

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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Thursday,  
July 16, 2015

Volume VIII

Hearing Room A  
Room TW-A363

445 12th Street, SW

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: 1:04 p.m. to 2:22 p.m.

OTR: 5:38 p.m.

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

2 9:37 a.m.

3 JUDGE SIPPEL: Please be seated.

4 Mr. Broussard, you're still on the stand. You're still  
5 under oath.

6 THE WITNESS: Yes, sir.

7 JUDGE SIPPEL: And you're waiting for me to sit down.  
8 Okay.

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: Thank you, sir.

11 THE WITNESS: Your Honor, would it be okay if I took my  
12 jacket off?

13 JUDGE SIPPEL: It certainly would.

14 THE WITNESS: Thank you.

15 JUDGE SIPPEL: We're on the record, are we?

16 THE COURT REPORTER: Yes.

17 JUDGE SIPPEL: Good. Before we start, I met Mr.  
18 Broussard out by the elevators this morning, I said good morning to  
19 him, and he said good morning to me. And we talked that he had  
20 watched the art show last night. So, we talked in very general  
21 terms about the art show; not the programming, not the Nielsens.

22 (Laughter.)

23 THE WITNESS: And I'm embarrassed to say that I had never  
24 heard of it before, and there it was, big as life.

25 JUDGE SIPPEL: Well, I hope it didn't take you off

1 another selection that you had in mind. But for what it's worth,  
2 congratulations.

3 Now, who's going here? Mr. Schmidt. I know.

4 MR. SCHMIDT: Yes, cross, Your Honor.

5 JUDGE SIPPEL: Mr. Schmidt, let's go.

6 MR. SCHMIDT: Okay.

7 WHEREUPON,

8 ROBERT BROUSSARD

9 having been called for examination by Counsel for the Defendant,  
10 and having been previously duly sworn, resumed the stand, and was  
11 examined and testified as follows:

12 CONTINUED CROSS-EXAMINATION

13 BY MR. SCHMIDT:

14 Q Mr. Broussard, let's pick up where we were yesterday.  
15 You'll be happy to hear that at this point in the day I've had only  
16 one cup of coffee. So, I'll be measured, at least according to my  
17 standards.

18 (Laughter.)

19 Let's talk about contractual provisions, and we should  
20 probably close the record for that.

21 (CLOSED SESSION STARTS)

22 MR. SCHMIDT: Thank you. Sorry.

23 BY MR. SCHMIDT:

24 Q

25

1

2 A

3 Q

4 A

5

6

7 Q

8 A

9

10

11 Q

12

13 A

14 Q

15

16 A

17 Q

18

19 A

20

21 Q

22

23 A

24

25 Q

1

2 A

3

4 JUDGE SIPPEL:

5

6 THE WITNESS:

7

8 JUDGE SIPPEL:

9 THE WITNESS:

10

11 JUDGE SIPPEL:

12 BY MR. SCHMIDT:

13 Q

14

15

16

17 A

18 Q

19

20

21 A

22 Q

23

24 A

25 Q

1

2 JUDGE SIPPTEL:

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4 MR. SCHMIDT:

5 JUDGE SIPPTEL:

6 MR. SCHMIDT:

7

8 BY MR. SCHMIDT:

9 Q

10

11

12

13 A

14 Q

15 A

16 Q

17 A

18 Q You have one agreement, the carriage agreement, that sets  
19 forth, this is how Cablevision as a distributor will carry the  
20 Rainbow networks? True?

21 A Yes.

22 Q It's actually multiple agreements, one per each network,  
23 right?

24 A Yes. That is correct.

25 Q And that agreement, the carriage agreement, is not the

1 source of the management fees? True?

2 A That is true.

3 Q Because the management fees are not the term of  
4 distribution, right?

5 A The management fees are not included in the --  
6 specifically included or referenced in the affiliation agreement  
7 between WE and Cablevision.

8 Q And they're not a term of carriage, are they?

9 A They're not a condition to carriage? Is that what you're  
10 asking?

11 Q They're not a term of carriage?

12 A Okay.

13 Q Correct?

14 A I suppose.

15 Q Okay.

16 A Yeah.

17 Q Instead, the management fees, whether it's written or  
18 unwritten, relate to ownership, not distribution, right?

19 A Right.

20 Q Okay.

21 A And I can't comment on exactly the purpose of the  
22 management fees, but they are not specifically provided for in the  
23 affiliation agreement, that is true.

24 JUDGE SIPPEL: Well, it's to make money, isn't it?

25 Somebody who's getting the management fees is making money?

1 THE WITNESS: Yes. So, we're --

2 JUDGE SIPPEL: It's a moneymaker?

3 THE WITNESS: Yes. So, the network is paying a  
4 management fee to its parent, Cablevision, that is true.

5 BY MR. SCHMIDT:

6 Q For management?

7 A Yes.

8 Q

9

10

11 A

12 Q

13 A

14 Q

15

16

17 A

18

19

20 Q

21

22

23 A

24 Q

25

1 A

2

3 Q

4 JUDGE SIPPEL:

5

6

7 THE WITNESS:

8 JUDGE SIPPEL:

9 THE WITNESS:

10 JUDGE SIPPEL:

11 THE WITNESS:

12 JUDGE SIPPEL:

13 THE WITNESS:

14

15 BY MR. SCHMIDT:

16 Q

17

18

19 A

20 Q

21

22 A

23

24

25

1 JUDGE SIPPEL:

2 THE WITNESS:

3 JUDGE SIPPEL:

4 THE WITNESS:

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6

7

8 BY MR. SCHMIDT:

9 Q

10 A

11 MR. SCHMIDT:

12 JUDGE SIPPEL:

13 BY MR. SCHMIDT:

14 Q

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19 JUDGE SIPPEL:

20

21 MR. SCHMIDT:

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25 JUDGE SIPPEL:

1 MR. SCHMIDT:

2 JUDGE SIPPEL:

3 BY MR. SCHMIDT:

4 Q

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6 A

7 Q

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13 A

14 Q

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19 A

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21 Q

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25 A

1 Q

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5 JUDGE SIPPEL:

6 MR. SCHMIDT:

7 BY MR. SCHMIDT:

8 Q

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11 A

12 Q

13

14

15 A

16 Q

17

18

19 A

20 Q

21 A

22 Q

23 A

24 Q

25 A

1 Q

2

3 A

4 Q

5

6 A

7

8 Q

9

10

11

12 A

13 Q

14

15

16

17 A

18

19 Q

20

21 A

22 Q

23 A

24 Q

25

1 A

2 Q

3

4 A

5 Q

6

7 A

8 Q

9

10 A

11 MR. GORDON:

12

13 MR. SCHMIDT:

14 BY MR. SCHMIDT:

15 Q

16 A

17 Q

18

19 A

20 Q

21

22 A

23 Q

24 A

25 Q

1	A
2	Q
3	
4	
5	A
6	Q
7	
8	A
9	Q
10	A
11	
12	Q
13	
14	
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16	
17	A
18	Q
19	
20	
21	A
22	
23	
24	Q
25	A

1 Q  
2  
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6 A  
7 Q  
8  
9 A  
10 Q  
11  
12 A  
13 Q  
14  
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16 A  
17 Q  
18  
19  
20  
21 A  
22 Q  
23 A  
24 Q  
25

1

2 A

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7

8 Q

9

10 A

11 Q

12 A

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14

15

16 Q

17 A

18 Q

19 A

20 Q

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22

23

24 A

25

1

2 Q

3

4 A

5 Q

6 A

7 Q

8 A

9 JUDGE SIPPEL:

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11 MR. GORDON:

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16 JUDGE SIPPEL:

17 MR. GORDON:

18 JUDGE SIPPEL:

19 BY MR. SCHMIDT:

20 Q

21

22

23 A

24 Q

25

1 A

2 Q

3

4

5 A

6 Q

7

8

9 A

10 JUDGE SIPPTEL:

11 MR. SCHMIDT:

12 BY MR. SCHMIDT:

13 Q

14

15

16 A

17 Q

18

19 A

20 Q

21

22

23 A

24 Q

25

1 (Whereupon, the document was marked as GSN  
2 Exhibit No. 409 for identification.)

3 A

4 Q

5 A

6 Q

7

8 A

9 Q

10

11 A

12 Q

13

14

15 A

16 Q

17

18

19

20 A

21 Q

22

23 A

24 Q

25 A

1 Q

2

3

4 A

5

6 Q

7

8 A

9 JUDGE SIPPEL:

10

11 MR. SCHMIDT:

12 BY MR. SCHMIDT:

13 Q

14

15

16 A

17 Q

18 A

19 Q

20

21

22 A

23 Q

24

25 A

1

2 Q

3 A

4 Q

5 A

6 Q

7 MR. SCHMIDT:

8

9 MR. COHEN:

10

11 MR. SCHMIDT:

12

13 JUDGE SIPPEL:

14 MR. SCHMIDT:

15

16 MR. GORDON:

17 JUDGE SIPPEL:

18

19 MR. SCHMIDT:

20 (Laughter.)

21 (Whereupon, the document marked as  
22 GSN Exhibit No. 409 for  
23 identification was received in  
24 evidence.)

25 BY MR. SCHMIDT:

1 Q What is promotional support, Mr. Broussard?

2 A That's a very broad question.

3 Q The answer?

4 A Promotional support can take a variety of forms. Are we  
5 talking about promotional support in connection with promoting a  
6 network?

7 Q Yes.

8 A Okay.

9 Q So, let me be more precise in that regard. Have you  
10 heard of the concept of MVPDs providing promotional support to  
11 networks?

12 A Yes.

13 Q What is that?

14 A So, for example, an MVPD might promote a network's  
15 particular shows on their channel guide, on their market channel  
16 which is the channel that MVPDs provide to their customers to  
17 highlight programming that's important to them. As new technology  
18 takes hold, there's all sorts of new ways to promote different  
19 programming.

20 You know, the interfaces with customers are becoming more  
21 and more sophisticated. A traditional way to promote particular  
22 programs might be providing what's called cross-channel  
23 advertising.

24 JUDGE SIPPEL: Cross-channel advertising?

25 THE WITNESS: Cross-channel advertising. So, cable

1 operators typically get advertising time in each one of the  
2 networks that they carry. So, they might get two minutes an hour,  
3 for example, of advertising time in each one of their networks.

4 They can do with that advertising inventory what they  
5 want. And typically, they will sell. It is becoming an  
6 increasingly-important part of their revenue source. And so, they  
7 can sell that time or they can provide it for promotional purposes  
8 to promote their own platform and in many cases to promote  
9 programming networks. And so, that is a form of promotional  
10 support.

11 BY MR. SCHMIDT:

12 Q That's helpful. Is promotional support of the type you  
13 just discussed, is it something you sometimes negotiate as part of  
14 carriage agreements?

15 A Sometimes. It's not common.

16 Q Okay.

17 A I don't believe it's -- it doesn't wind up being  
18 contractual that often, but sometimes it does.

19 Q Is it -- sorry, I didn't --

20 A But sometimes it does.

21 Q Is it something of value to the network where it is  
22 provided?

23 A We like to think it is of value to both the network and  
24 to the MVPD because, if the MVPD can create an emotional connection  
25 with their customer, and not just a big dumb pipe, they are

1 creating an emotional connection with their customer through our  
2 brands, we feel that that is very valuable for an MVPD.

3 Q Are you aware of instances where a network has provided  
4 some exchange of value in exchange for promotional support?

5 A I'm sorry, can you repeat the question?

6 Q Yes. Are you aware of instances where networks provide  
7 an exchange of some form of value to get promotional support from  
8 an MVPD?

9 A Yes.

10 Q Let's look at Exhibit 31 in your binder.

11 MR. KNOWLES-KELLETT: Should we be out of closed session?

12 MR. COHEN: Is this going to be about Wedding Central?

13 MR. SCHMIDT: Yes.

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

15 MR. SCHMIDT: Okay.

16 MR. COHEN: Thank you.

17 MR. SCHMIDT: Thank you for raising it.

18 MR. COHEN: I'll keep an eye on it.

19 JUDGE SIPPEL: Which binder are we in?

20 MR. SCHMIDT: The big binder, Exhibit 31. I am going to  
21 try to be super, super fast with this document without talking  
22 super, super fast.

23 THE WITNESS: That sounds ideal.

24 (Laughter.)

25 MR. SCHMIDT: I don't think I've ever found the ideal in

1 my life, but I try.

2 (Laughter.)

3 JUDGE SIPPEL: You know, if you ask a super-fast  
4 question, you might get a super-fast answer.

5 (Laughter.)

6 MR. SCHMIDT: That was my hope.

7 BY MR. SCHMIDT:

8 Q Look with me, if you would -- do you see that on the  
9 bottom half of this email, which is from July 2009, someone named  
10 Kenetta Bailey writes? Do you see that?

11 A Yes.

12 Q Do you know who she is?

13 A Kenetta Bailey at the time was our, I think, SVP of  
14 Consumer Marketing for WE tv.

15 Q And do you see that she is talking about promotional  
16 support that Cablevision will provide to Wedding Central?

17 A Yes.

18 Q Just to run through that promotional support, it  
19 includes, in the second paragraph, do you see where it references  
20

21

22 A Yes.

23 Q In the next paragraph, do you see where it says,  
24

25 A Yes.

1 Q Do you see in the next paragraph it says,

2

3

4 A Yes.

5 Q Do you see in the next paragraph,

6

7 A Yes.

8 Q Do you see in the next paragraph it says,

9

10

11 A Yes.

12 Q And then the next one,

13

14 A Yes.

15 Q And if you flip over,

16 Do you see that?

17 A Yes.

18

19 Q

20

21 A

22 Q

23 A

24 Q Can you point me to any value? Is this valuable to

25 Wedding Central?

1       A       This is very valuable to Wedding Central, and I think it  
2 is very valuable to the MVPD, to promote the fact that they are  
3 bringing a new product to their customers.

4       Q

5

6

7       A

8       Q       Let's look at one more. Look with me, if you would, at  
9 Exhibit 244 in your binder. Do you know what                   ?

10      A

11      Q       Okay. And do you see that this is

12

13      A       Yes.

14      Q       And it says,

15

16                   Do you see that?

17      A       Yes. In all honesty, I'm having trouble reading it.

18      Q       Okay. Here's my question:

19

20

21      A

22      Q       Let's talk about Wedding Central. Wedding Central  
23 launched on Cablevision in August of 2009? True?

24      A       It definitely launched sometime in 2009.

25      Q       You don't take issue with the date, do you?

1 A Okay. I don't take issue with it.

2 Q Okay. And Mr. Rutledge approved the creation of Wedding  
3 Central, correct?

4 A Yes, at some point in time.

5 Q He also approved the launch of Wedding Central on  
6 Cablevision, correct?

7 A Yes.

8 Q And was there ever a time where you recall that Mr.  
9 Rutledge was willing to approve the creation of Wedding Central,  
10 but was not willing to approve the carriage of Wedding Central by  
11 Cablevision?

12 A No.

13 Q I take it when you're launching a network like Wedding  
14 Central, you want to get, it's true, isn't it, that you want to get  
15 as broad of carriage as you can?

16 A Yes.

17 Q And I think we're going to look at some documents that  
18 reflect this. You were trying to get carriage from a range of  
19 distributors?

20 A Yes.

21 Q Let's take a look at paragraph 4 of your written direct  
22 -- I'm sorry -- page 4 of your written direct, which is Cablevision  
23 339. And I am told it appears in the back of everyone's binder.

