

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

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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 :  
: :  

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Tuesday,  
July 14, 2015

Volume VI

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

The above-entitled matter came on for hearing, pursuant  
to notice, at 9:37 a.m.

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

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OTR: 9:37 a.m.

Lunch: 12:20 p.m. to 1:34 p.m.

OTR: 6:09 p.m.

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

2 9:37 a.m.

3 JUDGE SIPPEL: Let's go on the record.

4 Okay. You have your first witness?

5 MR. COHEN: Yes, Your Honor.

6 I think that GSN has finished its presentation of its  
7 evidence. And our first witness is Mr. Poret. Mr. Carney, whom  
8 you might recall from --

9 MR. CARNEY: Good morning, Your Honor.

10 JUDGE SIPPEL: Yes.

11 MR. COHEN: -- to put on Mr. Poret.

12 JUDGE SIPPEL: That's fine.

13 MR. CARNEY: Gary Carney, Your Honor.

14 Cablevision calls Hal Poret.

15 JUDGE SIPPEL: Mr. Poret, okay, I'm going to administer  
16 the oath, sir. Would you just raise your right hand?

17 WHEREUPON,

18 HAL PORET

19 having been called for examination by Counsel for the Defendant,  
20 and having been first duly sworn, was examined and testified as  
21 follows:

22 JUDGE SIPPEL: Okay, please be seated.

23 THE WITNESS: Thank you, Your Honor.

24 MR. CARNEY: May I approach, Your Honor, with some  
25 binders, smaller binders today?

1 JUDGE SIPPEL: Mr. Carney, you're welcome.

2 MR. CARNEY: Thank you.

3 JUDGE SIPPEL: Small binders are always good.

4 MR. CARNEY: Small binders I figured would be well-  
5 received.

6 JUDGE SIPPEL: Okay, let's get started. Mr. Carney?

7 MR. CARNEY: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. CARNEY:

10 Q Mr. Poret, where are you employed?

11 A At ORC International, which is a market research and  
12 business research company, and I also have a market research  
13 consulting practice.

14 Q What type of work do you do?

15 A I design and conduct and analyze consumer surveys.

16 Q What has Cablevision asked you to do in connection with  
17 this case?

18 A They asked me to design and conduct a survey among  
19 television viewers to determine the extent to which GSN and WE are  
20 perceived by TV viewers to be similar or dissimilar channels in  
21 terms of the type of programming they offer.

22 Q Okay. Thank you.

23 Now, Mr. Poret, unlike some of the other experts who have  
24 been here, you have not been in front of the Court. So, could you  
25 take a few minutes and describe your professional background for

1 the Court?

2 A Sure. I have essentially been in my current employment  
3 since 2004, over which time I have designed and conducted about 800  
4 consumer surveys.

5 JUDGE SIPPEL: Are you an independent? Are you  
6 independently employed or are you with a group?

7 THE WITNESS: I am with a company. It's ORC  
8 International, which stands for, it used to be called Opinion  
9 Research Corporation. It is the company that cosponsors the CNN  
10 poll. You know, when you see on TV certain results and it says the  
11 CNN poll --

12 JUDGE SIPPEL: Yes.

13 THE WITNESS: -- and it says sponsored by ORC. So,  
14 that's the company that I am employed by.

15 JUDGE SIPPEL: Okay. So, they have a whole range of  
16 topics that they survey? It's not just limited to the media?

17 THE WITNESS: No, no. They have a huge range, a  
18 pharmaceutical practice and a financial industries practice, and we  
19 do all kinds of different market research.

20 JUDGE SIPPEL: Yes. Political polls?

21 THE WITNESS: Yes, they run CNN's polls that they publish  
22 the results from on television.

23 JUDGE SIPPEL: Who's going to get the Republican  
24 nomination?

25 (Laughter.)

1 THE WITNESS: That I have no idea.

2 JUDGE SIPPEL: All right. Then, tell them they'd better  
3 get cracking on their system.

4 THE WITNESS: I will.

5 (Laughter.)

6 JUDGE SIPPEL: Okay. Thank you. Okay, that's good for  
7 me.

8 MR. CARNEY: Okay. Good. Thank you, Your Honor.

9 BY MR. CARNEY:

10 Q Can you just finish describing a little bit the breadth  
11 of the work that you individually do at ORC and independently, just  
12 briefly?

13 A Sure. About half of what I do is standard corporate  
14 market research, which is doing research for companies about their  
15 brands and their products and their advertising, to help them make  
16 decisions about how they run their business and their advertising.  
17 And a lot of those are big companies like Pepsi or Apple or  
18 Kellogg, Nike, and a lot of them are medium- or small-sized  
19 companies.

20 And then, I also, about the other half of what I do is do  
21 surveys related to legal issues, which can either be surveys in the  
22 context of litigation or surveys where a company is trying to  
23 comply with some legal regulations and they need to test their  
24 advertising or other things to make sure there's no problem.

25 Q Okay. So, to follow up on the last part of your answer,

1 have you actually acted as a survey expert in a litigation context?

2 A Yes, I have been an expert in over 100 litigations, and  
3 I have given testimony in about 70 to 80 cases, most of those just  
4 as depositions, but about 15 to 20 trials I've testified in.

5 Q Okay. Very good.

6 Please turn to tab 1 in your binder, Mr. Poret.

7 JUDGE SIPPEL: Have you been on only one side of the  
8 issue consistently? Let's say, let me put it plaintiff or  
9 defendant.

10 THE WITNESS: No, I've been about 50/50 in terms of  
11 plaintiffs or defendants.

12 JUDGE SIPPEL: Yes, I'm finished.

13 MR. CARNEY: Okay.

14 (Whereupon, the documents were marked as CV Exhibit Nos.  
15 233 and 233A for identification.)

16 BY MR. CARNEY:

17 Q Tab 1 in your binder, Mr. Poret, CV Exhibit 233, what is  
18 that?

19 A That is my direct testimony in this matter.

20 Q Okay, and if you could turn to tab 2? Can you tell us  
21 what that is?

22 A Yes. These are the appendices to my report.

23 Q And that's been marked as CV Exhibit 233A. Are both CV  
24 Exhibit 233 and 233A true and accurate?

25 A Yes, they are, other than that my CV is accurate as of

1 the time it was submitted, but it's a little out-of-date in terms  
2 of listing the other matters I've testified in.

3 Q Okay.

4 MR. CARNEY: We move, Your Honor, CV Exhibit 233 and CV  
5 Exhibit 233A into evidence.

6 JUDGE SIPPEL: Any objections?

7 MS. FLAHIVE-WU: Your Honor, we've spoken with counsel  
8 for Cablevision and reached an agreement that we will not object to  
9 the admission of Mr. Poret's testimony and the appendix thereto,  
10 based on the agreement that Cablevision will not take the position  
11 that we've waived the objections that we've put in against Mr.  
12 Poret's testimony.

13 MR. CARNEY: That's agreeable, Your Honor.

14 JUDGE SIPPEL: All right. Well, if that's the case,  
15 where do you expect to assert your reserved objections?

16 MS. FLAHIVE-WU: Your Honor, consistent with the approach  
17 that was taken in both the Tennis and the NFL proceedings, we  
18 believe that we can deal with the nature of the testimony and the  
19 weight it should be given in the post-trial briefing, after you've  
20 had the opportunity to hear the testimony here again.

21 JUDGE SIPPEL: The judge in those cases must have been  
22 pretty smart.

23 (Laughter.)

24 MS. FLAHIVE-WU: We agree. We agree, Your Honor.

25 JUDGE SIPPEL: Okay.

1           (Whereupon, the documents marked as CV Exhibit Nos. 233  
2 and 233A for identification were received in evidence.)

3           JUDGE SIPPEL: Mr. Carney?

4           MR. CARNEY: Thank you, Your Honor.

5           BY MR. CARNEY:

6           Q     Before we get into the details of your work, Mr. Poret,  
7 can you just describe for the Court the conclusions that you drew  
8 from your work here?

9           A     Yes. The survey results strongly showed that TV viewers  
10 perceive GSN and WE to be very dissimilar channels in terms of  
11 their type of programming they offer.

12          Q     Okay. Can you describe generally the survey that you  
13 designed for the purposes of this case?

14          A     Yes. The general nature of the survey is that the  
15 participants were shown pairs of channels, so two channels at a  
16 time, and they were asked to rate on a scale from zero to 10, with  
17 zero being extremely dissimilar and 10 being extremely similar,  
18 they were asked to rate how similar or dissimilar they think these  
19 two channels are. And they were also offered the option to say  
20 they have no opinion if they didn't have enough experience with  
21 those channels to form an opinion.

22                Of course, the key pair of channels that was tested in  
23 the survey was the pair of GSN and WE, but there were also 11 other  
24 pairs that were asked about to establish benchmarks that could  
25 confirm the validity and reliability of the results.

1 Q How many people did you survey?

2 A There were a total of 870 participants on the whole, but  
3 there were a number of specific subgroups. There were 470, in  
4 particular, who lived in the New York City DMA that is served by  
5 Cablevision. And then, there were also a number of other subgroups  
6 that we could look at the data, including that there were about 550  
7 people who have the GSN channel, in particular, and there were  
8 about 300 people who were current watchers of GSN, and there were  
9 about 350 people who were current watchers of WE. So, there are a  
10 number of large-sized subgroups within the 870.

11 Q And within that 870, did you include participants who  
12 were outside of the New York DMA as well?

13 A Yes, 400 of the participants were from a national group  
14 which was geographically representative of the rest of the country  
15 outside of the New York City DMA.

16 Q In your experience, is this an adequate sample size to  
17 yield statistically-significant, reliable results?

18 A Yes, the overall number of 870 is very large. And what  
19 that allowed for is for all these other subgroups of two or three  
20 hundred, for instance, to themselves be large enough sample sizes  
21 to look at the results within those groups.

22 Q Now how were these people selected?

23 A They were selected using an online panel, which is a  
24 company that, since online surveys have become the dominant form of  
25 market research, there are companies whose business is to maintain

1 and recruit large databases of American consumers who have given  
2 permission that they can be contacted by email and invited to take  
3 a survey.

4 So, I used a very large, reputable panel company called  
5 Research Now, which has about 3 to 4 million Americans on their  
6 panel. So, it is a very large, diverse pool of people to invite.

7 Q Okay.

8 JUDGE SIPPPEL: Do these repeat? For instance, do they  
9 get paid anything or given anything of value?

10 THE WITNESS: They get a small amount of value. As in  
11 pretty much every type of survey, people are offered some type of  
12 incentive. And, you know, online surveys, people are offered a  
13 similar amount as in mall and phone surveys, which in this case  
14 would be something on the order of probably \$2 or \$3 worth of value  
15 in the form of points that they can ultimately exchange for things  
16 when they build up some points.

17 JUDGE SIPPPEL: All right. That's like you get at Best  
18 Buy? If you are a customer at Best Buy, a continuing customer, you  
19 get points for the products that you buy, and then, at some given  
20 period you add all the points up and you get so much credit. You  
21 can credit that against another gizmo.

22 THE WITNESS: Yes, that's essentially the idea. It is  
23 probably more like a credit card rewards points program or an  
24 airline mileage, which over the years as you use it you build up  
25 some points, and then, you can redeem those for something

1 eventually.

2 JUDGE SIPPEL: Okay. And that's just the company, the  
3 company like Research Now has these people like they have them  
4 online or they have them available. So, they don't really know  
5 who's paying for the survey, or do they?

6 THE WITNESS: Do you mean the people taking the survey?

7 JUDGE SIPPEL: No, the people who are going to be  
8 answering the questions.

9 THE WITNESS: They do not know who is paying for the  
10 survey. They receive an anonymous invitation that comes from  
11 Research Now, and it simply says you're invited to take a survey.  
12 And it has a link they can click on in the email. So, they have no  
13 idea who is running the survey. In other words, they have no idea  
14 that it is coming from Cablevision or that it has anything to do  
15 with Cablevision or GSN or any legal issue.

16 JUDGE SIPPEL: Thank you. Okay.

17 BY MR. CARNEY:

18 Q To follow up on the Court's question, that's purposeful,  
19 isn't it, Mr. Poret, in terms of like establishing controls within  
20 the survey?

21 A Yes, the purpose is to take sure that people don't know  
22 the sponsor or the purpose of the survey, and that they have no  
23 idea what answers they should or shouldn't give for any reason.

24 Q Okay. Thank you.

25 Did you provide any guidelines or specifications to

1 Research Now to help that company select the sample?

2 A Yes, I discussed with them certain age and gender and  
3 geographic parameters. Of course, I did have them focus a lot of  
4 the invitations on the New York City DMA to be sure we were  
5 covering a substantial number of respondents in the Cablevision  
6 territory.

7 And then, I also talked to them about age and gender  
8 demographics because I had reviewed the parties' allegations in  
9 this case and I understood that both parties allege that females  
10 made up more of the viewership of both of the channels. So, I did  
11 have Research Now send more invitations to women, since it's  
12 appropriate to represent the actual viewership, and my  
13 understanding was that more viewers are women of both the channels.

14 And then, in terms of age, I understood that GSN alleged  
15 that both of the channels target more of the 25-to-54 age range,  
16 but I also understood there's disputes about who, what the real  
17 viewership is, and that there was certain data possibly indicating  
18 that a lot of the GSN viewers were older.

19 So, in the end, what I did is I just had Research Now get  
20 a large diverse sample of people from all of the age groups, so  
21 that there were enough people in every age group that we could look  
22 at the results and see what they are in every age group, and simply  
23 know what they are across the board. So, no matter what anybody  
24 decides is the right age group, the data is there to focus on for  
25 that age group.

1 Q Can you describe, just as a matter of nuts and bolts, how  
2 the participants took the survey?

3 A Yes. They receive an email with a link in it, and when  
4 they click on the link, that will take them to a web page where the  
5 survey has been programmed. So, it's hosted on the web page.

6 So, they would first come to a screen that starts the  
7 survey asking them to enter their date of birth. And they go one  
8 screen at a time, reading the instructions and answering the  
9 questions, and then, click Next to continue to the next screen.  
10 And they move through the survey that way.

11 Q Okay. Before you mentioned that the survey provided the  
12 participants with pairs of channels to assess, correct?

13 A Yes.

14 Q Okay. Is this pairing technique that you describe a  
15 standard methodology employed by survey professionals in your  
16 field?

17 A Yes. It is called a parallelized comparison. It is a  
18 long-established, very common methodology with a lot of  
19 applications in market research for when consumers are going to be  
20 asked to either compare or contrast two items.

21 Q Okay. Turn with me, if you would, to paragraph 10 of  
22 Exhibit 333, your testimony. This is on page 4.

23 A Okay.

24 Q And you'll see there in paragraph 10 the effort of  
25 respondents qualified for the survey. They were shown a screen on

1 which they were instructed. And I will just quote briefly. "We  
2 are now going to show you the names of two channels at a time. For  
3 each pair of channels, we would like you to tell us how similar or  
4 dissimilar the channels are in terms of the types of programming  
5 they offer. If you are not familiar enough with either channel to  
6 have an opinion, you can indicate so." And it goes on from there.

7 Do the instructions set out in paragraph 10 accurately  
8 reflect what the survey participants saw when they were taking the  
9 survey?

10 A Yes.

11 Q Now let me ask you this, Mr. Poret: did it matter  
12 whether the participants were familiar with the programming being  
13 tested?

14 A Yes, it mattered in that that was an important thing that  
15 we asked people about, and we wanted to know which people were or  
16 were not familiar with the channels and how familiar they were.

17 Q Okay. How do you know the participants are actually  
18 familiar with that program?

19 A Well, not all were, but what we know is that many were.  
20 And part of the reason for getting a large sample size is that we  
21 would end up getting a lot of people who were. And we know that we  
22 did for a number of reasons.

23 First of all, just as a matter of methodology, we used a  
24 very standard, reliable technique for finding out who was familiar  
25 with the channels, because we showed people 18 different channels

1 in a randomized order and we asked them which of these channels, if  
2 any, they were familiar with and to give their level of familiarity  
3 on a scale.

4 So, at that point, the respondents are seeing 18  
5 different channels. They have no idea that GSN or WE are relevant  
6 to this survey at all. And so, there's no way they would have any  
7 reason to say they are familiar with those channels if they're not.

8 So, that methodology of asking people what they're  
9 familiar with and hiding the items that are particularly relevant  
10 is very reliable. And, of course, if you look to the data, you see  
11 that most people said they were not familiar with a large number of  
12 the channels on the list. So, there's no reason to think that  
13 anybody would be saying they were familiar with channels that they  
14 were not.

15 But, probably most importantly, the most direct way we  
16 know we have people that are familiar with the channels is that we  
17 actually had about 300 people who, when they were asked which  
18 channels they watch, said that they currently watch GSN, including  
19 almost 200 people who say they watch GSN at least two hours a week.  
20 And we also had almost 370 people who currently watch WE, including  
21 almost 250 people who said they watch WE at least two hours a week.

22 So, at the end of the day, we simply have large sample  
23 sizes of people who actually watch these channels, including  
24 multiple hours a week, and we can always look at the data amongst  
25 those people.

1 Q How did you come up with the pairs of channels that you  
2 tested?

3 A I wanted to have a way to tell if the survey produces  
4 reliable, valid results. So, I wanted to have controls or  
5 benchmarks for what do people say about channels that probably are  
6 similar and what people will say about channels that probably are  
7 dissimilar.

8 So, I had five pairs of channels that to me seemed like  
9 they offer a lot of similar programming content; for instance, HBO  
10 and Cinemax, both being movie-oriented channels that also offer  
11 some original programming, or ABC and CBS, both being classic  
12 broadcast networks.

13 So, I picked these pairs of channels that seemed like  
14 they offered generally a lot of similar programming that we could  
15 ask people about to validate whether, when you do show people a  
16 pair of channels that are similar, will they actually say they're  
17 similar? And on the other hand, I wanted to come up with some  
18 pairs of channels that struck me as dissimilar. For instance, CBS  
19 and the Science Channel, I wouldn't expect people to say those are  
20 similar channels in terms of their programming. So, I wanted to  
21 ask about those pairs of channels to see if people do say they are  
22 dissimilar.

23 And by ultimately asking about these other pairs of  
24 channels, we can see does the survey actually produce valid,  
25 reliable results. And I did pick those channels, you know, based

1 on my own review online and otherwise of what programming they  
2 seemed to offer. However, ultimately, it is not my opinion about  
3 whether those channels are similar that matters. It is respondents  
4 in the survey were asked about them, and, ultimately, we would see  
5 if respondents do say that they are similar or they don't.

6 And then, finally, there was another pair of channels  
7 that was included as a key control, and that pairing was the pair  
8 of WE and Oxygen. That was included because I know that Game Show  
9 Network in its papers talked about WE and Oxygen as channels that  
10 it believes are similar in programming and do fall into the same  
11 genre. And therefore, that is a good pair as a benchmark to see  
12 will, in fact, respondents rate those channels as similar. And  
13 that can, then, be compared to the rating given to GSN and WE to  
14 validate the meaning of those results.

15 Q Thank you.

16 You mentioned the term "controls" before. Did you  
17 implement any other controls in the survey to ensure that the  
18 results were not biased or skewed in any way?

19 A Yes. There were other safeguards in the survey,  
20 including instructing respondents that, if they didn't have an  
21 opinion, they could select that option, so that nobody was  
22 encouraged or forced to give an opinion on something they didn't  
23 have a position on.

24 And the order that the channels, pairs of channels were  
25 listed in the survey was randomized, as was the order of each

1 network within a pairing. So, there were a lot of standard  
2 techniques like that to avoid any skewing or bias in the results.

3 Q Okay. Let's turn to the results, if we can. Would you  
4 mind turning to paragraph 61 in your testimony?

5 MR. CARNEY: Your Honor, that's on page 19, paragraph 61.

6 JUDGE SIPPEL: Who tabulates these results?

7 THE WITNESS: A lot of it just occurs electronically,  
8 because what's happening is the results are all collected in a  
9 central database, and it's simply a matter of the computer telling  
10 me, for example, "X" number of respondents picked a certain answer  
11 choice. So, a lot of these numbers are just spit out by the  
12 computer program, which is just looking at everybody's answer and  
13 telling us what the average answer was or how many people gave each  
14 answer.

15 JUDGE SIPPEL: Okay. None of this data goes through  
16 Research Now? Or you've answered the question. They're not  
17 tabulating it; it's the computer that's tabulating it?

18 THE WITNESS: It is. None of it goes through Research  
19 Now because these are not answers where people are typing in their  
20 own words and somebody needs to read and process those answers.  
21 It's simply they are clicking. For instance, they've rated a  
22 pairing as a 1 on a scale. So, it is simply just an electronic  
23 record that this respondent gave a pair a 1.

24 JUDGE SIPPEL: Thank you.

25 THE WITNESS: Okay.

1           MR. CARNEY: And, Judge, for Your Honor's benefit, it's  
2 true, we don't need to dwell on it, but in tab 2 at Exhibit CV  
3 233A, it actually shows screenshots, pictures of screenshots that  
4 the actual respondents would have seen as they conducted the  
5 survey.

6           BY MR. CARNEY:

7       Q     Correct?

8       A     Yes.

9       Q     Okay.

10          JUDGE SIPPEL: Thank you.

11          BY MR. CARNEY:

12       Q     So, let's go back to paragraph 61. Can you describe for  
13 us what is depicted in that chart in paragraph 61?

14       A     Yes. Paragraph 61 is showing the results among people  
15 who lived in the New York City DMA and were familiar with both the  
16 types of programming on GSN and WE, which is a total of 272  
17 respondents. And this table is showing the average result on the  
18 similarity scale for each pair of channels.

19            So, what you can see is that, for the channels that are  
20 similar, such as ABC and CBS or HBO and Cinemax, the respondents  
21 did rate them as being similar on the scale. The similar pairings  
22 all received results roughly in the 7.5-to-9 range.

23            And then, at the bottom of the chart, what you see is  
24 that the respondents did sensibly rate the dissimilar pairs as  
25 dissimilar with those typically getting results more in the 1 or 2

1 range on the scale.

2 And then, as to our key test item, which is the pair of  
3 GSN and WE, what you can see is that received a 1.32 average on the  
4 scale, which is very close to the extremely dissimilar end of the  
5 scale.

6 In comparison, you can see that Oxygen and WE, which is  
7 the pairing that GSN agreed is a similar pairing and they feel fall  
8 into the same genre, got a 7.62. What this tells me is the survey  
9 works very well and produces reliable, logical results, and that  
10 the result for GSN and WE is very much toward the extremely  
11 dissimilar end of the scale.

12 Q As a survey expert, how would you characterize the  
13 strength of these results, as shown in this chart?

14 A They are very strong results in that there's 12 different  
15 pairings that all make perfect sense, which validates the process.  
16 And the result for GSN and WE is very strong and clear-cut, and  
17 that on a scale from zero to 10, 1.32 is very much toward one end  
18 of the scale.

19 Q Okay. Let's touch on a couple of sets of other results  
20 just quickly, and I'll turn you over. Turn to paragraph 7, if you  
21 will.

22 MR. CARNEY: This is on page 22, Your Honor.

23 JUDGE SIPPPEL: On page 22?

24 MR. CARNEY: Paragraph 71.

25 BY MR. CARNEY:

1 Q I'm sorry. And it goes over to page 23, the paragraph  
2 does. And there's another chart there, Mr. Poret. Let the judge  
3 get there.

4 Okay, we're actually looking at the top of 23 and the  
5 carryover. What does the chart on the top of page 23 show, Mr.  
6 Poret?

7 A This shows the results among the 400 participants who  
8 lived in other parts of the country outside of New York City and  
9 are familiar with both GSN and WE.

10 Q And what does the chart show?

11 A It shows essentially the same results as within the New  
12 York area. The average rating for GSN and WE was 1.38, which is  
13 very similar to the 1.32 in the New York City area and, again, very  
14 strongly toward the extremely dissimilar end of the scale.

15 Q Okay. Thank you.

16 MR. CARNEY: One last chart, Your Honor.

17 BY MR. CARNEY:

18 Q Let's turn to paragraph 82 on page 26.

19 JUDGE SIPPEL: Say it again?

20 MR. CARNEY: Paragraph 82 on page 26.

21 BY MR. CARNEY:

22 Q And what does this chart show, Mr. Poret?

23 A This chart shows the results of all 672 respondents that  
24 said they were familiar with the type of programming on both GSN  
25 and WE, both in the New York City DMA and outside. So, a total of

1 672 respondents.

2 And this shows, again, essentially, the same results.

3 GSN and WE had an average of a 1.35 rating on the scale of zero to  
4 10.

5 Q Okay. Now did you measure the results from other  
6 subgroups of participants?

7 A Yes, I did.

8 Q And did you tabulate the results by gender of the  
9 participant?

10 A Yes.

11 Q By age?

12 A Yes.

13 Q Geographic location?

14 A Yes.

15 Q Did you examine the data based on the level of  
16 familiarity with the programming by the viewers?

17 A Yes.

18 Q And did the survey results under any of those metrics  
19 materially differ with respect to viewers' perceptions of the  
20 programming on GSN and WE?

21 A No, the results were in a very similar range toward the  
22 extremely dissimilar end of the spectrum for GSN and WE, regardless  
23 of how you slice it, regardless of gender, age, or any of these  
24 other factors. Okay?

25 Q And fundamentally, did you also measure the results of

1 those participants who actually were watching the programming of WE  
2 and GSN at the time of the survey?

3 A Yes, I also looked at the results among the several  
4 hundred people who were watchers of GSN and watchers of WE, and  
5 even, in particular, those who watched two or more hours a week.  
6 And the results are the same. Even the people who are the most  
7 familiar and the heaviest watchers of those channels still come out  
8 with essentially the same result.

9 Q Okay. So, based on all the slicing and dicing of this  
10 tabulated data, what did you finally conclude about the consumer  
11 perception of the types of programming on WE TV and GSN?

12 A That there's an extremely consistent view across all TV  
13 consumers that GSN and WE are very dissimilar channels in terms of  
14 the types of programming they offer.

15 Q Thank you, Mr. Poret.

16 MR. CARNEY: Your Honor, I have no further questions  
17 right now.

18 JUDGE SIPPEL: Okay. Ms. Wu?

19 MS. FLAHIVE-WU: Your Honor, I have a small binder that  
20 I would like to add to the pile, if I may.

21 JUDGE SIPPEL: Small binders are welcome.

22 (Laughter.)

23 CROSS-EXAMINATION

24 BY MS. FLAHIVE-WU:

25 Q Good morning, Mr. Poret.

1 A Good morning.

2 Q I think it's been a little bit more than two years since  
3 we last met at your deposition.

4 A Yes.

5 Q Nice to see you.

6 A You, too.

7 Q Let's get started with some of your experience that you  
8 discussed with Mr. Carney. You testified that you have been a  
9 witness in a number of litigations, correct?

10 A Yes.

11 Q And your work as an expert witness in the litigation  
12 context primarily involves disputes involving trademark and false  
13 advertising, correct?

14 A I would say that covers a large majority of it, yes.

15 Q For example, you've surveyed consumers to see whether the  
16 use of a particular trademark is likely to cause customer  
17 confusion, correct?

18 A Yes.

19 Q Other than in this case, you've never testified before  
20 the FCC?

21 A Correct.

22 Q And other than in this case, you've never testified in a  
23 matter concerning program carriage?

24 A Correct.

25 Q Now, Mr. Poret, I would like to ask you to look at, in

1 the binder I just handed out, what is tab 2. This was also in the  
2 first binder. We'll stick with this. This is the appendix to your  
3 direct testimony. It's here identified as CV Exhibit 233A.

4 Just for clarity on the record, I just want to note that  
5 in your written direct testimony, which was submitted as CV Exhibit  
6 233, I believe it's the same document, this appendix, is referenced  
7 as CV Exhibit 208. Is that correct?

8 MR. CARNEY: Your Honor, I can represent -- Mr. Poret, I  
9 can represent that that is the case.

10 MS. FLAHIVE-WU: I just wanted the record to be clear on  
11 the --

12 MR. CARNEY: Thank you for doing that.

13 MS. FLAHIVE-WU: -- cross-references.

14 JUDGE SIPPEL: Thank you.

15 BY MS. FLAHIVE-WU:

16 Q Mr. Poret, I would like to ask you to turn to Appendix C,  
17 which looking at the pagination on the right-hand corner of the  
18 document starts at page 17 of 32.

19 A Okay.

20 Q Mr. Poret, Appendix C includes --

21 JUDGE SIPPEL: Are you in your cross-examination binder?

22 MS. FLAHIVE-WU: I am, Your Honor. It's tab 2, which is  
23 CV Exhibit 233.

24 JUDGE SIPPEL: I have that, yes.

25 MS. FLAHIVE-WU: And we're now looking at page 17 of 32,

1 Your Honor.

2 JUDGE SIPPEL: Okay, I've got it, Appendix C.

3 BY MS. FLAHIVE-WU:

4 Q Mr. Poret, Appendix C to your testimony includes  
5 screenshots of the actual survey that was sent by Research Now to  
6 the survey respondents, correct?

7 A Yes.

8 Q So, the images included in Appendix C, are those same  
9 images or pictures of what the respondents saw on their own  
10 computer screens? Correct?

11 A Yes.

12 Q Now if you would turn with me to page 26 of 32 on the  
13 same document, I'm now looking at Main Questionnaire No. 200. This  
14 is one of the questions that was part of your survey, correct, Mr.  
15 Poret?

16 A Yes. It's not actually a question. It is an  
17 instruction, but this is a screen from the survey.

18 Q This is the screen that described to the respondents how  
19 you asked them to respond to the network pairings that you  
20 described in your testimony with Mr. Carney, correct?

21 A Yes.

22 Q And it states, if you read with me in the very first  
23 section, "We are now going to show you the names of two channels at  
24 a time. For each pair of channels, we would like you to tell us  
25 how similar or dissimilar the channels are in terms of the types of

1 programming they offer." And then, a parenthetical, "If you are  
2 not familiar enough with either channel to have an opinion, you can  
3 indicate so."

4 Have I read that correctly?

5 A Yes.

6 Q So, basically, your survey is seeking to measure consumer  
7 opinions of whether programming provided by network pairs,  
8 including GSN and WE, is similar?

9 A Yes, that sounds fair.

10 Q And then, if we just look down to the next paragraph, it  
11 says you define "similar" as having comparable types of programming  
12 or similarly-themed programming, correct?

13 A Yes.

14 Q So, in this case, you are not offering an opinion about  
15 whether consumer perception is actually relevant to Section 616,  
16 correct?

17 A I'm definitely not offering a legal opinion. I'm just  
18 offering the evidence of what consumers' perceptions of the  
19 channels are.

20 Q I want to stay on this subject for a minute, so I make  
21 sure I understand exactly what ground you've covered in your  
22 written testimony.

23 Mr. Poret, you're not offering an opinion about whether  
24 GSN and WE TV target similar audiences, correct?

25 A Correct.

1 Q You didn't look at that?

2 A Not -- when you say "target," if you mean the  
3 demographics or the types of people, that's not within the scope of  
4 the survey.

5 Q In fact, the viewership of GSN and WE TV might be  
6 demographically similar and you would not know, correct?

7 A I don't know if that's quite correct.

8 Q You haven't studied the demographic profiles of the  
9 networks for WE TV and GSN, correct?

10 A It's correct that that wasn't the function of the survey.

11 Q And you don't offer an opinion on the demographic  
12 profiles of GSN and WE TV, correct?

13 A Yes, that's correct.

14 Q The viewership of GSN and WE TV may overlap  
15 significantly, but you wouldn't know that, correct?

16 A It's correct that that's not the subject of my expert  
17 opinion.

18 Q You haven't studied the duplication of the audience  
19 shared by GSN and WE, correct?

20 A Yes, I think that's correct.

21 Q And you're not offering any opinion about whether or not  
22 WE TV and GSN have similar ratings, correct?

23 A Ratings in terms of as in Nielsen ratings or -- I'm just  
24 trying to clarify because what I did measure in my survey are  
25 ratings of how similar people think they are, but I think you mean

1 ratings in a different sense, right?

2 Q Yes. Ratings such as Nielsen ratings or metrics, the  
3 ratings for a network.

4 A Right, I'm not offering any opinion relating to that type  
5 of rating.

6 Q Mr. Poret, you mentioned to Mr. Carney earlier that about  
7 350 people reported that they watched GSN, correct?

8 A I think it was for GSN more like 300.

9 Q Okay, 300. And that means that in your survey  
10 approximately 300 people said that they watched more than zero  
11 hours of GSN in an average week, correct?

12 A Yes.

13 Q And I believe you testified with Mr. Carney earlier that  
14 about 350 people reported that they watched WE TV?

15 A Yes.

16 Q And what you mean by that is that about 350 people who  
17 took your survey answered that they watch more than zero hours of  
18 WE TV in an average week, correct?

19 A Somewhat. To be specific, what they answered is they  
20 either watch it one or two or three or some number of hours above  
21 zero.

22 Q So, more than zero hours a week, correct?

23 A Yes, but they answer they gave is not more than zero  
24 hours. They gave a specific hour. They either said one hour or  
25 two hours or some number of hours.

1 Q Can you tell me how many of the 870 people who took your  
2 online survey reported that they actually watched WE TV and GSN?

3 A I can't tell you off the top of my head. That is in the  
4 data that is provided.

5 Q But, as you sit here now, you don't even know how many  
6 people reported that they watched more than zero hours of both WE  
7 TV and GSN in an average week, correct?

8 A It's correct that I don't know the number, sitting here  
9 right now, but I did look at that, and there were people. And we  
10 did look at the results, and the results were the same among people  
11 who watched both GSN and WE.

12 Q You didn't report the actual number of reported shared  
13 viewers in your written testimony which is CVC Exhibit 233,  
14 correct?

15 A It's not in the body of the report. I assume that the  
16 data from the survey is provided as part of the testimony.

17 Q The data from your report is not reported in your written  
18 testimony which is Exhibit 233, correct?

19 A Certainly not all of it. The data encompasses thousands  
20 of answers from 800-and -- you know, a total of a lot of  
21 respondents, though certainly not every point of data is mentioned  
22 in the report.

23 Q And the data that you're referencing, which is the  
24 respondent answers, is not included in CVC Exhibit 233A, which is  
25 the Appendix to your written testimony, correct?

1 A Well, there's the cover page for the data file in that  
2 which says provided electronically. So, I'm not sure logistically  
3 how it's provided, but I certainly provided the data as part of my  
4 report.

5 Q You haven't offered any opinion based on the reported  
6 shared audience of WE TV and GSN, correct?

7 A I don't know that that's correct. I looked at the data  
8 of GSN viewers and the data of WE viewers, and I looked at the data  
9 across all of these metrics, and it was the same every way. If you  
10 mean I didn't report the specific number of the subgroup you're  
11 talking about now, I agree, that's not in the body of the report.

12 Q That's right. And as you sit here now, you don't know  
13 how many people reported that they watched more than zero hours of  
14 WE TV and GSN in an average week, correct?

15 A It's correct I don't know the exact number, but I know  
16 it's a meaningful enough number that I looked at it.

17 Q But you don't know the number?

18 A I don't know the exact number.

19 Q Mr. Poret, I would like to ask you to look at tab 3 in  
20 the binder that I have given you, which is CVC Exhibit 112.

21 A Okay.

22 Q Mr. Poret, this is a document produced by Cablevision in  
23 this litigation. And if you look at the attachment line, you can  
24 see it says, "WE Weekly Ad Sales Research Report," and the date  
25 reflects that it was generated June 27th, 2010. And I will

1 represent to you that this is one of a pile of such documents that  
2 we have received in this litigation, weekly iterations of this same  
3 report.

4 I would like to ask you to turn with me to what has been  
5 marked, again, in the bottom right-hand corner as page 5 of 20.

6 A Okay.

7 Q Now, if we look at the chart on the bottom half of this  
8 document --

9 MS. FLAHIVE-WU: Your Honor, do you have the page?

10 JUDGE SIPPEL: Page 5 of 20?

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

12 JUDGE SIPPEL: I do.

13 MS. FLAHIVE-WU: Great. It says, "WE and key  
14 competitors' prime time quarter and year-to-date versus prior year  
15 performance." Mr. Poret, do you see this "WE and key competitors"  
16 chart that I'm referencing?

