue?
13 In my opening, Your Honor raised the question of whether the Beta
14 data that I cited was a matter of public record, and we said we
15 would come back to you on that, I think with Mr. Brooks. Exhibit
16 316 which is now in evidence is that very data. So I wanted to let
17 Your Honor know that we addressed that question Your Honor had in
18 the opening.

19 JUDGE SIPPEL: Thank you very much. Thank you very much.
20 Does anybody else have anything else?

21 MR. SPERLING: Your Honor, while we're on the subject of
22 housekeeping, you asked us last week during JZ's examination
23 whether Exhibit 174 had been prepared in the ordinary course or as
24 part of the litigation. We don't have a copy of the exhibit handy.
25 We'll obviously have to go out for another one. We did look into

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1 it. It was prepared by GSN, but for purposes of litigation.

2 JUDGE SIPPEL: For purposes of litigation.

3 MR. SPERLING: Yes.

4 MR. COHEN: And just so we're clear, Your Honor, that's
5 that detailed chart, right, of all the advertising that we examined
6 Mr. Zaccario about.

7 MR. SPERLING: Exhibit 174.

8 MR. COHEN: Exhibit 174. Prepared for litigation.

9 MR. SPERLING: Prepared by GSN, not by counsel --

10 JUDGE SIPPEL: But for litigation.

11 MR. SPERLING: In connection with litigation. Yes, Your
12 Honor.

13 JUDGE SIPPEL: Okay. But it's still in evidence?

14 MR. COHEN: Yes, sir.

15 JUDGE SIPPEL: Okay. Alright, I did ask for that
16 clarification. Now I have it.

17 MR. COHEN: Your Honor, since it's housekeeping afternoon,
18 you asked us many times for a Cablevision 10K. Surprise. Happy
19 Birthday, Judge.

20 (Laughter.)

21 MR. COHEN: This is 2010, which was just before the spin
22 at the time when Rainbow and Cablevision were still part of the one
23 parent company. If Your Honor wants to see any other year after
24 you've looked at this, we will be happy to provide that.

25 JUDGE SIPPEL: All right. I'm not going to mark that one.

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1 What a wonderful present.

2 MR. COHEN: Thank you.

3 JUDGE SIPPPEL: Thank you. Thank you. Okay, then, is that
4 it for housekeeping?

5 MS. KANE: Yes.

6 MR. COHEN: Yes, Your Honor.

7 JUDGE SIPPPEL: We are in recess until 9:30 tomorrow
8 morning. Thank you very much.

9 (Whereupon, at 5:12 p.m., the hearing went off the
10 record, to reconvene Tuesday, July 14, 2015, at 9:30 a.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: 07-13-15

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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Neal R Gross

Court Reporter

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