24 MR. COHEN: 339?

25 MR. SCHMIDT: 339.

1 MR. COHEN: You're going to --

2 MR. SCHMIDT: I think we should close, yes. I think we  
3 should. Well, I'm going to talk about the specific numbers. I  
4 don't know if you want me to close or not.

5 MR. COHEN: Keep it closed.

6 MR. SCHMIDT: Keep it closed? Okay. Did we bring anyone  
7 back in? Okay. Oh, we're still closed?

8 MR. COHEN: Yes.

9 JUDGE SIPPEL: We are still closed.

10 MR. SCHMIDT: Okay.

11 JUDGE SIPPEL: It's been that way.

12 BY MR. SCHMIDT:

13 Q Do you see the table on page 4 where you list carriage by  
14 different MVPDs of WE tv?

15 A Yes.

16 Q First of all, what made you focus on those carriers?

17 A It's those are major distributors, the major  
18 distributors.

19 Q Those are the important ones?

20 A They are among the important ones.

21 Q Among the important ones?

22 JUDGE SIPPEL: Well, you've got him on page 4 of his  
23 direct testimony?

24 MR. SCHMIDT: Yes, sir. Yes, Your Honor.

25 JUDGE SIPPEL: And what paragraph?

1 MR. SCHMIDT: It's the paragraph 12. It's the table.

2 JUDGE SIPPEL: I see it.

3 MR. SCHMIDT: Okay.

4 BY MR. SCHMIDT:

5 Q To be clear, this is WE tv's carriage, not Wedding  
6 Central's, right?

7 A This is WE tv's carriage, that is correct.

8 Q Wedding Central never achieved this level of carriage?

9 A In terms of total viewing subs?

10 Q Yes.

11 A In terms of total viewing subs in the pay TV universe,  
12 no.

13 Q Okay. And you talked about the carriage for WE TV, using  
14 this table as an illustration. I think the word you used in direct  
15 testimony was it was pretty uniform. Do you remember talking about  
16 that?

17 A What was pretty uniform?

18 Q The level of carriage by WE tv across the marketplace.

19 A It was, yes, sure.

20 Q That was never the case with Wedding Central, was it?

21 A Did Wedding Central ever achieve distribution like WE tv?  
22 No.

23 Q It never had uniform distribution across the marketplace,  
24 right?

25 A Comparable to what we're looking at here, no.

1 Q Yes. Okay.

2 MR. SCHMIDT: Your Honor, may I put up a board and just  
3 see if I can short circuit some questions by just trying to graph  
4 something out with him?

5 JUDGE SIPPEL: Wait a minute. Wait, wait, wait. Do you  
6 mean a demonstrative thing?

7 MR. SCHMIDT: Yes, just a board that I want to ask him  
8 some questions about.

9 JUDGE SIPPEL: Do you have any objection to this, Mr.  
10 Cohen?

11 MR. GORDON: Not in theory.

12 MR. COHEN: It's the short circuit part, Your Honor. My  
13 experience is it rarely short circuits, but that's okay.

14 MR. SCHMIDT: It is something I raised yesterday with the  
15 Enforcement Bureau.

16 JUDGE SIPPEL: I'm sorry, Mr. Gordon, this is your  
17 witness. So, I was going to actually ask you, do you have any  
18 objection to this?

19 MR. GORDON: I don't have any objection, and you don't  
20 need to apologize.

21 JUDGE SIPPEL: But you look quizzical.

22 (Laughter.)

23 MR. GORDON: I'm more quizzical at Mr. Cohen than you,  
24 Your Honor.

25 (Laughter.)

1 Paul, does it make sense for me to just swing over here?

2 MR. SCHMIDT: Yes, if that's okay with everyone else.

3 MR. GORDON: I don't mean to block you all. I just  
4 wanted Your Honor to see the board.

5 (Pause.)

6 JUDGE SIPPEL: This is like Night at the Opera with the  
7 Marx brothers.

8 (Laughter.)

9 MR. SCHMIDT: Hopefully, it doesn't continue that way,  
10 Your Honor.

11 JUDGE SIPPEL: Yes.

12 BY MR. SCHMIDT:

13 Q All right. So, let me see if I can just quickly diagram  
14 this out. We talked about Cablevision launching Wedding Central in  
15 August of 2009, right?

16 A Yes.

17 Q And do you recall that at that time Cablevision gave  
18 Wedding Central about subs?

19 A That sounds about right.

20 Q You kept working to get carriage with other MVPDs for  
21 Wedding Central, right?

22 A That is correct.

23 Q And that was your job?

24 A That was my job.

25 Q Okay. In August of -- I'm sorry, not in August of that

1 year -- in November of that year, Mediacom started carrying Wedding  
2 Central?

3 A Yes. I'll accept the date. I'm not sure. Okay.

4 Q I can show you volumes of testimony, but --

5 A That sounds fine.

6 Q I can assure you it's not in my interest to give you the  
7 wrong date here.

8 A Yes.

9 Q And Mediacom's subscriber base for Wedding Central was  
10 about subscribers? True?

11 A That is correct.

12 Q And I take it there was nothing special about Mediacom  
13 that made you target them. You were just looking for broad  
14 distribution, and it was great that they were giving it to you?

15 A Yes. We were talking to all our MVPD partners.

16 Q Okay. And then after Wedding Central -- after Mediacom,  
17 it was another year or so in, I believe, November of 2010, when you  
18 got carriage from Time Warner, right?

19 A Yes.

20 Q And that was about subs?

21 A Yes, slightly north.

22 Q That's where the story stops in terms of carriage of  
23 Wedding Central, right?

24 A That is correct.

25 Q And so about of the subs for Wedding Central

1 were provided by Cablevision, right?

2 A At that -- yes.

3 Q But throughout this time period, you were working to get  
4 carriage from other carriers, right?

5 A Yes.

6 Q You tried Comcast?

7 A Yes. Most certainly.

8 Q True?

9 A Yes.

10 Q And Cox, that was zero?

11 A Yes.

12 Q And just to short circuit it, I'm going to --

13 A No, you're just rubbing it in.

14 (Laughter.)

15 Q I'm not trying to rub it in.

16 A Oh, okay.

17 Q Roughly how many MVPDs are there?

18 A I would say eight to ten sort of make up 80 to 90 percent  
19 of the market.

20 Q What rank is Mediacom?

21 A Mediacom is in the top ten.

22 Q Okay. So, eight to ten?

23 A Eight to ten make up most, the vast majority, of the pay  
24 TV universe.

25 Q And none of those eight to ten, other than these two,

1 gave you carriage?

2 A Yes.

3 Q Okay. What was the penetration level of Cablevision?

4 A They were on digital basic and the penetration level was  
5 roughly, I'm going to say, in the neighborhood of percent.

6 Q Does percent sound right?

7 A Okay.

8 Q Okay. And I can show you testimony if you want, but do  
9 you accept that representation?

10 A I said ballpark.

11 Q Cablevision was at about percent, correct?

12 A Okay.

13 Q And if we look across the entire Mediacom footprint, they  
14 were at about percent, right?

15 A That is accurate, but they were also on digital basic.

16 Q And the difference between and , that's about five  
17 times in terms of level of penetration?

18 A I would say is probably five times , yes.

19 JUDGE SIPPEL: You said "digital basic". Is that --

20 THE WITNESS: Digital basic is the package that both  
21 Mediacom and Cablevision carried Wedding Central on.

22 JUDGE SIPPEL: And is that a lesser or a better factor?

23 THE WITNESS: So, typically, expanded basic is sort of  
24 the most widely-distributed package. And then, typically, the next  
25 most widely-distributed package is digital basic. In the case of

1 Cablevision, they did a remarkable job of getting high penetration  
2 for digital basic. Mediacom's digital basic, because of the way  
3 they market their products, only wound up at percent.

4 BY MR. SCHMIDT:

5 Q And if we go to Time Warner and look across all the Time  
6 Warner systems, they were at about percent across all their  
7 systems? True?

8 A Across all their systems? But it was only launched on  
9 one system, which was New York, the New York DMA.

10 Q And that's about seven times lower than percent,  
11 right?

12 A Yes.

13 Q That's math even I can do without having to look at my  
14 notes.

15 (Laughter.)

16 Here's my question: and then, of course, none of these  
17 carriers ever granted carriage?

18 A Yes.

19 Q So, Cablevision was the first, right?

20 A Yes.

21 Q There were only two others, right?

22 A Yes.

23 Q The level of carriage both in terms of number of subs and  
24 in terms of level of penetration was only a fraction of what  
25 Cablevision granted? True?

1 A Yes.

2 Q And no one else ever granted carriage?

3 A Yes.

4 Q Would you agree with me that Cablevision's carriage of  
5 Wedding Central was different than the way the rest of the  
6 marketplace carried Wedding Central?

7 A Right. So, we launched the network, and we tried to get  
8 distribution over a period of two years, and we were unsuccessful  
9 in getting a new network launched on most operators. So, I would  
10 say Cablevision's distribution was different.

11 Q It was different?

12 A Yes.

13 Q Can you rule out for me, sitting here under oath, that  
14 this difference that we see, five times higher, seven times higher,  
15 carrying it when the rest of the marketplace doesn't carry it, that  
16 that difference was not influenced by the fact that Cablevision  
17 owned Wedding Central? Can you rule that out? And you're under  
18 oath.

19 A Can you repeat the question?

20 Q Yes. Can you rule out, when we look at this difference,  
21 and everything we see about this difference in terms of number of  
22 subs, level of penetration, first to launch, the rest of the  
23 marketplace not following, can you rule out that the difference  
24 between Cablevision and the rest of the market was due to  
25 ownership? Can you rule that out under oath?

1 A If you're asking me if I can rule it out --

2 Q Yes.

3 A Is it conceivable that that played some role? It's  
4 certainly conceivable.

5 MR. SCHMIDT: Everyone can go back. I'm sorry.

6 JUDGE SIPPEL: And now what are we going to do with that?  
7 The transcript is going to be kind of --

8 MR. SCHMIDT: I was going to take a picture of it and  
9 convert it to something fancier, and then move that in.

10 JUDGE SIPPEL: All right. Well, you're going to have to  
11 let counsel see it ahead of time before you move it in.

12 MR. SCHMIDT: Absolutely, I will. In that vein, though,  
13 there was something -- may I approach, Your Honor?

14 JUDGE SIPPEL: Certainly, yes.

15 JUDGE SIPPEL: Thank you.

16 MR. SCHMIDT: Thank you, Your Honor.

17 BY MR. SCHMIDT:

18 Q Take a look at that, and then I'm going to ask you a  
19 question about it.

20 JUDGE SIPPEL: This is GSN Exhibit 379. Is this in?

21 MR. SCHMIDT: It is not in, Your Honor.

22 JUDGE SIPPEL: Thank you.

23 (Whereupon, the document was marked  
24 as GSN Exhibit No. 379 for  
25 identification.)

1 BY MR. SCHMIDT:

2 Q If you look at GSN Exhibit 379, it contains the  
3 penetration level of Wedding Central by Cablevision at percent,  
4 by Time Warner at percent, and then different other distributors  
5 at zero percent. It does not include Mediacom because of the cut-  
6 point we used for this table. But does this appear accurate to  
7 your mind with the chart I just created?

8 A Yes.

9 MR. SCHMIDT: We'll move it into evidence, Your Honor.

10 JUDGE SIPPEL: Any objection?

11 MR. GORDON: Your Honor, I would like to do -- one, I  
12 would like to have an opportunity to look at the numbers and check  
13 the deposition cites, and then we can get back to you.  
14 I may have an objection, though, because I think the Time Warner  
15 part is grossly misleading, but we will talk to counsel about that.

16 JUDGE SIPPEL: All right. We'll wait.

17 BY MR. SCHMIDT:

18 Q Okay. So, let's drill down to some of the steps that you  
19 took to secure carriage for Wedding Central. Look at me, if you  
20 would, at GSN Exhibit 363 in your binder.

21 (Whereupon, the document was marked  
22 as GSN Exhibit No. 363 for  
23 identification.)

24 MR. SCHMIDT: So, Your Honor, we are looking at GSN  
25 Exhibit 363 in the big binder.

1 BY MR. SCHMIDT:

2 Q And while the Judge is finding it, is this an email that  
3 you received on June 17th, 2009?

4 A Right. So, I obviously don't have a recollection of  
5 receiving it, but it sure looks like I did.

6 Q Okay. And this is a document that relates to Wedding  
7 Central, correct?

8 A Yes.

9 Q So, this is a few months before Wedding Central formally  
10 launched, right?

11 A Yes.

12 JUDGE SIPPEL: That's June of 2009?

13 MR. SCHMIDT: Yes. And I was actually going to flip to  
14 the third page of the document, which looks like it's the start of  
15 a report or a slide deck or something. It says, "Cablevision  
16 Systems Corporation, WE tv, Wedding Channel," and it's got a date  
17 of May 18, 2009. That's the attachment. Do you see that, sir?

18 THE WITNESS: Yes.

19 BY MR. SCHMIDT:

20 Q Let's - so, this is three months before you launched?  
21 May, right?

22 A Yes.

23 Q And if you go to Page 9 of the document, it says Page 9  
24 of 35 at the bottom, it's a table. And I'm going to be, I hope,  
25 blissfully short on the table. So, it's something called affiliate

1 models. And if I look at it, it has year one, 2009; year two,  
2 2010. Do you see those rows across the top?

3 A Yes.

4 Q I'm sorry, those columns across the top?

5 A Yes.

6 Q And each row is a different MVPD: Comcast, DIRECTV, Time  
7 Warner, or EchoStar. Do you see that?

8 A Correct.

9 Q If I understand this table correctly on the top of Page  
10 9 of 35 of GSN Exhibit 363, it's a projection of the carriage you  
11 hope to secure for Wedding Central from various MVPDs across time?

12 A Yes.

13 Q So, in year one, 2009, you're projecting carriage by  
14 Cablevision, for example. And then in year two, in 2010,  
15 comes in,

16 A Yes, that is correct.

17 Q And your hope was as more and more signed up, more and  
18 more would come in?

19 A Yes.

20 Q Okay. Cablevision is the first one you were looking to  
21 for carriage, according to this model, right?

22 A Yes.

23 Q And that was always the case, wasn't it? There's not a  
24 model you could point me to that had any assumption other than that  
25 Cablevision would be the first to carry you followed by others.

1 A There's nothing I could point you to right now, right.

2 Q You don't recall a time when your plan was, "We'll get  
3 someone else and then we'll go to Cablevision and get carriage?"

4 A I don't recall a time.

5 Q And your carriage with Cablevision, if we look at this  
6 table, actually came in much better than you projected, right? You  
7 projected homes. You actually got right? It came  
8 in what you anticipated in May of 2009, true?

9 A Yes, but significantly lower than the projection for  
10 2010.

11 Q Okay. And your projections

12 Well,  
13 let me ask the question more precisely. Your projection for  
14 for 2010 never came about, right?

15 A That is correct.

16 Q And if I go down the list, that's true for the other  
17 MVPDs you project here in 2010, right?

18 A That is correct.

19 Q And your hope was, if we look at Time Warner, you were  
20 projecting a little further out, but your hope was when you did get  
21 carriage you would start off at about Do  
22 you see that?

23 A Yes.

24 Q Look with me, if you would, at the page before where you  
25 have assumptions. Obviously, it's important for the success of a

1 network to secure a certain level of carriage, correct?

2 A Yes.

3 Q And you knew, I take it, from the outset that if you  
4 didn't get a certain level of carriage for Wedding Central, it  
5 would not be viable?

6 A Yes.

7 Q And that's in fact what happened, right?

8 A That we didn't get -- yes.

9 Q Look with me, if you would, at Page 8 of 35. Do you see  
10 there some assumptions for a Wedding Channel affiliate model?