17 MR. PORET: Yes.

18 BY MS. FLAHIVE-WU:

19 Q Now, it lists the key competitors from the perspective of  
20 WE, and it says "WE" at the top. Do you see that, the first entry  
21 in the chart?

22 A Yes.

23 Q Then it says which is a, I believe, a reference to

24 . You've not studied whether consumers view WE tv as

25 similar to in terms of programming, correct?

1 A I don't think that was one of the comparisons, no. I  
2 think it was WE and Oxygen, and and .

3 Q So WE tv and was not one of the network pairings  
4 that you've studied, correct?

5 A It wasn't, although WE and were, and and  
6 were, and those two pairings received the same ratings,  
7 so.

8 Q Right, but you did not study the comparison of WE and  
9 correct?

10 A That was not one of the specific pairs in the survey, no.  
11 Now if we go to the next entry under Lifetime it reads,  
12 which stands for . Mr. Poret, you  
13 didn't study a comparison of the programming on WE tv and  
14 , correct?

15 A Correct.

16 Q Now is a network that primarily shows  
17 Would you expect  
18 and WE tv to be viewed or rated in your survey as having similar  
19 themed programming?

20 A I don't know.

21 Q You don't know?

22 A I've never heard of that channel before now, so I don't  
23 know how I would have much sense of that.

24 Q You didn't study it?

25 A No.

1 Q Do you have a personal opinion about whether or not WE  
2 and have similar themed programming?

3 A No, as I said, I've never even heard of that other  
4 channel.

5 Q Now if we - the next one is . Now let's - and you  
6 didn't study the comparison of the programming on WE tv and ,  
7 correct?

8 A Correct.

9 Q The next one is - it reads, which refers to a  
10 network called . You didn't study the comparison of  
11 programming on and WE tv, correct?

12 A Correct.

13 Q Now is a network that primarily, during the time  
14

15 Would you expect and WE tv to be rated  
16 as having similar themed programming?

17 A I don't know.

18 Q You didn't study it?

19 A No.

20 Q And do you have a personal opinion about whether or not  
21 and WE tv have similar themed programming?

22 A No, I don't.

23 Q Other than , you haven't studied whether any of the  
24 networks listed in WE tv's competitive set, as we're looking at it  
25 here, offer programming similar in programming theme to WE tv,

1 correct?

2 A Correct.

3 Q You also didn't study whether consumers believe WE and  
4 Wedding Central to have similar themed programming, correct?

5 A Correct.

6 Q Do you have an opinion about whether WE and Wedding  
7 Central had similar themed programming?

8 A No.

9 Q Mr. Poret, you said to Mr. Carney that you selected the  
10 network pairs in your survey based in part on your own consumer  
11 perception, correct?

12 A My own sense of things, yes, but of course pending seeing  
13 what people actually respond to it being what matters.

14 Q And that's - you're referring to when you said that you  
15 created - you identified benchmark channels based on what struck  
16 you as similar or dissimilar, correct?

17 A Some of them based on that. Most of them based on that.

18 Q And also based on your review of material online,  
19 correct?

20 A Yes.

21 Q And when you reference material online, you mean looking  
22 at websites about networks, correct?

23 A Yes.

24 Q You didn't personally view any GSN programming in  
25 connection with putting together your survey which is referenced in

1 your testimony, correct?

2 A I really don't remember is the truthful answer at this  
3 point.

4 Q Well, you testified at your deposition that you just  
5 looked at websites and didn't view any programming. Does that  
6 sound right?

7 A I don't know, but I'm sure what I said at my deposition  
8 a few years ago is closer to my memory at the time than it is now.

9 Q So in putting together the network pairs, you didn't look  
10 at any programming for GSN?

11 A As I said, I don't remember, but if that's what I said in  
12 my deposition, I don't have any reason to doubt that.

13 Q Mr. Poret, let's look at what's Tab 1 in the binder that  
14 I've given you. This is a copy of your deposition testimony and  
15 it's from January 29, 2013. Do you recall when we met for your  
16 deposition a few years back?

17 A Yes, I do.

18 Q And you testified under oath?

19 A Yes.

20 MS. FLAHIVE-WU: Now I'd like to ask you to look at  
21 what's Deposition Page 141, and this is a mini script so there's  
22 four pages per printed page.

23 JUDGE SIPPEL: Okay, you're on Tab 1 and it's -

24 MS. FLAHIVE-WU: Tab 1 of the binder that I passed out,  
25 Your Honor, which is a copy of Mr. Poret's 2013 deposition

1 testimony.

2 JUDGE SIPPPEL: Right, I've got that.

3 MS. FLAHIVE-WU: And we're going to look at Page 141 of  
4 his testimony which is Page 36 of the printed deposition  
5 transcript.

6 JUDGE SIPPPEL: Page 36.

7 MS. FLAHIVE-WU: Do you have that, Your Honor?

8 JUDGE SIPPPEL: I do.

9 MS. FLAHIVE-WU: Okay.

10 JUDGE SIPPPEL: But wait a minute. I've got 34 and then  
11 it jumps to 38. Am I right on that?

12 MS. FLAHIVE-WU: So at the bottom it says, "36, Pages 138  
13 to 141." So it's 131, then below it, 139, 140, 141. It's in the  
14 bottom right-hand corner of the page.

15 JUDGE SIPPPEL: I've got the tab. Is that it? I've got  
16 it.

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

18 BY MS. FLAHIVE-WU:

19 Mr. Poret, I'd like to direct your attention to Page 141  
20 starting at Line 19. My question was, "Did you tune into GSN prior  
21 to putting together your survey for this case?" Answer: "No, I  
22 don't think I tuned in. I don't think I did on TV. I did go onto  
23 the website." My question: "Did you watch any of the programming,  
24 the GSN programming, on its website?" Answer: "No, I did not watch  
25 the programming." Have I read that correct, Mr. Poret?

1 A Yes.

2 Q Does that refresh your recollection that you didn't  
3 review any of GSN's programming in connection with putting together  
4 your survey for this case?

5 A I'm sure that what I said in January of 2013 was  
6 accurate.

7 Q You didn't review any programming for GSN?

8 A I'm sure that's true if that's what I said in 2013 in  
9 January. All I was saying now is that my memory of what I did in  
10 the summer of 2012 isn't all that sharp on that point.

11 Q So let's talk about what you did in 2012. So as you  
12 described to Mr. Carney, your testimony is based on an online  
13 survey that you designed, correct?

14 A Yes.

15 Q Mr. Poret, self-selection bias refers to the fact that  
16 the sample of survey respondents is limited to the people who  
17 choose to participate, and it may not be representative of the  
18 population as a whole, is that right?

19 A Yes, as a general matter that makes sense.

20 Q And every survey is subject to self-selection bias,  
21 correct?

22 A To some degree, yes.

23 Q And you believe that you sufficiently safeguarded the  
24 survey that's the subject of your testimony here against the  
25 effects of self-selection bias as we've described it by using a

1 third party to collect your sample, and that's Research Now,  
2 correct?

3 A That's not correct that that's the reason that I think  
4 it's reliable.

5 Q Well, while we have your deposition open, Mr. Poret,  
6 let's look at Page 101 of your deposition transcript. It's at Page  
7 26 of the transcript, the printed transcript. Actually, I'm sorry,  
8 it's the same page but it's starting on Page 100. Do you have it,  
9 Mr. Poret?

10 A No, Page 100 of the deposition transcript?

11 Q It's mini script - it's - of the printed transcript, it's  
12 Page 100 of the deposition transcript at Page 26 of the printout,  
13 Deposition Page 100.

14 A Okay, I am there.

15 MS. FLAHIVE-WU: Your Honor, do you have it as well?

16 JUDGE SIPPEL: Yes, I have it right here.

17 MS. FLAHIVE-WU: Okay.

18 BY MS. FLAHIVE-WU:

19 Q If we go to Line 21 it says can you - the question is,  
20 "Can you describe what you mean by self-selection bias?" and the  
21 answer, "Well, the topic could also be described at great length.  
22 I'm assuming what you're getting at is the fact that the survey is  
23 limited to people who choose to be on the panel and who - that you  
24 can invite the people to a survey who have essentially identified  
25 themselves as willing to do surveys, and I'm just pointing out that

1 this is true of every kind of survey."

2 "This is what - the ground we've just covered here. Even  
3 if in theory it might seem that anybody could take a mall survey,  
4 the fact that not everybody will take a mall survey is really what  
5 matters. In the world of market research, there's nothing less  
6 reliable about the fact that people self-select online than surveys  
7 do of any other kind."

8 And then you say on Page 101 in Line 20 - I asked then on  
9 101, Line 23, "Is there anything that you do in your survey design  
10 to guard against the effects of self-selection bias?" and the  
11 answer, "Well, the main thing you can do, which is why I went to  
12 Research Now, the best way to guard against any bias from that is  
13 to go to as big a pool as you can."

14 Does this refresh your recollection that the way you  
15 dealt with self-selection bias was to go to Research Now?

16 A No, you're not citing this accurately. What I'm saying  
17 is the way to guard against research self-selection bias is to go  
18 to a very large pool. It has nothing to do with what you asked me  
19 before. It has nothing to do with Research Now in particular or a  
20 third party supplier, which is what you asked me before. It has to  
21 do with using a large and diverse pool of people.

22 Q You went to Research Now to get a large and diverse pool?

23 A Yes.

24 Q Going to Research Now was part of your effort to address  
25 the potential problems with self-selection bias?

1       A       I don't really think that's an accurate way to put it,  
2 but certainly I went to Research Now and I thought that they were  
3 a good panel to use because of the large and diverse pool of  
4 people, and that that is a helpful way to deal with that issue,  
5 although I never said in the first place that I thought there was  
6 any concern about self-selection bias.

7       Q       But every survey is subject to self-selection bias,  
8 correct, Mr. Poret? That's what you just said.

9       A       Yes, to some degree, but I was never saying that I had  
10 any concern about self-selection bias being an issue with this  
11 survey. I was just answering your general questions about what  
12 self-selection bias, and in general, what is done in the world of  
13 market research on that topic.

14      Q       Right, self-selection bias impacts every survey.

15      A       It can to some degree, it doesn't necessarily.

16      Q       So let's stick with Research Now, and you described that  
17 process a bit earlier to Mr. Carney. Research Now actively  
18 recruits individuals to be part of its survey panels, correct?

19      A       Yes.

20      Q       But you don't know how Research Now identifies the email  
21 addresses of the people that it contacts, correct?

22      A       I don't know the mechanics of how they actually get an  
23 email address from someone.

24      Q       You don't know how they identify potential survey  
25 participants?

1 A No, I don't know the specifics of that.

2 Q Do you know if there are any - you don't know if there  
3 are any incentives involved in that process of identifying  
4 potential registrants?

5 A There's no incentives in the process, but clearly the  
6 fact that if they are part of the panel and they take surveys, they  
7 can get incentives to take the survey as part of that.

8 Q And those are the incentives that you described to Judge  
9 Sippel this morning, the credit card like program where essentially  
10 people get paid to take surveys, correct?

11 A Yes, that they get the small incentives to take surveys.

12 Q Mr. Poret, the Research Now registered population is not  
13 representative of the U.S. national population, correct?

14 A It is in some respects, and it's not perfectly in others.  
15 It's fairly close, but there are differences. It's not perfectly  
16 representative I think is a fair way to put it.

17 Q So the demographic profile of the Research Now registered  
18 population is not the same as the U.S. national population,  
19 correct?

20 A It depends what you mean by demographics. There are  
21 hundreds of different characteristics you could be talking about,  
22 and it is almost perfectly representative in certain ones, and it's  
23 less so in others.

24 Q But you haven't studied the exact ways in which the  
25 Research Now registered population deviates from the demographics

1 of the U.S. national population, correct?

2 A I certainly haven't studied every way, but I'm familiar  
3 with how it relates to the characteristics in a lot of the key ways  
4 that we usually look at in surveys.

5 Q Are those - those differences in the demographic profile  
6 of Research Now and the U.S. national population are not reported  
7 in your direct testimony which is CV Exhibit 233, correct?

8 A Correct.

9 Q They're not reported anywhere in Appendix A to your  
10 written direct testimony which is CV Exhibit 233A, correct?

11 A Correct.

12 Q Mr. Poret, do you know how many emails Research Now sent  
13 out in order to get 870 survey participants?

14 A Not off the top of my head right now I don't.

15 Q More than 1,000?

16 A Yes.

17 Q More than 2,000?

18 A I would suspect so, but I would just be guessing at this  
19 point.

20 Q You just don't know how many emails Research Now had to  
21 send out to get 870 participants, correct?

22 A I don't know right now.

23 Q Do you know whether women were more or less likely than  
24 men to respond to the survey request email?

25 A I don't know right now.

1 Q And that's not reported in your testimony in this case,  
2 correct?

3 A Correct.

4 Q And it's not reported in the appendix to your testimony,  
5 correct?

6 A Correct.

7 Q Mr. Poret, I believe you mentioned that you conducted  
8 your survey in 2012. That was in September of 2012, correct?

9 A Yes.

10 Q So you did a \$50,000 survey to assess consumer viewpoints  
11 for the period of September 2012, correct?

12 A I think that was the price, and I think that was the time  
13 period, yes.

14 Q You did not ask the survey takers to think back to the  
15 programming that was available on the networks in the year 2010,  
16 correct?

17 A Correct.

18 Q And you didn't ask the survey takers to think back to  
19 what was on the networks in your pairings for the period January  
20 2011, correct?

21 A Correct.

22 Q You haven't specifically studied the similarity of GSN  
23 and WE tv in the period July 2010 to December 2010, correct?

24 A It's not - the survey is not specific to any one period  
25 of time.

1 MS. FLAHIVE-WU: Mr. Poret, I'd like to ask you to look  
2 back where we were before. It's Tab 2 of the binder I've given  
3 you, which is the appendix to your written testimony, and let's  
4 look at Page 26 of 32. We're back at - you've corrected me. It's  
5 Instruction number 200.

6 JUDGE SIPPEL: Give that to me again, please.

7 MS. FLAHIVE-WU: Yes, Your Honor, Tab 2.

8 JUDGE SIPPEL: Yes.

9 MS. FLAHIVE-WU: Page 26 of 32.

10 JUDGE SIPPEL: Thank you. I'll be there in a second.  
11 Okay.

12 BY MS. FLAHIVE-WU:

13 Q Now, Mr. Poret, just repeating a little bit where we were  
14 earlier, you defined in the second paragraph here, you defined  
15 "similar" as "offering comparable types of programming or similarly  
16 themed programming," correct?

17 A Yes, that's a big part of it.

18 Q Your survey does not define "comparable," correct?

19 A Correct.

20 Q And your survey does not define "similarly themed,"  
21 correct?

22 A Correct, other than in the instruction that's below that  
23 sentence, which is not meant to be a definition of that term, but  
24 it is a clarification of what we mean by similar or dissimilar.

25 Q But you didn't define "similarly themed?"

1 A Not that term, no.

2 Q And your survey does not specify whether you meant to  
3 compare types of programming on a daily basis?

4 A Nothing is directed to - I'm not entirely sure what you  
5 mean by that, but I think the simple answer is no, because there is  
6 no wording in the survey that refers to "a daily basis."

7 Q There's nothing in your survey that asks the survey  
8 takers to consider the programming over a specific time period, is  
9 that right?

10 A Right.

11 Q Whether it be a day, a week, program to program, there's  
12 nothing about that?

13 A Right, there's nothing about that.

14 Q You didn't ask survey takers to look just at the  
15 programming in prime time for example?

16 A That's right.

17 Q You didn't ask them to look at just daytime programming?

18 A That's right.

19 Q There's nothing about the level of comparison that you  
20 want the survey takers to have in mind?

21 A I'm not sure what you mean by that.

22 Q You just mean generally, just about their impression of  
23 the programming, correct?

24 A I mean what I asked, for them to rate how similar the  
25 channels are in terms of the type of programming they offer.

1 Q You didn't conduct a separate study that asked the survey  
2 takers to respond to particular programs on the networks, did you?

3 A No.

4 Q Now Mr. Poret, you walked through with Mr. Carney the  
5 groups of respondents to your survey. As you said, you sliced them  
6 different ways. And your testimony in this case focuses on the  
7 responses of individuals who reported that they were somewhat,  
8 very, or extremely familiar with the type of programming offered by  
9 both GSN and WE, correct?

10 A Yes.

11 Q You referred to this group of people as the familiar  
12 group, correct?

13 A Yes.

14 Q In your opinion, this is the core relevant universe for  
15 the survey, and it's absolutely crystal clear that this is the  
16 group relevant to this dispute, correct?

17 A I'm not sure how correct that is. I mean, that seems to  
18 be venturing into legal opinion to say it quite that way. All I'm  
19 saying is it seemed to me - the most interesting part of the  
20 analysis to me would be among the people who do have more  
21 familiarity with the channels than those who don't.

22 Q Well, to save us some time, crystal clear was something  
23 you told me before, but I'll accept that. You think that this is  
24 the group, the familiar group, that is in your mind relevant to the  
25 issues in this case?

1       A       I'm not saying that - in sitting here right now, I think  
2 the whole survey is relevant, but yes, I defined the main focus of  
3 my analysis was on that group that you're talking about now.

4       Q       So the familiar group is the focus of your analysis,  
5 correct?

6       A       It's the main focus.

7       Q       Now, you asked the survey takers to report whether or not  
8 they were familiar with the type of programming offered on each of  
9 the networks in your 12 network pairs, correct?

10      A       I believe it was actually a larger set of networks. It  
11 wasn't just the 12 pairs they were - I think they were asked about  
12 18 networks in terms of their familiarity.

13      Q       The 12 network pairs that you discussed with Mr. Carney  
14 were part of the larger set, correct?

15      A       Yes.

16      Q       But you didn't ask them whether they were familiar with  
17 the actual programming on the networks, the 18 network pairings,  
18 correct?

19      A       I don't think that's accurate. I'm not sure what you  
20 mean by that.

21      Q       You didn't ask them - you didn't ask the viewers if  
22 they've actually viewed any particular amount of programming on the  
23 networks included in your survey, correct?

24      A       No, I did do that.

25      Q       On a program by program basis?

1 A Oh, you mean a particular television show?

2 Q When I say a program, yes, I mean a television show. You  
3 did not ask survey respondents if they could even name a single  
4 program, a single television show for the networks with which they  
5 reported being familiar?

6 A No, they were asked how many hours, if any, they view  
7 those networks, not about any particular program.

8 Q And your familiar group, as we've been talking about it,  
9 includes individuals who don't watch even an hour of GSN in a  
10 typical week, correct?

11 A Yes.

12 Q And your familiar group includes individuals who don't  
13 even watch an hour of WE tv in a typical week?

14 A Yes, some.

15 Q And you did not show the survey takers any programming,  
16 just the network names, correct?

17 A Yes.

18 Q You intended to design this survey to rely on people's  
19 real world experience, their pre-existing impressions of the  
20 network pairs, correct?

21 A Yes, their real world experience, including actually  
22 watching the channels.

23 Q But real world experience does not necessarily mean  
24 watching network programming, correct?

25 A It does for some people and it doesn't for others.

1 Q For others, real world experience means flipping through  
2 TV Guide, correct?

3 A I don't know if it means exactly that, but clearly there  
4 are some people in the survey who - the ones who said they didn't  
5 watch these channels, their experience comes from other things  
6 other than watching the channels, and the people who did watch the  
7 channels experience does come from watching the channels.

8 Q But you acknowledge that for even survey takers in your  
9 familiar group, the knowledge could come from, to use an example  
10 you've given me before, flipping through TV Guide?

11 A That's certainly one source of knowledge that some people  
12 could have.

13 Q And you don't know the source of knowledge that the  
14 survey takers were using when rating the network pairs that  
15 appeared on their computer screens?

16 A That's not entirely true. What I know is that the  
17 hundreds of respondents who answered that they regularly watch  
18 these channels currently are - you know, that I do know that  
19 they're actually watching the networks as part of their experience.  
20 What I don't know is, of course, what other real world experiences  
21 people have with regard to the channels.

22 Q Your familiar group also includes people who didn't even  
23 get GSN on their - from their cable provider, correct?

24 A It has some people like that, yes.

25 Q So for those people, it's not watching the programming,

1 correct?

2 A Right.

3 Q And you said that you did not show the survey takers any  
4 programming for any network, correct?

5 A Yes.

6 Q What you showed them were the network names that appeared  
7 on the computer screen?

8 A Yes.

9 Q Now, Mr. Poret, in other cases, in other litigations,  
10 your surveys have been rejected as fatally flawed because they bore  
11 no resemblance whatsoever to marketplace conditions, correct?

12 A No, that's not accurate.

13 Q Mr. Poret, isn't it the case that in a trademark  
14 litigation between Fancaster and Comcast, one of your surveys was  
15 stricken from the record because it failed to replicate market  
16 conditions?

17 A I don't think that's accurate. What happened is that I  
18 had done a preliminary survey that was preliminary, and when I did  
19 a final survey with an updated methodology to replace the  
20 preliminary survey, the judge accepted the final survey, and in  
21 fact, he ruled in my side's favor and gave them summary judgment,  
22 and he relied on my survey, and he just struck the preliminary part  
23 of the survey, which was preliminary, and had been replaced by the  
24 final survey.

25 Q In the Fancaster litigation that you're describing, you

1 conducted two surveys, correct?

2 A You could call them two surveys, but one was a  
3 preliminary survey done at a time when I couldn't have used the  
4 methodology I wanted, and the second survey was done - it was the  
5 same survey to replace the initial methodology with a better one,  
6 so it was intended - it was intended to replace the first one which  
7 wasn't a good a methodology with a better methodology when it was  
8 possible to do that, and the judge did what I'm sure is the right  
9 thing, which is he relied on the final survey and rejected the  
10 preliminary survey that was an inferior methodology and that was  
11 supplanted by the final survey.

12 Q And in the first survey, you used printouts of websites  
13 rather than showing the survey takers the actual websites, right?

14 A Yes, they did see some printouts of websites.

15 Q And the court found that your use of printouts and static  
16 screenshots instead of live websites provided ample grounds on  
17 which to exclude the first survey, correct?

18 A I'm assuming you're reading from the decision, so I'm  
19 sure you have it right.

20 Q You agree that your survey was excluded because rather  
21 than using live websites showing survey takers the actual websites,  
22 you just gave them a printout, correct?

23 A I don't know exactly everything that the judge was  
24 thinking. I think he limited his consideration to the second  
25 survey because that was the updated survey with the better

1 methodology. But yes, I agree with you that one of the things he  
2 didn't like about the preliminary methodology was the use of print,  
3 of website printouts.

4 Q The first survey was excluded, correct?

5 A Again, it's not really a separate survey, but yes, the  
6 judge rejected the first version of it and accepted the final one.

7 Q And Mr. Poret, you've been criticized by at least one  
8 other report for presenting survey questions about products in a  
9 way that was radically different from the way in which survey  
10 respondents would actually encounter the products in the market,  
11 correct?

12 A I'm not aware of what you're referring to.

13 MS. FLAHIVE-WU: Let me try to help. Let's go to Tab 4  
14 in the binder that I've given to you.

15 JUDGE SIPPEL: In your cross examination binder, Tab 4?

16 MS. FLAHIVE-WU: Yes, Your Honor, Tab 4. It's a printout  
17 of a case, Kraft v. Cracker Barrel.

18 MR. PORET: Right, I am familiar with this case, but what  
19 you said is not at all accurate about it.

20 BY MS. FLAHIVE-WU:

21 Q Well, let's - let me - we can walk through it together,  
22 Mr. Poret. Mr. Poret, you served as an expert in the case  
23 captioned here, Kraft and its group of brands, LLC v. Cracker  
24 Barrel Old Country Store, Inc., correct?

25 A Yes.

1 Q And Kraft alleged that Cracker Barrel restaurants had  
2 infringed Kraft's Cracker Barrel trademark, correct?

3 A Yes.

4 Q And Kraft retained you in the context of a preliminary  
5 injunction proceeding to conduct a survey in support of its claims  
6 that consumers would be confused about the Cracker Barrel  
7 Restaurant's use of the Cracker Barrel trademark, correct?

8 A For the purposes of this discussion, that's fine. It's  
9 not really getting it right, but it's good enough.

10 Q All right, and in connection with your work for Kraft,  
11 you emailed survey takers pictures of food products. And if we  
12 turn the page, the Court has helpfully -

13 A Well, sorry to interrupt, but that isn't true what you  
14 just said.

15 MS. FLAHIVE-WU: Well -

16 JUDGE SIPPEL: What isn't true?

17 MR. PORET: That pictures were emailed to people.

18 JUDGE SIPPEL: Okay, start again, Ms. Wu. Ask the  
19 question again.

20 MS. FLAHIVE-WU: Sure.

21 BY MS. FLAHIVE-WU:

22 Q Mr. Poret, in connection with your work for Kraft in the  
23 case reflected - reported at Tab 4, you emailed pictures of food  
24 products to survey takers, correct?

25 A Not at all correct.

1 Q Survey takers were asked to respond to questions about  
2 pictures of food products, correct?

3 A Yes.

4 Q And that was in connection with the survey that you  
5 designed in connection with the Kraft litigation, correct?

6 A Yes.

7 Q And the court said that it had doubts about the probative  
8 significance of your survey?

9 A Not that district court who heard my testimony. The  
10 district court who heard my testimony accepted it, and wrote an  
11 opinion accepting it, and granted a preliminary injunction to Kraft  
12 relying on my testimony.

13 If you're referring to the 7th Circuit, I think you've  
14 already established that the 7th Circuit is talking about a survey  
15 that is not the one I did. In other words, as you can see from the  
16 opinion, the 7th Circuit - what you've read from it does not  
17 describe what the survey did, and what his comments are are not  
18 about the survey that I actually did.

19 MS. FLAHIVE-WU: So what I'm showing you is an opinion  
20 written by Judge Posner of the 7th Circuit. If we look at Page 6  
21 of the printout here, which is the reporter page reference 72, 742,  
22 it's the last page of the tab, Your Honor.

23 JUDGE SIPPEL: The tab that you're on?

24 MS. FLAHIVE-WU: Yes, it's Tab 4, and if you just turn  
25 all the way to the last page -

1 JUDGE SIPPEL: I've got it.

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

3 BY MS. FLAHIVE-WU:

4 Q In the left column, Judge Posner writes, this is one,  
5 two, the third section down, "Also, it's very difficult to compare  
6 peoples' reactions to photographs shown to them online by a survey  
7 company to their reactions to products they are looking at in a  
8 grocery store in trying to decide whether to buy. The contexts are  
9 radically different, and the stakes much higher when actual  
10 shopping decisions have to be made because that means parting with  
11 money which many influence responses." Have I read that correctly?

12 A Yes.

13 Q Did you think Judge Posner was wrong when he wrote this?

14 A I don't know what I think about that, but I know this is  
15 a decision affirming the district court's decision which relied on  
16 my survey, and Judge Posner's comments here are not talking about  
17 anything to do with my survey generally. They're comments on - I  
18 mean, it's not comments on my survey specifically. It's comments  
19 on the use of surveys in trademark cases generally.

20 And in fact, I do disagree with a lot of what he says,  
21 and in fact, one of the leading trademark authorities in the area  
22 wrote - published a Trademark Reporter article on this decision to  
23 point out how inappropriate he thinks the discussion of the surveys  
24 in this opinion is.

25 Q Mr. Poret, if we stay on the last page of Judge Posner's

1 opinion in the Kraft case, he writes, "We have doubts about the  
2 probative significance of the Poret survey." Mr. Poret, he's  
3 speaking directly about your work, not about surveys in general,  
4 correct?

5 A No, if you read the decision, what he's talking about is  
6 the Eveready survey in general. He's - if you read the decision,  
7 he's talking about that he doubts the value of that type of survey.

8 Q Well, here he says, "We have doubts about the probative  
9 significance of the Poret survey." Have I read that correctly?

10 A You have, but if you read the opinion, you'll see that  
11 what he's talking about is the Eveready format of survey, which is  
12 a well-accepted format of survey. He's not talking about something  
13 that he thinks is specifically wrong in my survey.

14 Q Well, emailing pictures about the food products, that was  
15 specific to your survey, correct?

16 A Yes, except that that didn't happen, and all that goes to  
17 show is that he didn't even know what my survey was when he was  
18 making this comment because there were no pictures emailed to  
19 people, and those comments that you're referring to do not describe  
20 what happened in the survey.

21 And he is just talking about - he's just giving his  
22 doubts about surveys in general. What he's saying about my survey,  
23 with all due respect to him, he obviously didn't know what the  
24 survey even was.

25 Q Mr. Poret, but you said that you did ask survey takers in

1 the context of the Kraft case to respond to pictures of food  
2 products, correct?

3 A They were shown pictures of food products and asked about  
4 them, yes.

5 Q And Judge Posner raised doubts about the probative  
6 significance of your survey, correct?

7 A Not about that, not about the issue of asking people  
8 about pictures of food products.

9 Q Well, I believe we've all read this together, so perhaps  
10 we have different opinions of what Judge Posner meant. In this  
11 case, you just gave network names to the survey respondents,  
12 correct?

13 A Yes.

14 Q You didn't show them any programming?

15 A Right.

16 Q And you admit that many of the people, even in your  
17 familiar group, don't watch GSN and don't watch WE, correct?

18 A There were some people who don't and a lot of people who  
19 do.

20 Q Not even an hour in an average week, right?

21 A There were definitely some of the 870 people, and the 470  
22 people, who do not watch any of these networks.

23 MS. FLAHIVE-WU: Your Honor, I have nothing further.

24 JUDGE SIPPPEL: Just bear with me a minute here. Let's  
25 see, if you had been hired to design a study for Cablevision

1 comparing public perception of the WE versus GSN, how would you  
2 design one? How would you have gone about designing it?

3 MR. PORET: Well, that is how I would describe this  
4 survey as measuring public perception.

5 JUDGE SIPPEL: No, no, no, I'm asking how would you  
6 design it. Have you ever designed a study, like did you design  
7 this study in Kraft?

8 MR. PORET: Yes, yes.

9 JUDGE SIPPEL: Okay, so if you were asked to design a  
10 study in this case by Cablevision, how would you have gone about  
11 doing that?

12 MR. PORET: I did design the study in this case that  
13 we're talking about.

14 JUDGE SIPPEL: You did design it?

15 MR. PORET: Yes.

16 JUDGE SIPPEL: But you just got the other company to do  
17 the legwork basically?

18 MR. PORET: Oh, yeah, I'm the designer of everything  
19 about this survey. The only thing the other company is doing is  
20 sending out the invitations to the people who would take the  
21 survey.

22 JUDGE SIPPEL: Oh, okay, I didn't quite understand that,  
23 okay. I was a little bit thrown off by some presumptions I was  
24 making. Let's take 15 minutes and I'll come back to this, okay?

25 MR. PORET: Sure.

1 (Whereupon, the above-entitled matter went off the record  
2 at 11:04 a.m. and resumed at 11:20 p.m.)

3 JUDGE SIPPEL: We're back on the record. Please be  
4 seated. Okay, I'm ready to put Judge Posner aside, but let me ask  
5 you this question, so we're back to where we were. You had  
6 designed the survey and it goes from there as to how it was done.  
7 You've testified to that at length. But going back again, going  
8 back to Judge Posner, this is just a one-shot deal, was that survey  
9 that you were doing in that case basically showing people to  
10 Cracker Barrel and -- was it Cracker Barrel -- how is this thing  
11 going?

12 THE WITNESS: I can tell you you're not going to be able  
13 to tell from that decision because it doesn't say what happened in  
14 the survey. But I can tell you what happened in the survey is that  
15 people were shown --

16 JUDGE SIPPEL: What were people asked to do, to respond  
17 to?

18 THE WITNESS: People were shown a whole ham put out by --  
19 are you familiar with the Cracker Barrel Old Country Store and  
20 Restaurant?

21 JUDGE SIPPEL: It's right next to a gas station that I  
22 use.

23 THE WITNESS: So what was at issue was for years Cracker  
24 Barrel Old Country Store has existed with its restaurants and  
25 Cracker Barrel cheese has been sold in supermarkets and they

1 coexisted for years. But the Cracker Barrel Old Country Store  
2 wanted to start selling products in supermarkets that say Cracker  
3 Barrel and Kraft said wait a minute, we've been fine in our  
4 separate areas, but now when you start selling products in a  
5 supermarket that say Cracker Barrel people are going to think  
6 they're related to our Cracker Barrel cheese. They're not going to  
7 -- they're going to be confused.

8           So what I did is I did a survey where I showed people the  
9 Cracker Barrel Old Country Store ham product that was going to be  
10 sold in the supermarkets and asked them questions to see if they  
11 were confused into thinking that that came from the Cracker Barrel  
12 cheese brand. And it showed that there was a significant rate of  
13 confusion.

14           JUDGE SIPPEL: So you were showing them -- okay. So you  
15 were showing them two products and asked them if there were any  
16 confusion the way it was being -- what, the trademark or the way it  
17 was being identified for them?

18           THE WITNESS: It actually wasn't two products. They only  
19 showed one product which is why it's such a reliable type of survey  
20 because what happened is they were only shown the ham product that  
21 was the alleged infringing product. And on their own, they said I  
22 think the company that makes this product makes cheese. So they  
23 didn't even compare two products and said they came from the same  
24 company. They looked at the defendant's product and on their own  
25 they said I think the company that makes this ham is the company

1 that makes Cracker Barrel cheese.

2 JUDGE SIPPEL: Did they volunteer that information  
3 independently?

4 THE WITNESS: No. They were asked -- it's called an  
5 Eveready survey. It stems from a case in which --

6 JUDGE SIPPEL: Eveready batteries?

7 THE WITNESS: Yes. And there was a company making a lamp  
8 called an Eveready lamp. And in the survey they showed people the  
9 lamp and they said what other products do you think this company  
10 makes? And people said batteries. And so you knew they were  
11 confused in thinking that the lamp comes from the Eveready battery  
12 company. And that's become the most well accepted type of  
13 trademark confusion survey.

14 So in this instance, people were shown the ham and they  
15 were asked do you think the company that makes this ham also makes  
16 any other products? And people said yes, cheese. And so  
17 ultimately at the end of the questions you could see that people  
18 thought that the ham was coming from the same company that makes  
19 Cracker Barrel cheese.

20 JUDGE SIPPEL: So could you have done that in this  
21 survey? Could you have taken one of these products, let's say like  
22 WE tv and said is any other program similar to this?

23 THE WITNESS: Yes, I imagine you could have done that,  
24 but if I were GSN I would complain quite a bit about that kind of  
25 survey because that would have required the respondent to see the

1 name WE and come up with GSN on their own which would be very, very  
2 difficult whereas in my survey showing them GSN and WE together as  
3 a pairing and if they really thought those were similar, all they  
4 needed to do was say yes, they're similar. So doing it as pairings  
5 made it as easy as possible for a participant to say yes, I think  
6 these are similar channels if they really did believe that. Almost  
7 900 people were given GSN and WE and could have clicked yes, those  
8 are similar and virtually no one out of 900 people did that. So it  
9 was -- this was as fair a way to do it as I think you could have.

10 JUDGE SIPPEL: I hear you. Now supposing it was done  
11 that way in the Cracker Barrel case? You offer them the two  
12 products and said how does this strike you or whatever the question  
13 you would ask them?

14 THE WITNESS: That is a common type of trademark  
15 confusion.

16 JUDGE SIPPEL: You didn't do that, you didn't do it in  
17 the Cracker Barrel case.

18 THE WITNESS: Right.

19 JUDGE SIPPEL: And why?

20 THE WITNESS: Well, because the conventional wisdom is  
21 that when you put two things together next to each other, you're  
22 risking leading them to make a connection between those two things.  
23 So when I was doing the survey for the plaintiff, I didn't want to  
24 be accused of leading anybody to make a connection between the  
25 products because I put them together for the respondent. I wanted

1 to only show them one and see if they come up with the other on  
2 their own. But here, doing something for the defendant, this was  
3 a much more conservative thing to do in this instance and that I  
4 did put GSN and WE together and gave people the maximum opportunity  
5 to answer yes, these two things do go together.

6 JUDGE SIPPEL: Is it possible some people might have  
7 known that Cablevision was the sponsor of both of these programs?