11 A Yes.

12 Q And one of the assumptions is that would launch  
13 by July 1st, 2010, paying per sub. Do you see that?

14 A Yes.

15 Q That never happened, right?

16 A That never happened.

17 MR. SCHMIDT: Let's go ahead to the next document. Oh,  
18 I'll move this into evidence.

19 MR. GORDON: No objection, Your Honor.

20 JUDGE SIPPEL: This is?

21 MR. SCHMIDT: 363, Your Honor.

22 JUDGE SIPPEL: GSN Exhibit 363, no objection, it's  
23 received into evidence.

24 (Whereupon, the above-referred to  
25 document was received into evidence

1 as GSN Exhibit 363.)

2 MR. SCHMIDT: Look with me, if you would, at the one  
3 right before, Exhibit 362.

4 (Whereupon, the above-referred to  
5 document was marked as GSN Exhibit  
6 362 for identification.)

7 BY MR. SCHMIDT:

8 Q Exhibit 362 is an email from you to Renee Howard. Is  
9 Renee Howard your assistant?

10 A Yes.

11 Q Okay. And that's dated July of 2009?

12 A Yes.

13 Q And as I understand this, if we go to the second page of  
14 the document with the Bates number 537 in the corner, you're  
15 forwarding to her an email chain that you received from Jan Eric  
16 Diedrichsen?

17 A Yes.

18 Q Who is Jan Eric Diedrichsen?

19 A It's Jan.

20 Q Jan, I apologize.

21 A That's okay. And Jan is the SVP of affiliate marketing.

22 Q Okay. Do you see that this document contains if we look  
23 through it, I don't know if these are slides or notes, but material  
24 that touches on Wedding Central?

25 A Yes.

1 Q For example, if we look at 539, the next page, about  
2 halfway down, this page relates to Wedding Central, right?

3 A Yes.

4 Q And about halfway down it identifies internal obstacles.  
5 "If we do not make revenue ratings goals, resources will be cut."  
6 That's that idea we were talking about: if you don't get a certain  
7 level of carriage, the network's not going to survive.

8 JUDGE SIPPEL: Wait a minute. Does it say that?

9 MR. SCHMIDT: It says, "If we don't make revenue ratings  
10 goals, resources will be cut."

11 JUDGE SIPPEL: That it says.

12 MR. SCHMIDT: Yeah, my question is, does that go to the  
13 point we were talking about, that if it doesn't get enough  
14 carriage, maybe among other things, it might not survive or it  
15 might not have the same resources?

16 JUDGE SIPPEL: Well, wait a minute. Which is it, one or  
17 the other?

18 MR. SCHMIDT: Well, let me break it down, to speak to  
19 Your Honor's point.

20 BY MR. SCHMIDT:

21 Q When it talks about revenue and ratings goals, are those  
22 influenced by your level of carriage? Specifically, your revenue  
23 goals.

24 A Yeah, it depends.

25 Q Okay. Generally speaking, though, if you have more

1 carriage you have more opportunity for revenue?

2 A More carriage is better.

3 Q Okay. And if you don't make that revenue, your resources  
4 will be cut, right?

5 A Maybe.

6 Q Okay. That's the internal obstacle identified here?

7 A Presumably.

8 Q Let's look at the next page, please.

9 A It's not my document.

10 Q Let's look at two pages later, 541. And do you see  
11 there's -- it looks like a task list here, under Strategy 1 and  
12 Strategy 2?

13 A Yes.

14 Q And the first task under Strategy 1 is,

15

16 Did I read that correctly?

17 A You read that correctly.

18 Q And it then identifies Bob B. That's you?

19 A Yes.

20 Q And Jan, that's the Jan we were talking about before?

21 A Yes.

22 Q And Kim M., is that Kim Martin?

23 A Yes.

24 Q To be clear, none of those people were actual Cablevision  
25 employees, right?

1 A That is correct.

2 MR. SCHMIDT: Cablevision was your sister company?

3 JUDGE SIPPEL: Wait a minute, sister company?

4 MR. GORDON: Yeah, I have no idea what that means, Your  
5 Honor.

6 MR. SCHMIDT: The witness was about to answer.

7 MR. GORDON: Okay, well, I'm objecting. I think it's an  
8 imprecise question and I think it's unfair to make the witness  
9 guess what you mean. Why don't you just explain it to him?

10 JUDGE SIPPEL: Well, I'm going to sustain the objection,  
11 but just sort of try to rephrase this.

12 MR. SCHMIDT: Sure.

13 JUDGE SIPPEL: I mean, sister, brother, cousin, what is  
14 it?

15 BY MR. SCHMIDT:

16 Q Have you ever heard of the concept of the sister company?

17 A I have.

18 JUDGE SIPPEL: What do you think he means by that?

19 MR. BROUSSARD: I think he means a company that sits  
20 parallel to another company.

21 BY MR. SCHMIDT:

22 Q So, using that definition, was the programming branch  
23 your sister company?

24 A Okay, now I'm confused.

25 Q That's because I totally misspoke.

1 A Okay.

2 Q Using that definition, was the distribution branch your  
3 sister company?

4 MR. GORDON: I think you still misspoke.

5 MR. SCHMIDT: Okay.

6 MR. BROUSSARD: The distribution branch?

7 MR. SCHMIDT: Was the distribution arm of Cablevision your  
8 sister company at Rainbow?

9 MR. BROUSSARD: Okay, I really am confused.

10 JUDGE SIPPEL: Let's back up. Can you use another term?

11 MR. SCHMIDT: Sure.

12 JUDGE SIPPEL: Do we have to say "sister?"

13 MR. SCHMIDT: No.

14 JUDGE SIPPEL: Can we say something else?

15 MR. SCHMIDT: Okay. We're they your affiliate?

16 MR. BROUSSARD: Who is "they"?

17 JUDGE SIPPEL: "They" being who?

18 MR. SCHMIDT: Cablevision distribution.

19 MR. BROUSSARD: So, Cablevision?

20 MR. SCHMIDT: Yes.

21 MR. BROUSSARD: So, Cablevision was affiliated with  
22 Rainbow.

23 MR. SCHMIDT: Can we move that into evidence, Your Honor,  
24 362?

25 JUDGE SIPPEL: Any objection?

1 MR. GORDON: No objection.

2 JUDGE SIPPEL: 362 is received into evidence.

3 (Whereupon, the above-referred to  
4 document was received into evidence as  
5 GSN Exhibit 362.)

6 MR. SCHMIDT: Look with me, if you would, at the back of  
7 your binder, Exhibit 408.

8 (Whereupon, the above-referred to  
9 document was marked as GSN Exhibit 408  
10 for identification.)

11 BY MR. SCHMIDT:

12 Q And you'll see there's a cover page that says, "Produced  
13 in native format." And then the first page with regular writing on  
14 it, that's number 408.001, says, "Cablevision Systems Corporation,  
15 Wedding Central strategic planning meeting, 2010 budget and long-  
16 term plan." Do you see that?

17 A Yes.

18 Q And that's dated September 26, 2009, correct?

19 A Yes.

20 MR. SCHMIDT: Look with me, if you would, at the page  
21 numbered 408.003.

22 MR. GORDON: This is the 1-1 page?

23 MR. SCHMIDT: Yes. Yeah, if you look at the bottom, or  
24 I guess it's on the left-hand side of the page, it says, "GSN  
25 Exhibit 408.003."

1 MR. BROUSSARD: Okay.

2 BY MR. SCHMIDT:

3 Q And it says, "situation analysis." Do you see that?

4 A Yes.

5 Q "The wedding industry is a \$60 billion business and no  
6 network owns the genre. Rainbow could own weddings." Did I read  
7 that correctly?

8 A Yes.

9 Q Was that what you understood to be one of the purposes of  
10 Wedding Central, to really dominate the wedding genre?

11 A To dominate the wedding genre?

12 Q Well, I'm just -- let me use the words "to succeed" in  
13 the wedding genre?

14 A Yes, we wanted to super-serve people who are -- to women  
15 who want to -- who connect with wedding programming.

16 Q Okay, in the wedding genre?

17 A In the wedding genre, yes.

18 JUDGE SIPPEL: Would you be competing in the wedding  
19 genre?

20 MR. BROUSSARD: At the time, not really. But we were so  
21 successful with our wedding programming that there were others who  
22 started to play wedding programming. So, at the time we really --  
23 it was a genre that we really connected with our viewers on.

24 BY MR. SCHMIDT:

25 Q So, if we look at the next bullet, it says securing --

1 one of the goals, I take it, is securing distribution commitments  
2 for Wedding Central from two major distributors. And then it lists  
3 several, including . Do you see that?

4 A Yes.

5 Q Was that in fact one of your goals at this point in time?

6 A Yes.

7 MR. SCHMIDT: Look ahead with me, if you would, at page  
8 6 of this document. It says, "key assumptions." And do you see  
9 there --

10 MR. GORDON: I'm sorry, Paul, you're talking about 006?

11 MR. SCHMIDT: 006. And that's an important point,  
12 because there's numbering at the bottom of the slides. I'm going  
13 off the numbering on the side.

14 MR. GORDON: There's also a 6-1 and a 6-2.

15 MR. SCHMIDT: Yeah.

16 BY MR. SCHMIDT:

17 Q Do you see this document, "key assumptions," the first  
18 one being affiliate distribution?

19 A Yes.

20 Q And this states that your key assumption regarding  
21 affiliate distribution was to get

22 assumed by year end 2010. Do you see that?

23 A That's what this says, yes.

24 Q And the next one, the next bullet is,

25

1 A Yes, that is what this says.

2 Q Okay. So, before you were hoping to launch with

3

4

5 A Yeah.

6 Q And you never met that goal?

7 A We never met this goal.

8 Q Okay. Look with me, if you would, at page 11 of this  
9 document. Again, 408.011. And do you see another one of these  
10 projections of how your subs will grow over time, starting with  
11 Cablevision and branching out?

12 A Yes.

13 Q And this reflects the fact that you were hoping to get  
14 close to subscribers launched with  
15 in 2011, correct?

16 A Yes, that is what this plan says.

17 MR. SCHMIDT: Last document in this series. I'll move  
18 Exhibit 408 into evidence.

19 JUDGE SIPPEL: Objection?

20 MR. GORDON: No objection, Your Honor, but I think he may  
21 have said 804. I think he meant 408.

22 JUDGE SIPPEL: I thought he said 408.

23 MR. SCHMIDT: I did mean 408.

24 MR. GORDON: No objection in any event, Your Honor. I  
25 apologize.

1 MR. SCHMIDT: Last one in this series.

2 JUDGE SIPPEL: Wait a minute.

3 MR. SCHMIDT: Sorry.

4 JUDGE SIPPEL: With no objection, GSN 408 is received.

5 (Whereupon, the above-referred to  
6 document was received into evidence  
7 as GSN Exhibit 408.)

8 JUDGE SIPPEL: That was just a commercial break.

9 (Laughter.)

10 MR. SCHMIDT: Look with me, if you would, sir, at Exhibit  
11 372, please.

12 JUDGE SIPPEL: 370?

13 MR. SCHMIDT: 372, Your Honor.

14 JUDGE SIPPEL: 372?

15 MR. SCHMIDT: Yes, please, GSN Exhibit 372.

16 (Whereupon, the above-referred to  
17 document was marked as GSN Exhibit  
18 372 for identification.)

19 MR. COHEN: In our copy, things are circled.

20 MR. GORDON: Oh, I didn't look. Yeah, I'm sorry.

21 MR. SCHMIDT: This is the copy I have. I'm happy to work  
22 with you to get a different copy.

23 BY MR. SCHMIDT:

24 Q Do you see Exhibit 372, Mr. Broussard?

25 A Yes.

1 Q And lets look, if we could, at the third page of this  
2 document, which is another one of these charts.

3 A Okay, could you hold one just one second?

4 Q Sure. Let me just say what it is and then I'll give you  
5 as much time as you want.

6 A Okay.

7 Q This is another one of these charts looking at  
8 distribution.

9 A So I am looking at which page?

10 Q The third page.

11 A 003?

12 Q It says Page 1 of 2 on the bottom.

13 A Got it.

14 Q Do you see it's another one of these distribution charts?

15 A Yes, I do.

16 Q And this time it's starting in 2010 and going forward,  
17 and it reflects the numbers we've talked about,  
18 for Time Warner, for Cablevision, and  
19 for Mediacom. Do you see that?

20 A Yes.

21 Q And just to pause on this point: if you look at the Time  
22 Warner numbers, when you got with Time  
23 Warner, right, you were going to continue to try to grow your  
24 carriage with Time Warner over time across their systems, true?

25 A Yes.

1 Q Let's look at DIRECTV on this chart. At this point in  
2 time, October 2010, October 26, 2010, your assumption was that

3

4 A Yes.

5 Q So,

6

7 A Yes.

8 Q And I take it DIRECTV was, potentially, a very important  
9 carrier for Wedding Central in terms of their volume of  
10 subscribers?

11 A Yes.

12 Q And I take it you made some effort to get carriage by  
13 DIRECTV?

14 A Yes.

15 Q Was that talking with Mr. Chang or with others?

16 A It was talking with Mr. Chang, among others.

17 Q Okay. I think you said yesterday, for example, you  
18 talked repeatedly with Mr. Chang. Do you remember that?

19 A Yes.

20 Q Was that in this 2010-2009 time period trying to get  
21 carriage of Wedding Central by DIRECTV?

22 A Yes.

23 Q And what was his consistent response?

24 A He had -- well, I don't have a specific recollection of  
25 any specific conversations, but I would say, in sum and substance,

1 his response would vary from time to time, as is not uncommon. But  
2 he was hesitant. Ultimately, he was hesitant from launching the  
3 channel.

4 Q And in October of 2010, your assumption was DIRECTV would  
5 happen

6 A That's what this business plan says. It certainly wasn't  
7 where I was.

8 Q Okay, do you recall any different Wedding Central  
9 assumption in October of 2010 for DIRECTV?

10 A I do not.

11 Q In those discussions up through October 2010, had there  
12 ever been discussions between you and Mr. Chang about GSN?

13 A No.

14 Q It had never come up?

15 A No.

16 Q Now, I think you said yesterday that you came to learn  
17 about GSN and about the tiering after the tiering had in fact  
18 occurred, true?

19 A Yes.

20 Q And I think what you --

21 A No. It was the decision.

22 Q You're right. I misspoke. You're right. Thank you for  
23 catching that. Let me ask my question again. I think you said  
24 yesterday you learned about the GSN tiering after the decision had  
25 been announced?

1 A Yes.

2 Q And then it was another few months before it actually was  
3 implemented?

4 A Yes, I believe so.

5 Q Okay. And in that time between when you heard about the  
6 decision being announced and when it was actually executed, you  
7 learned that Mr. Chang had reached out to Cablevision to see if he  
8 could talk with them?

9 A Yes.

10 Q And you understood he was reaching out with respect to  
11 GSN?

12 A Yes.

13 Q And is it your understanding that he spoke with Mr.  
14 Rutledge, and Mr. Rutledge referred him to Mr. Sapan, who was your  
15 boss on the network side?

16 A That is my recollection.

17 Q And that's what led to you talking with Mr. Chang, was  
18 Mr. Rutledge referring him to Mr. Sapan, and then you and Mr. Sapan  
19 talking to Mr. Chang?

20 A Yes, in that time period.

21 Q And you knew when you were talking to Mr. Chang, when you  
22 talked to him for the first time in this time period after the  
23 tiering decision had been announced but before it had been  
24 executed, you knew that Mr. Chang wanted to talk about GSN?