8 THE WITNESS: No.

9 JUDGE SIPPEL: Why not?

10 THE WITNESS: Well, Cablevision, I mean, this is going a  
11 bit outside my area, but I don't think -- Cablevision isn't the  
12 sponsor of GSN so I don't see why people would know that because I  
13 don't think that's --

14 JUDGE SIPPEL: Well, I'm saying in the broad context,  
15 they have a contract that's not a contract with GSN, but it started  
16 out as a contractual relationship. They have a contractual  
17 relationship also with WE tv. And it's kind of in the grouping  
18 that GSN offers. I mean people have spent, paying money to  
19 Cablevision because -- for carrying GSN or the certain tier.  
20 That's what this case is all about. So they know Cablevision has  
21 GSN with it in some shape or form. They're probably even paying  
22 the bills for GSN, Cablevision. And then they perhaps know that WE  
23 tv is also part of Cablevision.

24 THE WITNESS: Well, that makes me have two thoughts.  
25 Number one is the survey had a group of Cablevision subscribers and

1 a group of non-Cablevision subscribers and the results were the  
2 same, so it didn't matter in the results whether somebody has  
3 Cablevision or a different provider. But secondly, I think what  
4 you're suggesting would only be a reason for somebody to say that  
5 they're similar, not dissimilar. In other words, if somebody came  
6 into the survey already thinking that there's some connection  
7 between GSN and WE because they both are offered by the same  
8 company, I don't see why that would make hundreds of people answer  
9 that they're dissimilar channels.

10 JUDGE SIPPEL: So you think it's a cleaner survey if you  
11 just drop Cablevision out of the picture completely?

12 THE WITNESS: Yes, not inform the surveyed parties of  
13 that fact.

14 JUDGE SIPPEL: They should not be informed of that fact.  
15 They should be left to drift on their own only looking at WE tv and  
16 GSN?

17 THE WITNESS: I think it is better because, as you say,  
18 people in the real world they may know about it, they may not. And  
19 it's better to take people with their actual state of awareness and  
20 have people who are Cablevision subscribers and people who are not  
21 and see if they answer the same way.

22 JUDGE SIPPEL: Okay. Now do you know -- I did not see  
23 any definition or instruction for similarly themed in your survey  
24 in any of the documents that I've seen. Was there a definition  
25 given to the customers who were selected or the people who were

1 selected for survey defined -- was it defined in any way what you  
2 were looking for, similarly themed programming?

3 THE WITNESS: What I was trying to do as a whole was give  
4 them a general concept without trying to give them a very specific  
5 idea that would maybe influence them one way or the other. So I  
6 tried to combine the topic of comparable programming and similar  
7 themed programming to give them the general sense that I'm talking  
8 about channels that offer similar types of things, but to leave it  
9 to consumers' experience and their understanding of what similar  
10 programming is to give the answers.

11 JUDGE SIPPEL: So they should define what you were  
12 meaning to survey them on by themselves, work out the definition  
13 yourself?

14 THE WITNESS: Well, I don't know if I would go that far.  
15 My feeling is that similar is a very common standard English word  
16 and I didn't, in that instance, I didn't feel that it was necessary  
17 to try to get into an explanation of what I mean by that. I think  
18 in my experience writing survey questions that that was terminology  
19 that people would understand on their own and most importantly,  
20 when 900 people give an extremely consistent answer to a question  
21 that does not suggest that there's any misunderstanding or  
22 difficulty following a question. If you have a question, and you  
23 have people who are all over the board in answering it, that might  
24 raise a concern about how people understand the terms. But when  
25 you have uniformly across the board in every type of people they're

1 all giving a very similar answer. That does not suggest any  
2 problem with how people understood the question.

3 JUDGE SIPPEL: These are more technical questions, if you  
4 will. Is the survey data actually in the record? We haven't seen  
5 anything that shows us the actual data -- the survey data, the raw  
6 data that came in was actually put in the record. Maybe I can ask  
7 that to the attorneys.

8 MR. CARNEY: And Your Honor, we're happy to do so. It is  
9 not marked separately as an exhibit because it's voluminous, but if  
10 it assists Your Honor, we're certainly happy to provide it.

11 JUDGE SIPPEL: Okay. That's enough of that. The last  
12 question I have is did you calculate your margin of error for the  
13 survey?

14 THE WITNESS: Yes, I did. I didn't put all of that  
15 throughout the report because we're talking about small numbers,  
16 but the whole purpose of having a certain sample size is to make  
17 sure that the margin of error is small.

18 JUDGE SIPPEL: Did you put that any place in your report?

19 THE WITNESS: Yes. The report talks about that the  
20 results are statistically significant, but I didn't lay out  
21 individual margins of error because it would have made tables look  
22 very confusing. For instance, every time you would see a number  
23 1.32, you'd see plus or minus .4 or 5 or something like that and it  
24 would be pretty hard to follow. But my expert report did lay out  
25 how the results were statistically significant. And if you want to

1 know just on an intuitive level when you're talking about a result  
2 of 1.32 on a scale of zero to 10, you're talking about margins of  
3 error of well less than 1. So you're talking about a range of  
4 could the 1.32 really be less than 1? Could it really be as high  
5 as 2? That's basically the range that you're talking about for a  
6 margin of error.

7 JUDGE SIPPEL: And the full report is in the record, is  
8 that correct?

9 THE WITNESS: Yes, sir.

10 MR. CARNEY: And the data is missing. I will tell Your  
11 Honor, that Exhibit CV --

12 JUDGE SIPPEL: The data is different.

13 MR. CARNEY: The data is different. CV 233 represents  
14 his full report that was converted to testimony for purposes of  
15 this proceeding.

16 JUDGE SIPPEL: All right.

17 MR. CARNEY: And with the appendices behind it at 233.

18 JUDGE SIPPEL: Okay. We'll take a look at that.

19 THE WITNESS: I'm sorry; it's in the direct testimony,  
20 too. It does show that the results of statistically significant at  
21 the 99 percent confidence level. It does say that in the testimony  
22 version, too.

23 JUDGE SIPPEL: All right. I'll take that representation  
24 and if it's in there, it's in there. It better be in there. The  
25 survey was done in 2012.

1 THE WITNESS: Yes.

2 JUDGE SIPPEL: And were you given that instruction or did  
3 you just take upon yourself and do it for 2012?

4 THE WITNESS: Well, that was just the time period in  
5 which I was contacted and asked to do the survey was leading up to  
6 that period of time so that as just simply when I was retained to  
7 do it.

8 JUDGE SIPPEL: Well, let me ask that question again. You  
9 got some instruction from the client or from the client's attorney  
10 as to what the job is that they want you to do. Were they asking  
11 you to survey for 2012?

12 THE WITNESS: No. They weren't asking the survey to be  
13 limited to a particular period of time. I'm just saying that when  
14 they hired me was in 2012, so --

15 JUDGE SIPPEL: So you did it in 2012?

16 THE WITNESS: So I did it in 2012, but since what we have  
17 in the survey is many hundreds of respondents with differing real-  
18 world experiences, the reality is you have people who have been  
19 watching the networks for years and you have people who have been  
20 watching them for only a few years and maybe some only more  
21 recently. So the survey is essentially averaging out the results  
22 of people who have been watching these networks for many years and  
23 some who have been watching them less years. But the bottom line  
24 again since the results are consistent across the board, it's not  
25 varying whether people have been watching GSN for 20 years or

1 whether it's only been a few years or whether it's only been a few  
2 months.

3 JUDGE SIPPEL: Okay. That's all I have. Thank you, sir.

4 THE WITNESS: You're welcome.

5 MR. CARNEY: May I do a redirect, Your Honor?

6 JUDGE SIPPEL: Yes. I just want to ask Ms. Wu, is there  
7 anything in that line of questioning that you wish to pursue or  
8 not, my questions I'm saying.

9 MS. FLAHIVE-WU: I think I'll let Mr. Carney go first and  
10 if there's anything else to address, I'll take the next turn, Your  
11 Honor.

12 JUDGE SIPPEL: Ms. Kane, you're going to wait until the  
13 end?

14 MS. KANE: As always, Your Honor, yes.

15 JUDGE SIPPEL: Okay, I just wanted to be sure. Mr.  
16 Carney.

17 MR. CARNEY: Thank you, Your Honor. Just a few  
18 questions.

19 REDIRECT EXAMINATION

20 BY MR. CARNEY:

21 Q Is there anything in your survey that suggested that  
22 Cablevision was sponsoring the survey?

23 A No.

24 Q And of course, as you testified before, the survey also  
25 had national respondents, correct?

1 A Yes.

2 Q And were these respondents outside of the New York DMA in  
3 which Cablevision operates?

4 A Yes, 400.

5 Q So there will be survey results from the 400 national  
6 respondents that would not have received Cablevision service?

7 A Yes, and we looked at that data before when you asked me.

8 Q Thank you. Let me just go back to where Ms. Wu ended.  
9 Ms. Wu asked you about two cases, the Fancaster case and Judge  
10 Posner's decision in the Cracker Barrel case. Did your clients in  
11 those cases win or lose?

12 A They won.

13 Q Were your surveys accepted?

14 A Yes, they were accepted and relied on by the judge in  
15 both cases.

16 Q Ms. Wu did not ask you about other cases in which your  
17 surveys were not criticized at all. Have there been instances  
18 where courts have accepted your surveys?

19 A Yes, there are many trials in which my surveys have been  
20 accepted and many public opinions accepting my surveys and  
21 testimony.

22 Q About how many times?

23 A I don't know, 10 to 15.

24 Q On behalf of various clients?

25 A Yes, and various courts and jurisdictions.

1 Q Have you ever had surveys accepted when there were screen  
2 shots used?

3 A Yes, you mean online surveys, screens like this?

4 Q Yes.

5 A Yes. I've had many. That's the most common survey  
6 methodology including in courts and the last -- I've had a number  
7 of online surveys accepted by courts.

8 Q In this survey that you did here, would it have improved  
9 your survey to show respondents actual programming from either GSN  
10 or WE?

11 A No.

12 Q Why not?

13 A Because it would be far more reliable and appropriate to  
14 take people who have real-world experience watching the networks  
15 with the actual programming. Like I said before, there are  
16 hundreds of people who said that they watch GSN or watch WE or  
17 watch both multiple hours a week. And those people have a far  
18 greater breadth of actual experience with what the programming is  
19 than I could ever hope to provide them in a couple of minutes in a  
20 survey.

21 Q Ms. Wu also asked you about whether you asked  
22 participants to identify the day parts that they may have watched  
23 or individual programs that they watched. Would have asking those  
24 questions improve the reliability of your survey in any way?

25 A I don't believe so.

1 Q Let me switch subjects. Ms. Wu pointed out to you some  
2 questions concerning the self-selection bias. Do you remember  
3 that?

4 A Yes.

5 Q Is there any self-selection bias issue here that causes  
6 you to question any of the results that you've obtained?

7 A No. This is not a situation where self-selection bias  
8 would be an issue at all. Self-selection bias would arise in  
9 something, for instance, let's say you want to know who is going to  
10 win the presidential election and maybe it's only the liberal  
11 Democratic people who are more likely to agree to take a survey  
12 because -- for whatever reasons. Maybe that self-selection will  
13 affect the results because maybe you'll get more Democrats who take  
14 the survey. But here, we're talking about whether people are going  
15 to think that WE and GSN are similar or different networks and  
16 there's absolutely no reason why someone's agreement or lack of  
17 agreement to take a survey that they know nothing about would  
18 affect whether they think GSN and WE are similar channels. And  
19 again, the survey results are so robust across nearly 900 people  
20 that there's no way that self-selection has anything to do with the  
21 results.

22 Q Relatedly, does the fact that participants agreed to  
23 participate in the survey, opted in if you will, in response to  
24 Research Now's inquiry, impact your results in any way?

25 A No.

1 Q We talked a little bit about the incentives that survey  
2 participants may have received for participating in terms of what  
3 credit card miles and the like. Are these types of incentives  
4 standard operating procedure in the consumer research industry?

5 A Yes. They're not only standard, they're widely accepted  
6 as beneficial to surveys because offering incentives expands the  
7 pool of people who are willing to do surveys by such a large degree  
8 that the value in having a much larger group of people who are  
9 willing to do surveys far outweighs any concern about people  
10 getting a few dollars for a survey.

11 Q We spent a little time this morning during Ms. Wu's cross  
12 examination talking about litigations and the like. Do companies  
13 in the ordinary course of business undertake these types of  
14 consumer research surveys in non-litigation contexts?

15 A Yes. Companies collect and we are spending many, many  
16 billions of dollars on these types of surveys to help them make the  
17 decisions that are worth billions of dollars to them in terms of  
18 their sales and their advertising.

19 Q And in your professional experience, have you been  
20 involved in designing surveys outside of the litigation realm?

21 A Yes, I do that every day.

22 Q Now we talked a little bit about the extent to which you  
23 personally watched programming of either GSN or WE in the course of  
24 designing your survey. Do you remember that?

25 A Yes.

1 Q Was that important to you that you needed to actually  
2 watch GSN or WE programming in order to design a reliable survey?

3 A No. Because the whole point of the survey is to find out  
4 what consumers think of GSN and WE. That's simply the objective of  
5 the survey and what I personally think of it has nothing to do with  
6 it. I would be showing people and asking them about GSN and WE no  
7 matter what.

8 Q I think you had mentioned this in your testimony, but I  
9 just want to clarify it for the record. You have pointed out that  
10 two control pairs of networks were WE and Oxygen and Oxygen and  
11 Lifetime. Do you remember that?

12 A Yes.

13 Q And do you recall where you obtained those specific  
14 pairings for use in your survey?

15 A Yes, I don't remember the exact document, whether it was  
16 a complaint or something else, but something in the pleadings of  
17 GSN, they talked about what network they thought were similarly --  
18 similar types of programming and were in the same category. And  
19 they indicated -- GSN indicated its category, a belief that it was  
20 -- that Oxygen, WE, and Lifetime were all similar types of  
21 programming in the same category.

22 Q Apologies for jumping around a little bit. There were  
23 some questions raised by Ms. Wu concerning instructions that you  
24 may have given to participants about time period and restricting  
25 the time periods in which they had developed a familiarity with the

1 programming. Does the fact that survey does not provide any such  
2 restrictions as to time affect the validity of the survey in your  
3 view?

4 A No.

5 Q Why not?

6 A Because again, you're taking 900 people of different ages  
7 and experiences with different levels of how much they watch the  
8 channel and you naturally are going to have people who are older  
9 and have watched these channels for years and you have people who  
10 have only watched them for a few years and maybe you have some  
11 people who are younger and only have watched them recently. But  
12 what you're getting is 900 people averaging the results of all  
13 these time periods across time and you have a uniformly consistent  
14 result that virtually everyone rates these channels as extremely  
15 dissimilar. It doesn't matter whether they've been watching for 30  
16 years or 10 or 5 or 1. It's a pretty straight forward consistent  
17 result that's not sensitive to the time period.

18 Q Did you include in your survey viewers that -- I'll  
19 withdraw that and ask a better question. In your familiar group of  
20 participants, were there participants that had both watched GSN and  
21 WE and participants that did not watch GSN and WE, but nonetheless  
22 said they were familiar with the programming?

23 A Yes.

24 JUDGE SIPPEL: Which program?

25 BY MR. CARNEY:

1 Q I'm sorry, for either WE or GSN.

2 A The reality is that there's everything. There's people  
3 who watched only GSN. There's people who watch only WE and there's  
4 people who watch GSN and WE and there are people who watch none of  
5 them and they're all represented in the survey and they all have  
6 the same result.

7 JUDGE SIPPPEL: Well, not the people who didn't see  
8 anything. They couldn't have any result. People who saw nothing?

9 THE WITNESS: Well, just as a matter of fact, there were  
10 people in the survey who said they are not current watchers of  
11 those networks, but said that they do have some familiarity with  
12 the networks and in that case clearly it's not from watching and  
13 clearly it's from some other experience. I'm just saying that the  
14 people who said they were not watchers still did have the same  
15 results as the people who were watchers.

16 JUDGE SIPPPEL: They could have been getting the  
17 information -- the next door neighbor, who is also giving --  
18 responding to the survey, could have been giving them the input.

19 THE WITNESS: I agree that in the case of the people who  
20 don't watch the networks, they could have gotten their information  
21 from everywhere and that's why I wouldn't have done a survey  
22 relying on that, but within the survey I have entirely separate  
23 groups of hundreds of people who do watch the networks and that's  
24 why -- those are the results that I would rely on primarily.

25 BY MR. CARNEY:

1 Q So just to be clear, even within your familiar groups  
2 nationally and DMA whether or not the participants watched the  
3 programming or did not watch the programming, the survey results  
4 were not materially different?

5 A Yes. And the bottom line is even if you said all I want  
6 to know is the results among the people who watched the networks,  
7 there are hundreds of people of those in the survey and the results  
8 are essentially the same.

9 MR. CARNEY: Thank you, Your Honor. I have nothing  
10 further.

11 JUDGE SIPPEL: Ms. Wu.

12 MS. WU: Your Honor, if I might, I do have a few  
13 questions.

14 RE CROSS EXAMINATION

15 BY MS. FLAHIVE-WU:

16 Q Just picking up where Mr. Carney left off, Mr. Poret, you  
17 are aware that the majority of people who responded to your survey,  
18 of the 870 people watch zero hours of GSN and zero hours of WE tv  
19 in the average week, correct?

20 A The majority of the 870.

21 JUDGE SIPPEL: That's 870.

22 THE WITNESS: Yes, I think the numbers are that 300 watch  
23 GSN so 570 don't, and I think the number with that 370 or so watch  
24 WE, so something like 400 don't.

25 MS. FLAHIVE-WU: And it's an even smaller number

1 proportion of the respondents who watch both GSN and WE. It's a  
2 very small number of respondents, correct?

3 MR. PORET: It's not a small enough number that would  
4 mean you couldn't look at the results in that group, but it's  
5 definitely the minority.

6 BY MS. FLAHIVE-WU:

7 Q Mr. Poret, but you testified earlier that you actually  
8 don't know the number of respondents who watch both GSN and WE,  
9 correct? You don't know that number.

10 A I said I don't know the number, but that doesn't mean  
11 that I don't know that it's not a meaningful size.

12 Q But yes or no, you don't know the number?

13 A I don't know the exact number.

14 Q Mr. Poret, Judge Sippel asked you some questions focusing  
15 on the time period of your survey. You conducted your survey in  
16 2012, correct?

17 A Yes.

18 Q And you didn't focus the survey takers or respondents on  
19 any particular relevant period of time to keep in mind when  
20 answering the questions, correct?

21 A Correct.

22 Q Do you know how many people in the group of survey  
23 respondents saw GSN in 2010?

24 A No.

25 Q There's no question in your survey that would tell you

1 that, correct?

2 A Not on an individual by individual respondent, but on a  
3 global level that's something that you would have a sense of from  
4 the survey.

5 Q But you wouldn't know in what time period the respondents  
6 watched a network, correct?

7 A I wouldn't know in the case of any one respondent, but I  
8 do know that over the course of hundreds of respondents of all  
9 different ages and a representative sample that you would certainly  
10 have people who were watchers during a variety of periods.

11 Q Mr. Poret, yes or no, did you ask any question that would  
12 call for an answer of whether or not a respondent watched GSN in  
13 2010?

14 A No.

15 Q Yes or no, did you ask any question that would ask a  
16 respondent to report whether they watched WE TV in 2010?

17 A No.

18 Q Have you personally reviewed any of the programming that  
19 GSN aired in the year 2010?

20 A Not that I can think of.

21 Q Have you personally reviewed any programming that WE TV  
22 aired in 2010?

23 A No.

24 Q If you thought that 2010 were a relevant period for  
25 purposes of this survey, you could have asked survey respondents

1 about that year in particular, correct?

2 A I don't know if that's correct.

3 Q You don't know if 2010 is relevant to the issues in this  
4 case?

5 A No, I said I don't know if you could ask that question.  
6 I do understand 2010 to be relevant, but the question of whether in  
7 2012 you could do a survey and expect people to compartmentalize  
8 knowledge from two years ago versus what they've seen before  
9 recently, I don't know. I'm saying I don't know whether that could  
10 be a reliable, successful methodology.

11 Q Mr. Poret, so it is your opinion that 2010, the year 2010  
12 is relevant to the analysis in this case, correct?

13 MR. CARNEY: Objection, Your Honor.

14 THE WITNESS: I'm not --

15 JUDGE SIPPEL: Wait, wait. Whoa, whoa, whoa.

16 MR. CARNEY: It calls for a legal conclusion in terms of  
17 the relevance of the year to the issues in this case.

18 MS. FLAHIVE-WU: He just offered his own opinion on that,  
19 Your Honor. I'm just following up on his own testimony.

20 JUDGE SIPPEL: That's what I heard. I'm going to  
21 overrule the objection.

22 THE WITNESS: I'm clearly not here as a legal expert or  
23 interpreting the legal rules relevant to the case. I'm just saying  
24 that as a consumer person who's asking people about their  
25 experience, there's nothing that makes me think their experience in

1 previous years is irrelevant.

2 BY MS. FLAHIVE-WU:

3 Q And you did not ask any question that specifically  
4 relates to the year 2010, correct?

5 A Yes, correct.

6 Q Now Mr. Poret, I'd like to go back to Judge Posner's in  
7 the Kraft case just for clarity. Mr. Carney asked if your surveys  
8 were accepted in other cases, correct?

9 A Yes.

10 Q And just so the record is clear, the Seventh Circuit did  
11 not find your survey reliable, correct?

12 A No, but I don't think that's correct.

13 Q Okay, yes or no. The Seventh Circuit wrote in its  
14 opinion at Tab 4 in this binder that they did not find your survey  
15 to have probative significance. Yes or no?

16 A That's not my understanding of it.

17 JUDGE SIPPEL: Well, what about the -- I'm sorry. You go  
18 ahead. I don't mean to interrupt you.

19 MS. FLAHIVE-WU: Your Honor, I have nothing further. I'm  
20 happy to have you ask.

21 JUDGE SIPPEL: No. Ms. Kane?

22 MS. KANE: We have some questions, Your Honor.

23 Good afternoon, Mr. Poret. My name is Pamela Kane. I  
24 represent the Enforcement Bureau, and with me is my colleague Mr.  
25 Knowles-Kellett. We just have a few followup questions for you

1 about your testimony this morning.

2 THE WITNESS: Okay.

3 DIRECT EXAMINATION

4 BY MS. KANE:

5 If I could have you turn to your direct examination  
6 notebook, which I believe only has the two tabs, and have you turn  
7 to Page 19 of your written direct testimony at Paragraph 60.

8 A Okay.

9 Q Do you see where it says among the 272 respondents of the  
10 NYC DMA?

11 A Yes.

12 Q How many of the 870 that -- let me provide a little bit  
13 of foundation. I believe that you've testified that there were a  
14 total of 870 participants in this survey, correct?

15 A Yes.

16 Q How many of the 870 were part of the New York City DMA?

17 A 470.

18 Q 470. And so of those 470 is that where that 272 number  
19 comes from?

20 A Yes.

21 Q And the 270 represents the percentage or the number of  
22 the 470 who are familiar or surveyed that they were familiar with  
23 the type of programming on both GSN and WE, correct?

24 A Yes.

25 Q If I could have you look at the chart in Paragraph 61 on

1 that same page.

2 A Okay.

3 Q Next to each of the categories of channel pairings there  
4 appears to be a number that's preceded by an N equals. What is  
5 that N and the equal, what does that represent?

6 A That represents the number of people who actually gave a  
7 rating because some people gave an answer that they have no  
8 opinion. So, for instance, for ABC and CBS, four people said that  
9 they didn't have an opinion about how similar or dissimilar they  
10 were, so only 268 people are included in that rating out of the  
11 272. Whereas, for GSN and WE you see that it says N equals 231,  
12 and what that means is that there were 41 people who said I have no  
13 opinion about how similar they are when asked that question.

14 So of the 272 there were only 231 who felt familiar  
15 enough to express an opinion on the ratings scale, and that 1.32  
16 rating for GSN and WE is based on the group of 231 who did express  
17 an opinion.

18 Q So do I understand it then that since each of these  
19 channel pairings have different N numbers next to them that they're  
20 based on a different number of respondents for each of the averages  
21 that are put in the same chart?

22 A Yes, exactly. And the reason for that is that the same  
23 respondent could go through the survey and give a rating for ten of  
24 the channel pairs, but then for two others they could say I don't  
25 have an opinion on that one because I don't know the channels well

1 enough. So there were different numbers of respondents who rated  
2 each channel pair.

3 Q And yet you put all the averages together as if they were  
4 the same number of people in the same chart despite the fact that  
5 there are different numbers for the N factors, correct?

6 A No, and that's exactly what this chart is conveying is  
7 that there's different numbers for each pairing.

8 Q Can I have you turn to Page 22 of your written direct  
9 testimony, Paragraph 71?

10 A Okay.

11 Q And you see where it says among the 400 respondents  
12 outside of the New York City DMA?

13 A Yes.

14 Q That are familiar with the type of programming, do you  
15 see where I'm reading?

16 A Yes.

17 Q I believe you just testified that of the 870, 470 were  
18 inside the New York DMA, correct?

19 A Yes.

20 Q So, and that only 272 of that 470 were familiar with the  
21 type of programming on both GSN and WE, correct?

22 A Yes.

23 Q So technically there should be 400 other respondents  
24 beyond the 470 that are in the New York DMA that are outside,  
25 correct? If your total was 870 and we've got 470 inside the New

1 York DMA, there should be 400 outside the DMA?

2 A Right. That's what Paragraph 71 is about.

3 Q Well, so all of the 400 who were outside the DMA the New  
4 York City DMA are familiar with the type of programming on GSN and  
5 WE? A hundred percent of that 400?

6 A Yes, because that was a requirement for them to get into  
7 the survey. For people outside the New York City DMA, they were  
8 not admitted to the survey unless in the screening questions they  
9 answered that they were familiar with both.

10 Q Why was there a different qualification to be outside the  
11 DMA versus being inside the DMA?

12 A Because to the extent of getting people in other parts of  
13 the country that weren't even in the Cablevision area, the most  
14 useful data by far is obviously people who are familiar with the  
15 networks. So while I figured there's a chance that anyone in the  
16 New York City DMA might be considered relevant regardless of their  
17 knowledge as far as going outside the Cablevision territory, it  
18 didn't seem very useful to be getting more people who were not  
19 familiar with the channels, that the data among the people who are  
20 familiar with the channels is the most useful.

21 Q But you didn't limit that familiarity for just the New  
22 York City DMA, correct?

23 A Right.

24 Q And I would assume that the N equals numbers are  
25 consistent, they mean consistently the same thing throughout your

1 report when they're used in the various charts?

2 A Yes.

3 Q Can I have you turn to Page 31 of your written direct  
4 testimony, Paragraph 95? And there's a heading to that that says  
5 results by gender. Can you describe what this chart is?

6 A Yes. We're now looking at the results for both in New  
7 York and national combined, and this is showing how the results for  
8 each pair compare from males to females.

9 Q So this would -- I didn't mean to interrupt you.  
10 Continue.

11 A Oh, I was just going to say, for instance, the GSN-WE,  
12 similarity rating was 1.24 for males and it was 1.36 for females.

13 Q So the totality of people surveyed for this chart was  
14 672, correct, of the 870? The 272 from the New York City DMA and  
15 the 400 from the outside the New York City DMA?

16 A Yes.

17 Q Did you calculate of that 672 number universe how many  
18 were women and how many were men?

19 A I don't know that I calculated it. That's something  
20 that's just in the data. It's automatically tabulated as part of  
21 the data. It's not something I would have needed to calculate; it  
22 would just be a number there of how many were women and how many  
23 were men in the data.

24 Q Do you happen to recall what the breakdown was?

25 A It is shown on Page 16.

1 JUDGE SIPPEL: 16, 1-6?

2 THE WITNESS: Of the direct testimony. We'd have to add  
3 it up sitting here right now, but the numbers are all in that table  
4 of how many people there were from each age and gender group in  
5 both the national and the New York City DMA sample.

6 BY MS. KANE:

7 Q That's the total numbers? If I were to add those all up,  
8 it would add up to 672?

9 A I believe so. It looks like Paragraph 48 is the  
10 composition of the New York City DMA and Paragraph 49 is the  
11 composition of the national group.

12 Q So when Paragraph 48 and Paragraph 49 are referring to  
13 sample compositions, it's not talking about a subset of that 672?

14 A No.

15 Q It's just generally using the word sample as what?

16 A Sample is just a term of art in market research to refer  
17 to the group of people who took the survey.

18 Q Can I have you turn back to Page 32, Paragraph 98? Or  
19 actually, if you could actually flip one page earlier, 31,  
20 Paragraph 95.

21 A Okay.

22 Q Why is it when you calculated the results by gender that  
23 you didn't identify an N factor?

24 A I think that it's because in combining the national and  
25 the DMA groups, it gets kind of complicated, because you have

1 different Ns for each of those groups and it just seemed like it  
2 would have been cumbersome to try to convey that in the table.

3 Q So in that case, this data seems to presume that all 672  
4 answered for all of these channel pairs then, correct?

5 A That's not my intention for it to presume that. I mean  
6 I've given the Ns for each before this, so if you wanted to know  
7 the Ns, you would just need to add the N. Well, actually the Ns  
8 are, the Ns for that are given on the previous pages, I guess  
9 they're just not repeated in each of the subgroup tables.

10 So if you look on Paragraph 82, it does have the Ns for  
11 the national and the New York City combined for each pairing.  
12 They're just not repeated when I get to the breakdown by each  
13 classification. But if you wanted to just compare the chart on 95  
14 to the chart on 82, you would see the Ns for each channel pairing  
15 when you add together the national and the local N.

16 Q If I compared the chart on Paragraph 82 to Paragraph 95  
17 though, it wouldn't show how many of the men answered as to the  
18 ABC-CBS pairing, for example, and the females answered for those  
19 two pairings, correct? It would just show the total of number of  
20 people who had answered as to that pairing, correct?

21 A Yes. If you want to know the number. These charts are  
22 not showing numbers at all, they're showing average ratings. If  
23 you wanted to see the number you'd have to --

24 Q But they're based on average ratings based on the number  
25 of survey participants who answered as to that particular channel

1 pairing, correct?

2 A Yes.

3 Q So is there any chart in here that allows me to identify  
4 of the channel pairings for the males, how many of the participants  
5 on a channel pairing basis were men and women for each of the  
6 channel pairings?

7 A Well, certainly that's all in the data. I think if you  
8 wanted to see it summarized more neatly, I think what you'd have to  
9 do is look at, for instance, if you wanted to know about ABC and  
10 CBS, it shows that 661 people are included in those pairings. And  
11 if you wanted to know how those 661 break down among males versus  
12 females you could either tell that from the data file or you'd have  
13 to look at the information on Page 16 and see proportionately how  
14 that 661 would have broken down between male and female.

15 Q But you didn't break it anywhere down in your report,  
16 correct? You didn't identify, let's say, for the GSN-WE channel  
17 pairing, for example, how many of the 606 who are familiar with the  
18 networks were men and how many were female?

19 A That's correct. I did not lay out those numbers.

20 Q Okay, and if I could have you turn the page to Page 32,  
21 Paragraph 98? And can you identify for the record what this chart  
22 represents?

23 A Yes, this shows the breakdown of the results by age for  
24 each channel pairing.

25 Q And again, this is for familiar groups, correct? So this

1 is 672 of the 870 participants?

2 A Yes.

3 Q Now within each of these age groups did you identify how  
4 many were women and how many were men?

5 A Again that's all part of the dataset, but no, not in that  
6 table. It's not broken down by age and gender within the same  
7 table.

8 Q And is there a reason again why you didn't provide an N  
9 factor for this data?

10 A Yes, just that I'm not repeating the same thing  
11 throughout the report.

12 Q So again for, let's say, just taking, for example, the  
13 GSN-WE channel pairing, which I think you identified that there  
14 were 606 people that I think you identified from Paragraph 82, 606  
15 had responded that they were familiar enough with that channel  
16 pairing to answer as to that channel pairing. Do you recall that?

17 A Yes.

18 Q So of that 606 we're not able from your written direct  
19 testimony to figure out how many fell into each of these gender  
20 categories, correct?

21 A I don't know if that's correct. You could have a pretty  
22 strong sense of it from comparing it to the previous tables that I  
23 talked about where it's shown how many people fall into each age  
24 group, or if you look at the actual data you can tell that. But  
25 you're correct that there are certain breakdowns that are not laid

1 out throughout the report.

2 Q Now I believe you testified earlier today that there was  
3 the potential for some subset of the 870 to both -- to be watchers  
4 of more than zero minutes of both GSN and, or more than an hour of  
5 GSN and WE TV, correct?

6 A I'm just trying to think if I followed that. That there  
7 were people who were watchers of both GSN and WE?

8 Q Correct.

9 A Yes.

10 Q And that you don't recall what that specific number was,  
11 correct?

12 A Yes.

13 Q Is it also correct that there's nothing in your report  
14 that segregates out just that small group of people -- let me  
15 rephrase it. There's nothing in your report that segregates out  
16 whatever that number is of people who both watched GSN and WE TV?  
17 You haven't segregated out those people and then derived data  
18 specific to those people, correct?

19 A Yes, that's right.

20 Q I believe you testified earlier today that you were hired  
21 in 2012 to prepare your report. Is that correct?

22 A To do the survey.

23 Q To do the survey. Do you recall when in 2012 you were  
24 hired?

25 A I don't recall when I was hired. I think the survey ran

1 in September of 2012.

2 Q Do you have an understanding of whether you were hired  
3 after the litigation was initiated before the FCC?

4 A I don't recall when the date was but it must have been  
5 afterwards, because at the very beginning of it I was shown all  
6 these court papers from the case.

7 Q So it's your understanding that the litigation had  
8 already been initiated at the time that you conducted the survey,  
9 correct?

10 A Yes. This -- we're trying to go back three years, but my  
11 memory is toward the very beginning of being contacted I was sent  
12 the complaint and all kinds of materials from the case. So I'm  
13 pretty sure this case must have already been going on.

14 Q Did you do anything in selecting the number of  
15 participants who participated in the survey to determine whether  
16 they were aware of the litigation?

17 A No.

18 Q So you didn't ask any questions in the, was there a pre-  
19 selection process for those folks who participated in the survey?

20 A No.

21 Q Did you take any steps to determine in the selection  
22 process to know whether people were aware of the retiering of GSN  
23 from Cablevision?

24 A No.

25 MS. KANE: I think that's it from the Bureau, Your Honor.

1 Thank you very much.

2 JUDGE SIPPEL: Anything further on that?

3 MS. FLAHIVE-WU: Your Honor, can I just ask a couple of  
4 questions just for clarity of the record?

5 JUDGE SIPPEL: Okay.

6 CROSS EXAMINATION

7 BY MS. FLAHIVE-WU:

8 Q Mr. Poret, Ms. Kane asked you questions focused on Page  
9 16 of your written direct testimony.

10 A Okay.

11 Q Well, actually Ms. Kane asked you questions about the  
12 total number of women in the New York, in the full New York DMA  
13 reporting group. Is that right?

14 A I'm not positive, but that's fine, whatever you want to  
15 ask me.

16 Q In response to Ms. Kane's question asking for the total  
17 number of women in the New York DMA sample, you directed Ms. Kane  
18 to the chart on Page 16 of your report which sets forth the sample  
19 composition for the New York DMA familiar group, correct?

20 A Yes.

21 Q The results set forth in the table at the top of Page 16  
22 are in fact limited to the New York DMA familiar group not to the  
23 full sample, correct?

24 A Right, but the other tables she asked me about were also  
25 only limited to the New York familiar group.

1 Q But if you add up the numbers in the table at the top of  
2 Page 16 you aren't going to get the total number of women in the  
3 full New York DMA sample, correct?

4 A Right. You're going to get the number in the group she  
5 asked me about.

6 Q Well, I think the transcript will show the questions.  
7 And just again for clarity, Ms. Kane asked you questions about the  
8 total number of women in the national sample, correct?

9 A That's one of the things she asked about.

10 Q And then in response you directed her to the chart in  
11 Paragraph 49 on Page 16 of your testimony, correct?

12 A Yes.

13 Q And it is the case that the numbers reflected in the  
14 chart included in Paragraph 49 are limited to the national familiar  
15 group, correct?