25 A I knew that he had approached Mr. Rutledge to see if

1 DIRECTV could help solve the GSN situation.

2 MR. SCHMIDT: Okay. Let's take a look at Exhibit 98.  
3 Before we do, Your Honor, I'll move 372 into evidence.

4 MR. GORDON: No objection, Your Honor.

5 JUDGE SIPPEL: It's received.

6 (Whereupon, the above-referred to  
7 document was received into evidence as  
8 GSN Exhibit 372.)

9 MR. SCHMIDT: Look with me if you would at Exhibit 98,  
10 GSN 98.

11 JUDGE SIPPEL: GSN 98.

12 BY MR. SCHMIDT:

13 Q And I'm going to ask you to look at the second to the  
14 bottom email in the chain, from Mr. Montemagno to Mr. Weinstein and  
15 Mr. Budill. Those are gentlemen on the distribution side of  
16 Cablevision, right?

17 A Yes.

18 Q Do you see where it says, "FYI, Tom asked Broussard" --  
19 that's you, right?

20 A Yes.

21 Q "To come up with a list of asks for DIRECTV that would be  
22 worth our keeping GSN status quo." Did I read that correctly?

23 A Yes.

24 Q Is that consistent with your recollection of what  
25 happened? Just yes or no.

1       A       It's consistent with my recollection, but I don't have a  
2 specific recollection of the conversations.

3       Q       Okay. Now, and that's what led to Mr. Chang talking with  
4 Mr. Sapan and you, right?

5       A       Yes, over a series of -- over a period of weeks, there  
6 were a series of conversations that took place.

7       Q       Before you talked with Mr. Chang, you and Mr. Sapan  
8 talked first, right?

9       A       I don't have a specific recollection.

10      Q       Okay. And when you and Mr. Sapan talked first, you  
11 talked about Wedding Central, right?

12      A       Among other things.

13      Q       And then you agree with me that when you later talked  
14 with Mr. Chang, it's likely that you and Mr. Sapan raised Wedding  
15 Central in those discussions?

16      A       I would say, yeah, Wedding Central was raised in those  
17 conversations, yes.

18      Q       By you and Mr. Sapan?

19      A       I suppose at some point during the conversations, yes.

20           MR. SCHMIDT: Okay, let me see if I can help you on that.  
21 Look with me, if you would, at Exhibit 403 in your binder.

22                               (Whereupon, the above-referred to  
23                               document was marked as GSN Exhibit 403  
24                               for identification.)

25           MR. SCHMIDT: Do you see that this is the deposition?

1 JUDGE SIPPEL: His deposition.

2 MR. SCHMIDT: Yes, that we took on February 20, 2013?

3 MR. BROUSSARD: Yes.

4 MR. SCHMIDT: It probably seemed like a very long day.

5 BY MR. SCHMIDT:

6 Q I'm going to point you right to the beginning. Look at

7 Page 37, if you would.

8 A Okay.

9 Q And let me start on -- are you with me on Page 37?

10 A I am.

11 Q Let me start on line 3. I ask you, "If I were to ask  
12 you, to the best of your recollection, what's the first moment in  
13 time at which you could point me to when, as part of this larger  
14 discussion, Wedding Central came up? Would that be your discussion  
15 with Mr. Sapan that we've been talking about, your initial  
16 discussion with Mr. Sapan?" And do you see you answered, "Yes"?

17 A Okay.

18 Q And then I ask you -- I bungled my question and started  
19 again on line 15. "When you later talked with Mr. Chang, who  
20 raised Wedding Central in those discussions?" Your answer: "It is  
21 likely that Mr. Sapan and I raised Wedding Central in those  
22 discussions." Did I read that correctly?

23 A You did read that correctly.

24 Q Were you doing your best here to be truthful and  
25 accurate?

1 A Always.

2 MR. SCHMIDT: Okay. Let's take a look at GSN 260,  
3 please.

4 JUDGE SIPPEL: GSN 260?

5 MR. SCHMIDT: Yes, sir.

6 BY MR. SCHMIDT:

7 Q If you look about a third of the way down the page,  
8 there's an email from you to your colleague, I believe your  
9 counterpart within Rainbow, Mr. Carroll, and your boss, Mr. Sapan,  
10 dated September 18, 2010. Do you see that?

11 A Yes.

12 Q And you report on different discussions you've had,  
13 including with DIRECTV. Do you see that?

14 A Yes.

15 Q And I'm only going to focus on the DIRECTV discussion.  
16 Do you see it references the discussion you had with Mr. Chang that  
17 we were just talking about?

18 A I don't know if it was the conversation we were just  
19 talking about, but it references a conversations with Mr. Chang.

20 Q Fair enough. At this point you've talked with Mr. Chang,  
21 right?

22 A Yes.

23 Q And in fact, you've made the proposal we discussed,  
24 right?

25 A That is correct.

1 Q And that's a proposal, I assume, that you had discussed  
2 with Mr. Carroll and Mr. Sapan on the Rainbow side?

3 A Again, I don't have a specific recollection, but that's  
4 likely.

5 Q Okay, that's what the email says, right?

6 A Well, this is me recounting the proposal that I made.

7 Q Yeah. And just to be clear, when you try to recount  
8 things like this, you try to be accurate in your emails, right?

9 A Yes.

10 Q Okay, let's go on to look at how you describe that  
11 proposal. Let's first look at Mr. Chang's reaction. He said, "WC"  
12 -- that's Wedding Central, right?

13 A Yes.

14 Q "Would be very difficult, but agreed to consider over the  
15 weekend," right?

16 A Yes.

17 Q That's him responding -- that's his response to your  
18 proposal, right?

19 A Yes.

20 Q And you then set forth how you justified the proposal.  
21 "I explained that it all seemed like an equal exchange of value."  
22 Is that how you justified the proposal to Mr. Chang?

23 A It appears to be something that I said to him during what  
24 was probably an extended exchange.

25 Q Okay.

1 A Probably an exchange that, you know, took place over an  
2 hour.

3 Q Okay.

4 A You know, there was probably a lot said.

5 Q Okay. And your justification for your proposal was that  
6 the rate for Wedding Central would balance out against the  
7 rate that Cablevision would be willing to pay, continue to  
8 pay, for GSN, right?

9 A Right. So, if those things were to occur, it seems that,  
10 from his position, it seems like a good result.

11 Q Okay. And you understood that Mr. Chang's interest in  
12 starting this whole line of discussions was in avoiding having GSN  
13 be tiered?

14 A Yes, my understanding was that he approached Tom to say,  
15 "Can DIRECTV do something that could help move forward the GSN  
16 solution?"

17 Q Okay. And when you said -- when you referenced the  
18 proposal you made that you discussed with your colleagues, that was  
19 a real proposal, right?

20 A Yes.

21 Q And when Mr. Chang ultimately said no to your proposal,  
22 he said, "It's not worth it to carry Wedding Central in exchange  
23 for keeping GSN on extended basic." He communicated that response  
24 to you and Mr. Sapan, right?

25 A He never said it that -- I don't recall him ever saying

1 it like that. Again, I don't have a specific recollection of the  
2 actual conversations, but I don't even think that was, in sum and  
3 substance, his response.

4 We always talked about these issues and Rainbow providing  
5 a bunch of different values so that those deals could stand on  
6 their own. And if we could make progress on those issues, it was  
7 Mr. Chang's hope that that would have a favorable -- that could  
8 cast a favorable light on the GSN conversation.

9 Q You knew at this point in time he was not willing to  
10 carry Wedding Central, right?

11 A Not necessarily. I mean, even this goes and says, Derek  
12 said, "You know what? It's going to be hard for me. Let me think  
13 about it over the weekend." That's not unusual in negotiations.  
14 Sometimes people say, "There's no way it will ever happen," and  
15 then the next week they say, "You know what? I figured out a way."

16 Q He never told you he was going to carry Wedding Central,  
17 true?

18 A That is correct.

19 Q And your latest projection that we just looked at was  
20  
21 , true?

22 A That was what was in that business plan.

23 Q Okay. And you have no contrary recollection, right?

24 A I don't have any contrary recollection of what?

25 Q Of a different model, in that timeframe, for when you

1 would be carried by DIRECTV?

2 A I don't, yeah.

3 Q Okay. And when Mr. Chang said no to the proposal you  
4 raised with him, he said no to you, right?

5 A At what point in time? Are you talking about ultimately?

6 Q Yeah, did he --

7 A So, ultimately --

8 Q Let me try my question better. Did Mr. Chang ultimately  
9 come back and say no to the proposal you offered him? Yes or no.

10 A Yeah, I would say he said --

11 MR. SCHMIDT: And who did he say no to?

12 JUDGE SIPPEL: Wait a minute, he didn't finish his  
13 answer. Let him finish his answer.

14 MR. BROUSSARD: So, can you just ask the question again,  
15 please?

16 JUDGE SIPPEL: Ask the question again.

17 MR. SCHMIDT: Yeah.

18 JUDGE SIPPEL: You answer the question, then. Nobody  
19 talks when the other one is talking, okay?

20 MR. BROUSSARD: Okay.

21 JUDGE SIPPEL: The reporter has to get this down.

22 MR. BROUSSARD: Okay.

23 BY MR. SCHMIDT:

24 Q And just let me try it as a simple yes or no. Did Mr.  
25 Chang ultimately say no to the proposal you made that you had

1 discussed with your colleagues? Yes or no.

2 A I'm not sure if it was a flat no. I'm not sure if it was  
3 he came back with some qualifier. I don't have a specific  
4 recollection. I know sort of the sum and substance of what  
5 occurred over a series of conversations that took place over a two  
6 or three month period.

7 Q And who did he come back to?

8 A Very likely me.

9 Q Okay. And did he ever carry Wedding Central? Did he  
10 ever agree to carry Wedding Central in exchange for -

11 A DIRECTV --

12 Q Just let me finish, sorry.

13 A Sorry.

14 Q Did he ever agree to carry Wedding Central in exchange  
15 for Cablevision carrying GSN?

16 A He never -- DIRECTV never carried Wedding Central.

17 JUDGE SIPPEL: Did that answer your question?

18 MR. SCHMIDT: It does, Your Honor.

19 BY MR. SCHMIDT:

20 Q I'm on my last topic. A must-have network is a network  
21 that would be very difficult for an MVPD not to distribute, true?

22 A Yes.

23 Q You don't recall any MVPD telling you that they  
24 considered WE tv to be a must-have network, correct?

25 A An MVPD would never do that.

1 Q They never did that, did they?

2 A They would never do that.

3 Q Did they ever do that --

4 A About any network.

5 Q Can you answer my question?

6 A Yes.

7 Q Did they ever do that?

8 A No, they never characterized WE tv -- an MVPD never  
9 characterized WE tv as a must-have network to me.

10 MR. SCHMIDT: Was Wedding Central a must-have network?

11 MR. GORDON: Are you asking him his opinion?

12 MR. SCHMIDT: Yes.

13 MR. BROUSSARD: It never got an opportunity to become a  
14 must-have network.

15 BY MR. SCHMIDT:

16 Q And definitely it was not a must-have network at any  
17 point when it existed, right?

18 A It was -- it never became a must-have network.

19 Q Okay. A distributor's decision to reposition a network  
20 to a less distributed tier is harmful to that network, true?

21 A Yeah, it may be.

22 Q And just to give an example of that, look with me, if you  
23 would, at Tab 165 in your binder. Do you see this email? We  
24 actually look at this yesterday afternoon. We looked at the third  
25 paragraph. I'm not going to ask you about the second paragraph.

1 A Yes.

2 JUDGE SIPPEL: This is a memo of January 2012?

3 MR. SCHMIDT: Yes, Your Honor, from Kim Martin to various  
4 people including Mr. Broussard.

5 JUDGE SIPPEL: Thank you.

6 BY MR. SCHMIDT:

7 Q And do you see she is discussing

8

9 Do you see that?

10 A Yes.

11 Q And do you see she goes onto talk about the benefits of  
12 that.

13

14 "This is a increase in our  
15 distribution, but more important, it changes the perception of the  
16 network with advertisers and affiliates." Do you see that?

17 A Yes.

18 Q Do you agree with that concept, that getting broader  
19 carriage can change the perception of a network with advertisers  
20 and affiliates?

21 A Well, with affiliates, I mean, we were already pretty  
22 much fully distributed.

23 JUDGE SIPPEL: Well, can you answer his question?

24 MR. BROUSSARD: Oh, I'm sorry. Can you repeat the  
25 question?

1 MR. SCHMIDT: Sure, yeah.

2 BY MR. SCHMIDT:

3 Q Do you agree with that -- did you agree with her  
4 statement that getting broader carriage can change the perception  
5 of the network with advertisers and affiliates? Do you agree with  
6 that proposition?

7 A I do think for certain levels of distribution it could  
8 enhance the perception of the network. If there's, you know, if  
9 there's a dramatic difference in distribution it could impact  
10 perception.

11 Q And I take it that goes both ways? Dramatically gone up  
12 can help, dramatically gone down can hurt?

13 A Yes.

14 JUDGE SIPPEL: Well, is a dramatic increase?

15 MR. BROUSSARD: In this case -- and this is a little bit  
16 outside my expertise -- in this case, I'm not sure that it would,  
17 quite frankly. I think Kim may be advocating a bit here and may be  
18 overstating her case a little bit. So, the difference, you know,  
19 going from , really, it's possible nobody  
20 even notices, quite frankly.

21 BY MR. SCHMIDT:

22 Q Do you recall that WE sometimes had unexplained and  
23 sudden declines in Nielsen ratings?

24 A I'm sorry?

25 Q Do you recall that WE tv sometimes had unexplained and

1 sudden declines in Nielsen ratings?

2 A I don't.

3 MR. SCHMIDT: Okay, look with me, if you would, at  
4 Exhibit 311.

5 MR. BROUSSARD: Okay.

6 JUDGE SIPPEL: Is this in, by the way, 165?

7 MR. SCHMIDT: Yes. Yes, Your Honor.

8 JUDGE SIPPEL: And now we're going where?

9 MR. SCHMIDT: 311, potentially my last exhibit.

10 MR. GORDON: We heard that the last time.

11 MR. SCHMIDT: I don't think you did hear that the last  
12 time. I think you heard last topic, and we're still on the last  
13 topic.

14 MR. GORDON: I see.

15 MR. SCHMIDT: Could you look at 311, sir?

16 JUDGE SIPPEL: Generally, Mr. Schmidt follows through  
17 with what he says he's going to do.

18 MR. SCHMIDT: Thank you, Your Honor.

19 (Laughter.)

20 JUDGE SIPPEL: We've got 311?

21 MR. SCHMIDT: I hope you all recognize that where I don't  
22 it's my own limitations, nothing else. 311.

23 JUDGE SIPPEL: Don't be so hard on yourself.

24 MR. SCHMIDT: Someone has to be. Certainly everyone is,  
25 but --

1 MR. GORDON: I was just going to say, I'm sure there's --  
2 (Laughter.)

3 MR. SCHMIDT: I'll take that away from you. There are  
4 plenty of people. So stipulated.

5 BY MR. SCHMIDT:

6 Q 311, last document, sir.

7 A Okay, I'm looking at it.

8 Q Do you see you're copied on an email from Kim Martin on  
9 July 26, 2011?

10 A Yes.

11 (Whereupon, the above-referred to  
12 document was marked as GSN Exhibit  
13 311 for identification.)

14 BY MR. SCHMIDT:

15 Q Do you see she is saying, "WE tv," in the second  
16 sentence, "is seeing ratings declines in every single daypart on  
17 every series unlike anything we've ever experienced," exclamation  
18 mark?