16 A There only is a national familiar group.

17 Q That's right. Okay.

18 A I'm not sure what you're asking me, but these two tables  
19 are exactly the people who are in the two tables that she was  
20 asking me about before.

21 Q I believe that there was a mismatch in the question and  
22 the response as to the first table, and I want the record to  
23 reflect that you pointed Ms. Kane to a table that doesn't include  
24 the full New York sample for the gender breakdown.

25 A But she was asking me about the resultant tables that

1 were only the New York familiar group, so there's no -- I'm just,  
2 whatever the record says, I'm just telling you the results in the  
3 tables that she asked me about were the New York City familiar  
4 group and the national group, and Paragraph 48 is the New York City  
5 familiar group and Paragraph 49 is the national group. So I'm just  
6 clarifying that these are the numbers for exactly the tables she  
7 asked me about.

8 Q Mr. Poret, is there, I'll ask what I believe Ms. Kane's  
9 question was. Can you point us to where in your report we can  
10 review the gender breakdown for the full New York DMA sample?

11 A Well, you have had the data for that for about two years  
12 or if not more, probably two and a half. So it's all been sitting  
13 there for a long time.

14 Q Mr. Poret, yes or no. Can you point us to anywhere in  
15 your written testimony that reports the gender breakdown for the  
16 total New York DMA sample?

17 A Well, I consider my report to include the data. It's an  
18 appendix to the report. So I'm not sure of the logistics of how  
19 the data is included in the record, but if I were to sit down with  
20 the data, which is part of my report, I could show you. I just  
21 don't have it sitting in front of me right now.

22 Q Mr. Poret, yes or no. As you're sitting here now can you  
23 point me to any table or paragraph of your written direct testimony  
24 which is marked as CVC Exhibit 233 which includes the gender  
25 breakdown for the full New York DMA sample?

1       A       I can't, but only because I don't have part of it in this  
2 binder which is the data file.

3       Q       So that's a no?

4       A       Well, only because this is incomplete what you've given  
5 me, or at least that it's not, I don't physically have the data  
6 file in this, but it is part of it as far as I understand.

7       Q       Mr. Poret, you're looking at the binder, I believe, that  
8 Mr. Carney gave you, correct?

9       A       Yes, I was. Well, it's the same. They're both the same  
10 thing. They're both the appendices to my report, which in the  
11 appendices to my report includes the data. But since the data is  
12 in electronic form you can't stick it in a binder so it's not  
13 sitting here. But if I did have access to the full data that's  
14 part of my report and my direct testimony, I would be able to show  
15 you any of these things. There's only so much data from an  
16 electronic file that it can be put in paper in these pages.

17           MS. FLAHIVE-WU: Thank you, Mr. Poret.

18           MR. CARNEY: And of course, Your Honor, we will offer the  
19 data in whatever format works best for the Court and for the  
20 Enforcement Bureau. And Mr. Poret is correct; we did not include  
21 it in the binder because it's voluminous Excel files.

22           JUDGE SIPPEL: Yes, I see that.

23           MR. CARNEY: Thank you, I have nothing further.

24           JUDGE SIPPEL: Nothing further from the bench, so we're  
25 breaking for lunch. We're going to see Mister --

1 MR. COHEN: Montemagno, Your Honor.

2 JUDGE SIPPEL: Right, I was just going to say that.

3 We're going to see him at what time? I have 20 after 12:00. So  
4 1:35, how's that?

5 MR. CARNEY: Yes, sir.

6 JUDGE SIPPEL: Okay.

7 (Whereupon, the above-entitled matter went off the record  
8 at 12:20 p.m.)

9 JUDGE SIPPEL: Good afternoon. Are we set to go?

10 MR. COHEN: Yes, sir. Mr. Montemagno is right behind me.

11 JUDGE SIPPEL: Mr. Montemagno, come forward please.

12 Please raise your right hand.

13 Do you swear or affirm that the testimony you are about  
14 to give in this case will be the truth, the whole truth and nothing  
15 but the truth?

16 MR. MONTEMAGNO: I do.

17 JUDGE SIPPEL: Please be seated sir.

18 DIRECT EXAMINATION

19 THOMAS MONTEMAGNO

20 MR. COHEN: Your Honor, I'm just going to hand the  
21 witness the monitor. He probably doesn't need this for his direct  
22 testimony I guess.

23 JUDGE SIPPEL: Thank you.

24 MR. COHEN: Okay. Good afternoon Mr. Montemagno.

25 MR. MONTEMAGNO: Good afternoon.

1 MR. COHEN: I've handed you a binder that includes your  
2 direct testimony, which has been designated as Cablevision Exhibit  
3 337.

4 (Whereupon, the above-referred to document was marked as  
5 CV Exhibit No. 337 for identification.)

6 MR. COHEN: And I think in reviewing this you found a  
7 typo. And let's just get this cleared up.

8 In paragraph 77 on page 29.

9 MR. MONTEMAGNO: Correct.

10 MR. COHEN: Let me wait for the Judge to get there.

11 JUDGE SIPPEL: No, I'm here.

12 MR. COHEN: Okay.

13 JUDGE SIPPEL: Wait a minute, where is it?

14 MR. COHEN: Paragraph 77, page 29 of his testimony.  
15 Right in the front, not in Exhibit, Your Honor. In the testimony  
16 right in the front of the book.

17 JUDGE SIPPEL: I got it. Paragraph 79?

18 MR. COHEN: 77 Your Honor.

19 JUDGE SIPPEL: 77, back and forth, 78.

20 MR. COHEN: Right. And the third sentence says something  
21 about in brackets, of Wedding Central a  
22 that's one typo, of  
23 Cablevision in 2011. Should that be 2009?

24 MR. MONTEMAGNO:

25 BY MR. COHEN:

1 Q Okay. And do you elsewhere in your testimony describe  
2 that Wedding Central was launched in 2009?

3 A Yes, I do.

4 Q Okay. And with that correction, is your testimony true  
5 and accurate?

6 A Yes.

7 MR. COHEN: I offer Exhibit 337, Your Honor.

8 JUDGE SIPPEL: Any objection?

9 MR. SPERLING: Your Honor, we're happy to have it  
10 received subject to our ability as indicated to prep to the  
11 objection we previously raised with the same comments.

12 JUDGE SIPPEL: It's -- this document, which is marked CV  
13 Exhibit No. 337 is received in evidence.

14 (Whereupon, the above-referred to document was received  
15 into evidence as CV Exhibit No. 337.)

16 MR. COHEN: Thank you, Your Honor.

17 Now sir, let's just try to cover the highlights of your  
18 -- of what's covered in your direct testimony.

19 Can you tell us a little bit about your career at  
20 Cablevision, sir?

21 MR. MONTEMAGNO: Sure. I've spent my entire career with  
22 Cablevision. I joined right out of undergrad in an entry level  
23 position in the programming department as a -- pretty much a  
24 marketing analyst and begun with the work.

25 About three years in, I moved over to a transactional

1 role, where I started getting involved with negotiations. And from  
2 there my career has -- I've had a series of promotions and more  
3 responsibilities negotiating programming agreements.

4 BY MR. COHEN:

5 Q And what's your current position, sir?

6 A Currently I'm Executive Vice President of Programming.

7 Q And is that the head of the Program Department at  
8 Cablevision?

9 A That's the top position in the Programming Department.

10 Q And in 2010/2011, what was your position in the  
11 Programming Department then?

12 A I was Senior Vice Present of Programming and I had  
13 responsibility for leading most of our content negotiations.

14 Q Okay. And did you report to somebody higher then you in  
15 the Programming Department?

16 A I did. There was an Executive Vice President.

17 Q What was his name?

18 A Mac Budill.

19 JUDGE SIPPEL: Say that again?

20 MR. MONTEMAGNO: Mac Budill.

21 JUDGE SIPPEL: How do you spell that?

22 MR. MONTEMAGNO: B-U-D-I-L-L.

23 MR. COHEN: Now, I want to turn to the history of  
24 Cablevision and GSN's relationship. Were you there at the  
25 beginning?

1 MR. MONTEMAGNO: I was.

2 BY MR. COHEN:

3 Q Okay. And when was that?

4 A 1996, we were first approached.

5 Q And what role did you play in those initial negotiations  
6 in 1996?

7 A I was one of the principal people who at the time Game  
8 Show came to us to present the channel and seek carriage on  
9 Cablevision.

10 Q And did you negotiate the original carriage contract?

11 A I did.

12 Q And can you tell us why Cablevision decided to put GSN on  
13 its systems back in -- was it 1996 or '97?

14 A 1997 we actually signed an agreement.

15 Q Okay. Why did you do that?

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24 Q Okay. Now when you say that --

25 JUDGE SIPPEL:

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MR. MONTEMAGNO:

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JUDGE SIPPEL:

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MR. COHEN:

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MR. MONTEMAGNO:

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BY MR. COHEN:

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JUDGE SIPPEL:

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MR. MONTEMAGNO:

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JUDGE SIPPEL:

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MR. COHEN:

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JUDGE SIPPEL:

MR. COHEN:

JUDGE SIPPEL:

MR. COHEN: Okay. So if you need to refer to Cablevision Exhibit 4, it's the first tab in your book. But see if you can answer His Honor's question.

JUDGE SIPPEL: This for round -- you know, rough numbers.

MR. MONTEMAGNO:

1 MR. COHEN:

2 JUDGE SIPPEL:

3 MR. MONTEMAGNO:

4 MR. COHEN: For the fee per subscriber, if you look at  
5 Exhibit 4 in your book, and you turn to page nine of 20. I think  
6 you'll see what's called the GSN rate card form 1997.

7 JUDGE SIPPEL: Could you give me that page again?

8 MR. COHEN: Yes. It's Exhibit 4, CV 4, page nine of 20.  
9 Do you see that?

10 MR. MONTEMAGNO: Yes.

11 JUDGE SIPPEL: CV 4, nine of 20. Hold on just a second.  
12 Let me catch up with you. What's the number? Give me that number  
13 again here.

14 MR. COHEN: Oh, on page -- well, actually, Your Honor, I  
15 can actually do it somewhere in the agreement.

16 JUDGE SIPPEL: Nine of 20, right?

17 MR. COHEN: Yes. Nine of 20. But actually if you turn  
18 back to two of 20, it actually says license fees. One is the rate  
19 card and one is the license fees in this agreement.

20 So, are these the stated license fees here in paragraph  
21 three of Exhibit 4 on page two of 20?

22 MR. MONTEMAGNO: Yes.

23 BY MR. COHEN:

24 Q So it went up to the number in this renewal term, which  
25 we'll talk to, which is -- this one I will do confidentially. On

1 the second, the last number on page three of 20, was that the final  
2 per subscriber rate?

3 A Yes.

4 Q Okay. And if we turn the page to paragraph six of  
5 Exhibit 4. Do you see where it says launch support? Four of 20,  
6 Your Honor.

7 JUDGE SIPPEL: Four of 20?

8 MR. COHEN: Yes, sir.

9 JUDGE SIPPEL: I got it.

10 MR. COHEN: Okay. And is this the and per  
11 subscriber charges you were talking about?

12 MR. MONTEMAGNO: Correct.

13 MR. COHEN: Okay.

14 JUDGE SIPPEL: Thank you.

15 MR. COHEN: Now --

16 MR. MONTEMAGNO: I did my math wrong though, it was I  
17 think five years would be

18 JUDGE SIPPEL: In five years?

19 MR. MONTEMAGNO: Yes.

20 JUDGE SIPPEL: Good. Okay.

21 MR. COHEN: Okay. Now, when you launched the service,  
22 did you have an understanding of what the content was on -- what  
23 was the name called, Game Show Network?

24 MR. MONTEMAGNO: Yes.

25 BY MR. COHEN:

1 Q And what was that content?

2 A At the time it was primarily rerun classic game show  
3 programming.

4 Q Okay. And what -- did the 1997 agreement expire?

5 A It did.

6 Q And what happened then?

7 A We extended it in when it expired. There was a  
8 renewal write-in agreement and we extended it until

9 Q Okay.

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18 Q Okay. Now, there's been some testimony about tiers in  
19 this case. Are package and tiers synonymous?

20 A I'm using them synonymously, yes.

21 Q Okay. And in , you went out of contract with GSN?

22 A Correct.

23 Q And were there any negotiations?

24 A Yes, there were.

25 Q And did you reach an agreement?

1 A We did not.

2 Q And in 2005 was there an exchange of proposals between  
3 your parties?

4 A Yes, there was.

5 Q Can I ask you to turn to Cablevision Exhibit 19, which is  
6 a tab in your book.

7 JUDGE SIPPEL: CV 19.

8 MR. COHEN: CV 19, which is entitled CSC GSN Offer  
9 Comparison. Dated June 15, 2005. Do you see that, sir?

10 MR. MONTEMAGNO: Yes.

11 BY MR. COHEN:

12 Q And does this summarize the layout of what the competing  
13 proposals were back in 2005?

14 A Yes, it does.

15 Q So the print is a little small. Can you tell us, as best  
16 as you can recall, what were the principal areas of disagreement in  
17 that prevented the parties from reaching an agreement?

18 A Primarily three material significant issues.

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21 The second was

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23 And the third was the

24 Q Okay. And when you say

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17 Q Okay.

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25 JUDGE SIPPEL: Paragraph 21?

1 MR. COHEN:

2 MR. MONTEMAGNO:

3 MR. COHEN:

4 MR. MONTEMAGNO:

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8 BY MR. COHEN:

9 Q

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11 Q

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21 Q

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23 A

24 Q Okay. Now, you didn't strike a deal in , did you?

25 A We did not.

1 Q And did there come a time later when the negotiations  
2 between GSN and Cablevision got struck up again?

3 A Yes.

4 Q When was that?

5 A They had personnel changes over time at Game Show  
6 Network. I was always sort of the principal for Cablevision.

7 So 200 -- late 2007 I believe there were new  
8 representatives that started up negotiations again.

9 Q And who was that for GSN?

10 A Dennis Gillespie.

11 Q And did you know Mr. Gillespie when he arrived at GSN?

12 A I did. Dennis and I worked as -- I was a client of his  
13 for many years. And he worked at different programming networks.

14 Q Okay. And did you negotiate with Mr. Gillespie about a  
15 new carriage agreement after the time he took over distribution at  
16 GSN?

17 A Yes, I did.

18 Q Okay. And were you able to reach an agreement with Mr.  
19 Gillespie?

20 A No, I was not.

21 Q And over what period of time did these discussions take  
22 place?

23 A Late 2007 through early 2009.

24 Q Okay. And what were the principal open issues in the  
25 negotiations with Mr. Gillespie that prevented GSN and Cablevision

1 from reaching a new deal?

2 A They were similar to the ones I described in the past  
3 that we didn't agree on.

4

5 Q

6 A

7 Q

8

9 A

10 Q Okay. And did there come a time when Mr. Gillespie made  
11 a presentation to GSN -- I mean to Cablevision in an effort to  
12 close the gap between the parties?

13 A Yes.

14 Q Do you remember when that was?

15 A 2009.

16 Q Okay. And let me show you Exhibit 52. CV 52 in  
17 evidence. Which is in your binder, sir. You'll see the tab.

18 And do you recognize this presentation that's Exhibit 52?

19 A I do.

20 Q And can you turn to the second page, page two of 15? And  
21 by the way, was this a presentation that Mr. Gillespie made to you?

22 A Yes.

23 Q And it says, under GSN is the only network, it says  
24 classic game show favorites with new original programming. Do you  
25 see that?

1 A I do.

2 Q And did this description by GSN square up with what you  
3 thought the network was putting on the air?

4 A Yes. Game show programming.

5 Q And do you see the reference to new original programming?

6 A Yes.

7 Q Did you understand that that new original programming was  
8 targeted at a specific audience?

9 A No.

10 Q Did Mr. Gillespie tell you at this meeting either in  
11 words or in substance, that the new original programming was  
12 targeted at women 25 to 54?

13 A He did not.

14 Q Did anybody from GSN ever tell you that their programming  
15 was targeted at women 25 to 54?

16 A No.

17 Q Did Mr. Gillespie tell you in this meeting that GSN was  
18 focused on women? Attracting viewers who were women 25 to 54?

19 A He did not.

20 Q Did he ever tell you that?

21 A He never did.

22 Q Now, did these negotiations continue after February 2009?

23 A They did not.

24 Q Did you ever refuse to meet with Mr. Gillespie or anybody  
25 else at GSN?

1 A Absolutely not.

2 Q Did you ever threaten Mr. Gillespie?

3 A I did not threaten Mr. Gillespie.

4 Q Let me see if I can ask you one other thing. Did you  
5 ever threaten Mr. Gillespie that if he pressed for a new carriage  
6 agreement, you would simply drop the service?

7 A I didn't threaten Mr. Gillespie. Dennis and I had a long  
8 relationship over many, many years. And I was very, you know,  
9 transparent and honest and open with Mr. Gillespie.

10 And I told him that if he were to press for increases in  
11 programming fees, that my executive staff would likely really take  
12 a hard look at what we were paying in the relationship. And  
13 whether it was worth continuing.

14 Because we were at a point in time, it was dramatic  
15 transformation occurring in the industry that put a tremendous  
16 amount of pressure on our programming budgets. Our costs were  
17 going up at a faster pace than our revenues could keep up with  
18 them.

19 So, we were looking for opportunities to save money. So,  
20 I advised him and said I would take back any proposal. But, that  
21 if he were seeking increases, there was, you know, there was a  
22 chance that we might not continue carrying the programming network.

23 Q Okay. And did he come back to you with other proposals  
24 after February of '09?

25 A He did not.

1 Q Now, I want to focus now on the period where Cablevision  
2 made its decision to re-tier GSN? So you remember when those  
3 discussions began within Cablevision?

4 A Yes, I do.

5 Q When was that?

6 A July 2010.

7 Q And what was the context in July 2010 for GSN to be  
8 raised within Cablevision?

9 A I had a meeting with the President of the Cable Division.  
10 John Bickham was his name. Our head of Financial Planning, Jim  
11 Nuzzo. Mac Budill who I reported to, and myself.

12 And we were discussing the reforecast of our budget for  
13 2010.

14 Q And in 2010, were there conditions that were occurring in  
15 your business that caused you to be looking at your budget?

16 A Yes. There were a number, as I said before, there were  
17 -- it was a transformational time in the industry. And there were  
18 a couple of key factors that were going on in the industry.

19 First, retransmission consent. Broadcasters were now  
20 asking for significant fees that we never paid before. So we  
21 hadn't been paying for broadcasters. And now all of a sudden, we  
22 had to.

23 We -- the sports fees. Some of the sports properties,  
24 the NFL, NASCAR, NBA, MLB, when their deals came up, there was a  
25 bidding war for, you know, who would get the right to the NCAA

1 tournament.

2 And the Foxes and the NBCs and the ESPNs would all bid  
3 for that. And the rights fees were going up dramatically. And all  
4 of that was getting passed onto us in the form of rate increases.

5 Two other critical elements, the programers, there was a  
6 lot of consolidation. So, now when I sat down with an ESPN Disney,  
7 you know, we were doing agreements that covered 15, 20 networks.

8 Before I would have individual agreements with, you know,  
9 each network. And now, ESPN, VIACOM, Turner, NBC, Fox, they all  
10 were doing, you know, what I'm going to call a portfolio deal.

11 Where you had to carry -- you had to do one agreement for  
12 everything. And they leveraged that by asking for significant rate  
13 increases.

14 In fact, in 2010, there were three blackouts that we had.  
15 And we couldn't come to terms. Home & Garden and Food Network  
16 pulled their signal from us. ABC pulled their signal from us. Fox  
17 pulled their signal from us.

18 And then last, --

19 Q Can I just pause for one second?

20 A Sure.

21 Q Because there's been a little testimony about Fox. Did  
22 you kick Fox off around the time of the World Series?

23 A No, they pulled their signal from us.

24 Q When you say they pulled the signal, what do you mean?

25 A They deauthorized and told us that we could no longer

1 carry it. As of the contractual -- the end of the contract.

2 Q And you were going to describe something else.

3 A The last element I was going to describe is the  
4 competitive landscape. So, we had significant competition from  
5 both satellite providers, but Cablevision in specific, Verizon  
6 overbuilt our operation by more than 50 percent.

7 It was the largest overbuild of a wired cable operator in the  
8 country. And they were very, very aggressive in their pricing.  
9 That put lots of pressure on us that we basically had to match  
10 pricing.

11 So, again, our costs were going up and our revenues  
12 weren't catching up. So, our margins were beginning to shrink  
13 pretty significantly from the programming cost increase.

14 So, it really was a time where we were squinting at how  
15 are we going to save some of these costs.

16 Q Okay. And just so we're clear for the record, when you  
17 say that Verizon overbuilt you, could you just tell us what you  
18 mean?

19 A Sure. So they laid wires in our franchise areas, in our  
20 cable systems. And started selling, you know, competing cable,  
21 wired cable television service in our area.

22 So we were head to head competing for customers.

23 Q And has Verizon been taking market share away from  
24 Cablevision?

25 A Yes.

1 Q And in this July meeting, were you asked to do anything  
2 specific with respect to GSN?

3 A Yes. John Bickham told me that he'd like to consider  
4 dropping the Game Show Network. And he asked me to prepare a  
5 recommendation to support his decision.

6 Q And did you prepare one?

7 A I did.

8 Q And can you turn please to CV 119 in your binder. And  
9 tell us what this document is and then I'm going to have some  
10 questions for you.

11 A Sure.

12 Q CV 119.

13 A So this is the document that I prepared in response to  
14 Mr. Bickham's question to me. And it contains what I viewed as the  
15 relevant information and considerations that should go into that  
16 decision, whether to continue to carry or to drop the Game Show  
17 Network.

18 Q Okay. And then let me turn, if you would, to what's page  
19 three of four. You see it's a document that on top says Game Show  
20 Network Carriage Considerations 7/22/2010?

21 A Correct.

22 Q Okay. Did you prepare this document?

23 A I did.

24 Q And I just want to briefly go through this with you. The  
25 first section talks about what you call background.

1           And in the second bullet, you talk about the fact that  
2 there had been an agreement in 1997 that had expired. And why was  
3 it relevant for you to tell Mr. Bickham that the agreement had  
4 expired?

5       A     Because agreements that expired gave us the ability to  
6 decide to make the decision not to carry them anymore.

7       Q     And turn -- in the next bullet you have, for the next  
8 section, key programming. Do you see that, sir?

9       A     Yes.

10      Q     And you talk about a combination of older game shows,  
11 more contemporary game show reruns and original game shows and the  
12 like. Do you see that?

13      A     I do.

14      Q     And did that accurately reflect your understanding of the  
15 programming on GSN at the time you were writing this up for Mr.  
16 Bickham?

17      A     Yes.

18      Q     Then in the next paragraph, and let me see if I can do  
19 this too without asking Mr. Feldman to leave. You say something --  
20 you have a section that says box polling data?

21      A     Yes.

22      Q     Okay. And just tell us what you're referring to when you  
23 say box polling data?

24      A     Sure. Our set top box, the equipment that the customer  
25 had in the home to receive our service, we were able to report

1 which channels the customers were watching.

2 So, we had a tally of what our customers were watching.

3 And at this time it was a sample, a percentage of our subscribers  
4 that we got that data for.

5 Q Okay. And without referring to specific numbers here,  
6 how did GSN fair on the set top box data of Cablevision?

7 A It performed poorly and it ranked at the lower end of the  
8 spectrum of channels.

9 Q Okay. And what was the relevance of that information to  
10 a carriage decision?

11 A It was an important consideration. If you were thinking  
12 about dropping the carriage, you know, are customers, lots of  
13 customers are going to be upset with that or not? Do people watch  
14 it? Is it that important to our product set?

15 Q Okay. And then in the next section, you say ownership  
16 and other relationships, and you mention Sony pictures and  
17 DIRECTTV. Now why did you include that information for Mr.  
18 Bickham?

19 A Just because I, you know, in case I thought he might ask  
20 who owns it. And what other relationships we have. And what other  
21 implications could there be on our relationship if we did this.

22 Q And what concerns did you have about other relationships?

23 A

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5 Q

6 A

7 Q Now, in the next section, you see it says considerations  
8 and concerns?

9 A Yes.

10 Q And then in the first bullet it says product management  
11 in programming. Now, you're programming, right?

12 A Yes.

13 Q And what's product management?

14 A So, they are the department that decides the pricing and  
15 the packaging. And together we make decisions on what to offer the  
16 customer.

17 But they assemble the retail packaging and the marketing  
18 and the positioning and the customer communication. And they are  
19 sort of the connection to the consumer.

20 Q Okay. And it says product management and programming  
21 feel that the removal of GSN from our systems will result in  
22 minimal customer outcry.

23 And we can easily withstand the activity. Likely will  
24 hear from an older subscriber base, which was our experience when  
25 we moved from analog to digital.

1           What does that refer to?

2           A     So, in 2005, we used to distribute programming networks  
3 in what we called analog format. And you didn't need a cable box.

4           And that took up a lot of bandwidth. We were  
5 transitioning as an industry to digital transmission. Which  
6 required that you have a cable set top box that could decode the  
7 signal.

8           So, we changed the mode of distribution from analog to  
9 digital. And unless you agreed to get the box, you lost access to  
10 programming.

11          So, at that time, we made that change. And customers  
12 lost access to Game Show Network programming. And we heard very  
13 little about that.

14          And those that we did hear -- we heard from older retiree  
15 audience primarily.

16          Q     And then in the next sentence in that same bullet, you  
17 say we are not too concerned about or lack of carriage while our  
18 competitors continue to offer it. What does that mean?

19          A     So, I didn't think that -- we didn't think that if we  
20 didn't offer Game Show Network at all, and Verizon and DIRECTTV and  
21 Dish Network did carry it, that our customers would leave us for  
22 their services because of that one channel.

23          We weren't concerned about defections.

24          Q     And had there been circumstances prior to the summer of  
25 2010 when there were concerns about defections? Or by the

1 networks?

2 A In general?

3 Q Yes.

4 A Oh, yes. Yes.

5 Q And can you give us an example?

6 A You know, we -- like I mentioned, we had a couple of  
7 black outs with, you know, very popular programming. The Fox  
8 Broadcast Network, you know, we didn't carry the NFL Network for  
9 some period of time.

10 So, those really popular strong networks.

11 Q And did your competitor such as Verizon from time to time  
12 publicize to the public that you could get certain networks on  
13 Verizon and not on Cablevision?

14 A Yes. At one time DIRECTTV had promoted that we didn't  
15 carry the Yankees Network, the Yes Network. FiOS and Verizon  
16 promoted when we lost access to ABC programming, they promoted that  
17 fact to customers.

18 Q Now, is there anything in this memorandum Exhibit 119  
19 that discusses WE or Wedding Central or the impact of dropping GSN  
20 on those networks?

21 A No, not at all.

22 Q In the summer of 2010 at Cablevision, when you were  
23 having these discussions, this analysis of whether or not to drop  
24 GSN, was there any discussion within Cablevision about the impact  
25 of this decision on WE or Wedding Central or any network that

1 Rainbow owned?

2 A None whatsoever.

3 Q In the summer of 2010 when you were preparing this  
4 memorandum, did you have any discussions with anybody at Rainbow  
5 about whether or not it made any sense to drop GSN?

6 A I did not.

7 Q Did you draw any connection in your mind between the  
8 decision with respect to GSN and WE or Wedding Central?

9 A Absolutely not.

10 Q Now, did there come a time after July 2010 when  
11 Cablevision actually made the decision to re-tier GSN?

12 A Yes.

13 Q When was that?

14 A It was in the November 2010 time frame when we were now  
15 looking at our 2011 budgets.

16 Q And can you describe for us what discussion there was at  
17 GSN in November of 2010?

18 A Yes. So, this meeting was with the same individuals that  
19 participated in the July meeting. But now also included our Chief  
20 Operating Officer, Tom Rutledge.

21 And we talked about for 2011 the anticipated programming  
22 cost increases. Again, they were going to be pretty dramatic for  
23 the reasons I stated earlier.

24 And we talked about what actions, what channels might we  
25 change our distribution arrangement with to save money. And we

1 discussed the issues that I raised in this Game Show Network memo  
2 that I prepared back in July.

3 We also updated some of the set top box data with some  
4 Nielsen data as well. And we discussed a variety of channels.

5 Q And channels other than GSN?

6 A Yes.

7 Q Could you turn to Exhibit -- CV Exhibit 136 in your  
8 binder? And the first page says 2011 Programming Budget, November  
9 8, 2010.

10 A Yes.

11 JUDGE SIPPEL: Can you give me that again?

12 MR. COHEN: Yes, Your Honor. It's CV 136.

13 JUDGE SIPPEL: I got it.

14 MR. COHEN: I'm just orienting you by the first page.  
15 Now turn to the very last page.

16 JUDGE SIPPEL: It's 211, Programming Budget.

17 MR. COHEN: Yes, Your Honor. I want to turn to Page 22  
18 of 22 of that exhibit. It's the last page. There's some  
19 handwritten notes.

20 BY MR. COHEN:

21 Q Do you see there's some notes here that are dated  
22 11/8/10?

23 A Yes.

24 Q Are those your notes?

25 A Those are my notes.

1 Q Did you take those notes at this programming budget  
2 meeting?

3 A Yes.

4 Q There's a reference here, kind of about three or four  
5 lines down, to -- there's some various networks listed. Can you  
6 tell us what this says and what this refers to?

7 A Yes. It says, "Tom," and I'm referring to Tom Rutledge  
8 because he's speaking.

9 His request or  
10 question is let's move them to a sports tier.

11 Q Up above, it says Tom R., and it says John B. Is that  
12 Mr. Bickham?

13 A Correct.

14 Q Just run through us for the participants in this meeting,  
15 right here under the heading.

16 A Sure. Tom Rutledge was chief operating officer. John B.  
17 is John Bickham. He was the president of the cable and  
18 communications division. He reported to Tom Rutledge. Jim Nuzzo  
19 was our executive vice president of financial planning. He  
20 reported in to John Bickham. Mac Udell, who I reported to, he also  
21 reported in to John Bickham. He was the head of programming. And  
22 myself.

23 Q Was a decision made at some point to reposition GSN,  
24 coming out of this meeting?

25 A Yes.

1 Q Was the same decision made with respect to

2

3 A No, decision was to drop it  
4 altogether.

5 Q I want to be careful not to discuss numbers as we go  
6 through this, so we don't have to clear the courtroom, but did you,  
7 in fact, notify Cablevision customers at the end of 2010 that not  
8 only were you retiering GSN, but you were

9 A Yes.

10 Q Did you drop

11 A We did not.

12 Q Why not?

13 A Because -- I can talk without clearing the room?

14 Q Yes, just don't use the numbers. Just use a percentage,  
15 perhaps?

16 A , when we informed them that we were going  
17 to drop the channel, they were owned by at the  
18 time. They also own

19 They asked --

20 MR. COHEN: Your Honor, I just realized that maybe I'm  
21 not being fair to . Could we close the courtroom  
22 for one brief minute?

23 JUDGE SIPPEL: Sure.

24 MR. COHEN: Since this is not information they would want  
25 public, either.

1 JUDGE SIPPPEL: All right, fair enough.

2 (OPEN SESSION ENDS)

3 (CLOSED SESSION STARTS)

4 BY MR. COHEN:

5 Q Now tell us, now the courtroom -- we're going to have a  
6 sentry, and the courtroom is --

7 JUDGE SIPPPEL: One absentee, and one sentry.

8 BY MR. COHEN:

9 Q What happened in 2010 that prevented --

10 JUDGE SIPPPEL: Wait a minute. What's going on here?

11 MR. SPERLING: I think a Cablevision employee's asking,  
12 actually, if she can come back in, so I'll leave that to you.

13 MR. COHEN: No, she's not an employee, so we'll leave her  
14 outside. Thank you, though.

15 BY MR. COHEN:

16 Q What was the discussion about that led it  
17 to not be dropped at the end of 2010?

18 A They did not want us to pursue it. They asked to come  
19 in, meet with us, and negotiate a solution.

20 Q Did you negotiate a solution?

21 A We did.

22 Q Now that the courtroom's closed for this part of the  
23 testimony, what was the solution that kept at  
24 the end of 2010?

25 A They cut their fee by .

1 Q From what to what?

2 A From about

3 Q That resulted in them not being dropped by Cablevision?

4 A Correct.

5 MR. COHEN: I think we can now let everybody back in.

6 (CLOSED SESSION ENDS)

7 (OPEN SESSION STARTS)

8 BY MR. COHEN:

9 Q I don't see any notations here in these notes to WE or  
10 Wedding Central, in terms of the impact -- let me ask the question  
11 a different way. There's a line down at the bottom that says  
12 Rainbow renewals. Do you see that?

13 A Yes.

14 Q Take us down to

15

16 A

17 Q What does that refer to?

18 A We were going to renew our Rainbow agreements, and Tom  
19 Rutledge was saying that

20

21

22

23

24 Q Is this --

25 JUDGE SIPPEL: Wait a minute. Whoa.

1 MR. COHEN: Yes, Your Honor.

2 JUDGE SIPPEL: The rates were -- this is on the rates for  
3 the licensing fee?

4 WITNESS: Yes.

5 JUDGE SIPPEL:

6 WITNESS:

7

8

9 JUDGE SIPPEL:

10

11 WITNESS: Tom Rutledge, the COO, was saying that we  
12 should --

13

14

15

16

17 JUDGE SIPPEL: I hear you.

18 BY MR. COHEN:

19 Q Is there any connection between this discussion of  
20 Rainbow down in the bottom and the discussion in this meeting of  
21 GSN at the bottom?

22 A No, not at all.

23 Q And in connection with the decision to move GSN to the  
24 sports tier, was there any discussion within Cablevision about what  
25 the impact of that move would be on WE or Wedding Central or any

1 Rainbow?

2 A None. Not at all.

3 Q Did you see any connection?

4 A I did not.

5 Q When was that decision to move GSN to the sports tier  
6 communicated to GSN?

7 A December 3rd I believe my notes reflect.

8 Q Who communicated that?

9 A I communicated that in a phone call to Dennis Gillespie  
10 at Game Show Network.

11 Q You think that was about December 3rd?

12 A I believe so, yes.

13 Q Just as best as you can recall, tell us what you told Mr.  
14 Gillespie and what he told you.

15 A I explained that we were changing distribution, the  
16 packaging level for Game Show, that we were moving it to a sports  
17 tier. I explained the pressures that we were under, particularly  
18 at that point in time, retransmission consent leverage that we were  
19 facing. Dennis was a customer of ours in Connecticut. He  
20 experienced the blackout, so he was very familiar with that. I  
21 told him why, and he expressed disappointment. He told me that he  
22 understood those reasons. He was a customer of ours. He knew the  
23 pressures we were under, but he was disappointed, and he wanted to  
24 go back internally and discuss it, and said that he may come back  
25 to me and want to discuss it further.

1 Q Just so the record's clear, when you say the pressures,  
2 what were the financial pressures of retransmission consent, just  
3 so we have that clear?

4 A We were going from very low or zero fees to significant  
5 fees that we had to pay in order to carry broadcast stations which  
6 were just critical, must-have programming.

7 Q You mean like the local ABC, NBC, CBS stations?

8 A Correct, Fox, Univision.

9 Q When was the retiering actually -- when did it actually  
10 take place? What was the effective date?

11 A February 1, 2011.

12 Q Did Cablevision hear any complaints from its customers  
13 when that retiering took effect?

14 A We did.

15 Q Do you remember sort of approximately how many  
16 complaints?

17 A in that range.

18 Q Were you troubled personally by the network complaints?

19 A I was not. I said I wasn't surprised. We had past  
20 experience with it.

21 Q As a result of these customer complaints, did you think  
22 you should reverse your decision?

23 A No, not at all. We thought we made a very sound business  
24 decision, and that was going to save us The  
25 calls that we did get, they went away in a few days. They were a

1 blip, and they kind of dissipated and went away. It was not  
2 anything that we were too concerned about.

3 Q Just to put these calls in context, you said that you  
4 thought it was about . How many customer calls does  
5 Cablevision field each year?

6 A

7 JUDGE SIPPEL: What's the nature of

8

9 WITNESS: Billing questions, service calls, service  
10 appointments, technical issues in the home, things like that.

11 JUDGE SIPPEL: That's not anything new. That's not  
12 anything comparative to the calls for pulling GSN, is that  
13 right, or moving GSN up?

14 WITNESS: Correct.

15 JUDGE SIPPEL: That's a whole different category of  
16 calls. How often do you get those kinds of calls?

17 WITNESS: I'm sorry?

18 JUDGE SIPPEL: How often have you gotten those kinds of  
19 calls?

20 WITNESS: When we've made a change or during those  
21 blackouts, when programmers pulled the programming off the system,  
22 we heard from customers in those cases, as well.

23 JUDGE SIPPEL: You lost the Yankee games?

24 WITNESS: Yes.

25 JUDGE SIPPEL: Yes, that's going to be a lot of calls.

1 Again, I'm distinguishing -- in my mind, I'm distinguishing those  
2 calls from this situation, but I understand exactly what you're  
3 saying. Never mind. I don't have to just repeat that. Okay, go  
4 ahead.

5 BY MR. COHEN:

6 Q After February 1, 2011, when the retiering took place,  
7 did you participate in any discussions with GSN where GSN tried to  
8 restore carriage at a broader tier?

9 A Yes.

10 Q Did you reach an agreement?

11 A We did not.

12 Q Did there come a time when you learned that there was  
13 some discussions between DIRECTV and Cablevision about, for lack of  
14 a better word, exchanging carriage of Wedding Central on DIRECTV,  
15 in return for restoring GSN's carriage in Cablevision?

16 A I was made aware of that. I wasn't involved in that.

17 Q Did you have any involvement in those discussions?

18 A No.

19 Q Prior to the date in which you communicated the retiering  
20 decision to Mr. Gillespie, which I think you said was December 3,  
21 had you had any discussions within Cablevision, that you're aware  
22 of --

23 A No.

24 Q Let me finish the question -- any discussions in  
25 Cablevision about whether it would be a good idea to trade

1 Cablevision carriage of GSN for Wedding Central or anything that  
2 linked this decision to Wedding Central?

3 A We did not.

4 Q Did you participate in discussions with GSN in which they  
5 made a carriage proposal to you after the date of retiring to try  
6 to restore the network --

7 A Yes.

8 Q -- for broader carriage?

9 JUDGE SIPPEL: Let him finish the question.

10 WITNESS: I'm sorry.

11 JUDGE SIPPEL: You're paying him good money. Let him  
12 earn it. Then you answer.

13 WITNESS: I'm sorry.

14 JUDGE SIPPEL: It's the reporter that I'm concerned about.  
15 The transcript's going to be garbled. Go ahead.

16 BY MR. COHEN:

17 Q Have you testified at a trial before, Mr. Montemagno?

18 A One time, very briefly.

19 Q Are you a little nervous today?

20 A A little bit.

21 Q Do you remember what the proposal was that GSN made to  
22 you?

23 A Yes, in broad strokes.

24 Q First of all, can you tell us when it was?

25 A I believe it was in February of 2011, but discussions, I

1 think, continued through March of 2011.

2 Q In broad terms, what was the proposal? Again, I don't  
3 know whether you'd want the courtroom cleared for this or not?

4 JUDGE SIPPEL: Consultant?

5 PARTICIPANT: Yes, we'd prefer that.

6 MR. SPERLING: Yes, please.

7 MR. COHEN: It's just the one person. I think everybody  
8 else --

9 MR. SPERLING: Oh, yes, I'm sorry.

10 MR. COHEN: Cliff, you have to leave for this, as well,  
11 because it's on the protective order, not ours.

12 PARTICIPANT: Thank you.

13 (OPEN SESSION ENDS)

14 (CLOSED SESSION STARTS)

15 BY MR. COHEN:

16 Q What proposal did they make to you in the February/March  
17 of '11 time frame?

18 A They proposed a rate, I believe, that was , and then  
19 they were going to

20 , net the rate down to approximately

21

22 JUDGE SIPPEL: Now, was the was that a move? Was  
23 that, in itself, a move?

24 WITNESS: It was than proposals that I've seen in  
25 the past. We were paying

1 JUDGE SIPPEL: Okay, so they wanted to move -- they  
2 wanted to go ?

3 WITNESS: Right, to

4 JUDGE SIPPEL: And then that with the proposal

5

6 WITNESS: Right.

7 JUDGE SIPPEL: Go ahead and explain that, please.

8 WITNESS:

9

10 They were saying to us when you look at those two in  
11 combination, it gets you --

12 in value. So the to Cablevision would -- we'd pay  
13 , we get back. It would cost us a net .

14 JUDGE SIPPEL: Which is less than .

15 WITNESS: Correct.

16 JUDGE SIPPEL: Okay. Go ahead.

17 BY MR. COHEN:

18 Q Did you accept that proposal?

19 A We did not.

20 Q What did you tell GSN in response?

21 A I told GSN in response, at that point, that we had made  
22 the change, and we weren't interested in changing it unless

23

24 Q

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1 A

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4 Q

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6 A

7 Q When you made that proposal to GSN, I assume they did not  
8 accept that, or we wouldn't be here.

9 A They did not.

10 Q Did you have a good faith basis for believing that was a  
11 proposal that GSN could accept?

12 A Yes.

13 Q

14

15 A

16 Q

17 A

18

19

20 MR. COHEN: Nothing further.

21 JUDGE SIPPEL: How did that --- you cut --

22 to avoid being dropped. Why didn't you give

23

24 WITNESS:

25 Here, we already had made the change, and we didn't want

1 to reverse it, put the customer through that change, have the  
2 public perception out there when we were having these public  
3 disputes. At that point, the customer calls stopped. It was a  
4 non-issue. We already put in our plan that we were saving

5 Any added expense would have been  
6 added expense we didn't budget. We didn't plan for it.

7 JUDGE SIPPEL: You're saying that the posture of your  
8 deal with GSN was at a different stage than it had been at the  
9 when Did  
10 you understand that?

11 WITNESS: What do you mean by posture? Just the  
12 circumstances?

13 JUDGE SIPPEL: That's what you were talking about. The  
14 was -- I'm sorry, your situation with GSN, you say,  
15 the tiering had been accomplished. You had absorbed the public  
16 reaction to it, more or less, so you were at a new stage, in terms  
17 of your business policy or your business strategy, and you didn't  
18 want to upset that. Whereas with , it was something  
19 different. What was the difference?

20 WITNESS: Yes, the circumstances were different. We  
21 hadn't implemented the change. It was before we actually --

22 JUDGE SIPPEL:

23 WITNESS: Yes, before we took the action. There were  
24 also some other elements of that agreement that were favorable to  
25 us.

1 JUDGE SIPPEL: Let me just ask you this one question.  
2 Did GSN just get to you too late, whereas moved  
3 fast?

4 WITNESS: It's very possible. If they made that proposal  
5 before we made -- we may have had an agreement. They never made  
6 that kind of proposal.

7 JUDGE SIPPEL: Okay. I'm sorry.

8 MR. COHEN: No, I'm ready to tender the witness for  
9 cross-examination, Your Honor.

10 JUDGE SIPPEL: Okay.

11 MR. SPERLING: Your Honor, I'm just making a note, based  
12 on your last question to the witness and his answer, and then I'm  
13 ready to go.

14 MR. COHEN: Can we open the courtroom again?

15 MR. SPERLING: Yes.

16 (CLOSED SESSION ENDS)

17 (OPEN SESSION STARTS)

18 JUDGE SIPPEL: Do you have water? Do you need water?

19 WITNESS: Yes, I'm good. Thank you.

20 JUDGE SIPPEL: If it's too warm, you can take your coat  
21 off. That's no problem.

22 WITNESS: Oh, thank you. I may do that, at some point.

23 MR. SPERLING: Judge, this is your set.

24 JUDGE SIPPEL: Thank you.

25 MR. SPERLING: Got some loosies to come, Your Honor.

1 JUDGE SIPPEL: This is Volume 1 of 2.

2 PARTICIPANT: Loosies.

3 JUDGE SIPPEL: Does that mean there are two of these  
4 things?

5 PARTICIPANT: That's one of two?

6 PARTICIPANT: Yes.

7 MR. SPERLING: We may or may not get to No. 2.

8 MR. COHEN: I do want the record to reflect that the big  
9 binder being handed to the witness says 1 of 2 --

10 JUDGE SIPPEL: I saw that.

11 MR. COHEN: --- which I would assume gives them the new  
12 record.

13 MR. SPERLING: Only if No. 2 gets rolled out. I'm going  
14 to pass out these to start, as well.

15 JUDGE SIPPEL: That's the way I like to do it.

16 PARTICIPANT: Think you can have that handy for  
17 reference.

18 JUDGE SIPPEL: Yes, sir. This is Exhibit 397. It's a  
19 GSN exhibit. I can loosely call this a cast of characters.

20 MR. SPERLING: Correct, Your Honor. We'll ask the  
21 witness about it in just a moment. For the time being, it's just  
22 marked for identification.

23 JUDGE SIPPEL: Just go right ahead.

24 (Whereupon, the above-described document was marked as  
25 GSN Exhibit 397 for reference.)

CROSS-EXAMINATION

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BY MR. SPERLING:

Q Good afternoon, Mr. Montemagno.

A Good afternoon.

Q My name's Jonathan Sperling. Remember we met yesterday afternoon?

A Yes.

Q Your counsel had you locked in that windowless conference room. I represent GSN. I'm going to ask you a few questions about your testimony. I wanted to begin by talking about Cablevision and its structure, just so we understand who the players are and who's doing what at the company. You work at the distribution side of the company, correct?

A Correct.

Q That's the cable operator?

A Correct.

Q Provides cable services to consumers, right?

A Yes.

Q Cablevision, up until 2011, also had a programming operation called Rainbow Networks, correct?

A Correct.

Q You didn't work in the programming operation, right?

A I did not.

Q While the distribution and programming were operated separately, since they were both part of Cablevision, financially

1 they rolled up to the same set of Cablevision financial statements  
2 correct?

3 A Ultimately, yes.

4 Q What that means is, any dollar that Cablevision would pay  
5 to a programmer other than Rainbow Networks leaves the Cablevision  
6 system, right?

7 A I don't know how all the financials were accounted for.  
8 I'd be speculating.

9 Q Would you be speculating about whether a dollar that you  
10 paid to somebody who's not related to you leaves your pocket?

11 A No.

12 Q So a dollar that Cablevision would pay to a programmer  
13 that it wasn't affiliated with would leave the Cablevision system,  
14 correct?

15 A Would leave the -- yes.

16 Q But a dollar that Cablevision would pay to Rainbow  
17 Networks would stay within the Cablevision system, correct?

18 A Within the corporation, yes.

19 Q Let me ask you to take a look at what's been marked as  
20 GSN Exhibit 397, which you have in front of you. Do you see that?

21 A I do.

22 Q If you look at the left side of the chart, there's a  
23 picture of a decent-looking guy at the bottom, Tom Montemagno.  
24 That's you, correct?

25 A Yes.

1 Q At the time we're talking about, 2010 into early 2011,  
2 you reported to Mr. Budill, correct?

3 A Budill.

4 Q Budill, as you testified earlier. He, in turn, reported  
5 to Mr. Bickham?

6 A Correct.

7 Q That's right. On the programming side, that was Rainbow  
8 Networks, and there were various employees over there. They didn't  
9 report to you, and you didn't report to them, correct?

10 A Correct.

11 Q You had nothing to do with the programming operation?

12 A I did not.

13 Q The COO of Cablevision at the time was Tom Rutledge,  
14 right?

15 A Correct.

16 Q Mr. Rutledge oversaw both the distribution side, where  
17 you worked, and the programming side run by Rainbow Networks,  
18 correct?

19 A He did. In the last few years of his tenure, he did.

20 Q He did have those responsibilities throughout 2010 and  
21 2011, right?

22 A I believe so, yes.

23 Q What that meant is that he had to look out for the best  
24 interests of both the cable operation and the programming  
25 operation, correct?

1 A He had -- the Rainbow Networks reported in to him.

2 Q So he had ultimate oversight over Rainbow Networks?

3 A He did.

4 Q And he had ultimate oversight over the distribution  
5 operation?

6 A He did.

7 Q His oversight of the distribution operation that you ran,  
8 it's fair to say that he was looking out for the financial best  
9 interests of distribution, right?

10 A Yes.

11 Q You don't have any reason to believe that in his  
12 oversight responsibilities for the programming side, that he didn't  
13 also have to look out for the best interests of the programming  
14 operation, do you?

15 A I do not.

16 Q In 2011, Rainbow Networks was spun off from Cablevision,  
17 correct?

18 A Correct.

19 Q In 2010, that was anticipated, and that's something that  
20 you and others at Cablevision knew was going to happen?

21 A Yes.

22 Q While it's now a public company, Rainbow Networks, it  
23 remains controlled by the Dolan family. You know that, right?

24 A Yes.

25 Q Cablevision's also controlled today by the Dolan family,

1 right?

2 A Correct.

3 Q And Cablevision was controlled by the Dolan family in  
4 2009 and 2010 and every year in between then and now?

5 A Yes.

6 Q You state in your written direct testimony that your  
7 dealings with Rainbow Networks and networks that it operated were  
8 always at arm's length, so I just wanted to talk a little bit about  
9 what that means. When was Wedding Central launched? That was in  
10 2009, right?

11 A Yes, summer of 2009.

12 Q Before Wedding Central was launched, people from Rainbow  
13 Networks came to meet with you to talk about what the network  
14 should look like, right?

15 A Correct.

16 Q The people that came to that meeting from the Rainbow  
17 side were Kim Martin, she was president of WE tv, right?

18 A Correct.

19 Q And a couple of her direct reports?

20 A Yes.

21 Q And on your side, the participants were you, right?

22 A Correct.

23 Q And Mr. Budill?

24 A Correct.

25 Q And two of your reports, correct?

1 A Correct.

2 Q To be clear, this was not a meeting to negotiate  
3 carriage, right?

4 A No.

5 Q They weren't coming to negotiate over rates, whether you  
6 should or shouldn't carry them, right?

7 A No.

8 Q They were coming to discuss with you what this new  
9 network that the programming side wanted to launch would look like?

10 A They were coming to present to us a new network that they  
11 were planning to launch, and they were interested in our opinions  
12 and reactions.

13 Q You gave your opinions and reactions on what that network  
14 should look like, didn't you?

15 A We did.

16 Q In particular, what they were proposing was something  
17 different than what they ultimately launched, right?

18 A Not entirely.

19 Q What they were proposing was something that had a strong  
20 commercial component to it, oriented around sales of  
21 wedding-related goods and services, right?

22 A Interspersed in the programming, they had planned to sell  
23 merchandise.

24 Q And -- I'm sorry. I didn't mean to cut you off. Did you  
25 finish your answer?

1 A And sorts.

2 JUDGE SIPPEL: And sorts.

3 BY MR. SPERLING:

4 Q You suggested to them that the network, instead, should  
5 be focused more on delivery than continued programming, right?

6 A Correct.

7 Q That was a pretty substantial revamp that you suggested  
8 of the network. Do you agree with that?

9 A I don't know that I agree with that categorization. I  
10 don't know how much of the programming was going to be commercial  
11 in orientation.

12 Q Tell you what. Why don't you open up the big binder that  
13 we've given to you? If you could turn to GSN Exhibit 28, which is  
14 the second tab in the binder.

15 MR. SPERLING: Your Honor, do you have that in front of  
16 you?

17 JUDGE SIPPEL: I do, right here.

18 MR. SPERLING: Terrific.

19 BY MR. SPERLING:

20 Q Mr. Montemagno, you see that this is an email chain  
21 between you and Ms. Martin?

22 A Yes.

23 Q Again, she's the president of WE tv, at this point in  
24 time, right?

25 A She was the head of WE tv. I don't know if that was her

1 title.

2 Q President and general manager.

3 A Correct.

4 Q She was also responsible for overseeing the launch of  
5 Wedding Central, to your knowledge, right?

6 A Yes.

7 JUDGE SIPPPEL: This chart says president and GM, general  
8 manager, as of 2010-2011.

9 WITNESS: Correct.

10 BY MR. SPERLING:

11 Q You don't think that the chart's inaccurate on that  
12 point?

13 A No, I don't.

14

15 Q If you look at the email -- I'll find the right one for  
16 you -- why don't you turn to the second page of the document, the  
17 flip side. You'll see at the top there's an email from Ms. Martin  
18 to you, with a time stamp of 12:25 p.m.

19 A 12:25 p.m.?

20 Q Yes.

21 A Correct.

22 Q She says, "Hey, Mac, getting over Wedding Central?"

23 A Yes.

24 Q And that's a reference to Mr. Budill, right?

25 A Correct.

1 Q Then she writes, "I still feel really bad, particularly  
2 since y'all gave us so much good feedback, and we totally revamped  
3 our thinking based on the meeting with you." Do you see that?

4 A Correct.

5 Q To your understanding, and your understanding at the  
6 time, she was describing the meeting that we were talking about a  
7 moment ago, where you gave your feedback on what Wedding Central  
8 should look like, correct?

9 A Correct.

10 Q So in Ms. Martin's view, as she communicated to you, they  
11 totally revamped what the network should look like based on the  
12 feedback they got from the distribution side?

13 A She's saying she revamped her thinking. I think she's  
14 referring to that component of the network. I don't think the  
15 programming was changing, but the commerce approach was changing.

16 Q The commerce approach was changing, they were taking up  
17 your suggestion of focusing more on entertainment programming,  
18 correct?

19 A I believe so.

20 Q Over the course of early summer of 2009, you negotiated  
21 with WE tv over the launch of Wedding Central, right?

22 A Yes.

23 Q At the time, Cablevision was the largest operator in the  
24 New York market, is that correct?

25 A Correct.

1 Q You agree with the idea, don't you, that being the  
2 largest operator in a market as significant as New York gives you  
3 a fair amount of market power?

4 A Sometimes, yes.

5 Q In the ordinary course, you're able to exercise the  
6 leverage that goes along with that market power, including your  
7 negotiations with networks, right?

8 A In the terms of favorable agreements, sometimes, yes.

9 Q I'm not sure I understand your answer, so let me ask  
10 slightly differently. Given that power that you have, you're able  
11 to exercise a certain amount of leverage in negotiating for better  
12 terms in carriage agreements that you negotiate with networks,  
13 correct?

14 A Correct.

15 Q In the negotiation with Wedding Central, you had trouble  
16 reaching agreement with Wedding Central, correct?

17 A Yes.

18 Q Notwithstanding the fact that you had trouble reaching  
19 agreement with them,

20

21 A

22

23 Q In getting to that point, in the course of your  
24 negotiations with them, you couldn't exercise all the leverage that  
25 you had because you were dealing with an affiliate, right?

1       A       As far as -- there was no carriage, so there was no  
2 leverage to exert. What I couldn't do is stop talking to them, I  
3 think I referred to in one of my correspondence.

4       Q       Let's take a look at GSN Exhibit 33, which you have in  
5 your binder in front of you.

6               JUDGE SIPPPEL: Is there a question?

7       MR. SPERLING: I just want to make sure you had it in  
8 front of you, Your Honor.

9               JUDGE SIPPPEL: I do.

10       MR. SPERLING: Okay.

11       BY MR. SPERLING:

12       Q       Mr. Montemagno, this is an email chain that you were a  
13 part of, correct?

14       A       Correct.

15       Q       And at the bottom of the email chain, you're  
16 corresponding with Robert Broussard, and he was the representative  
17 of Wedding Central that you were negotiating with over carriage of  
18 Wedding Central, correct?

19       A       Correct.

20       Q       And then at some point you forward your email exchange  
21 with him to others on the distribution side, correct?

22       A       Correct.

23       Q       And then Gary Schanman writes to you. He's on the  
24 distribution side, right?

25       A       Distribution side of the company, yes.

1 Q And he writes to you, "I can only imagine what it's like  
2 with companies we don't own. Ha." You see that?

3 A I do.

4 Q Because here you were negotiating with a company that you  
5 did own, right?

6 A Correct.

7 Q And you wrote back to him, "Ridiculously annoying. I  
8 just don't have the same leverage to beat them up with because they  
9 go crying to dad."

10 A Correct.

11 Q Dad here is Mr. Rutledge?

12 A Could have been, yes.

13 Q Okay. Anybody else that it could have been aside from  
14 Mr. Rutledge?

15 A Mr. Bickham.

16 Q You believe it was Mr. Rutledge though?

17 A I believe so.

18 Q Okay. So you couldn't exercise all your leverage, as you  
19 say in the email, because they could go to Mr. Rutledge, right?

20 A Yes, I was complaining about the process.

21 Q Right.

22 A Couldn't walk away and not -- and stop talking to them.

23 Q Which you could in an ordinary negotiation with somebody  
24 you weren't affiliated with, right?

25 A Yes.

1 Q And here dad is both your dad, the dad to the  
2 distribution side and their dad, the dad to the programming side,  
3 right?

4 A Yes.

5 Q He loved you equally? Is that fair to say?

6 A I hope so.

7 Q You hope so.

8 (Laughter)

9 BY MR. SPERLING:

10 Q And as you're negotiating with Wedding Central, he's got  
11 to make a decision that addresses the interests of both his  
12 children, the distribution side and the programming side, right?

13 A If it got to him. I mean, if -- if Bob and I or -- or --  
14 or with Josh if we were able to come to terms, it might not have --  
15 it might not have required Tom Rutledge to --

16 JUDGE SIPPEL: Try and use last names, please, the  
17 transcript is going to be read about four months --

18 (Simultaneous speaking)

19 THE WITNESS: Okay. If myself and Mr. Broussard were  
20 able to come to an agreement, it might not have gotten to Tom  
21 Rutledge.

22 BY MR. SPERLING:

23 Q But in your experience sometimes they would go crying to  
24 Mr. Rutledge, right?

25 A Sometimes the process was not ideal, yes.

1 Q And the process wasn't ideal because they would go to Mr.  
2 Rutledge to have him intervene, correct?

3 A Correct.

4 Q And what that meant was you couldn't bargain with them in  
5 the same way that you could bargain with people who weren't  
6 overseen by Mr. Rutledge, right?

7 A I don't agree with that.

8 Q Well, you said a moment ago that you couldn't walk away  
9 from the negotiations with your affiliates, right?

10 A Correct.

11 Q But you could walk away from negotiations with people  
12 that you weren't affiliated with, right?

13 A Correct.

14 Q And walking away from them is the essence of holding them  
15 at arm's length, isn't it?

16 A Well, I could still not agree and -- and continue to  
17 talk. I didn't have to unilaterally just accept terms.

18 Q But they --

19 A We negotiated hard.

20 Q But you couldn't exercise the leverage of walking away  
21 that you could exercise with people that you weren't affiliated  
22 with, correct?

23 A Correct.

24 Q And ultimately the decision to launch carriage wasn't  
25 made by you. The decision to launch carriage of Wedding Central

1 was made by your superiors, right?

2 A Correct.

3 Q Do you characterize that process that resulted in the  
4 carriage of Wedding Central as an arm's length negotiation?

5 A That's not what I was referring to when I said that.

6 Q That's not what you were referring to when you said what?

7 A When I made the comment about arm's length, I was talking  
8 about the agreement, the contracts that we had in place and the  
9 rates and the terms that were part of that agreement.

10 Q But I'm asking you a different question. The process we  
11 just described where you're not able to exercise the leverage with  
12 your affiliates including Wedding Central that you could exercise  
13 in negotiating with people that you weren't affiliated with, is  
14 that what you mean by arm's length negotiation?

15 A I don't.

16 Q So let me take you back to the binder that Mr. Cohen  
17 placed in front of you. And if you could turn to page 32 of your  
18 written direct testimony, Cablevision Exhibit 337.

19 JUDGE SIPPEL: Give me a tab, please.

20 MR. SPERLING: It's the very front of Mr. Cohen's binder,  
21 the soft spiral-bound one, Your Honor.

22 JUDGE SIPPEL: CV 4?

23 MR. SPERLING: CV 337.

24 JUDGE SIPPEL: Three-thirty-seven.

25 MR. SPERLING: Yes. It's before the tab.

1 JUDGE SIPPEL: I've got it.

2 MR. SPERLING: And turn to page 32, Your Honor.

3 JUDGE SIPPEL: Thirty-two of thirty-six?

4 MR. SPERLING: That's the one.

5 JUDGE SIPPEL: Okay.

6 BY MR. SPERLING:

7 Q Mr. Montemagno, you see about a third of the way down the  
8 page there's a heading "Cablevision Launched Wedding Central on  
9 Market Terms Following Arm's Length Negotiations." You see that?

10 A Correct.

11 Q And the negotiations you were referring to are the ones  
12 that I just asked you about a moment ago?

13 A Correct.

14 Q

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16 A

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18 Q

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20 A

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23 Q

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6 Q Now after Wedding Central launched Cablevision provide a  
7 variety of promotions for the network. Are you aware of that?

8 A Yes.

9 Q And that included

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14 A

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4 A

5 Q That's in your written direct testimony, isn't it?

6 A I don't know if it was not in my deposition or not.

7 MR. SPERLING: Your Honor, permission to approach?

8 JUDGE SIPPEL: You may.

9 THE WITNESS: Thank you.

10 BY MR. SPERLING:

11 Q Your Honor, I'm handing the witness and you and opposing  
12 counsel a copy of what's been marked as GSN Exhibit 404.

13 (Whereupon, the above-referred to document was marked as  
14 GSN Exhibit No. 404 for identification.)

15 BY MR. SPERLING:

16 Q Mr. Montemagno, do you have GSN Exhibit 404 in front of  
17 you?

18 A I do.

19 Q And do you see that that's the transcript of the  
20 deposition that was taken of you by my partner Mr. Phillips in  
21 2013?

22 A Yes.

23 Q Let me ask you to turn to page 49 of the transcript. You  
24 have page 49 in front of you?

25 A Yes.

1 Q If you look at line 6 do you see that you were asked,

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7 A

8 Q

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13 A

14 Q

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16 A

17 Q And Cablevision --

18 MR. COHEN: Let me say here I think these negotiations  
19 are confidential.

20 MR. SPERLING: Okay.

21 MR. COHEN: The point you're trying to make.

22 MR. SPERLING: Yes.

23 MR. COHEN: So I think we need to close the courtroom.  
24 And I don't mean to interrupt the flow.

25 MR. SPERLING: No, absolutely fine. We'll excuse Mr.

1 Feldman.

2 (OPEN SESSION ENDS)

3 (CLOSED SESSION STARTS)

4 BY MR. SPERLING:

5 Q So, Mr. Montemagno,

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7 A

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10 A

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17 A

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3 Q

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5 A

6 Q

7 A

8 Q Let me ask you to turn to GSN Exhibit 252 in the binder  
9 in front of you.

10 A I'm sorry, which --

11 Q It's GSN 252.

12 A In this big binder?

13 Q Big binder. Sorry. You do have a couple of binders in  
14 front of you.

15 JUDGE SIPPEL: Two-five-two?

16 MR. SPERLING: Yes, Your Honor.

17 JUDGE SIPPEL: Two-five-two. Okay. I have it.

18 BY MR. SPERLING:

19 Q Mr. Montemagno, this is a programming report and it says  
20 that it's from Mr. Budill to James Dolan. You see that?

21 A Correct.

22 Q James Dolan is the CEO of Cablevision?

23 A Correct.

24 Q And in your the ordinary course would you participate in  
25 putting together program reports of this type?

1 A Yes.

2 Q Did you likely participate in putting this one together?

3 A Likely, yes.

4 Q And if you look at the top; the print is a little bit  
5 small, but the very first entry on the right-hand side where the  
6 program is identified -- you see that one?

7 A Correct.

8 Q

9

10 A

11 Q

12 A

13 Q And you write in the -- well, your division writes in the  
14 first bullet,

15

16

17

18 A

19 Q

20

21 A

22 Q

23

24 A

25 Q

1

2

3 A

4 Q

5

6

7

8 A

9

10

11 Q

12

13

14 A

15 Q

16 A

17

18 Q Let me turn now to the decision to re-tier, to reposition  
19 GSN to the sports tier. First of all, you didn't make the decision  
20 about the repositioning, did you?

21 A I participated in the decision. It wasn't my ultimate  
22 decision.

23 Q Right. It was Mr. Bickham's ultimate decision, right?

24 A Correct.

25 Q He's the one who knows firsthand why he made that

1 decision, correct?

2 A I participated and he took my guidance on that one, yes.

3 Q He's the one that made the decision, and you're not,  
4 correct?

5 A Correct.

6 Q Now, this analysis that you prepared in July of 2010, you  
7 didn't prepare a similar analysis for any other network, did you,  
8 at that time?

9 A No.

10 Q And you didn't conduct any analysis of WE TV or Wedding  
11 Central for potential repositioning of any kind?

12 A No.

13 Q Let me talk to you about the set top box data. I think  
14 you testified that at the time you looked at a sample, a certain  
15 percentage of the set top box data as a sample, right?

16 A Correct.

17 Q And the sample size that Cablevision used at that time  
18 ordinarily was , correct?

19 A That's what I'm aware of, yes.

20 Q Okay. And of the roughly 3 million homes  
21 that you said Cablevision was in at the time would be about a  
22 user sample?

23 A Correct.

24 Q Why don't you turn to GSN Exhibit 117. Sorry. It's  
25 Cablevision Exhibit 117. So the way your binder is organized is

1 the GSN exhibits are first in numerical order and then the  
2 Cablevision exhibits come after that.

3 You have Cablevision 117 in front of you, Mr. Montemagno?

4 A I do.

5 MR. SPERLING: Your Honor, let me know when you're --

6 JUDGE SIPPEL: I'm with you.

7 MR. SPERLING: Okay.

8 JUDGE SIPPEL: I'm with you. Or in a second, I'll be.

9 MR. SPERLING: Pleasure, Your Honor.

10 BY MR. SPERLING:

11 Q If you keep that open in front of you, Mr. Montemagno,  
12 and you turn to your written direct testimony, which is at the  
13 front of the binder that Mr. Cohen gave you --

14 JUDGE SIPPEL: Going to have two going at the same time?

15 MR. SPERLING: I'll tell you what, Your Honor, we can --

16 JUDGE SIPPEL: That's all right. You can do it your way.

17 Whatever you're satisfied with. I can follow you. If I can't,

18 I'll let you know.

19 BY MR. SPERLING:

20 Q Mr. Montemagno, if you turn to page 18 of your written  
21 direct testimony, you talk there about the fact that in putting  
22 together the memo that you prepared for Mr. Bickham on carriage of  
23 GSN, consulted set top box data, right?

24 A Correct.

25 Q And if you go on to page 19, four lines from the end of

1 paragraph 47, you point to Cablevision Exhibit 117 as the set top  
2 box data you looked at, right?

3 A Correct.

4 Q Now, the data is only meaningful if it's drawn from a  
5 representative sample, right?

6 A I relied on other experts in the company. I'm not  
7 qualified to render an opinion on that. I relied on the  
8 information that was given to me and represented that it was good  
9 information.

10 Q And that information, as you testified a moment ago, was  
11 a sample of Cablevision's viewership, right?

12 A Correct.

13 Q Now, one could take the data only from the homes that  
14 most watched GSN, right, if one wanted to?

15 A Can you ask the question again?

16 Q If you wanted to, you could pull the data solely from the  
17 homes that most watched GSN? GSN would perform very well if you  
18 did that, right?

19 A You mean carve up -- only take a piece of the sample?

20 Q Yes.

21 A I don't know -- I don't know the answer to that.

22 JUDGE SIPPEL: Cherry picking.

23 THE WITNESS: Yes, I don't know the answer to that.

24 BY MR. SPERLING:

25 Q You don't know whether the cherry picking is possible?

1 A I don't.

2 Q If you could do that, it still wouldn't be very  
3 informative, right?

4 A If we actually did it. I don't know if technically you  
5 could.

6 Q If you could take on the data that was most favorable to  
7 GSN, that wouldn't form a very good basis for a good faith business  
8 judgment, would it?

9 A Correct.

10 Q And if you could only take the data that was worst for  
11 GSN; for example, if you only looked at the data from homes that  
12 never watched GSN at all, that also wouldn't form a basis for a  
13 good faith business decision, would it?

14 A Correct.

15 Q Now, let's take a look at Exhibit 117, Cablevision 117 in  
16 front of you.

17 JUDGE SIPPEL: This is the first document?

18 MR. SPERLING: This is the first document. And the way  
19 it appears, Your Honor, there's an email and the same text for some  
20 reason appears on both the front and back of the page. This is how  
21 it was produced to us. And then behind that is an email that  
22 appears to have been an attachment that was forwarded in the first  
23 email. And in that one as well the same text appears on the front  
24 and the back. And behind that there's data produced in Your  
25 Honor's favorite native format.

1 JUDGE SIPPPEL: Right. So these two emails, they're taken  
2 together, is that correct?

3 MR. SPERLING: That's correct, Your Honor. It's all one  
4 exhibit.

5 JUDGE SIPPPEL: Right.

6 BY MR. SPERLING:

7 Q So, Mr. Montemagno, the front email is an email that Mr.  
8 Weinstein sent to you on July 15th, 2010, correct?

9 A Correct.

10 Q Adam Weinstein worked for you?

11 A Yes.

12 Q And you see there's an attachment? You see the graphic  
13 of an actual envelope there?

14 A Correct.

15 Q And behind this email, which is from 2:56 of July 15th,  
16 2010, there is the forwarded email, which is from five minutes  
17 earlier on July 15th, 2010. You see that?

18 A Correct.

19 Q And Mr. Weinstein is providing to you certain set top box  
20 data, right?

21 A Correct.

22 Q And if you continue to turn the page, then on pages 6 of  
23 7 and 7 of 7 you have the set top box data that you refer to in the  
24 memo that you prepared for Mr. Budill, right?

25 A Correct.

1 Q Now, this set top box data begins with rank No. 25. Do  
2 you see that?

3 A Correct.

4 Q It doesn't have 1 through 24?

5 A Correct.

6 Q And then it doesn't have 29, right?

7 A Correct.

8 Q Then it doesn't have 36?

9 A Correct.

10 Q Doesn't have 43 or 44?

11 A Correct.

12 Q It's not a complete set of data. Somebody's done some  
13 selection here, correct?

14 A Of networks, yes.

15 Q Yes. And this is the one that shows GSN ranked

16 A Correct.

17 Q That appears on page of 7.

18

19

20 A

21 Q

22

23 A

24 Q

25 A

1 Q If I can find it.

2 A I usually focus on ranking, household count and hours  
3 viewed, so I don't really pay too much attention to the other  
4 columns.

5 Q Pardon me?

6 A I usually focus on ranking, household count and hours  
7 viewed when I look at these reports. I don't really look at the  
8 other columns, so I'm not that familiar with what they mean or how  
9 they're calculated.

10 Q So you have no idea what sample size this document is  
11 drawn from?

12 A Well, I understand the sample size. It says on the top  
13 sample.

14 Q It says on the top sample. And that would be  
15 about homes, right?

16 A Correct.

17 Q But in fact this document actually, as indicated in the  
18 second column from the right, is drawn from Do  
19 you understand that from this document?

20 A I don't know how that's derived. This is not my report.  
21 I don't know what that means.

22 Q Well, you relied on this report in putting together your  
23 analysis for Mr. Budill, didn't you?

24 A I did. I told you I relied on ranking, household count  
25 and hours viewed.

1 Q And you relied on this report in your written direct  
2 testimony that you submitted to the Court also, right?

3 A Correct.

4 Q And you swore under oath that GSN was ranked based  
5 on Cablevision's set top box data, right?

6 A Correct.

7 Q Okay. Sorry, Mr. Montemagno. Give me just a moment.

8 A Sure.

9 Q Mr. Montemagno, to help us along I'm going to show you  
10 another document.

11 MR. SPERLING: Your Honor, may I approach?

12 JUDGE SIPPEL: You certainly may.

13 MR. SPERLING: Can I have a few more copies, please?

14 Thank you.

15 JUDGE SIPPEL: Are we still in closed session?

16 MR. SPERLING: We are, Your Honor, yes. We need to stay  
17 that way for a bit, unfortunately.

18 JUDGE SIPPEL: That's fine.

19 BY MR. SPERLING:

20 Q Mr. Montemagno, I'm handing you what's been marked as GSN  
21 Exhibit 405.

22 (Whereupon, the above-referred to document was marked as  
23 GSN Exhibit No. 405 for identification.)