19 A Yes.

20 Q And she raises the question of whether one of your major  
21 distributors has repositioned WE tv to a less attractive channel  
22 position. Do you see that?

23 A Yes.

24 Q Do you recall this?

25 A Not really.

1 MR. SCHMIDT: Okay, here's my question.

2 JUDGE SIPPEL: This is in July of 2011?

3 MR. SCHMIDT: 2011, yes, sir. Yes, Your Honor. When  
4 you've been involved in negotiations on behalf of WE tv, are there  
5 any discussions, that you're aware of, of Cablevision dropping WE  
6 tv?

7 MR. GORDON: Can we do that a little slower? I'm sorry,  
8 I missed it.

9 MR. BROUSSARD: Me too.

10 JUDGE SIPPEL: Go ahead, repeat it.

11 BY MR. SCHMIDT:

12 Q When you've been involved with negotiations on behalf of  
13 WE tv, are there any discussions, that you're aware of, of  
14 Cablevision dropping WE tv?

15 A Who am I having the conversations with?

16 Q Anyone. Have you ever been aware of Cablevision  
17 considering dropping WE tv?

18 A No.

19 Q Are there any discussions you're aware of involving  
20 Cablevision putting WE tv on a sports tier?

21 A No.

22 Q And just so I try to cover the whole waterfront in one  
23 question, are you aware of any discussions of Cablevision dropping  
24 any Rainbow networks or putting them on a sports tier?

25 A No.

1 MR. SCHMIDT: If I could have 30 seconds, Your Honor.  
2 I'm told that I answered Your Honor's question incorrectly about  
3 whether I got an answer to an earlier question from the witness, so  
4 I'm going to ask it again and then I'll be done.

5 BY MR. SCHMIDT:

6 Q I asked you about your proposal to Mr. Chang, do you  
7 remember that?

8 A Yes.

9 Q And the terms of the proposal were you justifying the  
10 cost of Wedding Central versus the benefits of GSN remaining on the  
11 expanded basic tier, right?

12 A I'm sorry, can you say that again?

13 Q Yeah, of course. Your proposal was talking about what it  
14 would cost to DIRECTV to carry Wedding Central at a sub and  
15 the benefit that GSN would get from continuing to get expanded  
16 basic carriage by Cablevision?

17 A My proposal was whatever my proposal was.

18 Q Okay.

19 A And in the course of having an extended discussion with  
20 Mr. Chang, I pointed out the pluses and minuses of why this makes  
21 sense, and among those was the fact that it seemed like a good  
22 result on both sides.

23 Q Did Mr. Chang ever tell you -- yes or no, last question  
24 -- did he ever tell you that he was willing to grant carriage to  
25 Wedding Central on DIRECTV in exchange for Cablevision keeping GSN

1 on the Sports Tier? Did he ever tell you that? Yes or no.

2 A He never told me that.

3 MR. GORDON: Keeping GSN on expanded basic.

4 MR. SCHMIDT: Let me ask my last question with the right  
5 words in it. I think he knew where I was going.

6 BY MR. SCHMIDT:

7 Q Did Mr. Chang ever tell you he was willing to grant  
8 Wedding Central carriage on DIRECTV in exchange for Cablevision  
9 keeping GSN on expanded basic? Did he ever tell you that?

10 A No, he never told me that.

11 MR. SCHMIDT: Thank you. That's all.

12 JUDGE SIPPEL: Did he even tell you anything like that?

13 MR. BROUSSARD: He told -- what he -- we had issues that  
14 we've always discussed on an ongoing basis with Mr. Chang. There  
15 were a number of issues, including Wedding Central. And so when he  
16 approached Mr. Rutledge ---

17 JUDGE SIPPEL: Wedding Channel -- was Wedding Central --  
18 is that the name of it?

19 MR. BROUSSARD: Yes.

20 JUDGE SIPPEL: Were the issues good issues, bad issues,  
21 mixed issues?

22 MR. BROUSSARD: Yes, so, we wanted to get carriage of  
23 Wedding Central on DIRECTV. We wanted

24 We wanted

25 Mr. Chang wanted

1                   So, there were always a whole host of issues that we  
2 were discussing with him on an ongoing basis. And in December, I  
3 think the --

4                   JUDGE SIPPEL: Of what year?

5                   MR. BROUSSARD: December of 2010. I think the hope was  
6 that if we could make meaningful progress on the Rainbow issues --

7                   JUDGE SIPPEL: Hope by who?

8                   MR. BROUSSARD: Hope by Mr. Chang.

9                   JUDGE SIPPEL: Hope on his part?

10                  MR. BROUSSARD: Hope on his part.

11                  MR. SCHMIDT: And I'm going to object to characterizing  
12 Mr. Chang as hopeful on --

13                  MR. GORDON: Your Honor, Mr. Goldhill was --

14                  MR. SCHMIDT: Can I just finish with my objection,  
15 please? I don't think it's fair to talk about what Mr. Chang's  
16 hopes were.

17                  MR. GORDON: Your Honor, may I respond? Because I think  
18 this is another selective enforcement. We have been admonished by  
19 Mr. Schmidt repeatedly not to interrupt witnesses. And I will say  
20 that Mr. Goldhill and others have had no problem telling what their  
21 understanding is of people's thoughts based on their conversations.  
22 Your Honor asked a question. He's just responding to it. I think  
23 it's unfair --

24                  MR. SCHMIDT: And Your Honor, he's right.

25                  MR. GORDON: -- and it's an improper objection.

1 MR. SCHMIDT: He's right. I shouldn't have interrupted.  
2 I do object though to the testimony on him testifying as to what  
3 Mr. Chang hoped.

4 JUDGE SIPPEL: Well, this is what he thinks. He doesn't  
5 know. Do you know what Mr. Chang hoped?

6 MR. BROUSSARD: I don't know for sure.

7 JUDGE SIPPEL: Don't know for sure.

8 MR. BROUSSARD: I don't know for sure.

9 JUDGE SIPPEL: Then we'll qualify it. Who was the  
10 witness yesterday, Miss, what was it?

11 MR. SCHMIDT: Ms. Doree and Mr. Montemagno.

12 JUDGE SIPPEL: Yeah, well, she was talking about hopes  
13 and characterizing things. I asked her specific questions about  
14 hopes, or as opposed to being a little bit more assertive with what  
15 the plan was. And I'm trying to think of the word that I was  
16 using, hopes versus --

17 MR. SCHMIDT: Belief.

18 JUDGE SIPPEL: Belief. That's right, belief. And we  
19 went back and forth on that for a while, and she settled on hope.  
20 Now, I'm going to take that as a qualifier, but let this witness  
21 answer the question.

22 MR. BROUSSARD: So, it was clear to me that the only  
23 reason Mr. Chang approached Mr. Rutledge was to bring DIRECTV into  
24 the -- and broaden the conversation that was going on, with the  
25 hope that if we could make meaningful progress on the issues we had

1 been discussing with DIRECTV over a long period of time, that that  
2 would cast a favorable light and may help in some way on the GSN  
3 negotiation.

4 JUDGE SIPPEL: Alright.

5 MR. BROUSSARD: Okay?

6 JUDGE SIPPEL: What was I trying -- you were -- you said  
7 there were a range of issues.

8 MR. BROUSSARD: Yes.

9 JUDGE SIPPEL: And you listed a few of them. Is that the  
10 range of the issues?

11 MR. BROUSSARD: So those were sort of the major issues  
12 that we had been discussing on an ongoing basis with DIRECTV.

13 JUDGE SIPPEL: And this was in a serious business sense?  
14 This was not baseball talk or something?

15 MR. BROUSSARD: No, this is very serious. So, we're  
16 repeatedly -- we're always trying to see if we can provide value  
17 for our distribution partners and get back reasonable value in  
18 exchange. And so those conversations on Wedding Central,  
19 those were always about providing an equal exchange of value  
20 from Rainbow between Mr. Chang.

21 JUDGE SIPPEL: How often did you see Mr. Chang?

22 MR. BROUSSARD: I consider Derek a friend. I've known  
23 him for many years.

24 JUDGE SIPPEL: Do you go to lunch?

25 MR. BROUSSARD: I've gone to dinner with him quite a bit,

1 and --

2 JUDGE SIPPEL: But do you have lunch, let's say, once a  
3 week or something?

4 MR. BROUSSARD: Oh, no, because he's out on L.A., and now  
5 he actually moved to the Far East with his family. He changed  
6 jobs.

7 MR. SCHMIDT: In Singapore.

8 MR. BROUSSARD: He's in Singapore.

9 JUDGE SIPPEL: Well, lunch in Singapore would be nice.

10 (Laughter.)

11 MR. BROUSSARD: But he's a great guy, Your Honor.

12 JUDGE SIPPEL: I'm sorry, do you want to --

13 MR. SCHMIDT: I'm done.

14 JUDGE SIPPEL: Do you want to ask questions on that?

15 MR. SCHMIDT: No, I'm done, Your Honor.

16 JUDGE SIPPEL: Okay. And we can have Ms. Kay now?

17 MR. GORDON: I think normally we ask -

18 JUDGE SIPPEL: Oh, I'm sorry.

19 MR. GORDON: I would ask -- I've got scraps here, and if  
20 Your Honor gave me -

21 JUDGE SIPPEL: Yes, yes, yes. Do you want a break?

22 MR. GORDON: Please.

23 JUDGE SIPPEL: It's ten after 11:00. We're back here at  
24 25 after 11:00. Thank you.

25 (Whereupon, the above-entitled matter went off the record

1 at 11:10 a.m. and resumed at 11:28 a.m.)

2 JUDGE SIPPPEL: We are open, aren't we?

3 MR. GORDON: At the moment I believe we are, Your Honor.

4 MS. KANE: We're still closed.

5 MS. GORDON: Oh, we still are?

6 MS. KANE: I don't think we've ever gone back open.

7 MR. GORDON: I mean, Your Honor, I'm going to get into  
8 some topics that will require us to close the courtroom, but I  
9 defer to you as to how you want to do it.

10 JUDGE SIPPPEL: Well, is anybody in here who shouldn't be  
11 here?

12 MR. GORDON: Not at the moment.

13 JUDGE SIPPPEL: Well, why don't we keep it that way then.

14 MR. GORDON: Okay.

15 JUDGE SIPPPEL: I'd rather do that than --

16 MR. GORDON: Open and close it.

17 JUDGE SIPPPEL: Open and close it. I think we'll just  
18 start like that. You're still under oath Mr. Broussard.

19 MR. BROUSSARD: Okay.

20 JUDGE SIPPPEL: And we're ready to proceed. We're going  
21 on redirect now, Mr. Gordon.

22 REDIRECT EXAMINATION

23 MR. GORDON: Thank you, Your Honor. Mr. Broussard, I  
24 want to start with Wedding Central and carriage of Wedding Central,  
25 if I may.

1 MR. BROUSSARD: Yes.

2 BY MR. GORDON:

3 Q You were asked some questions by Mr. Schmidt this morning  
4 about that subject. Do you recall?

5 A Yes.

6 Q And one of the questions you were asked was whether or  
7 not it was conceivable that Wedding Central was carried by  
8 Cablevision due to its ownership. Do you recall that?

9 A Yes.

10 Q And I believe you said it was conceivable.

11 A Conceivable.

12 Q Okay. Who did you speak to at Cablevision concerning the  
13 carriage of Wedding Central?

14 A Mac Budill, Tom Montemagno, and Tom Rutledge.

15 Q Okay. In your conversation --

16 JUDGE SIPPEL: These are all high up officials, aren't  
17 they?

18 MR. BROUSSARD: Yes. They're all senior executives.

19 MR. GORDON: In any of those conversations, did anybody  
20 on the Cablevision side say to you in words or substance, we're  
21 going to carry Wedding Central because we -- you know, because of  
22 ownership or affiliation?

23 MR. BROUSSARD: Never.

24 BY MR. GORDON:

25 Q Okay. Based on your conversations and your dealings with

1 Cablevision, can you explain to the Court why you believe  
2 Cablevision carried Wedding Central?

3 A I think Cablevision ultimately came to feel that this was  
4 a product that might resonate with important consumers to them, and  
5 that it was a good proposition for them.

6 And --

7 JUDGE SIPPEL: Well -- go ahead, yes, finish yours up.  
8 Finish your answer.

9 MR. BROUSSARD: And I think we looked at a document this  
10 morning that sort of demonstrated the enthusiasm of their senior  
11 consumer marketing person to market -- that was, I believe it was  
12 addressed to Jonathan Hargis. It was just to Jonathan.

13 But I think that's the most senior consumer marketing  
14 person at Cablevision, who's going -- who wants to go to his  
15 customer base and say, look at this, we're providing this wonderful  
16 new product to you, and so he embraced the promotional campaign.

17 JUDGE SIPPEL: Product being the --

18 MR. BROUSSARD: The Wedding Central.

19 JUDGE SIPPEL: The network?

20 MR. BROUSSARD: Yes. So, here he is saying -- you know,  
21 he wants to communicate the fact that Cablevision is now offering  
22 this great new product to an important part of his customer base.

23 So, he really embraced the launch through promotional  
24 support.

25 JUDGE SIPPEL: Would he know that much about the ins and

1 outs? The Nielsens and all that? To be the one you want making  
2 that pitch?

3 MR. BROUSSARD: Yes. Jonathan is definitely an expert in  
4 consumer marketing. He's been doing it a long time.

5 JUDGE SIPPEL: But Wedding -- the wedding channel, that's  
6 a -- that's an in-house creation, isn't it?

7 MR. BROUSSARD: It was created by Rainbow. So it was  
8 something -- actually it started as an idea that Kim Martin  
9 created, you know, as an offshoot from WE tv.

10 She had this block of Wedding Central -- of wedding  
11 related programming that really resonated with our consumers, and  
12 so she put together a plan.

13 She pitched it to Ed Carroll, her boss, and they pitched  
14 it to Josh Sapan, and ultimately Jose pitched it to Tom Rutledge.

15 JUDGE SIPPEL: And was this -- were they bifurcating the  
16 programming from WE tv in some way? Or in other words, if the  
17 shows that Wedding Central were putting on, or were contemplating  
18 to be putting on, had not --

19 Well, let's put it another way. If there was no Wedding  
20 Circle, would the programming that Wedding Circle eventually  
21 handled have been put on the WE tv?

22 MR. BROUSSARD: Yes. So --

23 JUDGE SIPPEL: So what's the benefit of having Wedding  
24 Circle?

25 MR. BROUSSARD: Because the -- and it's a good question.

1 Why not just have a wedding block on WE tv, and isn't that good  
2 enough?

3 We felt that there was such -- there was such a response  
4 to the wedding programming that was on WE tv that it could really  
5 support a full-time cable network that focused on weddings,  
6 families and relationships leading up to weddings.

7 And we didn't take all the wedding programming off of WE  
8 tv. We created a separate network that was designed to really  
9 supplement and focus just on wedding programming.

10 Really highly, highly, targeted. This is super-niche  
11 programming. Which is sort of the promise of cable programming.

12 JUDGE SIPPEL: Could you name another super-niche program  
13 that's been successful with any network? At any network?

14 MR. BROUSSARD: Yes. So, I think in --

15 JUDGE SIPPEL: Give me an example of another network.

16 MR. BROUSSARD: Well, I would say, you know, 15 or 20  
17 years ago, if you said to somebody, a 24 hour a day cooking channel  
18 could be successful, people would have said no.

19 But there is a very successful 24 hour a day cooking  
20 channel. That's pretty niche.

21 JUDGE SIPPEL: That's pretty niche.

22 MR. BROUSSARD: Yes. Just cooking.

23 JUDGE SIPPEL: Okay. Fine. It's changing -- too bad  
24 that Ted Turner didn't think of that.

25 (Laughter)

1 JUDGE SIPPEL: Cooking and news.

2 MR. BROUSSARD: Well, he was the first news channel.

3 Whoever thought a 24 hour news channel in the 70s? Whoever thought  
4 that would be successful?

5 Or even a Fox News Channel when there were already two or  
6 three other full-time news channels. And that was launched in the  
7 mid 90s and became a runaway success.

8 And the answer is you never quite know what's going to  
9 resonate and what's going to hit.

10 JUDGE SIPPEL: Okay. All right. All right. I'm still  
11 -- I'm still trying to -- so, WE tv says that it's pitching to  
12 women in -- you know, in the demos, you know, et cetera, et cetera.

13 But they wanted to have another network that would just  
14 focus on weddings. Weddings only. Leading up to weddings, going  
15 through the wedding.

16 MR. BROUSSARD: Yes.

17 JUDGE SIPPEL: And nobody ever thought about going to the  
18 dissolution end of weddings?

19 (Laughter)

20 MR. BROUSSARD: You know, that could be a very good --  
21 maybe that was our mistake. That could actually be good  
22 television.

23 JUDGE SIPPEL: Do I get a cut for that?

24 MR. BROUSSARD: Maybe.

25 (Laughter)

1 JUDGE SIPPEL: Okay. I'm finished. I'm finished. I'm  
2 sorry.

3 MR. GORDON: But let's follow up Your Honor's questioning  
4 and let me asking you this. Take for instance Bridezillas, which  
5 was a show on WE tv, right?

6 MR. BROUSSARD: Yes.

7 BY MR. GORDON:

8 Q What about -- and that was a show about brides and --

9 A It was -- that was brides behaving badly, and it was a  
10 wild success. I mean, who would have guessed that you know,  
11 screaming brides would really become as popular as it did.

12 And it really became a term throughout the -- I think  
13 it's a common term now in common usage in society. So, that was  
14 extremely valuable to a very important part of our distribution  
15 partners' customer base.

16 Q Okay. And were shows like Bridezillas and the success  
17 you had with that type of show what led WE tv management to think  
18 that a super-niche -- I think was your word -- network dealing with  
19 weddings would succeed?

20 A Yes.

21 Q Okay. Now --

22 JUDGE SIPPEL: But what -- you know, I'm just trying to  
23 think -- what -- I'm trying to think what's the significance of  
24 this? This is in-house stuff.

25 This is stuff that they got the executives at the top of

1 Cablevision to say, okay, go for it. Or if they need that kind of  
2 approval.

3 It seems like Ms. Martin had a heck of a lot of  
4 discretion to run these things on, but they're all in-house.

5 MR. BROUSSARD: Well we --

6 JUDGE SIPPEL: You know how that --

7 MR. BROUSSARD: Yes.

8 JUDGE SIPPEL: ---- works. So you're getting program --  
9 they know they're getting programming

10 It's a sure winner if it clicks.

11 MR. BROUSSARD: Yes. They didn't know at the time the  
12 network was approved. So, Mr. Rutledge approved the -- he gave the  
13 green light to the network in his capacity as an overseer of  
14 Rainbow.

15 So Josh Sapan --

16 JUDGE SIPPEL: How do you know that?

17 MR. BROUSSARD: Josh Sapan reported into Mr. Rutledge.  
18 Josh Sapan was the CEO of Rainbow. And so before he could go and  
19 launch a new network, he had to get the approval of his boss, who  
20 at the time was --

21 JUDGE SIPPEL: Being who?

22 MR. BROUSSARD: Tom Rutledge. So Tom Rutledge oversaw  
23 both Rainbow and he oversaw Cablevision.

24 So the idea was get approval for the network and then  
25 distribute it, not just to Cablevision, but to all of our MVPD

1 distribution partners.

2 So it wouldn't just be -- it wouldn't just be in-house.

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11 JUDGE SIPPEL: Wait a minute. With Wedding Circle or  
12 with WE tv?

13 MR. BROUSSARD: This is with Wedding Central.

14 JUDGE SIPPEL: Oh, I'm ---- Wedding Central.

15 MR. BROUSSARD: Okay.

16 JUDGE SIPPEL: But WE tv -- well,

17

18 MR. BROUSSARD: So, with WE tv,

19 Yes.

20 JUDGE SIPPEL:

21

22 MR. BROUSSARD: Oh --

23 JUDGE SIPPEL: Because you had the management fee.

24 MR. BROUSSARD: So there was the management fee

25 complication, yes.

1 JUDGE SIPPEL: And complication.

2 MR. BROUSSARD: Yes.

3 JUDGE SIPPEL: That was put in there for some business  
4 reason.

5 MR. BROUSSARD: Yes. So the management fee wasn't in the  
6 affiliation agreement, but it was a fee that WE tv had been paying  
7 for, you know, I would say more than 15 years, and I am frankly not  
8 sure of the genesis.

9 JUDGE SIPPEL: Well, you know it was for a business  
10 reason.

11 MR. BROUSSARD: Yes. Yes, sure.

12 JUDGE SIPPEL: And Cable TV got it ---- both Cable TV and  
13 WE tv got the benefit of it. In some one way or another.

14 MR. BROUSSARD: Yes. So Cablevision definitely I think  
15 was the big beneficiary of that one.

16 JUDGE SIPPEL: Yes.

17 MR. BROUSSARD: WE tv would have preferred not paying the  
18 management fee.

19 JUDGE SIPPEL: Hold up. So, I'm back to where I was  
20 again. It's an in-house operation that's set -- structured a  
21 little bit differently for whatever reason, but that effect is that  
22 the mother lode at the top, Cablevision, wants to get something for  
23 nothing.

24 I mean, they're paying ---- in a lot of ways, paying big  
25 money for it. They want to get that little extra something, or not

1 pay the extra amount that everybody else would have to pay.

2 MR. BROUSSARD: It sure seems like that's where it wound  
3 up, yes.

4 JUDGE SIPPEL: It's business incentives. You just do the  
5 ledger, anything you want to do.

6 MR. BROUSSARD: Yes.

7 JUDGE SIPPEL: It comes out that way. I mean, that's --

8 MR. BROUSSARD: Yes.

9 JUDGE SIPPEL: To me it's self-evident that that's the  
10 way you want to run it if you're running it internal. But my --  
11 well, okay, I keep preaching this. Any more questions?

12 MR. GORDON: Yes, Your Honor.

13 JUDGE SIPPEL: I'm sorry.

14 MR. GORDON: Let me follow up on Your Honor's  
15 questioning.

16 JUDGE SIPPEL: By the way, I mean, I'm not being  
17 critical. I'm just saying I think that this is reality. That's  
18 all I'm trying to get at. Go ahead.

19 MR. GORDON: I just want to -- let's talk about the  
20 Wedding Central and you were asking questions about how it came  
21 about. You had to convince folks on the Cablevision side that this  
22 would be a good idea, did you not?

23 MR. BROUSSARD: Yes.

24 BY MR. GORDON:

25 Q Okay. The idea of Wedding Central as a network was not

1 that this was going to be super-niche programming for just  
2 Cablevision, right?

3 A Yes.

4 Q You were creating a network that was going to be, in your  
5 hope and theory, widely distributed, right?

6 A Yes.

7 Q It takes a lot of resources to start up a network, right?

8 A Yes.

9 Q Okay. So, the idea was not just to pitch this to  
10 Cablevision and then put it on their own system, you wanted to get  
11 it on other MVPDs?

12 A Yes.

13 Q Okay. And if you turn to 363 --

14 JUDGE SIPPEL: In the big book?

15 MR. GORDON: In the big book. This is a -- you're on  
16 363, Your Honor?

17 JUDGE SIPPEL: I am.

18 MR. GORDON: Okay. And if you look at this --

19 JUDGE SIPPEL: Cablevision Systems Corporation, WE tv,  
20 Wedding Channel.

21 MR. GORDON: Right.

22 JUDGE SIPPEL: It's May 18, 2009.

23 MR. GORDON: Right. This is a business plan, right?

24 MR. BROUSSARD: Yes.

25 BY MR. GORDON:

1 Q And it has certain key assumptions about carriage on  
2 Cablevision -- I'm sorry, about Wedding Central, right?

3 A Yes.

4 Q Okay.

5 JUDGE SIPPEL: Who led the team that prepared this  
6 document? Do you know? I'll ask anyone. You or Mr. Gordon.

7 MR. GORDON: Led the team? I would have to find out who  
8 led the team, Your Honor.

9 JUDGE SIPPEL: Well, who was the big name on it?

10 MR. BROUSSARD: I would say Kim Martin oversaw. She was  
11 probably it.

12 JUDGE SIPPEL: Most likely?

13 MR. BROUSSARD: Yes.

14 MR. GORDON: And what was the purpose of these types of  
15 business plans?

16 MR. BROUSSARD: Just to try to lay out as best we could  
17 a viable business model.

18 MR. GORDON: Okay.

19 JUDGE SIPPEL: How high up is this being presented to?  
20 How high up? I'm assuming Mr. Rutledge.

21 MR. BROUSSARD: So, ultimately this goes up to Mr.  
22 Rutledge.

23 JUDGE SIPPEL: Okay.

24 MR. GORDON: And this has a lot of data in it and a lot  
25 of assumptions, right?

1 MR. BROUSSARD: Yes.

2 BY MR. GORDON:

3 Q And of course if Cablevision was just going to carry  
4 Wedding Central because it was -- it owned and it was affiliated  
5 with Wedding Central, there would have been no need to go through  
6 the -- this process of trying to convince them that this made  
7 sense, right?

8 A No.

9 Q Okay.

10 A Correct.

11 Q And you were asked some questions about page eight of 35.  
12 I'm sorry, it's page -- actually with a GSN Exhibit 363, 010.

13 JUDGE SIPPEL: Let me have that again. 363, 010?

14 MR. GORDON: Yes, Your Honor.

15 JUDGE SIPPEL: I've got a page eight of 35. Is that the  
16 same one?

17 MR. GORDON: Yes.

18 JUDGE SIPPEL: Okay. Assumptions.

19 MR. GORDON: Okay. And so this is a document in -- if  
20 you -- I'm sorry to do this, but if you look on page 003, is dated  
21 May 18, 2009, right?

22 MR. BROUSSARD: Yes.

23 MR. GORDON: Okay. And then if we look at --

24 JUDGE SIPPEL: What are you sorry to do that for?

25 MR. GORDON: I just was going back and forth, Your Honor.

1 But, this has some assumptions on this page about carriage by other  
2 MVPDs, right?

3 MR. BROUSSARD: Yes.

4 MR. GORDON: Okay. And here if we look at this page and  
5 you can look at the -- either 010 or the chart on 011 about  
6 carriage here, but --

7 JUDGE SIPPPEL: Wait a minute, hold it. You said you're  
8 moving the page. I'm working off of page eight of 35.

9 MR. GORDON: Yes. Sure, we can --

10 JUDGE SIPPPEL: And that then dropping down to page nine.

11 MR. GORDON: Right. So, in this May 2009 plan, the  
12 notion was to have distribution on DIRECTV correct?

13 MR. BROUSSARD: Yes.

14 BY MR. GORDON:

15 Q Now, distribution wasn't -- for DIRECTV, that wasn't the  
16 only MVPD you were saying there was going to be distribution on,  
17 correct?

18 A Correct.

19 Q You also had assumed that there would be distribution on  
20 Cablevision, correct?

21 A Yes.

22 Q There would be distribution on correct?

23 A Yes.

24 Q And there would be distribution correct?

25 A Yes.

1 Q Okay. And there was --  
2 distribution on Time Warner in 2010, correct?

3 A Yes.

4 Q But you ended up getting distribution in 2010 then?

5 A Yes.

6 Q Okay.

7 JUDGE SIPPEL: Which program, because there's two  
8 programs here? On which network?

9 MR. GORDON: We're talking about Wedding Channel here,  
10 Your Honor.

11 JUDGE SIPPEL: And not WE tv?

12 MR. GORDON: Not WE tv.

13 JUDGE SIPPEL: Because you see how the heading is? The  
14 heading says WE TV and Wedding Channel. It doesn't say and, it  
15 just says WE tv, Wedding Channel.

16 MR. GORDON: Yes, Your Honor. On page -- I'm looking on  
17 page eight of 35, it says Wedding Channel affiliate model. So I'm  
18 just looking at the page that deals with when they expected  
19 carriage on these various networks.

20 JUDGE SIPPEL: Right. But I understand that. But you  
21 understand that I'm a little bit confused because the document's  
22 head is WE tv, Wedding Channel.

23 But you're saying that -- I'm hearing it from your end,  
24 it seems to be exclusively Wedding Channel. At least on the pages  
25 that you're working on.

1 MR. GORDON: I will ask the question of the witness, Your  
2 Honor, as to what I think. And he'll tell us.

3 As I understand from the cover page, this is a  
4 presentation being made by WE tv to Cablevision? Or a document  
5 being prepared by WE tv for Cablevision relating to Wedding  
6 Channel?

7 MR. BROUSSARD: Yes. But the heading is misleading.

8 JUDGE SIPPEL: So, WE tv is kind of like the sponsor --  
9 it's sponsoring this?

10 MR. BROUSSARD: Yes.

11 JUDGE SIPPEL: All right.

12 MR. BROUSSARD: Yes.

13 MR. GORDON: And if we -- so, just to be clear, and to  
14 follow up on the questions I just asked, in 2009, after you get the  
15 green light on this network, I take it you got out to all these  
16 MVPDs and try to convince them about carriage?

17 MR. BROUSSARD: Yes.

18 BY MR. GORDON:

19 Q Okay. In other words, you weren't waiting on Time Warner  
20 until the budget said you would get carriage. That was something  
21 you immediately went out and you did?

22 A Yes. This is just a plan. We always try to do better.

23 Q And under the plan, two of the networks -- two of the  
24 MVPDs, were those sizable MVPDs?

25 A Yes.

1 Q Okay. Now, if you look on page 011, the next page, there  
2 is information concerning what you thought the rate would be  
3 correct?

4 A Yes.

5 Q It says rates in the middle column there?

6 A Yes.

7 JUDGE SIPPEL: What page are you on now?

8 MR. GORDON: Page 011, the very next page.

9 JUDGE SIPPEL: Oh, I see. Yes.

10 MR. GORDON: In the middle there is rate information.

11 And if I look at 2010, here you thought there would be  
12 for carrying Wedding Central, correct?

13 MR. BROUSSARD: Yes.

14 BY MR. GORDON:

15 Q

16

17 A

18 Q

19

20 A

21

22 Q

23 A

24 Q

25 A

1 JUDGE SIPPEL: Now I -- you're on page 0111 or nine of  
2 35?

3 MR. GORDON: Yes, Your Honor. And I'm looking at the  
4 column in 2010.

5 JUDGE SIPPEL: Rates. I've got it. I've got it.

6 MR. GORDON:  
7  
8  
9

10 MR. BROUSSARD:

11 BY MR. GORDON:

12 Q Okay.  
13

14 A

15 Q

16

17 A

18 Q

19 A

20 Q

21

22 A

23 Q

24 A

25

1 Q

2

3

4 A

5 Q

6 A

7 Q Now --

8 JUDGE SIPPEL: It's like baseball, you know. The

9 transition sometimes you drop the ball.