24 JUDGE SIPPEL: This is the deposition of Coleen Moraghan?

25 MR. SPERLING: That's the one.

1 BY MR. SPERLING:

2 Q Do you know who Coleen Moraghan is, Mr. Montemagno?

3 A I do.

4 Q Why don't you tell the Court who she is?

5 A Coleen oversees the databases that manage the set top box  
6 viewership data.

7 Q Let me ask you to turn to page 133 of her deposition  
8 transcript.

9 JUDGE SIPPEL: She's in charge of the set top box data  
10 for the company?

11 THE WITNESS: She's the operating person who's in charge  
12 of that, yes.

13 JUDGE SIPPEL: Operating?

14 THE WITNESS: She reports into the layer of executives  
15 that oversee it.

16 JUDGE SIPPEL: Thank you.

17 THE WITNESS: I'm sorry --

18 BY MR. SPERLING:

19 Q Page 133 --

20 A One-thirty-three?

21 Q -- of Exhibit 405. Yes, so the way it's numbered, Mr.  
22 Montemagno, is there's four pages of deposition transcript to each  
23 piece of paper. So at the bottom the page says pages 130 to 133.  
24 And you see --

25 A Yes.

1 Q -- at the bottom right of the four quadrants has a 133 in  
2 the upper right of it.

3 A Correct.

4 Q You see it?

5 A Correct.

6 Q And do you see that Ms. Moraghan was asked,  
7

8 A

9 Q And you see that she answers,  
10

11 A Correct.

12 Q Do you have any reason to doubt  
13

14

15

16 A

17 Q And so what that would indicate is that this data set at  
18 Exhibit 117 that formed the basis for your memo to Mr. Budill and  
19 that formed the basis for your written testimony to the Court is  
20 actually based on a sample of

21

22 A

23

24

25

1 Q Okay. Why don't we take a look in the big binder at GSN  
2 Exhibit 68? I want to make sure we all understand what we're  
3 looking at here. The first page of GSN Exhibit 68 is an email, the  
4 bottom portion of which says, "Hi Darshan. I understand from Adam  
5 that you sent him a whole bunch of reports on GSN." Do you see  
6 that?

7 A Yes.

8 Q And you see here that also there's a little envelope icon  
9 indicating that there's an attachment, an attached email that's a  
10 portion of this?

11 A Correct.

12 Q If you turn to the other side, you'll see the attachment.  
13 That attachment is an email from Adam Weinstein to Darshan Patel.  
14 Do you see that?

15 A Doesn't it say the other way around, from Darshan --

16 Q Yes, you're absolutely right. It's email from Darshan to  
17 Adam Weinstein.

18 A Correct.

19 Q And then behind it is some set top box data, right?

20 A Yes.

21 Q The email from Darshan Patel to Adam Weinstein is from  
22 July 7th, 2010? You see that?

23 A Yes.

24 Q And that's from one before Mr. Weinstein's email to you  
25 that we saw as Cablevision Exhibit 117, correct?

1 A Correct.

2 Q Let's take a look at the data that's attached here. Why  
3 don't we begin with the data that's on page 4. Unlike Cablevision  
4 Exhibit 117, this is a complete run of rankings. It doesn't have  
5 any gaps. You see that?

6 A Yes.

7 Q But with that exception it looks to be the precise data  
8 that you refer to in your report to Mr. Budill in your sworn  
9 testimony to the Court. Do you see that just like it  
10 was on your list? Feel free to flip back and forth between --

11 A Yes, can you remind where?

12 Q Yes, it's the same binder, unfortunately.

13 A Oh.

14 Q It's Cablevision 117. Here's what we can do to  
15 triangulate. One-seventeen is also in the binder that Mr. Cohen  
16 gave you. So if you keep my big binder open right where you have  
17 it and you take out Mr. Cohen's binder and you turn to 117, it will  
18 give you a nice side-by-side comparison.

19 So they both say at the top that they're ranking for all  
20 networks by household count within households with basic/expanded  
21 basic services. In parentheses,

22 You see  
23 that?

24 A Correct.

25 Q Look at the two right-hand columns. They both report

1 households using television of , right?

2 A I see that, right.

3 Q And if we go and look at No. 25 on both lists, it's the  
4 same, right?

5 A Correct.

6 Q And 26 is the same on both?

7 JUDGE SIPPEL: Twenty-five is

8 BY MR. SPERLING:

9 Q And you see that's true for both documents, correct, Mr.  
10 Montemagno?

11 A Correct.

12 JUDGE SIPPEL: Twenty-six is

13 BY MR. SPERLING:

14 Q And that's the same for both as well, right, Mr.  
15 Montemagno?

16 A Correct.

17 Q And if we drop down to , GSN is on both of those,  
18 right?

19 A Correct.

20 Q So this set of data that was emailed to Mr. Weinstein  
21 before he emailed you appears to be the complete set of data that  
22 is extracted in Cablevision 117 and that you relied on in your  
23 written report to Mr. Budill?

24 A This one contains all channels, broadcast channels,  
25 higher tier channels. And I believe the one that you're referring

1 to here shows the -- is limited to the packages of basic and  
2 expanded basic.

3 Q Okay. So just so we're clear what we're talking about  
4 when we say "this" and "that," GSN 68 is showing all channels and  
5 Cablevision 117 is excerpting certain channels from that, correct?

6 A Like , which is not in that package.

7 Q So 117 is an excerpt from the data that's on pages 4 and  
8 5 of GSN Exhibit 681, right?

9 A Correct.

10 Q Why don't we keep turning the pages in GSN 68? This data  
11 set we were looking at ends on page 9. You see that?

12 A Correct.

13 Q Then there's a new set of data after that.

14 A Page 11?

15 Q Begins on page 11.

16 A Okay.

17 Q Now, it also says at the top that

18

19

20 A Correct.

21 Q But this one is , isn't it?

22 A (No audible response)

23 Q Let me help you out --

24 A The is different.

25 MR. COHEN: Why don't you let him answer the question

1 before you help him out? Objection.

2 JUDGE SIPPEL: No, that's all right. I'm sustaining the  
3 objection.

4 BY MR. SPERLING:

5 Q Mr. Montemagno, if you look in the second column from the  
6 right, what's the number of in this  
7 report?

8 A

9 Q That's about of Cablevision's viewership,  
10 right, Cablevision subscribers?

11 A Correct.

12 Q The one we looked at before, which was in the  
13 neighborhood of was

14

15 A

16 Q

17

18 A

19 Q Now if you look at page 11,

20 , what number is GSN at?

21 A (No audible response)

22 Q Let me simplify it. Is GSN ranked in this data  
23 set?

24 A Yes.

25 Q And this is the full run of right?

1 A

2 Q So I just want to be 100 percent clear. The memo that  
3 you prepared for Mr. Budill wasn't based on the typical data sample  
4 size that you ordinarily analyze when you look at set top box data  
5 at Cablevision, was it?

6 A I rely on the information that comes from others, so I  
7 relied on that report. I relied on that to make a judgment on all  
8 of the networks.

9 Q My question was different, Mr. Montemagno. The report  
10 that you prepared for Mr. Budill, it wasn't based on a  
11 sample size, was it?

12 A That you are showing me two reports that have different  
13 I don't know what the -- what the reasoning or -- or  
14 what the -- how -- how the math is different. I don't know. I  
15 just relied on the information I was given.

16 Q I didn't ask you if you know the reasoning, Mr.  
17 Montemagno. So let me try again. There are two data sets in GSN  
18 68. One of them is drawn from and one  
19 of them is drawn from , right?

20 A Correct.

21 Q The set is a roughly sample  
22 of GSN's viewership, correct?

23 A A rough sample of of Cablevision subscribers.

24 Q Cablevision. Excuse me. Thank you. Mr. Weinstein had  
25 this data that's at GSN 68, correct?

1 A It's attached to an email that was sent to him.

2 Q Yes. So the analysis that you prepared that relied on  
3 your set top box data wasn't based on your ordinary sample size of  
4 set top box data, was it?

5 A I guess not. I relied on that report and that  
6 information.

7 Q And to be 100 percent clear it's not just that the sample  
8 size that you relied on was smaller, but it wasn't representative,  
9 was it?

10 A I don't know the answer to that.

11 Q Well, it shows totally different rankings than the  
12 sample size data set does, right?

13 A I don't know what the variables, the different variables  
14 that resulted in the different information. I don't know the  
15 answer to that.

16 Q Well, for a sample size, which is what you  
17 testified you ordinarily rely on, GSN is ranked right?

18 A On this report that you put in front of me, yes.

19 Q But the report that you relied on, which is based on  
20 , GSN ranked

21 A Correct.

22 Q Correct? So Cablevision had available to it a  
23 representative data set that showed GSN at correct?

24 A Correct.

25 Q And Cablevision also had available to it a different data

1 set that wasn't representative of that larger set and that cast GSN  
2 in a substantially worse light in terms of its ranking, right?

3 A It was a lower ranking, yes.

4 Q A substantially lower ranking, right?

5 A I don't know the technical -- whether you're comparing  
6 apples to oranges, or I don't know the derivatives of the report.  
7 I'm trying to answer best I can, but one says one says I  
8 don't know what the inputs -- the difference. I'm not an expert in  
9 this. I use the reports. I'm a recipient of the reports. I don't  
10 know how to answer the mathematical technical question you're  
11 answering me. I relied on the data. They're different. I can't  
12 tell you why.

13 Q And the data that you relied on, which was based on a  
14 , cast GSN in a  
15 much worse light than the data that was based on a  
16 sample that you ordinarily look at, correct?

17 A It was a different ranking, yes.

18 Q It was a ranking of versus right?

19 A Correct.

20 Q And it's that non-representative sample that you pointed  
21 the Court to in your written direct testimony, right?

22 A Correct.

23 Q Okay. And you knew that you'd looked at other data sets,  
24 didn't you, at the time that you prepared your written direct  
25 testimony?

1       A       I relied on that report to -- that's what I put in my  
2 report. That's what I relied on.

3       Q       Well, let's go back to your written direct testimony for  
4 a minute.

5               JUDGE SIPPEL: Are we --

6               MR. SPERLING: Your Honor, I'm back in Mr. Cohen's  
7 binder, the spiral-bound one. The written direct testimony.

8               JUDGE SIPPEL: Right.

9               MR. SPERLING: It's right at the front.

10              MR. COHEN: And, Your Honor, may I ask since we've been  
11 going close to two hours, whenever --

12                     (Simultaneous speaking)

13              JUDGE SIPPEL: I'm thinking the same thing.

14              MR. COHEN: Whenever is convenient.

15              MR. SPERLING: Yes, we'll be done in about five minutes  
16 with this line.

17              JUDGE SIPPEL: Five minutes?

18              MR. SPERLING: Yes, Your Honor.

19              JUDGE SIPPEL: Okay. Go ahead.

20              BY MR. SPERLING:

21       Q       Mr. Montemagno, can you go back to page 19 of your  
22 written direct testimony?

23       A       I'm sorry. I missed the number.

24       Q       Page 19.

25              JUDGE SIPPEL: I'm with you.

1 BY MR. SPERLING:

2 Q Mr. Montemagno, if you'd go to the fourth line on the  
3 page, you see the sentence beginning on that line that says, "One  
4 analysis" -- one analysis -- "of set top box viewership data that  
5 I reviewed showed that among our expanded basic households measured  
6 GSN ranked of all networks that Cablevision carries." You  
7 see that?

8 A Yes.

9 Q That was one analysis that you reviewed, correct?

10 A And there's a second one referenced in the parenthetical.  
11 It was the set of comparisons that was different. We looked at  
12 two.

13 Q But to be clear Cablevision had available to it a  
14 different set of data that was actually based on the sample size  
15 that it ordinarily uses, right?

16 A You showed me a different report, so I guess yes.

17 Q And that report cast GSN in a much better light in terms  
18 of rankings than

19 A Cast it at

20 Q But you chose to use the data that reported GSN at  
21 in the analysis that you prepared and in your written testimony to  
22 the Court, correct?

23 A I relied on the report that was given to me from the  
24 people that were more knowledgeable of this information, yes.

25 Q Is that -- yes --

1 A Yes.

2 Q -- is the answer to my question, right?

3 A Yes.

4 MR. SPERLING: Okay. Your Honor, I think we can take a  
5 break now.

6 JUDGE SIPPEL: Are you finished with your cross, or are  
7 you --

8 MR. SPERLING: Your Honor, Mr. Cohen might be  
9 disappointed to hear I've got a ways to go, but we can take a break  
10 for whatever length Your Honor thinks is appropriate.

11 JUDGE SIPPEL: Fifteen minutes?

12 MR. SPERLING: Sure.

13 MR. COHEN: Yes, Your Honor.

14 (CLOSED SESSION ENDS)

15 (Whereupon, the above-entitled matter went off the record  
16 at 3:21 p.m. and resumed at 3:40 p.m.)

17 (OPEN SESSION STARTS)

18 JUDGE SIPPEL: Back on the record.

19 Mr. Sterling?

20 MR. SPERLING: Thank you, Your Honor.

21 JUDGE SIPPEL: Sperling, it's Sperling.

22 MR. SPERLING: That's right, Your Honor. Thank you.

23 BY MR. SPERLING:

24 Q Mr. Montemagno, do you recall during your direct  
25 examination by Mr. Cohen you talked about the pressure, the pricing

1 pressure, that Cablevision was under in 2010? Do you remember  
2 that?

3 A Correct.

4 Q And the budget pressure that you faced made -- you say in  
5 your written direct testimony -- saving by moving GSN  
6 into the sports an important consideration. Do you remember that?

7 A Yes.

8 Q Now Cablevision, if it had wanted to, could have returned  
9 GSN to an expanded basic tier following your 2012, right?

10 A Following? I'm sorry?

11 Q The repositioning took effect in 2011, correct?

12 A Correct.

13 Q Now the following year in 2012, if it had wanted to,  
14 Cablevision could have returned GSN to the expanded basic care,  
15 right?

16 A We had an expired contract. I assume that we could have  
17 done that, yes.

18 Q And you chose not to because, again, the subscriber fees  
19 were an important consideration for Cablevision in 2012?

20 A We weren't willing to pay those fees, and we already had  
21 made the change. So, we thought it was a sound business decision.

22 Q And the same in 2013, if you had wanted to, you could  
23 have put GSN back on the expanded basic tier?

24 A Presumably, Game Show could have at any point shut off  
25 the signal and not permitted continued carriage.

1 Q Right. Mr. Montemagno, you're not under any sort of  
2 misimpression here? You understand that GSN very much would like  
3 to be carried on the expanded basic tier, right?

4 A Correct.

5 Q All right. And nothing prevented Cablevision from  
6 putting them back on that tier, if it had wanted to in 2012, right?

7 A Correct.

8 Q Or in 2013, correct?

9 A Correct.

10 Q Or 2014?

11 A Correct.

12 Q Or this year, 2015? Right?

13 A Correct.

14 Q And the in subscription fees that you saved  
15 was an important consideration in each of those years in your  
16 decision not to put GSN back on the expanded basic tier?

17 A Yes.

18 (Whereupon, the document was marked as GSN Exhibit No.  
19 401 for identification.)

20 Q Okay. I'm going to hand you an exhibit. It's been  
21 marked GSN Exhibit 401.

22 MR. SPERLING: Your Honor, can I approach the witness?

23 JUDGE SIPPEL: Yes, sir.

24 Thank you.

25 "Cablevision Financial Disclosures, 2009 - 2014." Is

1 this their public disclosure?

2 MR. SPERLING: They are, Your Honor.

3 BY MR. SPERLING:

4 Q Mr. Montemagno, I'm going to represent to you that the  
5 net income, cash on hand, and compensation figures for both the  
6 Dolans and Tom Rutledge on this chart, GSN Exhibit 410, are pulled  
7 directly from Cablevision's 10-Ks and proxy statements on Form 14A  
8 filed with the SEC.

9 If you would like, we can walk through each of those to  
10 source the numbers. But let me begin by asking you whether the net  
11 income figures reported here for each of 2009 through 2014 are  
12 roughly in line with your understanding. Let me be entirely clear.  
13 I'm not asking you to vouch for the specific numbers, but I'm  
14 asking you to tell the Court whether you believe that these are in  
15 the ballpark of what Cablevision made in net income in each of  
16 these years.

17 JUDGE SIPPEL: I don't have a number on this.

18 MR. SPERLING: Your Honor, I can swap it for you.

19 JUDGE SIPPEL: No, just give me the number. I can write  
20 it.

21 MR. SPERLING: It's 401.

22 JUDGE SIPPEL: CV 401?

23 MR. SPERLING: Yes.

24 MS. KANE: A GSN exhibit.

25 MR. SPERLING: Oh, yes, 401. Thank you, everyone.

1 JUDGE SIPPPEL: I was just testing who is paying  
2 attention.

3 (Laughter.)

4 MR. COHEN: Okay. I just flunked, Your Honor.

5 (Laughter.)

6 MS. KANE: We're always paying attention, Your Honor.

7 (Laughter.)

8 JUDGE SIPPPEL: I know.

9 GSN 401.

10 BY MR. SPERLING:

11 Q I'll tell you what, Mr. Montemagno. In the big binder --  
12 why don't you leave that sheet, GSN 401, in front of you? -- and in  
13 the big binder, if you can turn to GSN Exhibit 345?

14 MR. COHEN: Your Honor, may I make a suggestion to save  
15 some time? Mr. Montemagno is not in the financial line of  
16 reporting. So, he's just going to be reading numbers. I'm happy  
17 overnight to go back and check these numbers, and if these numbers  
18 are accurate, then we will consent to the admission of this  
19 document. And I think we should just question him on the  
20 assumption that your numbers are correct.

21 MR. SPERLING: Okay. You're fine with us questioning the  
22 witness that way?

23 MR. COHEN: All right?

24 JUDGE SIPPPEL: But we're not going to receive it in  
25 evidence until he has a chance to check it.

1 MR. SPERLING: Absolutely, Your Honor.

2 JUDGE SIPPEL: I'll tell you, these 10-Ks are great  
3 reading.

4 (Laughter.)

5 MR. SPERLING: Your Honor, I decided when you had such a  
6 good time yesterday on your birthday we figured we would give you  
7 a few more.

8 (Laughter.)

9 JUDGE SIPPEL: Don't overdo it now; it's like too much  
10 cake.

11 (Laughter.)

12 BY MR. SPERLING:

13 Q So, Mr. Montemagno, in 2010, which is when you said you  
14 had these budgeting meetings because of the incredible pricing  
15 pressure that Cablevision was under, Cablevision's net income for  
16 the year was about \$575 million. Do you see that?

17 A Correct.

18 Q All right. And so that we're all on the same page, net  
19 income is profit, not gross revenue, correct?

20 A Correct.

21 Q And in 2011, the year in which you repositioned GSN  
22 because of those tremendous pricing pressures that Cablevision was  
23 under, Cablevision's net income was \$426.7 million. Do you see  
24 that?

25 A Correct.

1 Q And it continues in the same vein. Most recently, or the  
2 past two years, in 2013, when Cablevision was still refusing to put  
3 GSN back in the expanded basic tier, Cablevision's net income was  
4 \$620 million, right?

5 A Correct.

6 Q And last year, \$462.7 million, right?

7 A Correct.

8 Q Now in 2011, the year of the repositioning, in addition  
9 to net income, the actual cash on hand at the end of the year for  
10 Cablevision was \$459.5 million, correct?

11 A I see that, yes.

12 Q All right. That's cash that the company was sitting on,  
13 right?

14 A Correct.

15 Q And at the end of the most recent fiscal year, the last  
16 full year for which we have information, Cablevision's cash on hand  
17 had grown to \$813 million, correct?

18 A Correct.

19 Q All right. That's the context in which Cablevision has  
20 been experiencing the pricing pressure that you described, right?

21 A I'm just confirming numbers you have in front of me; I  
22 never looked at it in that capacity. So, you're making the  
23 connection that I never made.

24 Q And subject to your counsel confirming the accuracy of  
25 the numbers, we're assuming it is accurate for purpose of these

1 questions. Understand that?

2 A Correct.

3 Q All right. And so, just to verify, assuming the accuracy  
4 of these numbers, this is the context in which Cablevision was  
5 experiencing the pricing pressures that you described, right?

6 A The context I described was our programming costs were  
7 in the following year. This is the end result  
8 of the whole company rolled up, but it is not how I thought about  
9 it or this was not the discussion when we made these decisions.

10 Q Okay.

11 JUDGE SIPPEL: Well, do you get stock bonuses? Do you  
12 get stock bonuses?

13 THE WITNESS: Yes.

14 JUDGE SIPPEL: So, you're a stockholder?

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: So, you must get annual reports and things  
17 like that?

18 THE WITNESS: Correct.

19 JUDGE SIPPEL: The president's letter to the  
20 shareholders?

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Doesn't he talk about these things?

23 THE WITNESS: He does.

24 JUDGE SIPPEL: So, you knew it?

25 THE WITNESS: Yes, I knew these numbers, but he asked me

1 in the context of what I was describing earlier. What I was  
2 describing earlier was specific to the we were  
3 facing in the budget I managed.

4 JUDGE SIPPEL: Well, when you take a shower, you know  
5 these numbers, don't you? I mean, it's not that you're thinking  
6 about them, but you know these numbers. They follow you around.

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: Okay.

9 BY MR. SPERLING:

10 Q Now Cablevision pays dividends every year to both its  
11 Class A and Class B shareholders. And you're aware that the  
12 Dolans, as the controlling owners of the Cablevision company, are  
13 substantial shareholders, correct?

14 A Correct.

15 Q And again assuming the accuracy of the chart, do you see  
16 that from the 2010 through 2014 the annual dividend to the Dolan  
17 family ranged from around \$29 million to around \$35 million? Do  
18 you see that in the total Dolan dividend row?

19 A I do.

20 Q Okay. Now Jimmy Dolan is the CEO of Cablevision as well,  
21 right?

22 MR. COHEN: I'm sorry, are you representing that that's  
23 a row from the 10-K --

24 MR. SPERLING: No. To be clear, since I told you when we  
25 were off the record, Mr. Cohen --

1 MR. COHEN: I know; I just can't remember. Just so we  
2 make the record clear.

3 MR. SPERLING: Yes. So, the net income, cash on hand,  
4 and compensation figures are simply lifted straight from the  
5 disclosures.

6 MR. COHEN: Okay.

7 MR. SPERLING: The dividend payout is calculated by  
8 taking the percentage ownership, the filings report for the Dolans,  
9 the shares outstanding reported on the front of the K, and the  
10 dividend per share that is reported in the body.

11 MR. COHEN: Okay.

12 MR. SPERLING: Or the proxy, as the case may be.

13 BY MR. SPERLING:

14 Q Mr. Montemagno, Jim Dolan is the CEO of the company,  
15 correct?

16 A He is.

17 Q And his father is the Chairman of Cablevision, correct?

18 A Correct.

19 Q And you're not surprised, are you, to see that between  
20 2010 and 2014 the total payout to the two of them in compensation  
21 ranged from \$22 million at the low end to \$39 million last year,  
22 are you?

23 A No, I'm not following the numbers.

24 Q If you look at the total Dolan non-dividend compensation  
25 row, that's the third row from the bottom --

1 A Okay.

2 Q -- you see there's a section "Non-Dividend Compensation  
3 Paid to Dolans". It's got a row for Charles Dolan. Do you see  
4 that?

5 A Yes.

6 Q He's the Chairman of the company?

7 A Right.

8 Q And then, it's got a row for J. Dolan. That's Jimmy  
9 Dolan. He's the CEO of the company, right?

10 A Right.

11 Q And then, there is a third row that sums the two up above  
12 it. Do you see that?

13 A Correct.

14 Q And you see that, of the years we're looking at, the  
15 lowest year, the total compensation paid to those two members of  
16 the Dolan family was above \$22 million in 2011? Do you see that?

17 A Oh, correct, yes.

18 Q And that's 2011, and that's the year in which GSN was  
19 retired?

20 A Yes.

21 Q And in 2010, the year in which you were facing your  
22 severe budget constraints, the compensation paid to the Dolans was  
23 \$27 million, right?

24 A Correct.

25 Q And last year the combined compensation paid to the two

1 of them was \$39 million, right?

2 A Correct.

3 Q And you see the row below that just sums the total  
4 payouts to the Dolans, compensation plus dividends? Do you see  
5 that?

6 A I see that.

7 Q And you understand, don't you, that the year-end net  
8 income figure and the year-end cash-on-hand figure are after the  
9 payments of compensation to the Dolans, right?

10 A Correct.

11 Q So, the amounts paid to the Dolans don't come out of that  
12 net income or cash on hand, right?

13 A I don't believe so.

14 Q By the way, Mr. Rutledge, the COO, we talked about him  
15 earlier, right?

16 A Correct.

17 Q And you understand that he was paid north of \$20 million  
18 a year in each of 2009, 2010, and 2011?

19 A Yes.

20 Q And you knew that before you saw this chart, didn't you?

21 A Yes.

22 MR. SPERLING: Your Honor, we're going to conditionally  
23 offer GSN Exhibit 401 into evidence, subject to Mr. Cohen getting  
24 back to us tomorrow.

25 JUDGE SIPPEL: Right.

1 MR. COHEN: Let me just say, Your Honor, given the math  
2 exercise that I now understand, it may take me a day or so. I am  
3 going to be a little busy tonight. And since these don't all come  
4 from lines -- before the end of the matter, the case, I'm sure  
5 we'll be able to confirm these numbers.

6 JUDGE SIPPEL: Okay.

7 MR. SPERLING: And we'll be happy to help walk you  
8 through it, and I realize you're busy, but you might have somebody  
9 else on your team that can look at it.

10 MR. COHEN: They're all busy.

11 (Laughter.)

12 JUDGE SIPPEL: Okay. Well, just remind me, Mr. Sperling,  
13 before we close the record.

14 MR. COHEN: And we have that exhibit from yesterday as  
15 well that we have to clean up, too, which is CV -- it's either 319  
16 or 320 or 318; one of those is open.

17 JUDGE SIPPEL: Okay.

18 MR. COHEN: But we'll deal with those things, Your Honor.

19 JUDGE SIPPEL: Thank you.

20 MR. SCHMIDT: And on that one, I'm not looking at the  
21 numbers, but I hope that the numbers you have in your exhibit are  
22 close to what we have in our exhibit. They're not identical. So,  
23 maybe we can confer on that at some point.

24 MR. COHEN: Okay. We'll get these all worked out, Your  
25 Honor, so they can both get into evidence.

1 JUDGE SIPPPEL: I'm sure you will. Thank you.

2 Are you finished?

3 MR. SPERLING: I'm finished with that line of  
4 questioning, Your Honor. I'd like to move on to the next issue, if  
5 that's okay.

6 JUDGE SIPPPEL: All right. I'm not rushing you.

7 MR. SPERLING: Is Mr. Feldman in the room or is he out of  
8 the room?

9 JUDGE SIPPPEL: He's not coming back.

10 MR. SPERLING: Okay, but we need to close this portion of  
11 the transcript.

12 JUDGE SIPPPEL: Okay. We have to close the record, I mean  
13 close the courtroom.

14 (OPEN SESSION ENDS)

15 (CLOSED SESSION STARTS)

16 MR. SPERLING: Yes, Your Honor, but the sensitive  
17 information is Cablevision information. So, unless Mr. Cohen feels  
18 that anybody on his side needs to be excused --

19 MR. COHEN: No, there's nobody on our side that needs to  
20 leave this room.

21 JUDGE SIPPPEL: All right.

22 BY MR. SPERLING:

23 Q Mr. Montemagno, do you remember during your direct  
24 examination you talked about

25

1 A  
2 Q  
3  
4  
5 A  
6 Q  
7  
8  
9  
10  
11 A  
12 Q  
13  
14 A  
15 Q  
16  
17  
18 A  
19 Q  
20  
21  
22 A  
23 Q  
24  
25

1 A

2 Q

3

4

5

6 A

7 Q

8

9

10 A

11

12 Q

13

14

15 A

16 Q

17

18 A

19

20

21 Q

22 A

23 Q

24 JUDGE SIPPEL:

25

1 MR. SPERLING: We'll walk through it right in the  
2 document, if it's okay with Your Honor.

3 JUDGE SIPPEL: Yes, that's fine.

4 (The witness coughs.)

5 THE WITNESS: Excuse me.

6 JUDGE SIPPEL: That's okay. Have a sip; drink some  
7 water.

8 THE WITNESS: It's the heat and the allergies.

9 JUDGE SIPPEL: This is the best heat we could order.

10 (Laughter.)

11 MR. SPERLING: I'm convinced I'm the one making you  
12 sweat, not the --

13 THE WITNESS: No.

14 BY MR. SPERLING:

15 Q Mr. Montemagno, do you have GSN Exhibit 398 in front of  
16 you?

17 A I do.

18 Q And you see that that's an email that you sent to Adam  
19 Weinstein in January of 2000-and --

20 MR. COHEN: Mr. Montemagno, feel free to take your coat  
21 off. It is quite warm in here.

22 THE WITNESS: Thank you.

23 MR. COHEN: And you see most of the lawyers have their  
24 suit jackets off. The judge is being a stalwart today.

25 JUDGE SIPPEL: Yes, I am.

1 (Laughter.)

2 I'm glad you noticed that. That's no small thing, let me  
3 tell you. I'm a year older and I'm still doing it.

4 (Laughter.)

5 (Whereupon, the document was marked as GSN Exhibit No.  
6 398 for identification.)

7 BY MR. SPERLING:

8 Q Okay. Mr. Montemagno, do you have 398 in front of you?

9 A Yes.

10 Q Now you see that the front page of Exhibit 398 is an  
11 email that you sent to Mr. Weinstein in January of 2011?

12 A Correct.

13 Q And if you turn the pages, there are attached  
14 spreadsheets. Do you see that?

15 A Yes.

16 Q If we turn to the page with the number at the bottom GSN  
17 Exhibit 398.002, that's the first spreadsheet page. Do you see  
18 that?

19 A Yes.

20 Q

21

22 A

23 Q

24

25

1 A  
2 Q  
3  
4 A  
5 Q  
6  
7  
8 A  
9 Q  
10 A  
11 Q  
12  
13  
14 A  
15 Q  
16  
17 A  
18 Q  
19  
20 A  
21 Q  
22  
23 A  
24 Q  
25

1

2 A

3 JUDGE SIPPEL:

4 MR. SPERLING:

5

6 JUDGE SIPPEL:

7 BY MR. SPERLING:

8 Q

9

10

11 A

12 Q

13

14 A

15 Q

16

17

18

19 A

20 Q

21

22

23 A

24

25 Q

1	A
2	Q
3	
4	
5	A
6	Q
7	
8	
9	
10	A
11	Q
12	
13	
14	A
15	Q
16	A
17	Q
18	A
19	Q
20	
21	
22	A
23	Q
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1	A
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6	Q
7	
8	
9	A
10	Q
11	
12	
13	A
14	Q
15	
16	
17	A
18	
19	
20	
21	Q
22	
23	A
24	Q
25	

1 A

2 Q

3

4 A

5 Q

6

7

8

9

10 A

11 Q

12

13

14 MR. COHEN:

15

16 JUDGE SIPPEL: We have been. Just repeating.

17 MR. SPERLING: I'll move on, Your Honor.

18 JUDGE SIPPEL: Please.

19 BY MR. SPERLING:

20 Q

21

22

23 A

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25

1

2 Q Okay. When you communicated to Dennis Gillespie in  
3 December of 2010 that Cablevision was going to move GSN to the  
4 sports tier, you weren't looking to conduct a negotiation with him,  
5 were you?

6 A No.

7 Q You were informing him of a final decision, correct?

8 A Yes.

9 Q So, you testified earlier, in response to Judge Sippel's  
10 question, as to why Cablevision was unwilling to negotiate with GSN  
11 in the way that it did with \_\_\_\_\_, that they were  
12 differently situated, because \_\_\_\_\_ negotiated with you  
13 before the repositioning took effect, and GSN only had this  
14 discussion with you after reposition took effect. Do you remember  
15 that?

16 A I remember that.

17 Q But, to be clear, you just testified that when you  
18 communicated to Mr. Gillespie you weren't willing to have a  
19 negotiation, were you?

20 A The GSN contract expired in \_\_\_\_\_. I had negotiated for  
21 \_\_\_\_\_ years. \_\_\_\_\_ was expiring at the end of  
22 \_\_\_\_\_ when we made the decision. The circumstances were entirely  
23 different. So, I spent --

24 Q But you were --

25 A -- \_\_\_\_\_ years of negotiations with Game Show Network

1 Q Are you done with your answer?

2 A Yes.

3 Q But at the time you communicated the repositioning  
4 decision, which was a new development in the relationship between  
5 Cablevision and GSN, you weren't willing to have any further  
6 negotiation, correct?

7 A We made the decision. If he would have come back and  
8 said , I don't know; we might have made a different  
9 decision like we did with . He did not make any such  
10 proposal.

11 Q

12

13 A

14 Q Now in your written direct testimony -- why don't we take  
15 a look at it? So, again, it's the beginning of the binder that Mr.  
16 Cohen gave to you. And turn to page 25. Actually, let me turn you  
17 back to page 22, if you don't mind.

18 JUDGE SIPPEL: Twenty-two?

19 MR. SPERLING: Twenty-two, please, Your Honor.

20 BY MR. SPERLING:

21 Q If you look at paragraph 57 -- do you have that in front  
22 of you, Mr. Montemagno?

23 A Yes.

24 Q And do you see there you're referring to the November  
25 8th, 2010 meeting that you testified about earlier?

1 A Correct.

2 Q And you say, "At this meeting, Mr. Rutledge proposed  
3 moving both GSN and to the sports pack. They were both  
4 largely sports channels available to all Cablevision subscribers at  
5 a modest extra monthly fee." Do you see that?

6 A I do.

7 Q Let me ask you to turn, please, in the big binder, to GSN  
8 Exhibit 284.

9 JUDGE SIPPEL: What was the number again?

10 MR. SPERLING: 284, GSN 284, Your Honor.

11 JUDGE SIPPEL: Yes, I've got it.

12 BY MR. SPERLING:

13 Q Mr. Montemagno, do you see that this is a study that  
14 Cablevision performed relating to the sports and entertainment  
15 pack?

16 A Correct.

17 Q And that's in July of 2011, correct? Right there on the  
18 first page.

19 A Oh, yes, correct.

20 Q Yes. Now, at the time in November of 2010, at the time  
21 of the November 8th meeting that you were just referring to, it was  
22 just called the sports pack, right?

23 A Correct.

24 Q And you testified that it consisted largely of sports  
25 channels?

1 A Right.

2 Q Are you aware of any non-sports networks being dropped  
3 from the sports or sports and entertainment pack between November  
4 of 2010 and the time of this study in July of 2011?

5 A Non-sports channels being dropped?

6 Q Yes.

7 A No.

8 Q So, why don't we turn to page 7 of this document? Sorry,  
9 it is the one with the Bates number ending 083 on the bottom right.

10 MR. SPERLING: And I apologize to both the witness and  
11 Your Honor for the small print.

12 BY MR. SPERLING:

13 Q But, Mr. Montemagno, you are able to read the names of  
14 the channels here, aren't you?

15 A Yes.

16 Q MLB Network, you're not going to tell Judge Sippel that's  
17 not a sports channel, are you?

18 A No.

19 Q Okay. And, in fact, aside from GSN, all the networks  
20 listed here are sports channels, aren't they?

21 A Outdoor Channel I consider like a network. TVG network,  
22 that was horses, horse racing.

23 JUDGE SIPPEL: So, horses?

24 THE WITNESS: Horses, right.

25 JUDGE SIPPEL: Are they a sport?

1 THE WITNESS: Yes, horse racing.

2 Outdoor Channel was hunting and hiking and lifestyle.

3 So, in the sports realm.

4 BY MR. SPERLING:

5 Q In the sports realm you said?

6 A Yes.

7 Q Because it was hunting and fishing and other outdoor  
8 sports --

9 A Hiking --

10 Q -- and activities?

11 A -- and things like that.

12 Q And just to make sure the record is clear, TVG, that's  
13 horse racing, right?

14 A Correct.

15 Q And so, they're all sports-related other than GSN, right?

16 A Correct.

17 Q So, it's not that it was largely sports networks, but,  
18 rather, prior to GSN being placed on the sports pack, it was  
19 exclusively sports networks, correct?

20 A Yes.

21 Q Okay. Now, after Cablevision moved GSN to the sports  
22 pack, there were a number of -- let me change direction. After GSN  
23 -- excuse me -- after Cablevision moved GSN to the sports pack or  
24 sports tier, there was discussion within Cablevision, wasn't there,  
25 about changing the name of the sports pack to sports and

1 entertainment pack?

2 A There was a decision to change it. I didn't participate  
3 in the discussion.

4 Q Well, why don't we turn to GSN Exhibit 127, still in that  
5 same binder?

6 JUDGE SIPPEL: What is the "as of" date of this box you  
7 just showed me?

8 MR. SPERLING: Your Honor, on the front page of the  
9 exhibit it is dated July of 2011. And to bridge the gap from  
10 November 2010 to July of '11, I asked the witness whether he was  
11 aware of there being any non-sports networks that were dropped from  
12 the sports tier between those two dates, and he testified that he  
13 is not aware of it.

14 JUDGE SIPPEL: No? Okay. Thank you.

15 BY MR. SPERLING:

16 Q Mr. Montemagno, do you have GSN 127 in front of you?

17 A Not yet. 127?

18 Q Yes. Take your time. Let me know when you get there.

19 A Okay.

20 JUDGE SIPPEL: Is this the big book?

21 MR. SPERLING: This is the big book, Your Honor.

22 JUDGE SIPPEL: No. 127?

23 MR. SPERLING: Yes.

24 JUDGE SIPPEL: I'm with you now. Okay. Fire away.

25 BY MR. SPERLING:

1 Q If you look in the middle of the page, Mr. Montemagno,  
2 there's an email from Jim Maiella to you. Do you see that?

3 A Yes.

4 Q And he writes to you, "Did you see the field  
5 communication on the" -- open quotation -- "`new'" -- closed  
6 quotation -- "name of the IO sports pack?"

7 A Yes.

8 Q And that's a reference to the change of the name from  
9 sports pack to sports and entertainment pack, right?

10 A Correct.

11 Q And he goes on to say, "We need to get some more  
12 entertainment into that thing pronto to validate the shift." Do  
13 you see that?

14 A Yes.

15 Q And what he was talking about was that the only non-  
16 sports network in the newly-renamed sports and entertainment pack  
17 was GSN, right?

18 A Yes. We're talking about a public relations executive  
19 that's writing this.

20 Q And the public relations executive was concerned of the  
21 need to validate the shift in name because you had only one non-  
22 sports network, GSN, on the sports tier, right?

23 A He's expressing a concern. This is an area that is not  
24 his responsibility. It is the Product Management Team. So, take  
25 it for what it is, but he's somebody who is not responsible for

1 this, rendering a personal opinion. This is not his responsible  
2 area.

3 JUDGE SIPPEL: What area?

4 THE WITNESS: The Project Management Team is responsible  
5 for the package names, the pricing, the content, the composition.  
6 And this is a public relations executive making/expressing an  
7 opinion.

8 BY MR. SPERLING:

9 Q And his view as that the name was being changed to  
10 validate the shifts, right?

11 A Yes.

12 Q Now, notwithstanding the change in name from sports to  
13 sports and entertainment pack, it remains the case today that GSN  
14 is the only non-sports network on the sports and entertainment  
15 pack, right?

16 A There are more lifestyle networks in there. There's a  
17 couple of outdoorsy channels in there now.

18 Q Well, why don't take a --

19 A But it's primarily sports, true sport channels.

20 Q Can we take a look, please, at GSN Exhibit 382?

21 JUDGE SIPPEL: You know, go ahead, but you seem to be  
22 suggesting -- I keep hearing this -- you seem to be moving  
23 lifestyle description into some of these sports channels. For  
24 example, there's a horsey set. That's a lifestyle. I can imagine  
25 it being a lifestyle thing as opposed to being a hard-driven sport

1 like competitive basketball or football, something like that.

2 THE WITNESS: Right. There were two -- well, there was  
3 one called Outdoor Channel, and I think the other one was Outdoor  
4 Life Channel where they were more about hiking and fishing and  
5 outdoorsmen kind of lifestyle clothing and hunting and fishing.  
6 And so, it wasn't the true bat-and-ball and sticks sport. Some of  
7 them had some like style component to them is what I am saying.

8 JUDGE SIPPEL: What's it, hook and something? The hook  
9 and -- shoot and hook, or something like that for the guns and the  
10 fishing?

11 THE WITNESS: And the fishing.

12 (Whereupon, the document was marked as GSN Exhibit No.  
13 382 for identification.)

14 BY MR. SPERLING:

15 Q Well, Mr. Montemagno, just to pursue what the judge was  
16 asking about, if you open up again to GSN Exhibit 382, the one I  
17 just asked you to look at --

18 A Yes.

19 JUDGE SIPPEL: Go on.

20 BY MR. SPERLING:

21 Q And I'll represent to you that this is a printout from  
22 this week from Cablevision's web page. And you see at the top it  
23 says, "Optimum Sports and Entertainment Pack"?

24 A Yes.

25 Q And we can walk through them, but, Mr. Montemagno, aside

1 from GSN, there's not a single network here that doesn't say  
2 "sports" in the title or the description unless it's actually got  
3 the name of the sports league in it, isn't that right?

4 A Can you repeat the question? I mean, I don't have an  
5 answer with the --

6 Q Sure. Well, let's go through them real quickly.  
7 Barclay's Premier League. The Premier League is a soccer  
8 league, right?

9 A Yes.

10 Q Soccer is a sport?

11 A Yes.

12 Q Okay. BEIN sports, that's a sports channel, right?

13 A Soccer, correct.

14 Q Okay. BTN, Big Ten Network, that's the Big Ten  
15 Conference. That's a sports conference, right?

16 A Correct.

17 Q ESPN Classic is a sports channel, right?

18 A Yes. It's not live sports, but it is sports genre, yes.

19 Q Yes. I mean, the description Cablevision has on its web  
20 page, which you see right here, is "rare, exclusive classic sports  
21 programming".

22 A Correct.

23 Q Do you see that?

24 A Yes.

25 Q And that's accurate, right?

1 A Yes.

2 Q The next ESPN channel is also a sports channel, right?

3 A Yes.

4 Q Okay. The same for ESPN U?

5 A Yes.

6 Q Fight Network, that has various competitive sports,  
7 martial arts, boxing, kickboxing?

8 A Correct.

9 Q Okay. Fantasy Sports Network, that's fantasy sports,  
10 right?

11 A Right.

12 Q It continues. Fox Soccer Plus, that's sports, correct?

13 A Right.

14 Q Fox Sports 2 is sports, right?

15 A Right.

16 Q Gol TV is sports programming, soccer, correct?

17 A Right.

18 Q GSN is not sports, is it?

19 A GSN is not sports.

20 Q Okay. May TV, the description there says motor sports.  
21 Do you see that?

22 A MAV TV.

23 Q MAV TV. Excuse me. Thank you for the correction. But  
24 do you see that MAV TV is motor sports?

25 A Yes, that's motor sports and also lifestyle. I think

1 they're changing that.

2 Q As described on your web page right now, it is described  
3 as including motor sports events, correct?

4 A Correct.

5 Q Okay. MLB --

6 A And movies.

7 Q Okay. MLB, NBA, NBC Sports Network, NFL Network, NFL Red  
8 Zone, NHL Network, those are all sports, right?

9 A Yes.

10 Q The Outdoor Channel you referred to, and it says in the  
11 description on your web page that it "features quality programming  
12 designed to educate and entertain sportsmen of all skill levels".  
13 Do you see that?

14 A Yes.

15 Q And the next one, Sportsmen Channel, that's got "sports"  
16 in the name, too, right?

17 A Right.

18 Q And then, the remainder are Golf, TVG, Willow, and World  
19 Fishing. Do you see that?

20 A Correct.

21 Q Golf is a sport?

22 A Yes.

23 Q TVG is horse racing? Correct?

24 A Yes.

25 Q Willow is about cricket. That's a sport, correct?

1 A That's --

2 Q I'm sorry, I didn't hear.

3 JUDGE SIPPEL: Cricket.

4 THE WITNESS: Yes, cricket.

5 JUDGE SIPPEL: Cricket is a sport.

6 THE WITNESS: Well, I don't know.

7 JUDGE SIPPEL: They should have croquet on here though.

8 MR. SPERLING: You'll have to complain to Mr. Maiella,  
9 Your Honor.

10 JUDGE SIPPEL: No one has croquet.

11 THE WITNESS: I don't know, maybe Willow has that.

12 BY MR. SPERLING:

13 Q And World Fishing Network, that has fishing/sportsman-  
14 related programming as well, correct?

15 A Correct.

16 Q So, to this day, GSN is the only network on the sports  
17 and entertainment tier that is just entertainment and not sports,  
18 right?

19 A Yes.

20 JUDGE SIPPEL: You know, that's interesting, though. The  
21 way it's printed out here, GSN "features original and classic game  
22 programming". It doesn't say "game show programming".

23 Now, I mean, I might be looking at something like this  
24 quickly and say, "I wonder what GSN has?" And I see it has game  
25 shows. I wonder what kind of games they play? You know, I'm

1 thinking what kind of sports games do they play. Is that done  
2 deliberately this way?

3 THE WITNESS: My understanding is these descriptions are  
4 lifted off like websites of the programming networks. The  
5 Marketing Department writes these. So, I don't know who wrote  
6 that.

7 JUDGE SIPPEL: Okay. So, Marketing is into it. But the  
8 PR people don't get into that?

9 THE WITNESS: No.

10 JUDGE SIPPEL: Okay.

11 BY MR. SPERLING:

12 Q And, Mr. Montemagno, to your understanding, these are the  
13 networks that are currently on the sports and entertainment pack,  
14 correct?

15 A Yes. I've offered carriage to other networks that are  
16 not included in here.

17 MR. SPERLING: Your Honor, I would like to offer GSN  
18 Exhibit 382 into evidence.

19 JUDGE SIPPEL: Any objection?

20 MR. COHEN: No objection.

21 JUDGE SIPPEL: Received.

22 (Whereupon, the document marked as GSN Exhibit No. 382  
23 for identification was received in evidence.)

24 BY MR. SPERLING:

25 Q Now, until a few months before you prepared your memo for

1 Mr. Budill in July of 2010, Cablevision owned the Madison Square  
2 Garden Company, right?

3 A The memo I prepared for Mr. Bickham?

4 Q Mr. Budill.

5 A Can you refresh my memory what that --

6 Q Yes, I'm sorry. The memo that you prepared for Mr.  
7 Bickham in July of 2010.

8 A Okay.

9 Q Yes. Two months before that, up until a few months  
10 before that, Cablevision owned a company called the Madison Square  
11 Garden Company, right?

12 A Correct.

13 Q And the Dolan family still controls the Madison Square  
14 Garden Company today, correct?

15 A Correct.

16 Q The Madison Square Garden Company owns the New York  
17 Nicks?

18 A Yes.

19 Q Yes, they're a professional basketball team?

20 A Correct.

21 Q And it owns the New York Rangers, correct?

22 A Correct.

23 Q They're a professional hockey team?

24 A Correct.

25 Q And it owns the New York Liberty, right?

1 A Correct.

2 Q And they're a women's professional basketball team?

3 A Correct.

4 Q Now the Madison Square Garden Company also owns a cable  
5 programming network called MSG Network, right?

6 A Yes.

7 Q And MSG Network shows Nick games, correct?

8 A Correct.

9 Q Just like the NBA Network does sometimes, right?

10 A Correct.

11 Q And the MSG Network shows Ranger games, just like the NHL  
12 Network does sometimes, right?

13 A The NHL Network serves national games, the regional  
14 games. So, it's the hockey games, but it is different execution.

15 Q They both show NHL games, right?

16 A Correct.

17 Q Now, in 2010, Cablevision never even thought about moving  
18 MSG Network to the sports tier, did it?

19 A

20 Q

21

22

23 A

24 Q And if you turn in the binder that Mr. Cohen gave to you  
25 to Cablevision Exhibit 136 --

1 JUDGE SIPPEL: This is your testimony.

2 MR. SPERLING: Yes, and behind the testimony are a series  
3 of exhibits, one of which is CV 136.

4 JUDGE SIPPEL: But those are all incorporated into his  
5 testimony.

6 MR. SPERLING: Yes, Your Honor, the exhibit is referred  
7 to and incorporated by reference in his testimony.

8 JUDGE SIPPEL: Yes. Well, that puts a little bit  
9 different spin on it. This is not just a business document you  
10 picked up and wanted to ask him some questions about.

11 MR. SPERLING: Absolutely, Your Honor.

12 JUDGE SIPPEL: Okay.

13 BY MR. SPERLING:

14 Q And further to that, Mr. Montemagno, this is the budget  
15 that was the subject of discussion at the November 8th, 2010  
16 meeting you described earlier, right?

17 A Right.

18 Q Mr. Rutledge attended that meeting?

19 A Yes.

20 Q And Mr. Budill attended that meeting?

21 A Yes.

22 Q And you?

23 A Yes.

24 Q Mr. Nazzo (phonetic)?

25 A Mr. Nuzzo.

1 Q Nuzzo. Thank you for the correction.

2 Anybody else attend?

3 A Mr. Bickham.

4 Q Mr. Bickham attended as well.

5 If you turn to page 10 of 22 in this document --

6 MR. COHEN: Did you say 10 of 22?

7 MR. SPERLING: Ten of 22.

8 BY MR. SPERLING:

9 Q Do you see this page that says --

10 JUDGE SIPPEL: Yes, yes, yes, yes, yes.

11 MR. SPERLING: Let me know when you're there, Your Honor.

12 BY MR. SPERLING:

13 Q Mr. Montemagno, do you see the top? It says, "Top 30  
14 most expensive services"?

15 A Yes.

16 Q These are the 30 networks to whom Cablevision paid the  
17 most money or was scheduled to pay the most money in 2011, correct?

18 A Correct.

19 Q

20 A

21 Q

22 JUDGE SIPPEL:

23 MR. SPERLING:

24

25

1 JUDGE SIPPEL:

2

3 MR. SPERLING:

4 BY MR. SPERLING:

5 Q

6 A

7 Q

8 A

9

10 Q

11

12 A

13 Q

14

15 A

16 Q

17

18 MR. COHEN: I'm sorry, are we in closed session now?

19 MR. SPERLING: I thought that we were.

20 MR. COHEN: I think that we are.

21 MR. SPERLING: I think that we marked it as closed.

22 JUDGE SIPPEL: I thought you're --

23 MR. COHEN: I thought we might have come out while we  
24 were going through the list of networks, but I guess we didn't.

25 THE COURT REPORTER: We're in closed session.

1 MR. COHEN: Okay.

2 MR. SPERLING: Oh, thank you.

3 JUDGE SIPPEL: We're in closed session.

4 THE COURT REPORTER: We are, Your Honor. We went into  
5 closed session at 3:54.

6 BY MR. SPERLING:

7 Q

8

9

10 A

11 Q

12

13 A

14 Q Now you testified earlier -- you can put that document  
15 aside -- you testified earlier that in February of 2011, after  
16 Cablevision moved GSN to the sports tier, there were complaints or  
17 that you expected to get some subscriber complaints. Do you  
18 remember that?

19 A Yes.

20 Q In fact, you were surprised by the volume of calls that  
21 Cablevision received, right?

22 A It was a little higher than I expected, but I wasn't  
23 totally surprised by it.

24 Q Okay. I don't want to include that, because like  
25 "totally".

1 A Okay.

2 Q Isn't it a fact that you were surprised by the volume of  
3 calls?

4 A It was a little higher than expected, but I did expect to  
5 get phone calls about it.

6 Q Is it your testimony now that you weren't surprised by  
7 the volume?

8 A I was surprised at the level, but not -- you don't want  
9 to use adjectives. I expected there to be phone calls complaining  
10 about it.

11 Q But you didn't expect there to be the number of calls  
12 that Cablevision actually received, did you?

13 A It came in higher than I expected, yes.

14 Q Let me ask you to turn to GSN Exhibit 118. It is in the  
15 big binder.

16 JUDGE SIPPEL: 118 in the big binder?

17 MR. SPERLING: 118, Your Honor.

18 JUDGE SIPPEL: Mr. Trump uses adjectives.

19 (Laughter.)

20 THE WITNESS: He sure does.

21 GSN or?

22 JUDGE SIPPEL: GSN.

23 MR. SPERLING: GSN.

24 JUDGE SIPPEL: And what's the number again?

25 MR. SPERLING: 1-1-8, Your Honor.

1 JUDGE SIPPPEL: I got it. You don't have to rub it in.

2 Okay, 118. I'm with you.

3 BY MR. SPERLING:

4 Q Now, Mr. Montemagno, you testified earlier that you had  
5 gotten complaints in connection with other carriage issues, and one  
6 of the examples that you mentioned was the outage of Fox on  
7 Cablevision. Do you remember that?

8 A Correct.

9 Q And that was in the fall of 2010, right?

10 A Yes.

11 Q Just a few months before the repositioning of GSN?

12 A Yes.

13 Q And as a result of that outage, the unavailability of Fox  
14 on Cablevision, Cablevision subscribers missed the entire National  
15 League Championship series, correct?

16 A Correct.

17 Q Not a good development for folks that are fans of  
18 National League baseball teams, right?

19 A Not at all.

20 Q And they missed at least one New York Giants game,  
21 correct?

22 A Correct.

23 JUDGE SIPPPEL: New York Giants? I think they're San  
24 Francisco, aren't they? Or is this the football games?

25 MR. SPERLING: Moving to football now, Your Honor.

1 BY MR. SPERLING:

2 Q They missed both? I'm correct, Mr. Montemagno, right,  
3 that they missed both the National League Championship series and  
4 a New York Giants football game?

5 JUDGE SIPPEL: With weather like this, I can't think of  
6 football.

7 (Laughter.)

8 Go ahead, sir. I'm sorry. I interrupted you.

9 BY MR. SPERLING:

10 Q Just so the record is clear, Cablevision subscribers also  
11 missed the New York Giants football game, right?

12 A Correct.

13 Q And that's the NFC team in Cablevision's footprint,  
14 right?

15 A Correct.

16 Q And in addition, as a result of that outage of Fox on  
17 Cablevision, all the Cablevision subscribers also missed the first  
18 two games of the World Series?

19 A Correct.

20 Q Also not a good development if you're a baseball fan?

21 A No.

22 Q And, nonetheless, you received more phone calls in  
23 connection with the retiering of GSN to the sports tier than you  
24 received complaining about the Fox outage; isn't that right?

25 A That is expected. So, if I may explain?

1 Q Well, first, I would like you to answer my question.

2 A More phone calls, yes.

3 Q Okay.

4 A We, with the Fox situation, Your Honor, we messaged out  
5 to customers very aggressively. When you turned the TV on, the  
6 first thing you saw was messaging explaining that there was a  
7 blackout; our contract expired; we're trying to negotiate. We sent  
8 customers to websites. We bought radio ads. We bought newspaper  
9 ads. We had website explanations. We put a lot of messaging  
10 specifically intended to suppress people from calling us, give them  
11 information upfront. So, you couldn't not see communication from  
12 Cablevision about the situation. So, we didn't take on a lot of  
13 phone calls because people got the information from us upfront.

14 JUDGE SIPPPEL: This is where the PR guy rises and shines.

15 THE WITNESS: He has a role in that, yes.

16 (Laughter.)

17 We did that with ABC; we did that with the bigger  
18 blackouts because we would have expected that, if we didn't, we  
19 would have gotten a lot more phone calls and questions. And it  
20 costs us money to take, you know, all those phone calls.

21 BY MR. SPERLING:

22 Q Well, further to that, why don't you flip to the next  
23 tab, GSN 127? That's the --

24 JUDGE SIPPPEL: GSN 127?

25 MR. SPERLING: 127, Your Honor. That's the email

1 exchange with Mr. Maiella we looked at a few minutes ago, right?

2 JUDGE SIPPEL: I see that.

3 BY MR. SPERLING:

4 Q And in the second email from the top, he says to you that  
5 Cablevision received almost calls over two days, right?

6 A Correct.

7 Q And he's the customer relations guy. Am I understanding  
8 that right?

9 A Public relations.

10 Q Public relations?

11 A Right.

12 Q And he describes that as "a lot of outrage," correct?

13 A Yes.

14 Q Now, as a result of the customer complaints, Cablevision  
15  
16

17 A

18

19 Q

20 A

21 Q

22

23 A

24 Q

25

1 A

2 Q

3

4 A

5 Q

6

7 A

8 Q

9

10 A

11 Q

12

13 A

14 Q

15

16 A

17 Q

18 A Right. We have been losing video subscribers for

19 multiple years now --

20 Q So --

21 A -- due to competition.

22 Q In response to one of the Judge's questions at the end of  
23 your direct testimony, you said that, once you had moved GSN to the  
24 sports tier, one consideration in not moving GSN back, despite the  
25 customer complaints, was that there was no economic incentive to do

1 so. Remember that?

2 A I think I said it would cost a lot more in fees to put  
3 them back on the expanded basic level of service, yes. We're  
4 paying fees on we would have to pay fees on

5

6 Q Okay. We'll come back to that in a moment.

7 MR. SPERLING: In fact, Your Honor, what I would suggest  
8 is, if we could take a 15-minute break, I can probably wrap up  
9 within a half-hour after that.

10 JUDGE SIPPEL: Let's take the break; we'll take a 15-  
11 minute break.

12 MR. COHEN: Your Honor, if we can try to finish him  
13 tonight, I can try to limit the redirect to 15 or 20 minutes. I  
14 don't know how much the Bureau has, but I would hate to bring him  
15 back if we could try to get it finished.

16 Or do you want to think about it over the break? I don't  
17 want to put you on the spot.

18 MS. KANE: We need to think about it over the break. I'm  
19 not sure we have very much, but I don't know. We're talking about  
20 your doing recross, and then we may have redirect.

21 MR. COHEN: No, I'm saying I will limit, if he finishes,  
22 if we come back --

23 JUDGE SIPPEL: Let's go off the record.

24 (Whereupon, the foregoing matter went off the record at  
25 4:37 p.m. and went back on the record at 4:52 p.m.)

1 JUDGE SIPPEL: Okay, we're back on the record.

2 MR. SPERLING: Thank you, Your Honor.

3 BY MR. SPERLING:

4 Q Mr. Montemagno, you testified earlier during your direct  
5 testimony that you disagreed with the assertion that you threatened  
6 GSN with consequences if they continued to push for carriage prior  
7 to 2010; remember that?

8 A Yes.

9 Q I just want to be clear. You say you didn't threaten  
10 them; right?

11 A Yeah, I didn't construe that as a threat, more as advice.

12 Q And the advice that you gave them was that there would be  
13 bad consequences if they so much as asked for something further;  
14 right?

15 A No. I said if they pushed for an increase in the rate  
16 then we might make a decision not to carry them anywhere.

17 Q So you told them if they did that there could be bad  
18 consequences beyond simply you saying no to what they asked for?

19 A I said it would get scrutinized, that there was a  
20 possibility, yes.

21 Q

22

23 A

24 Q

25

1 A

2

3 Q

4 A

5 Q

6 A

7 JUDGE SIPPEL:

8 THE WITNESS:

9

10 BY MR. SPERLING:

11 Q Now, after you communicated to Mr. Gillespie in December  
12 of 2010 that Cablevision planned to move GSN to the sports pack you  
13 understand that Derek Chang of DIRECTV contacted your superiors at  
14 Cablevision to discuss what could be done about that decision?

15 A I was made aware of that, yes.

16 Q Let me ask you to take a look at GSN Exhibit 98 in the  
17 big binder; it's towards the beginning.

18 JUDGE SIPPEL: Got it.

19 BY MR. SPERLING:

20 Q Mr. Montemagno, you see at the bottom you were writing an  
21 email to Mr. Budill, cc Adam Weinstein?

22 A Yes.

23 Q And you write -- and this is from December 10, 2010;  
24 correct?

25 A Correct.

1 Q And you write, "FYI Tom," that's Mr. Rutledge, right?

2 A Right.

3 Q "Tom tasked Broussard to come up with a list of asks for  
4 DIRECTV."

5 A Correct.

6 Q "It would be worth our keeping GSN status quo." You see  
7 that?

8 A Correct.

9 Q Mr. Broussard is from Rainbow Networks; correct?

10 A Yes.

11 Q So the decision to move GSN to the sports tier, that was  
12 a distribution side being made by the cable operator; correct?

13 A Correct.

14 Q And Cablevision's response to Mr. Chang's inquiry about  
15 what could be done about that carriage decision was to turn to Mr.  
16 Broussard on the programming side and ask him what he wanted;  
17 right?

18 A I believe that's what Mr. Chang asked Mr. Rutledge to  
19 consider.

20 Q Do you know that for a fact?

21 A I was made aware that he asked, is there anything across  
22 the relationship that could make this change your mind?

23 Q And what Cablevision did is it turned to its affiliated  
24 programmer to ask what they wanted in connection with Cablevision's  
25 carriage decision. Yes or no?

1       A       The relation -- the only relationship that existed with  
2 DIRECTV who was making the inquiry was Rainbow Media. The only  
3 logical response was that Rainbow Media would -- I didn't have a  
4 relationship with DIRECTV.

5       Q       You're not answering my question, Mr. Montemagno. Isn't  
6 it fact that when DIRECTV contacted Cablevision to complain about  
7 its carriage decision with respect to GSN, Cablevision's response  
8 was to turn to Rainbow Networks and ask them what they wanted in  
9 exchange for maintaining broad carriage of GSN on Cablevision?

10      A       Yes. DIRECTV reached the executive that was in charge of  
11 both Cablevision and Rainbow.

12      Q       And if DIRECTV had agreed to whatever it is that Rainbow  
13 Networks wanted then you on the distribution side would have  
14 maintained GSN on the expanded basic tier; right?

15      A       It's a possibility. That was Mr. Rutledge's decision.

16      Q

17

18

19

20

21

22      A

23      Q

24

25

1 A

2 Q

3

4 A

5

6 Q

7

8

9

10 A

11

12

13

14 Q Okay. Before we go on let me ask you to turn back to  
15 your written direct testimony which is at the front of the soft  
16 binder from Mr. Cohen. And if you can turn to page 26, please.

17 JUDGE SIPPEL: What tab?

18 MR. SPERLING: It's right at the front of Mr. Cohen's  
19 binder, Your Honor.

20 JUDGE SIPPEL: All right.

21 MR. SPERLING: Before the tabs.

22 JUDGE SIPPEL: Before the tabs.

23 MR. SPERLING: His written direct testimony, page 26,  
24 paragraph 69.

25 JUDGE SIPPEL: Okay.

1 BY MR. SPERLING:

2 Q

3

4

5

6

7 A

8 Q

9 A

10 Q

11

12

13

14 A

15

16

17 Q

18 A

19 Q

20

21

22

23

24

25 A

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2

3

4 Q

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6

7

8 A

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11

12

13

14

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16

17 Q

18

19

20 A

21 Q

22

23

24 A

25

1 Q

2

3

4 A

5

6 Q

7

8

9

10

11 A

12

13

14 Q

15

16 A

17 MR. COHEN: Objection, Your Honor.

18 JUDGE SIPPEL: Sustained.

19 BY MR. SPERLING:

20 Q

21

22 A

23

24 Q Now, in 2011, shortly after the repositioning of GSN to  
25 the sport pack, Cablevision entered into a new agreement, a new

1 written agreement with Wedding Central; correct?

2 A Correct.

3 Q And in your written direct testimony you say that you did  
4 that in part based on the fact that Wedding Central had performed  
5 well on Cablevision. Do you remember saying that in your written  
6 Direct Testimony?

7 A Yes.

8 Q And why don't we take a look at it inside. You still  
9 have your written direct in front of you, don't you?

10 A Yes.

11 Q And it's on page 33 at paragraph 90.

12 JUDGE SIPPEL: Paragraph 90?

13 MR. SPERLING: Yes, Your Honor.

14 JUDGE SIPPEL: Bottom of, bottom of 33; correct?

15 MR. SPERLING: Bingo, Your Honor.

16 JUDGE SIPPEL: I like that.

17 BY MR. SPERLING:

18 Q So, Mr. Montemagno, you say right at the beginning there  
19 "Wedding Central performed well on Cablevision and in 2011 we  
20 negotiated a new carriage agreement." You see that?

21 A Yes, I do.

22 Q And that was a reason why at the same time you were  
23 repositioning GSN in the sport pack, you were entering into a new  
24 written agreement with Wedding Central?

25 A That wasn't the only reason, no.

1 Q But it was a reason; correct?

2 A Yes.

3 Q Okay. Let me ask you to turn in the big binder to GSN  
4 Exhibit 68. It's towards the beginning.

5 JUDGE SIPPEL: What's the tab?

6 MR. SPERLING: GSN 68, Your Honor.

7 JUDGE SIPPEL: I'm with you.

8 BY MR. SPERLING:

9 Q And, Mr. Montemagno, you recall we looked at this  
10 document earlier?

11 A Yes.

12 Q And this document has attached to it two sets of set box  
13 top data. Set top box data.

14 JUDGE SIPPEL: Mr. Patel sent you this.

15 MR. SPERLING: Correct, Your Honor.

16 JUDGE SIPPEL: What does Mr. Patel do?

17 THE WITNESS: I don't know him but he's, I think he's in  
18 Ms. Moraghan's group that manages the set top box data, databases  
19 and these reports.

20 JUDGE SIPPEL: Go ahead.

21 BY MR. SPERLING:

22 Q And you recall, Mr. Montemagno, that you agreed with me  
23 that the first set of set top box data attached here is the  
24 complete set from which Exhibit 117 was excerpted, Cablevision 117,  
25 which is the data that you relied on in the memo that you prepared

1 for Mr. Bickham in July of 2010; you remember that?

2 A In July of 2010, yes.

3 Q Yeah. And remember we talked about the fact that right  
4 here on page 4 of the spreadsheet

5 A Correct.

6 Q And that's the same as it is in Cablevision 117 which is  
7 the excerpt that you relied on in preparing your memo for Mr.  
8 Bickham; right?

9 A Yes. I recall that.

10 Q If you look at page 5, the next page, you see that  
11 Wedding Central rated in this run of set top box data?

12 A I do.

13 Q And you considered that performing well on Cablevision,  
14 that's your testimony in paragraph 9; correct?

15 A My testimony wasn't just about set top box data. They  
16 were a network that existed for six months. There was a lot of  
17 buzz on the WE channel about the wedding programming. They had  
18 shows like Bridezilla that had a lot of traction in the  
19 marketplace. So the fact that they were getting some viewership  
20 and there was buzz in the marketplace was what fueled my answer  
21 there.

22 Q So for purposes of determining whether Wedding Central  
23 performed well -- actually, let me take you back to your deposition  
24 which we put in front of you previously, marked as GSN Exhibit 404.  
25 It's a loosey.

1 JUDGE SIPPPEL: Have it right here. Here it is.

2 BY MR. SPERLING:

3 Q And if you'd turn please to page 95 of the deposition  
4 transcript. If you see on page 95 at line 15 you were asked, "Now  
5 I take it Wedding Central was not a strong performer?" Do you see  
6 that?

7 A Yes.

8 Q And then the question's repeated again at line 19, "Do  
9 you share that view?"

10 And you answered, line 20, "I don't."

11 A Right.

12 Q And if you turn to the next page, at line 5 you were  
13 asked, "What would you use as a metric to determine whether it was  
14 a strong performer or not?" Do you see that?

15 A Yes.

16 Q And your answer was, "We would look at the set top box  
17 data."

18 A Correct.

19 Q Correct?

20 A Yes.

21 Q And is it your view that based on that metric, the set  
22 top box data, Wedding Central had performed well on Cablevision, as  
23 you testify in paragraph 90 of your direct testimony?

24 A In relative terms for a network that existed for six  
25 months it was ranked higher than a lot of the networks that existed

1 for 20 years. So in relative terms, yes.

2 JUDGE SIPPEL: Ranked by who?

3 THE WITNESS: I'm sorry?

4 JUDGE SIPPEL: Ranked by who?

5 THE WITNESS: It was a higher rank than other channels  
6 that we carry that we carried for many, many years who had brand  
7 equity and market presence. And they only existed for six months  
8 and they were performing better.

9 JUDGE SIPPEL: Is that ranking coming from Nielsen or  
10 coming out of the set top box?

11 THE WITNESS: The set top box, yes.

12 JUDGE SIPPEL: Thank you.

13 BY MR. SPERLING:

14 Q And so it's possible for them to have been performing  
15 well even though they were ranked in Cablevision set top box  
16 data?

17 A In relative terms, yes.

18 JUDGE SIPPEL: Are you getting close?

19 MR. SPERLING: I am very close, Your Honor. It's inside  
20 of 10 minutes. I just need to find my exhibit.

21 JUDGE SIPPEL: I wouldn't call that very close, but that's  
22 close.

23 BY MR. SPERLING:

24 Q Mr. Montemagno, if you take the binder that Mr. Cohen  
25 gave you, could you please turn back to Cablevision Exhibit 136?

1 JUDGE SIPPEL: What's the exhibit again?

2 MR. SPERLING: 136.

3 JUDGE SIPPEL: I've got 135. Are we in the big book?

4 MR. COHEN: No, Your Honor. It's in the small, my  
5 original size.

6 JUDGE SIPPEL: I've got it. I've got it. I've got it.

7 MR. COHEN: The spiral bound.

8 JUDGE SIPPEL: I've got it. I've got it now. Okay, here  
9 we are.

10 BY MR. SPERLING:

11 Q Mr. Montemagno, could you turn to the last page of that  
12 exhibit please.

13 JUDGE SIPPEL: 2011 programming budget.

14 THE WITNESS: The notes?

15 BY MR. SPERLING:

16 Q The handwritten notes.

17 A Yes.

18 Q And to reorient us, these are your notes; correct?

19 A Yes.

20 Q From November 8th of 2010?

21 A Correct.

22 Q

23

24

25

1 A

2 Q

3

4

5 A

6 Q

7

8 A

9 Q

10

11

12

13 A

14

15

16 Q Let's go bak to GSN Exhibit 398, which is in your big  
17 binder.

18 MR. SPERLING: Before I ask you questions about this  
19 document, Mr. Montemagno, I failed to ask earlier, Your Honor, we  
20 would ask to move to -- have admitted into evidence GSN Exhibit  
21 398.

22 MR. COHEN: No objection, Your Honor.

23 JUDGE SIPPEL: It's received into evidence now, GSN's  
24 Exhibit 398.

25 (Whereupon, the above-referred to document was received

1 in evidence as GSN Exhibit 398.)

2 BY MR. SPERLING:

3 Q

4

5

6

7 A

8 Q

9

10 A

11 Q

12 A

13

14 Q

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16

17

18

19 A

20 Q

21

22 A

23 Q

24

25

1 A

2 Q

3

4

5

6 A

7 Q

8 A

9 Q Let's take a look at that agreement. If you'd turn in  
10 your binder please to GSN Exhibit 202. That's in the big book.

11 JUDGE SIPPEL: 202?

12 MR. SPERLING: 202.

13 At the end of that document, Mr. Montemagno, Exhibit A,  
14 it's the last piece of paper, first side, the Bates Number ending  
15 470 on the bottom right.

16 JUDGE SIPPEL: 470?

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: All right.

19 BY MR. SPERLING:

20 Q Exhibit A shows the subscriber fees that Cablevision was  
21 agreeing to pay to WE TV commencing with this new agreement in  
22 2011; correct?

23 A Correct.

24 Q And the monthly rate that GS -- excuse me, that  
25 Cablevision was agreeing to pay in 2011 was per

1 subscriber; right?

2 A Correct.

3 Q And in two thousand --

4 A Can I just ask are we in confidential state?

5 Q I believe that we are.

6 MR. COHEN: I think we never left it.

7 THE WITNESS: Okay.

8 BY MR. SPERLING:

9 Q And in 2012 the monthly subscriber fee that Cablevision  
10 was agreeing to pay to WE TV was per  
11 subscriber; correct?