10 (Laughter)

11 MR. GORDON: I'm sure that doesn't make Mr. Broussard

12 feel good. But --

13 JUDGE SIPPEL: Well, that's baseball.

14

15

16 MR. BROUSSARD: You know, that's a great point, Your

17 Honor.

18

19 JUDGE SIPPEL:

20 MR. BROUSSARD:

21

22

23 JUDGE SIPPEL: Was Mr. Broussard -- I'm sorry, was Mr. --

24 what's his name?

25 MR. COHEN: Montemagno, Your Honor?

1 JUDGE SIPPEL: No, the one that they -- he's just  
2 mentioned.

3 MR. BROUSSARD: Rutledge?

4 MR. GORDON: Tom Rutledge.

5 JUDGE SIPPEL: Was he -- did -- was he unhappy with that  
6 result? When he saw it, he said this is great. It looks great to  
7 me.

8

9 MR. BROUSSARD: Yes. So, you know, the network was  
10 approved, and that's a completely separate process from negotiating  
11 carriage of the network.

12 And so it was Mac Budill's team who handled that  
13 negotiation.

14 JUDGE SIPPEL: Mac who?

15 MR. BROUSSARD: Mac Budill and Tom Montemagno who handled  
16 that negotiation.

17 And Tom let them handle those negotiations.

18 JUDGE SIPPEL: Rutledge let them handle the negotiations.  
19 Was he happy with what they did?

20 MR. BROUSSARD: Oh --

21 JUDGE SIPPEL: I'm just trying to be critical with you.

22 MR. BROUSSARD: I suppose he was ultimately okay with it.

23 JUDGE SIPPEL: Well, what choice does he have?

24 MR. BROUSSARD: He might have been able to overrule the  
25 decision

1 JUDGE SIPPEL: All right.

2 MR. GORDON: Do you have an understanding as to why the  
3 Cablevision programming group

4 MR. BROUSSARD: They weren't -- well, they were under  
5 tremendous programming cost pressure,

6 That was their position.

7 And we argued vociferously that we're just looking for a  
8 reasonable license fee for a very compelling product,

9

10 JUDGE SIPPEL: And this , that is a license  
11 fee?

12 MR. BROUSSARD: That is a license fee,

13

14 JUDGE SIPPEL: Now, some mention was made about program  
15 costs or program expenses. You were in all the -- Cablevision was  
16 in a hold to a big extent. Is that right?

17 MR. BROUSSARD: Yes. So MVPD --

18 JUDGE SIPPEL: And what was the amount? Do you remember  
19 the amount?

20 MR. BROUSSARD: Well, I was just saying that MVPDs are  
21 under ---- they're experiencing significant increases in the  
22 license fees they generally pay for programming networks.

23 And so these days they're under tremendous pressure to  
24 try to moderate their programming costs.

25 JUDGE SIPPEL: Under pressure?

1 MR. BROUSSARD: Yes.

2 JUDGE SIPPEL: And where was Cablevision feeling that  
3 pressure?

4 MR. BROUSSARD: Just generally in terms of programming  
5 groups coming and seeking significant license fee increases.

6 JUDGE SIPPEL: So, okay, so --

7 MR. BROUSSARD: So, for example, ESPN is a -- those  
8 networks cost a significant amount of money for MVPDs. And  
9 increase rapidly, those costs.

10 JUDGE SIPPEL: Well, I mean I guess that's true, but it  
11 depends on the -- it depends on the distributor, right? I mean, I  
12 never really felt sorry for Comcast because they were having  
13 trouble negotiation with ESPN.

14 I -- maybe if it was a smaller operation, I guess maybe  
15 I would feel a little sorry for them.

16 MR. BROUSSARD: Yes.

17 JUDGE SIPPEL: But that's just the cost of doing  
18 business. That's not big -- that should not be a catastrophic  
19 event.

20 MR. BROUSSARD: Yes. No, it is definitely a cost of  
21 doing business. And so the programming group at an MVPD, they're  
22 charged with moderating those increases as much as they can.

23 But, you're right, it is a cost of doing business.

24 JUDGE SIPPEL: I mean -- so yes. So, that's what big  
25 companies do. They try and work hard on keeping expenses down.

1 Particularly continuing expenses.

2 MR. BROUSSARD: Yes.

3 JUDGE SIPPEL: And they work equally hard in trying to  
4 get their taxes reduced.

5 MR. BROUSSARD: They sure do.

6 JUDGE SIPPEL: So, if you got -- if you take care of your  
7 taxes and you take care of these costs, you're in pretty good  
8 shape.

9 MR. BROUSSARD: Yes.

10 JUDGE SIPPEL: Perfectly natural.

11 MR. BROUSSARD: I agree with that.

12 JUDGE SIPPEL: And I've been hearing all this testimony  
13 about that there was a lot of pressure being put all over the place  
14 because of these costs, and as you were just saying, an expected  
15 cost of doing business.

16 MR. BROUSSARD: Yes.

17 JUDGE SIPPEL: Yes, what?

18 MR. BROUSSARD: Well, the other sort of new thing that  
19 happened in the industry, --

20 JUDGE SIPPEL: Well, what's the significance of that? I  
21 mean, did that really affect the bottom line that much?

22 MR. BROUSSARD: You --

23 JUDGE SIPPEL: You're carrying on another --

24 MR. BROUSSARD: You're sort of arguing my side. That's

25 --

1 JUDGE SIPPPEL: Am I?

2 MR. BROUSSARD: Yes, because we were saying, you know,

3 -- it seems like for this product, seems  
4 like a reasonable license fee. And the folks at Cablevision were  
5 saying,

6 And we're saying in the scheme of things, to your point,  
7 it's really not that significant.

8

9

10

11 And that was the point we kept trying to make repeatedly.

12 And we were unsuccessful in persuading them. So, your point is  
13 well taken.

14 JUDGE SIPPPEL: So, if they put you up on the sports tier,  
15 will you be making the same argument? Or they said we're going to  
16 do that? Or we want to talk to you about that?

17 MR. BROUSSARD: Yes.

18 JUDGE SIPPPEL: Would you be making the same arguments?

19 MR. BROUSSARD: Yes. I would try to persuade them to  
20 distribute our network more broadly than that. I would.

21 JUDGE SIPPPEL: Because of the -- it's not -- it's no big  
22 deal for you, but it's a big deal for us?

23 MR. BROUSSARD: Yes.

24 JUDGE SIPPPEL: You're -- who am I with? Mr. -- it's  
25 still yours.

1 MR. GORDON: Just to follow up Your Honor's questioning.  
2 You were arguing that this wasn't such a substantial cost, but I  
3 take it the programming group on the other side was telling you --

4 MR. BROUSSARD: It's every penny matters.

5 MR. GORDON: Okay.

6 MR. BROUSSARD: Every penny ---- this is our business.  
7 Every penny matters.

8 BY MR. GORDON:

9 Q Right. And the only way you make money as a general  
10 matter is if your costs and expenses are less than the money you  
11 bring in, right?

12 A Yes.

13 Q So, they were telling you they were trying to rein in  
14 programming costs at the time?

15 A Yes.

16 Q Okay. Now, if you skip to 372 in your binder.

17 JUDGE SIPPEL: This is not his binder. This is the Game  
18 Show's binder.

19 MR. GORDON: This is Game Show's binder, yes. It's  
20 affectionately Mr. Broussard's binder, I guess.

21 JUDGE SIPPEL: He's not adopting it, right? 372?

22 MR. GORDON: 372.

23 JUDGE SIPPEL: Mr. Broussard, you can hate this binder,  
24 but just answer the questions.

25 (Laughter)

1 MR. GORDON: And so just to orient us in time, this is  
2 dated, and I believe you were shown this, October 2010, right?

3 MR. BROUSSARD: Yes.

4 BY MR. GORDON:

5 Q So this is before your discussions with Mr. Chang about  
6 --

7 A Yes.

8 Q Okay. And it's before, to your understanding, the  
9 decision to re-tier GSN, correct?

10 A Yes.

11 Q Okay. And if you just turn to the actual numbers here,  
12 there are some -- again, some assumptions in here about carriage of  
13 Wedding Central by MVPDs. Do you see that?

14 A I'm sorry, is this one of two?

15 Q Yes.

16 A One of two, yes.

17 Q Okay. And so, whereas if you focus here on the first  
18 entry, which is Q4 2010.

19 A Yes.

20 Q You see here there is Time Warner,

21 A Yes.

22 Q So you had secured carriage from Time Warner?

23 A Yes.

24 Q And that's Time Warner Manhattan, right?

25 A That is correct.

1 Q And then if you go down, there is Cablevision and  
2 MediaCom and you mentioned those two, right?

3 A Yes.

4 Q And then for DIRECTV there's

5 Do you see that?

6 A Yes.

7 Q And if you go across,

8 , right?

9 A Yes.

10 Q So by -- but in the last plan we had saw that you had

11 thought That was an

12 assumption, correct?

13 A Yes.

14 Q I take it by now you had realized that that assumption

15 was not going to come to fruition, and

16 ?

17 A Yes.

18 Q And that was based on your conversations with Mr. Chang

19 among others, for this point in time where DIRECTV had indicated

20 they weren't going to carry Wedding Central, correct?

21 A Yes. That is correct.

22 Q Okay. So, you had moved on, in a sense?

23 A Yes.

24 Q Okay. So prior to your conversations with Mr. Chang in

25 December, January, February, that you testified about on -- in

1 response to Mr. Schmidt, prior to that point in time, you had come  
2 to the conclusion that you were going to get  
3 carriage for Wedding Central?

4 A Yes.

5 Q Now sir, you were asked some --

6 JUDGE SIPPEL: You mentioned Time Warner New York.

7 MR. GORDON: Yes.

8 JUDGE SIPPEL: Is that -- are there separate Time  
9 Warners?

10 MR. GORDON: I'm just about to go there, Your Honor.

11 JUDGE SIPPEL: Go ahead. You go there.

12 MR. GORDON: You want to --

13 JUDGE SIPPEL: Take me with you.

14 (Laughter)

15 MR. GORDON: You might do it better, Your Honor, but I'm  
16 going to give it a try.

17 So now, I want to follow up where Your Honor ---- so, you  
18 were shown, and I won't get Mr. Schmidt's --

19 MR. SCHMIDT: We have it.

20 MR. GORDON: Easel. But you were shown this, right?

21 JUDGE SIPPEL: What is it? Tell him what this is.

22 MR. GORDON: This is GSN 379. It's the chart. The bar  
23 graph.

24 JUDGE SIPPEL: And what is this supposed to represent?

25 Because the testimony is to pick this up.

1 MR. GORDON: This is representing carriage of Wedding  
2 Central and penetration to subscribers, Your Honor.

3 JUDGE SIPPEL: Carriage by major MVPDs in 2011.

4 MR. GORDON: Yes.

5 JUDGE SIPPEL: And it's been marked as proposed GSN  
6 Exhibit 379.

7 MR. GORDON: Right.

8 JUDGE SIPPEL: Okay. Now you can get it.

9 MR. SCHMIDT: I think it's submitted conditional until  
10 you guys coming back to us on a number of issues.

11 JUDGE SIPPEL: That's right.

12 MR. GORDON: I think that's right.

13 JUDGE SIPPEL: But I remember that.

14 MR. GORDON: I just want to be clear. So, in this chart  
15 in 2011, we have zero for DIRECTV. Do you see that?

16 MR. BROUSSARD: Yes.

17 BY MR. GORDON:

18 Q

19

20 A

21 Q

22

23 A

24 Q And then there's Time Warner, do you see that?

25 A Yes.

1 Q It's got ten percent now. Your Honor had asked a  
2 question about systems. Can you just explain the concept of this  
3 to the Judge?

4 A Yes. So, Time Warner at this time probably had about 12  
5 million subscribers across the country, and those are generally in  
6 different pockets of the country.

7 So they had a big presence in Los Angeles. A big  
8 presence in Northern Ohio. A big presence in the Carolinas. And  
9 a big presence in New York City, among other markets.

10 Q And do those systems make uniform carriage decisions?

11 A They do not.

12 Q Okay. So, each of those systems will decide what  
13 networks they put on their system, right?

14 A Yes. I mean, there are different levels of autonomy in  
15 different markets.

16 Q Okay.

17 A But there is a certain amount of autonomy on a market by  
18 market basis.

19 Q Okay. And with respect to Wedding Central, could you --

20 A Yes. So, with respect to Wedding Central, Time Warner  
21 had agreed to launch Wedding Central in the New York market. In  
22 the New York City market.

23 Q When you say Time Warner, who are you referring to?

24 A I'm talking -- I'm speaking about the individuals that we  
25 dealt with, the programming executives and really their head of

1 advertising, Joan Gillman, who said, let's get this going in New  
2 York.

3 With the hope that ultimately we'll -- hopefully it will  
4 be a lot more, but in New York City, we were widely distributed.

5 Q Okay. And if -- I've changed Time Warner to Time Warner  
6 Manhattan. That's the name of the system that you were -- we're  
7 talking about that represents New York City?

8 A Yes.

9 Q What would be the penetration level?

10 A So the penetration level there would be roughly in the  
11 neighborhood of percent.

12 Q The same as Cablevision?

13 A Yes.

14 Q Okay. Now, with respect to Cablevision, how many systems  
15 nationwide does Cablevision have?

16 A Really, Cablevision really serves one market. And that's  
17 the New York DMA.

18 Q Okay. And just so we're clear that -- I think you  
19 testified that's Long Island --

20 A It's the circle around the Manhattan -- the center of the  
21 donut. It's like a donut around Manhattan.

22 So, it's Long Island, it's Connecticut, it's Westchester  
23 and I think parts of New Jersey.

24 Q

25

1 A

2 Q

3 A

4 Q

5 A

6 Q

7 A

8 Q

9 A

10 Q Got it. All right. Let's move on to promotion. You  
11 were asked some questions.

12 JUDGE SIPPEL: You know, I just --

13 MR. GORDON: Oh, I'm sorry, Your Honor.

14 JUDGE SIPPEL: I just want a point of clarification.

15 That's all right. As you mentioned -- it originally was mentioned,  
16 but I want to get it clear in my own mind.

17 Time Warner, why is Time Warner able to get its  
18 programming in Manhattan, but Cablevision is not able to do it?  
19 What's the -- go ahead.

20 MR. BROUSSARD: Yes. So Cablevision operates -- all  
21 cable operators operate under local franchising authority. So you  
22 actually have to get a license from the local municipalities.

23 And I'm no expert here, but they operate under a license  
24 from local municipalities. Cablevision has licenses where it has  
25 licenses. And Time Warner is licensed to distribute as a cable

1 operator in Manhattan. So, they can't overlap.

2 JUDGE SIPPEL: Really?

3 MR. BROUSSARD: They have their own -- as cable  
4 operators, they have their own territories, and one can't go into  
5 the other's territory as a cable operator.

6 JUDGE SIPPEL: Okay. I -- yes, I'm -- I'm following you.  
7 Go ahead.

8 MR. GORDON: Okay. I'm going to shift gears, Your Honor.  
9 Do you have anything else on this?

10 JUDGE SIPPEL: I just -- Time -- well, I guess Time  
11 Warner went first. Is that why they got the inside pitch on that  
12 one?

13 MR. BROUSSARD: They did go first. They were one of the  
14 first cable systems in the U.S. And I believe it was founded by  
15 Cablevision's founder, Chuck Dolan, who wound up selling it to Time  
16 Warner.

17 JUDGE SIPPEL: Small world.

18 MR. BROUSSARD: Yes, it is. Yes, it is.

19 JUDGE SIPPEL: Okay, go ahead.

20 MR. GORDON: Okay. You were asked some questions about  
21 the promotional support Cablevision provided to launch Wedding  
22 Central. Do you recall that?