12 A Correct.

13 Q And if you look at the page before this one, this  
14 agreement was signed on right?

15 A Correct.

16 Q

17

18 A

19 Q

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24 A

25 Q

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3 JUDGE SIPPEL:

4 MR. SPERLING:

5 BY MR. SPERLING:

6 Q

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12 A

13 Q

14 JUDGE SIPPEL:

15 MR. SPERLING:

16

17 BY MR. SPERLING:

18 Q

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23 A

24 Q

25 A

1 Q

2 A

3 Q

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5

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7 A

8 Q

9 A

10 Q

11

12 MR. COHEN: Objection, Your Honor. We've been through  
13 this four times.

14 MR. SPERLING: Your Honor, I'm wrapping up but I think the  
15 point is worth making.

16 JUDGE SIPPEL: I don't think so.

17 MR. SPERLING: Then I will definitely move on, Your Honor.

18 JUDGE SIPPEL: Please do. Sustained.

19 BY MR. SPERLING:

20 Q You testified in response to Mr. Cohen's questions during  
21 your direct examination that at the November 8, 2010 meeting you  
22 didn't view there being any relationship between the discussion of  
23 negotiations with WE TV and other affiliated networks' carriage of  
24 GSN; right?

25 A Correct.

1 Q What you were discussing was your programming budget;  
2 right?

3 A Correct.

4 Q And once you've got a certain budget that you want to  
5 make, for every expense there's got to be an offsetting savings  
6 somewhere; isn't that right?

7 A Can you ask that again?

8 Q Once you've got a specific budget number you're trying to  
9 make, for every additional expense there's got to be an additional  
10 offsetting savings somewhere; isn't that right?

11 A Not necessarily.

12 Q If you want to keep it within the same cap isn't that  
13 true?

14 A Yes.

15 Q

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21 A

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25 Q

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MR. SPERLING: Nothing further.

MR. COHEN: Redirect, Your Honor?

JUDGE SIPPEL: Sure.

REDIRECT EXAMINATION

BY MR. COHEN:

Q You can keep 398 in front of you. But let me just start with a question just to clarify the record. Mr. Sperling asked you about an agreement you signed with Wedding Central in 2011. Do you recall that?

A Yes.

Q

A

1 Q

2

3 JUDGE SIPPPEL:

4 MR. COHEN:

5 BY MR. COHEN:

6 Q

7

8 A

9 Q

10

11

12 A

13 Q

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15

16

17 A

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19

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21 Q

22

23

24 A

25

1 Q

2

3 A

4 Q Now, let's go back to GSN 68, which is the set top box  
5 data that Mr. Sperling took you through. Let me know when you're  
6 there. You were just looking at it a few minutes ago.

7 A Okay.

8 Q This is the email from Mr. Patel. Do you see that?

9 A I do.

10 Q Okay. Now, this data, was it ever provided to you in  
11 connection -- in connection with the decision to analyze GSN?

12 A I don't believe so. I got the report from Adam.

13 Q Okay. And Adam is Mr. Weinstein?

14 A Correct, Mr. Weinstein.

15 Q And he worked in the programming group?

16 A He worked for me in the programming department.

17 Q And did you regularly rely on him to get information such  
18 as set top box data?

19 A Yes, I did.

20 Q Okay. Turn back then to Exhibit 119, Cablevision 119.  
21 Please go to our book, small binder, Cablevision 119. Extremely  
22 small binder.

23 Okay. And here you reference the set top box data that  
24 Mr. Weinstein provided you with in July; correct?

25 A Correct.

1 Q Okay. And if you turn back to 117, that's the data that  
2 he sent you, right, that showed GSN to be ranked

3 A Correct.

4 Q Okay. Did you give any instructions to Mr. Weinstein to  
5 leave out any information that might cast GSN in a more favorable  
6 light?

7 A I did not.

8 Q Did you have any discussions within the programming  
9 department that let's put together some information that will make  
10 GSN look worse than it really is?

11 A No, we did not.

12 Q Was your understanding when you prepared your memorandum  
13 for Mr. Bickham that you were using accurate information?

14 A Yes.

15 Q Did you revisit GSN's performance and how it was doing  
16 with Cablevision customers in the fall of 2010 when you made the  
17 actual programming decision?

18 A Yes, we did.

19 Q Okay. Turn please to Exhibit 154, CV 154, in the small  
20 binder. And just to be clear, GSN in the larger group that Mr.  
21 Sperling took you, it was

22 A Yes.

23 Q Okay, and go back to GSN 68. Do you still have it open  
24 in the big binder? It was And am I reading this correctly,

25 --

1 A I --

2 Q You've got to go to the back of what he gave you; it  
3 begins on page 11. Page 11 of GSN 68. It was

4 A Right.

5 Q And was WE TV number Am I reading that right in that  
6 same data?

7 A Correct.

8 Q slots above?

9 A Correct.

10 Q Now, in the fall of 2010 you took another look at how GSN  
11 was performing; correct?

12 A We did.

13 Q Okay. Now, if you look at this front email, this is from  
14 Mr. Weinstein to you, dated December 16th; correct?

15 JUDGE SIPPEL: Are you still in 154.

16 MR. COHEN: CV 154, the front email, Your Honor.

17 JUDGE SIPPEL: Okay.

18 REDIRECT EXAMINATION

19 BY MR. COHEN:

20 Q And he writes, "FYI, I gave Mac our viewership analysis  
21 we presented to Tom R. and John a few weeks back." Do you see  
22 that?

23 A Yes.

24 Q Okay. And if you turn to page 5 of 6, it says box data  
25 versus Nielsen full day. Do you see that?

1 A Yes.

2 Q And is this information that you examined in November of  
3 2010 in connection with the retiering decisions?

4 A Yes.

5 Q Is it mentioned in Mr. Montemagno's --- the memorandum  
6 that you wrote to Mr. Bickham?

7 A No.

8 Q This is done after the fact, correct?

9 A Yes.

10 Q Because -- and in fact it runs through as late as  
11 November 7, 2010 for Nielsen?

12 A Correct.

13 Q So this information is later in time than the analysis  
14 that Mr. Sperling was spending time on you with, correct?

15 A Correct.

16 Q And what it shows is that out of the 56 networks here,  
17 GSN was listed under the set-top box data in iO Family?

18 A Correct.

19 Q And in Nielsen?

20 A Correct.

21 Q And then on a Prime basis, if you turn the page, just on  
22 Prime, in box data and in Nielsen?

23 A Correct.

24 Q And is this information that you considered in connection  
25 with the final decision to retier GSN?

1 A Yes.

2 Q In addition to the information from July?

3 A Correct.

4 Q You can put that aside. Now, you were shown some  
5 documents by Mr. Sperling, I guess the upshot of it is that the  
6 Dolans get paid a lot of money?

7 A Yes.

8 Q Okay. Did Charles Dolan, did he found Cablevision?

9 A He did.

10 Q Cablevision is a multi-billion dollar company today?

11 A Yes.

12 Q Okay. When he founded Cablevision, how big a company was  
13 it?

14 A It was small.

15 Q Okay. Did he -- is he one of the people who built the  
16 cable TV business?

17 A Yes.

18 Q And do they have substantial ownership interest?

19 A Yes.

20 Q And despite the fact that they're paid the amount of  
21 money that he showed you, is there an environment at Cablevision  
22 that says, spend as much as you want because the Dolans get paid a  
23 lot?

24 A No.

25 Q Are you held to a budget?

1 A Yes.

2 Q And are you expected to maximize profits for the  
3 programming department?

4 A Yes.

5 Q And turn please to Exhibit -- Cablevision Exhibit 136.  
6 It's in the small binder. That's the programming budget that we've  
7 looked at a couple of times. You see that?

8 A Yes.

9 Q And turn to the second page, 2011 Programming Costs. All  
10 right. And it's page 2 of 22. All right. And this says 2000 --  
11 on the top, 2011 budget has programming costs  
12 . Do you see that, sir?

13 A Yes.

14 Q And was this the costs that you  
15 were discussing that provided the context for looking for places to  
16 cut programming costs?

17 A Correct.

18 Q And is this the -- is that what you were  
19 trying to manage against when you were looking at and GSN  
20 and whether cuts could be made?

21 A Yes.

22 Q Were you looking at the fact that the Dolans get paid  
23 dividends of tens of millions of dollars?

24 A We were not.

25 Q And were you looking at unrestricted cash that the

1 company have?

2 A No.

3 Q Were you looking at overall profitability of the company?

4 A No.

5 Q And does the company make all of its profits from video?

6 A No.

7 Q You can put that aside. I just had one other question  
8 for you, sir. You were shown a list of all the networks on the  
9 Sports and Entertainment Tier and you were asked questions about --  
10 it's GSN Exhibit 382 in the big book.

11 JUDGE SIPPEL: 382 in the big book?

12 MR. COHEN: 382 in the big book, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. COHEN:

15 Q And you were asked some questions about whether these  
16 networks are really sports networks and whether, essentially, GSN  
17 was an outlier, right?

18 A Correct.

19 Q When you were looking at GSN in the fall of 2010, did you  
20 think GSN was a sports network?

21 A No.

22 Q Why did you put it on the Sports Tier?

23 A It was the only tier that we had with low penetration  
24 that would enable us to save the majority of the we set  
25 out to save.

1 Q Was there an upper tier of low penetration of  
2 entertainment networks?

3 A We had a tier that was called Optimum iO Gold, but it was  
4 at least penetrated, so we wouldn't have saved  
5 most of the fees if we put it in that tier.

6 Q So was there any place to put GSN other than the Sports  
7 Tier if you wanted, say, the lion's share, as much of the  
8 that you in fact saved?

9 A No, we had no other tiers.

10 MR. COHEN: I have nothing else for the witness.

11 MR. SPERLING: Your Honor, if we have --

12 JUDGE SIPPPEL: Oh, yes.

13 MR. SPERLING: -- three or four minutes for redirect.

14 JUDGE SIPPPEL: You're going to go last, Ms. Kane.

15 MS. KANE: We always do, Your Honor.

16 MR. SPERLING: Save the best for last.

17 JUDGE SIPPPEL: No, no, no, no. Go ahead, Mr. Sperling.

18 RE-CROSS EXAMINATION

19 BY MR. SPERLING:

20 Q

21

22

23

24 A

25 Q

1 A

2 Q

3 A

4

5 Q

6

7 A

8

9

10 Q

11

12 A

13 Q Okay. Mr. Cohen also pointed you to the program budget  
14 and the savings that you were trying to achieve, correct?

15 A Correct.

16 Q Based on the documents that we looked at over the  
17 preceding few years, Cablevision could have saved

18

19

20 A

21 Q Okay. Now, finally, let me take you back to Cablevision  
22 Exhibit 154. It's in the small binder from Mr. Cohen. If you turn  
23 to page 5 of 6 in that one. This is box data versus Nielsen full  
24 day. Do you see that?

25 A Yes.

1 Q Mr. Cohen asked you about that a moment ago. If you look  
2 on the right side in Nielsen data, WE tv and GSN are ranked almost  
3 the same, aren't they?

4 A With -- under Nielsen?

5 Q Correct.

6 A

7 Q But WE tv

8 A

9 Q And given the number of subscribers GSN -- excuse me,  
10 given the number of subscribers Cablevision had, that difference  
11 would come out to

12 A

13 MR. SPERLING: Nothing further, thank you.

14 MR. COHEN: No further redirect, Your Honor. If I have  
15 right to, which I don't.

16 JUDGE SIPPEL: No, I don't think you do. Ms. Kane?

17 MS. KANE: The Bureau just has a few questions, Your  
18 Honor. Good afternoon, Mr. Montemagno. My name is Pamela Kane, I  
19 represent the Enforcement Bureau.

20 THE WITNESS: Good afternoon.

21 MS. KANE: And with me is my colleague, Mr. Knowles-  
22 Kellett. I know you've been here a long day, we'll try to make  
23 this very quick.

24 DIRECT EXAMINATION

25 BY MS. KANE:

1 Q If I can have you turn to in your spiral binder, CV  
2 Exhibit 136. And turn to the last page of that document, which is  
3 page 22 of 22. And just to ensure that the record is clear, again,  
4 these are your handwritten notes from a meeting that you had with  
5 several Cablevision executives in November of 2010 to discuss the  
6 retiering decision, correct?

7 A It was to discuss the budget in general, but we did  
8 discuss the retiering decision as well.

9 Q And about two lines down, it looks like there's a Tom and  
10 a colon. Am I reading that correctly?

11 A Yes.

12 Q And what does that line reflect again?

13 A It lists five -- I'm sorry, four networks and then the  
14 arrow says, move to Sports Tier.

15 Q So do I understand correctly that for each of those  
16 networks, which I believe are GSN,  
17 , there was a discussion about whether to move any one of  
18 those four or all of those four to the Sports Tier?

19 A All of those four to the Sports Tier.

20 Q And how were those four channels selected as ones that  
21 were considered to be moving to the Sports Tier?

22 A We looked at channels that were either out of contract,  
23 the contract expired or expiring, or we had contractual provisions  
24 that allowed us to retier it.

25 Q I believe you testified earlier today about the

1           and what ended up happening with  
2 correct?

3       A     Correct.

4       Q     What ended up happening with

5       A

6       Q     And what was the basis for why you did not retier

7       A

8

9

10      Q     And was that just something that was discussed in this  
11 meeting or decided after this meeting?

12      A     I believe that was discussed and decided in this meeting.

13      Q     So you decided on 11/8/2010 not to move

14      A     Correct.

15      Q     And what happened to

16      A

17

18

19

20      Q     When you say it remained unresolved, did it remain on an  
21 expanded broad tier?

22      A     Yes.

23      Q     So was it moved at --

24      A     It was --

25      Q     -- any point to a Sports Tier?

1 A It was not.

2 Q And it's not on a Sports Tier today, as I believe we went  
3 through the channel network for the Sports Tier, correct?

4 A It is not.

5 Q Now, right below that sentence, there seems to be -- and  
6 I apologize if I can't read your writing, but there seems to be  
7 something that says, and default?

8 A No. That says

9 Q Okay.

10 A So it's an arrow from

11

12

13 Q And what was that referring to?

14 A That we had a relationship with

15 it was just about the  
16 portfolio of services that we contracted with them.

17 Q So that notation then,

18

19 A Correct.

20 Q And right next to that, there's a dash and it says  
21 something that -- again, I apologize if I misread your writing and  
22 please correct me, or form a tier that S&S?

23 A Sits.

24 Q Okay. That sits between the Basic and Sports or Silver

25 --

1 A That sits between Digital Basic and Sports --

2 Q And Sports --

3 A Question mark.

4 Q Question mark or Silver question mark?

5 A Or Silver, approximately like tier.

6 Q What is that referring to?

7 A So we -- he was asking the question should we create some  
8 new tier that has low penetration. We've discussed in previous  
9 years breaking up -- our Digital Basic Tier was approaching like  
10 percent, so we're paying a lot of money for the tier and we -- he  
11 thought at times splitting it in half and creating lower  
12 penetration tiers to save license fees.

13 Q So I believe you testified -- and I apologize if I can't  
14 remember whether it was cross or recross, in response to I believe  
15 a question from Mr. Sperling that the only tier that you could put  
16 GSN on -- and again maybe it was Mr. Cohen, but the only tier that  
17 you could move GSN on was the Sports Tier, correct?

18 A That was the lowest penetrated tier that we had.

19 Q But you had been considering whether or not to create a  
20 new tier on which you would add each of these networks, correct?

21 A It was a discussion, but we didn't pursue it.

22 Q And why didn't you pursue that?

23 A I don't remember the lengthy conversation about this.

24 Q Further down on the page, there's a big star and it says

25 --

1 JUDGE SIPPEL: You don't remember?

2 THE WITNESS: Why we --

3 JUDGE SIPPEL: You remember everything else. This is the  
4 8th of November in 2010. And I know you've been over and over and  
5 over that time frame just preparing for this case. And this means  
6 nothing to you in terms of recollection?

7 THE WITNESS: No. The question was why didn't we create  
8 this new tier.

9 JUDGE SIPPEL: Right. But your answer was --

10 THE WITNESS: And I don't remember having a lot of  
11 conversation -- I think it came up and we moved past it. We didn't  
12 give it strong consideration. We never pursued it.

13 JUDGE SIPPEL: Okay.

14 MS. KANE: Following up --

15 JUDGE SIPPEL: But you took a note on it. This is in your  
16 notes.

17 THE WITNESS: Yes. It was thrown out as an idea and then  
18 we didn't follow up on it. We never created a new tier and I don't  
19 remember having much follow up conversation about it either.

20 JUDGE SIPPEL: You write down all ideas whether they're  
21 dumb or not?

22 THE WITNESS: When I'm in meetings with Mr. Rutledge, I  
23 typically jot down notes too.

24 JUDGE SIPPEL: He generally doesn't have dumb ideas?

25 THE WITNESS: He doesn't. He has aggressive ideas

1 sometimes, but not dumb.

2 JUDGE SIPPEL: Not dumb ideas though?

3 THE WITNESS: No.

4 JUDGE SIPPEL: Okay. All right. All right.

5 DIRECT EXAMINATION

6 BY MS. KANE:

7 Q

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10 A

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12

13 Q

14

15 A

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19

20 Q Did a Silver Tier exist at the time you were considering

21 retiering GSN?

22 A Yes.

23 Q And did you not consider whether -- it does indicate, at

24 least on this document, that one of the things to be considered was

25 to move these networks, GSN, and to

1 the Silver Tier, correct?

2 A No. It says, create a or form a tier that sits between  
3 Digital Basic or Sports or -- you're right, or Silver, yes.

4 Q So, again, these are your notes and I don't want to  
5 mischaracterize them, but do they indicate to you that you were  
6 suggesting creating a tier between Digital Basic and Silver? Or  
7 that you were creating or contemplating moving these networks to  
8 the Silver Tier?

9 A I believe it contemplates moving them to Silver.

10 Q And, again, that did not occur, correct?

11 A No. That's something I raised as a possibility in my  
12 July memo to Mr. Bickham and we did not pursue that.

13 Q Do you recall why you did not pursue that avenue?

14 A It wouldn't have saved enough license fees.

15 Q Do you recall --

16 JUDGE SIPPEL: You made the calculations?

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: Where are they?

19 THE WITNESS: I believe they were in my July memo if we  
20 want to refer to them.

21 MR. COHEN: It's on the last page of Exhibit CV 119, Your  
22 Honor, if that's helpful.

23 JUDGE SIPPEL: CV 119. I'll go there. Is Silver below  
24 Sports? In other words, is it a cheaper to the customer to get on  
25 Silver than on Sports?

1 THE WITNESS: No. It was like \$85. Sports was \$6.95 at  
2 the time. But it had like percent of our customers took it.

3 JUDGE SIPPEL: Silver?

4 THE WITNESS: Silver. It had HBO and Showtime in it.

5 JUDGE SIPPEL: It's 85?

6 THE WITNESS: It's like \$85.

7 JUDGE SIPPEL: As opposed to six?

8 THE WITNESS: As opposed to 6.95, yes.

9 JUDGE SIPPEL: What, I'm sorry, what was the reference you  
10 gave me?

11 MR. COHEN: 119 4.4, Your Honor.

12 JUDGE SIPPEL: Okay. All right. CV 119. And where is  
13 the calc?

14 MR. COHEN: The second to very last bullet point under  
15 recommendation. Product suggestion assessment.

16 JUDGE SIPPEL: Oh. Whether or not to consider retention  
17 of GSN in -- what is that iO?

18 THE WITNESS: That was the brand that we used to brand our  
19 digital packages.

20 JUDGE SIPPEL: Is that iO Silver?

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Okay. Go ahead. Deauthorize what?

23 THE WITNESS: We were out of contract and they could have  
24 shut me off and stopped my carriage at any point in time.

25 JUDGE SIPPEL: Well, okay. Well, assuming that. But

1 that's not too far off is it? as opposed to

2

3 THE WITNESS:

4 JUDGE SIPPEL: In savings?

5 THE WITNESS: It's short of the

6 JUDGE SIPPEL: Well, I understand that. But the numbers

7 that we're throwing around here --

8 THE WITNESS: Per year.

9 JUDGE SIPPEL: Per year. I understand that. I understand  
10 that too. All right. I can't force it. Is it difficult to create  
11 another tier?

12 THE WITNESS: It's not difficult. You have to manage your  
13 -- the rights within your programming agreements. Some of them  
14 have penetration requirements or packaging conditions. So it's  
15 hard to sell a new tier to customers, but it's not necessarily hard  
16 to create a new tier.

17 JUDGE SIPPEL: Hard to sell? Well, if you took all these  
18 -- I lost the page, but you had all that list of -- in your  
19 handwriting, your handwritten note, you had four or five of these  
20 programs that you could -- you were thinking of putting on Silver.  
21 Why not -- and that's \$95, \$85 forget about that one. Why not make  
22 another one like for five dollars? Or 4.50?

23 THE WITNESS: Some of those networks --

24 JUDGE SIPPEL: And put them in there?

25 THE WITNESS: Yes. Some of those networks won't --

1 wouldn't permit us to do that.

2 JUDGE SIPPEL: But you were putting them down as  
3 possibilities, I thought.

4 THE WITNESS: I know, but , if I did it, they  
5 could have decided that they're not going to let us carry it  
6 anymore. It was -- I was out of contract.

7 JUDGE SIPPEL: Well, why would you put it down then? Why  
8 would you even put it down for consideration?

9 THE WITNESS: We were willing to take that risk. Mr.  
10 Rutledge asked us to consider taking that risk.

11 JUDGE SIPPEL: I'm having a hard time going any further  
12 with this. Well, okay. You have a couple more?

13 MS. KANE: I have a couple more questions, Your Honor.

14 JUDGE SIPPEL: Go ahead, Ms. Kane.

15 DIRECT EXAMINATION

16 BY MS. KANE:

17 Q I just want to follow up on the page that we're on for CV  
18 119, the second bullet you just read in answer to the judge's  
19 question. I just want to clarify for the record that when you said  
20 that you would save approximately of the  
21 annualized GSN fees, that the is what you had  
22 suggested would be the savings of moving GSN to the Sports Tier,  
23 correct?

24 A I believe that was if we dropped it all together. The  
25 Sports Tier was probably going to save us

1 Q Do you recall specifically how much it actually did save  
2 Cablevision in moving it to the Sports Tier?

3 A I believe it was in the , I'm not positive on the  
4 accuracy, but within the range of

5 Q Can I have you turn back to CV Exhibit 136, again, your  
6 handwritten notes from that November 2010 meeting? And about a  
7 quarter of the way down the page, I referred you I believe  
8 previously to something that had been starred?

9 A Correct.

10 Q Can you read that sentence for me?

11 A Get Nielsen and box polling ratings on each of these.

12 Q And when you say these, what are you referring to?

13 A I believe I'm referring to the networks listed under the  
14 line where I wrote Tom, colon.

15 Q So that, again, for clarification for the record, that  
16 would be to get Nielsen and box polling data ratings on

17 GSN, and correct?

18 A Correct.

19 Q And did you, in fact, do that?

20 A Yes.

21 Q Did you in fact get Nielsen rating for even though  
22 you had decided in this meeting not to drop them?

23 A I believe the exhibit we just showed had all of those  
24 networks on it, if somebody could point me back to it? The one  
25 that I showed that had set top box data versus Nielsen data. I

1 believe all of these networks were represented on that.

2 Q I don't know that document off the top of my head. Maybe

3 --

4 MR. COHEN: That was 154.

5 MS. KANE: CV 154?

6 MR. COHEN: Yes.

7 THE WITNESS: I believe they're all represented here.

8 JUDGE SIPPEL: Is there a question?

9 MS. KANE: I believe he was asking -- have you been able  
10 to confirm that was listed for Nielsen rating?

11 THE WITNESS: Yes, is listed as number

12 DIRECT EXAMINATION

13 BY MS. KANE:

14 Q Okay. Again, if you could turn back to your handwritten  
15 notes. Why was it important to get the Nielsen ratings for each of  
16 these networks?

17 A I -- Mr. Rutledge asked for it. I don't actually -- I'm  
18 not sure why.

19 Q Do you consider whether ratings matter in determining the  
20 license fees?

21 A It's not necessarily a driving point of the license fees.  
22 For example, sports networks have low viewership, but they pay a  
23 lot of money for the programming. So if you did that analysis, it  
24 wouldn't make sense.

25 Q Do the Nielsen ratings impact your decision on where to

1 carry a particular network?

2 A Meaning package level?

3 Q Yes. Or tier, however you refer to them.

4 A Sometimes we -- I mean, we rely more on set top box data.  
5 I don't even use Nielsen data anymore. But sometimes it's a  
6 consideration. We do look at the set top box data in making those  
7 decisions.

8 Q And yet, the document we just looked at, I believe CV  
9 154, indicated that you had pulled Nielsen data for all of those  
10 networks, correct?

11 A Correct.

12 Q And you said you don't recall why Mr. Rutledge asked you  
13 to obtain that Nielsen data for the four networks that are  
14 specifically referenced to be retiered?

15 A I don't recall him explaining why he -- he just asked for  
16 it.

17 Q From your experience in programming, would you have an  
18 understanding of why he would have asked you for that?

19 A I would be speculating, but to just get a comparison of  
20 how nationally they might have compared to Cablevision's footprint.

21 Q In your experience, have you determined that --

22 JUDGE SIPPEL: What position? Cablevision or Game Show?  
23 Cablevision?

24 THE WITNESS: Yes. Cablevision, we're in the New York  
25 market --

1 JUDGE SIPPEL: Okay.

2 THE WITNESS: -- and Nielsen measures nationally as well  
3 as the New York market.

4 DIRECT EXAMINATION

5 BY MS. KANE:

6 Q In your experience, would you consider Nielsen ratings a  
7 measure of a value of a network?

8 A Oh, it's case by case. It's not something that I factor  
9 very heavily in carriage decisions and negotiations.

10 Q Could I -- if I could have you turn quickly to in the big  
11 book, Exhibit -- GSN Exhibit 252.

12 A Two fifty-two, right?

13 Q Two fifty-two. Just waiting for the judge to get there.

14 JUDGE SIPPEL: I'm getting there.

15 MS. KANE: No rush, Your Honor.

16 JUDGE SIPPEL: Oh, I'm going to rush. Two fifty-two, I  
17 have it.

18 DIRECT EXAMINATION

19 BY MS. KANE:

20 Q If you could look at the first page of that document. Do  
21 you recall testifying earlier today about this document?

22

23 A

24 Q

25

1

2

3 A

4 Q

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6 A

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9 Q

10

11 A

12

13 Q

14 A

15 Q

16 A

17 Q

18 A

19 Q

20 A

21 Q

22

23 A

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25

1 Q Our last line of questioning for you, hopefully. We've  
2 talked several times today about affiliates and I just want to get  
3 your understanding of how that term is being used and how you've  
4 used that term today in your testimony.

5 A The way I understood it is under the Cablevision  
6 Corporation and the Dolan control, the networks that folded up  
7 under that management corporation --- corporate structure.

8 Q And in that context, I believe you testified earlier that  
9  
10

11 A

12 Q

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14 A

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10 A

11 Q

12 A

13 Q

14 A

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16 Q

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18 A

19 Q

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21 A

22 MS. KANE: Thank you very much. That's all the Bureau

23 has.

24 THE WITNESS: Thank you.

25 MR. COHEN: I do have just one, just to clarify something.

1 MR. SPERLING: Yes. I do as well.

2 JUDGE SIPPEL: I've got one.

3 MR. COHEN: Oh, you go first, Your Honor.

4 JUDGE SIPPEL: But you might want to -- how do you  
5 determine a network's value?

6 THE WITNESS: A number of factors.

7

8 What their programming costs, so  
9 ESPN pays a lot more for programming than a game show network would  
10 pay for their programming for sports fees. And then, it's just  
11 what we think is important in our market, how it fits in our  
12 packaging and our pricing and how customers respond to it. There's  
13 no set formula per se.

14 JUDGE SIPPEL: Well, how about determining -- how do you  
15 determine a network is valuable to you, to Cablevision? Do they  
16 look at the Nielsen data? Any other metrics?

17 THE WITNESS: No. I mean, one of the things we look at it  
18 is the set top box data. But we also consider if we didn't carry  
19 the network -- there are lots of networks that our competitors  
20 carry that we don't carry. And people don't leave us because of  
21 one individual network.

22 So there's a number of variables. But there's not like  
23 a specific set of metrics that we always look to. The networks set  
24 their pricing and we do the best we can to negotiate the best deal  
25 we can and to make sure that we're not paying more than others and

1 that we're getting good deals and that we can control our costs and  
2 most importantly the pricing to our customers. And we don't like  
3 to always have to raise their rates.

4 JUDGE SIPPEL: All right. Okay.

5 MR. COHEN: Judge, I just have redirect.

6 JUDGE SIPPEL: Yes. Go ahead.

7 REDIRECT EXAMINATION

8 BY MR. COHEN:

9 Q I just want to clarify something from one of Ms. Kane's  
10 questions.

11

12

13 A

14 Q

15

16 A

17 Q

18

19

20 A Many.

21 MR. COHEN: That was my only question, Your Honor.

22 MR. SPERLING: Your Honor, I have two.

23 RECROSS EXAMINATION

24 BY MR. SPERLING:

25 Q Mr. Montemagno, you recall Ms. Kane asked you whether

1 Versus was on the Sports Tier?

2 A Yes.

3 Q Versus is in fact a sports network, correct?

4 A Yes.

5 Q And today it's known as the NBC Sports Network?

6 A Correct.

7 Q Okay. Now, second question, this has to do -- follow up,  
8 Your Honor, on your line of questioning and I think it's easier if  
9 I show the witness one document. May I approach Your Honor?

10 JUDGE SIPPEL: Yes.

11 MR. SPERLING: Mr. Montemagno, I want to show you what's  
12 been marked as GSN Exhibit 402.

13 (Whereupon, the above-referred to document was marked as  
14 GSN Exhibit No. 402 for identification.)

15 JUDGE SIPPEL: Thank you. Is this in evidence?

16 MR. SPERLING: I'm going to ask in a moment to move it  
17 into evidence, Your Honor, but it's not in yet.

18 JUDGE SIPPEL: It's an exhibit -- this is a deposition  
19 exhibit, I take it then. That's what's marked down below.

20 MR. SPERLING: Correct, Your Honor.

21 RE CROSS EXAMINATION

22 BY MR. SPERLING:

23 Q

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1 A

2 Q

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7 A

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13 Q Thank you for that clarification.

14 MR. SPERLING: Nothing further.

15 JUDGE SIPPEL: Hold on a second. I have a logistical  
16 problem here. I don't want it to stay my problem for long. The  
17 handwritten -- what is that exhibit with the handwritten notes?

18 MR. COHEN: One thirty-six, Your Honor, the last page.

19 JUDGE SIPPEL: Yes, 136. Something has to be done with  
20 that. Now either the witness sits here and reads it into the  
21 record.

22 MR. COHEN: You want a clearer --

23 JUDGE SIPPEL: It's got to be clearer. It's got to be  
24 cleared up. Or you can take it and work with the witness and  
25 reduce it to some kind of a typewritten --

1 MR. COHEN: Why don't I say this? How about I create a  
2 transcript, I'll settle it with GSN and -- or he could just read  
3 it.

4 MR. SPERLING: I'd have a slight preference, Your Honor,  
5 if he just reads it into the record now. There's no need for him  
6 to confer with anyone --

7 MR. COHEN: I have to make a quick -- if Your Honor has a  
8 few minutes, it's only one page.

9 JUDGE SIPPEL: I have a few minutes.

10 MR. COHEN: Okay. It might go -- that might be the  
11 easiest.

12 JUDGE SIPPEL: Okay.

13 MR. COHEN: Okay.

14 JUDGE SIPPEL: You willing to do that?

15 THE WITNESS: Yes, sir.

16 JUDGE SIPPEL: Okay. So you know -- sometimes, I mean I  
17 think that Jefferson did, when he was writing the --

18 THE WITNESS: I have terrible handwriting.

19 JUDGE SIPPEL: He was scratching it up so. And even his  
20 scratched writings are pretty important stuff, so --

21 THE WITNESS: Sometimes I have a problem reading my own  
22 handwriting --

23 JUDGE SIPPEL: You hit the big time here.

24 THE WITNESS: -- so I understand.

25 JUDGE SIPPEL: You hit the big time. Everybody's

1 interested in what you write. Go ahead.

2 THE WITNESS: Okay.

3 JUDGE SIPPEL: Just start from the top and all the way  
4 down.

5 THE WITNESS: Programming Budget Review Meeting, 11/8/10.

6 Tom R., John B., Jim Nuzzo, Mac, and I. Tom: , GSN,

7 Arrow. Move to Sports Tier.

8 JUDGE SIPPEL: And what's the reference of the arrow going  
9 up --

10 THE WITNESS: So I have --

11 JUDGE SIPPEL:

12 THE WITNESS: -- circled and it says,

13 And then there's an arrow below that circled

14

15 JUDGE SIPPEL: And you've explained what they are?

16 THE WITNESS: Correct.

17 JUDGE SIPPEL: You have? Oh.

18 THE WITNESS: Dash or form a tier that sits between

19 Digital Basic and Sports? Or Silver? Approximately percent

20 like tier. Dash or drop them. Star, get Nielsen and box polling

21 ratings on each of these. Next line says stars, see if can reduce

22 fee and we will extend; get additional platform rights.

23

24

25 Dash Rainbow dash renewals.

1

2

3

4 JUDGE SIPPEL: And that's it?

5 THE WITNESS: That's it.

6 MR. SPERLING: Your Honor, can the witness just identify

7 what's written beneath the word

8 THE WITNESS:

9

10 JUDGE SIPPEL: And the reference to Tom R. and Tom up at

11 the top, that's all Tom Rutledge?

12 THE WITNESS: Correct.

13 JUDGE SIPPEL: And would these notes that you were taking

14 as somebody was speaking or are some of these your original

15 thoughts?

16 THE WITNESS: I took these during the meeting as they were

17 speaking.

18 JUDGE SIPPEL: So what about when you spoke? Did you

19 write it down too? You must have said something.

20 THE WITNESS: I didn't. I don't know if I spoke a lot,

21 but I didn't write down anything I said.

22 JUDGE SIPPEL: Okay. And who else was in that meeting?

23 Tom Rutledge?

24 THE WITNESS: John Bickham.

25 JUDGE SIPPEL: John Bickham.

1 THE WITNESS: Mac Budill, who was my boss. And Jim Nuzzo,  
2 who was our financial planning executive.

3 JUDGE SIPPEL: All right. That's all I have.

4 MR. COHEN: Thank you, Your Honor.

5 JUDGE SIPPEL: Everybody satisfied with that?

6 MS. KANE: Yes, Your Honor.

7 JUDGE SIPPEL: Okay. Thank you very much.

8 THE WITNESS: Thank you.

9 JUDGE SIPPEL: You're free to go back to what page.

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: Good luck.

12 THE WITNESS: Thank you.

13 JUDGE SIPPEL: Have a safe trip.

14 THE WITNESS: Thank you very much.

15 JUDGE SIPPEL: Counsel, it was terrific all day today on  
16 both sides. Appreciate it very, very much.

17 MR. COHEN: Your Honor, we'll just go over your plan.  
18 We'll turn to Ms. Doree in the morning followed by Mr. Broussard.

19 JUDGE SIPPEL: Mister -- give me the name?

20 MR. COHEN: Oh, it's Ms. Doree, who's the head of  
21 programming of WE --

22 JUDGE SIPPEL: Right.

23 MR. COHEN: -- and Mr. Broussard, who is the distribution  
24 executive for AMC Networks, including WE. He's the person who has  
25 to carry responsibility.

1 JUDGE SIPPEL: Okay. Now, you're not to talk to those  
2 people.

3 THE WITNESS: Correct.

4 JUDGE SIPPEL: Until all this testimony is finished.

5 THE WITNESS: Okay.

6 JUDGE SIPPEL: Talk to your lawyer and if you have ideas  
7 as to who you might or might not talk to, get legal advice.

8 THE WITNESS: Okay.

9 JUDGE SIPPEL: Other than that, you're on your own.

10 THE WITNESS: Thank you.

11 JUDGE SIPPEL: Thank you very much. Thank you, sir.  
12 We're in recess until the morning.

13 (Whereupon the above-entitled matter went off the record  
14 at 6:09 p.m.)

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