23 MR. BROUSSARD: Yes.

24 BY MR. GORDON:

25 Q Is it typical for cable system -- cable operators and

1 MVPDs to provide promotional support for new networks?

2 A Yes.

3 Q Is that unusual?

4 A It's not unusual at all.

5 Q Okay.

6

7 A

8

9

10

11

12 Q

13

14 JUDGE SIPPPEL: I'm sorry, now what is being -- what is  
15 Mr. Cohen checking about this -- what information are you checking  
16 for this graph at 379?

17 MR. COHEN: I don't think Your Honor would have any issue  
18 in the end. Do you see the citations? We're just going to double  
19 check where the citations come -- it's represented to come from Mr.  
20 Broussard's testimony.

21 JUDGE SIPPPEL: Yes.

22 MR. COHEN: We're just going to double check that. I'm  
23 quite confident that the --

24 JUDGE SIPPPEL: The data's okay with you though?

25 MR. COHEN: I believe that's -- I --

1 JUDGE SIPPEL: Okay.

2 MR. COHEN: Yes.

3 JUDGE SIPPEL: That's all right.

4 MR. COHEN: I don't think there's going to be an issue.  
5 I think we -- unless we raise an objection, Your Honor should  
6 assume that 379 is in evidence.

7 JUDGE SIPPEL: All right. And what -- Time Warner is  
8 kind of like an outlier. I mean I can see where Cablevision is up  
9 there, percent.

10 But Time Warner is the only one from all these other --  
11 all these other cable companies, et cetera, and it's got a -- what  
12 is that -- that flukey thing before the percent mean? Is it  
13 approximately? Or, what does that mean?

14 MR. SCHMIDT: As the creator of the chart, I can tell  
15 Your Honor -- may I answer that, Your Honor?

16 JUDGE SIPPEL: Yes. Sure.

17 MR. SCHMIDT: It's approximately. And that's based on  
18 the discussion Mr. Broussard and I had in his deposition where he  
19 said approximately percent.

20 JUDGE SIPPEL: Fair enough.

21 MR. SCHMIDT: Okay. Likewise for the . There's one of  
22 those in front of the as well.

23 JUDGE SIPPEL: Well, you're right. But you know what the  
24 problem is? That's covered by the circle.

25 MR. SCHMIDT: Yes.

1 JUDGE SIPPEL: So I missed that. Thank you.

2 MR. GORDON:

3

4

5

6 MR. BROUSSARD:

7 BY MR. GORDON:

8 Q

9

10

11 A

12 Q

13

14 A

15 Q

16

17

18 JUDGE SIPPEL:

19

20 MR. GORDON:

21 JUDGE SIPPEL:

22

23 MR. GORDON:

24

25

1 MR. BROUSSARD:

2 BY MR. GORDON:

3 Q You haven't seen it?

4 A I don't.

5 Q Okay.

6 MR. SCHMIDT: Your Honor, I would request that the  
7 management fee agreement be produced given that it's become an  
8 issue in this ligation.

9 MR. COHEN: Your Honor, discovery's ended a long time  
10 ago. Okay, there are lots of documents.

11 JUDGE SIPPEL: Yes, but I haven't had my discovery yet.

12 MR. COHEN: No, I understand, Your Honor. I mean, you  
13 know, I have no idea what -- you know, what the circumstances are  
14 around the management fee.

15

16

17

18 The contractual management fee relationship between  
19 Cablevision and the Rainbow Network as it existed in 2010 is pretty  
20 distant from this document. There are lots of documents relating  
21 to GSN, its relationship with its parents, that we haven't seen.

22 This is not a secret, Your Honor. And if the other side  
23 was going to request it, the time for discovery ended a really long  
24 time ago. I don't know if we would need a witness. I don't know  
25 if we would need additional testimony to put it in perspective.

1 I mean, I think the relevance here, Your Honor, is the  
2 witness is saying

3

4

5

6 So, I just think, Your Honor, to go down this road, I  
7 have no idea what kind of additional testimony we're going to need.

8 JUDGE SIPPEL: All it is I'm asking -- if you want, I'll  
9 put this in an order. I'm just asking for reasonable efforts to  
10 locate this document, and get me a copy of it.

11 MR. COHEN: Right.

12 JUDGE SIPPEL: It can be after we close here. It doesn't  
13 have to be right now.

14 MR. COHEN: Your Honor, we will begin those efforts.

15 JUDGE SIPPEL: Yes, but I ---- you know, I don't want to  
16 ---- you know, to turn the company upside down because --

17 MR. COHEN: But my point is different, Your Honor. I'm  
18 sure if there is a writing of this, right, it's probably easily  
19 located. All right? I don't think it could --

20 JUDGE SIPPEL: You're qualifying though. You're saying  
21 if there is a writing.

22 MR. COHEN: Your Honor, I can't make a representation to  
23 you.

24 JUDGE SIPPEL: No, I know you can't.

25 MR. COHEN: Since I don't know the facts. So, I'm saying

1 let's assume that -- if there is a writing that covers this period,  
2 I assume in a phone call or two, we would be able to get it.

3 JUDGE SIPPEL: Well, then it's no problem.

4 MR. COHEN: Right. I'm making a slightly different  
5 point, Your Honor.

6 If there's then going to be examination by Mr. Schmidt  
7 about a document that was not called for in discovery, that they've  
8 known about since 2010, we have not tendered a witness who might be  
9 knowledgeable about that.

10 JUDGE SIPPEL: I understand that Mr. Cohen. If I see the  
11 document, I can make that determination as to what to do with it.

12 MR. COHEN: Okay. We will --

13 JUDGE SIPPEL: But if you're going to give it -- anything  
14 you give to me, you've got to give to Mr. Schmidt.

15 MR. COHEN: Of course. No, I understand that, I'm not  
16 raising an objection to it, Your Honor.

17 JUDGE SIPPEL: I didn't mean to insult you. You know, I  
18 just --

19 MR. COHEN: No, what I was objecting to was the call for  
20 discovery on the seventh day of trial.

21 JUDGE SIPPEL: I --

22 MR. COHEN: About a document that has been on its face,  
23 we've had these documents that refer to  
24 since the beginning of the case.

25 JUDGE SIPPEL: I hear you. And you're absolutely right.

1 MR. COHEN: We will place the call at lunchtime, Your  
2 Honor.

3 JUDGE SIPPEL: Okay.

4 MR. COHEN: And get it going.

5 JUDGE SIPPEL: You see where I'm coming from though?

6 MR. COHEN: Absolutely.

7 JUDGE SIPPEL: I'm hearing about this management fee.

8 And I've never been shown a document in the amount -- you know, to  
9 have the discussion here.

10 MR. COHEN: We will be --

11 JUDGE SIPPEL: And now I'm very curious about this thing.

12 I mean, phantom documents don't -- I don't get rest over those, you  
13 know. And you probably want to see it too.

14 MR. COHEN: I don't know, Your Honor.

15 (Laughter)

16 MR. COHEN: We will place the call at lunchtime.

17 JUDGE SIPPEL: Thank you.

18 MR. GORDON: May I approach, Your Honor?

19 JUDGE SIPPEL: Yes.

20 MR. GORDON: Let me show GSN 197.

21 JUDGE SIPPEL: Do you have a copy for our --

22 MR. GORDON: I, unfortunately, Your Honor --

23 MR. KNOWLES-KELLETT: We have it in the book. You can  
24 have this one.

25 MR. GORDON: Actually, I think it's a tab in your book.

1 I thought it was, but maybe a different number.

2 MR. KNOWLES-KELLETT: It's GSN 117, right? We have our  
3 big books here.

4 MR. GORDON: Okay. Oh, I see. Okay.

5 MR. KNOWLES-KELLETT: Do you want this one?

6 MR. GORDON: Sure, if you don't mind.

7 JUDGE SIPPEL: Thank you.

8 BY MR. GORDON:

9 Q

10

11

12 JUDGE SIPPEL:

13 BY MR. GORDON:

14 Q

15

16 A

17 Q

18 A

19 Q

20

21

22 A

23 Q

24

25

1

2

3 A

4 Q

5

6

7

8 A

9 Q

10

11

12 A

13 Q

14

15 A

16 Q

17

18 A

19 Q

20 JUDGE SIPPEL: Is this in evidence?

21 MR. GORDON: I believe it is, Your Honor.

22 JUDGE SIPPEL: It's GSN Exhibit 197?

23 MR. GORDON: Right.

24 JUDGE SIPPEL: Thank you.

25 THE WITNESS: And is this all confidential?

1 BY MR. GORDON:

2 Q Yes, it's confidential.

3

4

5 A

6 Q

7

8 A

9 Q

10 A

11 Q

12

13 A

14 Q

15

16 A

17 Q

18

19

20 A .

21 Q

22 MR. SCHMIDT:

23 MR. GORDON:

24 MR. SCHMIDT:

25 MR. GORDON:

1 MR. SCHMIDT:

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3 MR. GORDON:

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5 MR. SCHMIDT:

6 BY MR. GORDON:

7 Q

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9 A

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13

14 Q

15 JUDGE SIPPEL:

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18 THE WITNESS:

19 JUDGE SIPPEL:

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21 THE WITNESS:

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23 JUDGE SIPPEL:

24 THE WITNESS:

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1 JUDGE SIPPEL:

2

3 BY MR. GORDON:

4 Q

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6

7 A

8 Q

9 JUDGE SIPPEL:

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11 THE WITNESS:

12 JUDGE SIPPEL:

13 THE WITNESS:

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18 JUDGE SIPPEL:

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20 THE WITNESS:

21 JUDGE SIPPEL:

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24 THE WITNESS:

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THE WITNESS:

JUDGE SIPPEL:

BY MR. GORDON:

Q

1

2 A

3 Q I'm just looking for -- if you'd turn to 398, sir.

4 JUDGE SIPPEL: And what is Cablevision Systems  
5 Corporation? Where is that in the scheme of things? A subsidiary  
6 of Cablevision?

7 THE WITNESS: I think it might be. I'm not sure, but  
8 it's -- it might be the parent company. But it's somewhere in the  
9 corporate structure.

10 JUDGE SIPPEL: I'm sure it is. Do you know?

11 MR. GORDON: I'm sorry, Your Honor, I don't know.

12 JUDGE SIPPEL: Mr. Gordon, do you know?

13 MR. GORDON: No.

14 JUDGE SIPPEL: Cablevision Systems Corporation, is that  
15 a subsidiary of the parent?

16 MR. GORDON: I don't know, but I can ask, Your Honor --

17 JUDGE SIPPEL: Thank you.

18 MR. GORDON: -- exactly what the structure is.

19 MR. SPERLING: Mr. Gordon, I believe it's the parent  
20 company that holds CSC Holdings, LLC. Rainbow is a subsidiary of  
21 CSC Holdings, LLC.

22 COURT REPORTER: I'm sorry, sir. I did not pick that up.

23 JUDGE SIPPEL: You have to speak up.

24 COURT REPORTER: Could you repeat that, please?

25 MR. SPERLING: Yes. Your Honor, Mr. Gordon will confirm

1 it, but I believe the Cablevision Systems Corporation is the parent  
2 company at the very top of the hierarchy.

3 JUDGE SIPPEL: Thank you.

4 MR. GORDON: Okay. I want to move away from this topic  
5 and talk about channel placement, if that's all right, Your Honor.

6 BY MR. GORDON:

7 Q There was some --

8 JUDGE SIPPEL: Well, why don't you hold on just a second?  
9 Is there anything else in this -- this is called what? This is  
10 called an affiliation agreement?

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: Is this a typical one would you say in  
13 your experience?

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: GSN 197.

16

17

18 THE WITNESS:

19

20

21

22 JUDGE SIPPEL:

23 BY MR. GORDON:

24 Q And let me just ask you quickly to turn to 398.

25 A Yes.

1 JUDGE SIPPPEL: This is the big book?

2 MR. GORDON: The big book, GSN 398.

3 JUDGE SIPPPEL: Three-ninety-eight. I've got -- oh, I  
4 see. I got it.

5 MR. GORDON: And I'm looking at page 4, Your Honor.

6 JUDGE SIPPPEL: Yes.

7 BY MR. GORDON:

8 Q And there's an overview up top. Do you see that?

9 A Yes. You mean 004?

10 Q Yes.

11 A Okay.

12 Q And this was the document Mr. Schmidt directed you to  
13 that was prepared by Cablevision, correct?

14 A Yes.

15 Q

16

17

18

19 A

20 Q

21

22

23 A

24 Q

25

1

2 A

3 Q

4 A

5 Q Okay. Now there are two concepts in terms of channel  
6 placement we've been talking about. I want to make sure we've got  
7 them straight. One was neighborhooding. And that's this idea that  
8 being around other networks is a good thing.

9 A Yes.

10 Q Okay. And the other is just the position that you have  
11 on the lineup, the channel number, if you will, irrespective of  
12 what's around you, correct?

13 A Yes.

14 Q Okay. And I think yesterday you testified that being  
15 under 100 in your mind was a good thing?

16 A Yes.

17 Q Some or substance. I don't think that's exactly what you  
18 said.

19 A Yes.

20 Q Okay.

21

22

23 A

24 Q Okay. Do you recall it was 94?

25 A Yes.

1 Q Okay. And --

2 JUDGE SIPPEL: For what network was on --

3 THE WITNESS: Wedding Central.

4 JUDGE SIPPEL: Wedding Central was on what number again?

5 THE WITNESS: Channel 94.

6 MR. GORDON: For Time Warner.

7 THE WITNESS: For Time Warner.

8 JUDGE SIPPEL: Yes. Oh. Thank you.

9 BY MR. GORDON:

10 Q

11

12 A

13 Q

14

15 A

16 Q Now on Cablevision, could you tell us what channel

17 Sundance is on?

18 A Channel 192.

19 Q Okay. You think that's a good place to be?

20 A Not at all.

21 JUDGE SIPPEL: With Time Warner, it's 192?

22 THE WITNESS: On Cablevision, Sundance is channel 192.

23 JUDGE SIPPEL: Okay. So now we're back to Cablevision

24 channel 192?

25 THE WITNESS: Yes.

1 JUDGE SIPPEL: Sundance. Not good?

2 THE WITNESS: Not good.

3 (Laughter)

4 THE WITNESS: We've been -- we've been trying to so hard  
5 to get that changed for so long and have not been successful.

6 BY MR. GORDON:

7 Q Okay. And the fact that you're affiliated didn't change  
8 that, did it?

9 A Not in the least.

10 Q Okay.

11 JUDGE SIPPEL: So you, being Rainbow, were making that  
12 pitch?

13 THE WITNESS: Yes.

14 JUDGE SIPPEL: You weren't Sundance? You were Rainbow?

15 THE WITNESS: Yes, we were making -- making it on behalf  
16 of Sundance to Cablevision. Can you give us better channel  
17 position? And we've -- we've been unsuccessful.

18 BY MR. GORDON:

19 Q So on Cablevision you're 192?

20 A Yes.

21 Q Do you know what Game Show Network is?

22 A I think they're channel 88.

23 Q Under 100?

24 A Under 100.

25 JUDGE SIPPEL: I'm sorry. What is channel 88?

1 THE WITNESS: I think Game Show Network is on channel 88  
2 on the Cablevision platform.

3 JUDGE SIPPEL: Okay.

4 BY MR. GORDON:

5 Q Let me do my last line here, and that's your  
6 conversations with Derek Chang. So let me just orient you in time.  
7 Following the re-tiering of GSN, you got a call from Mr. Sapan,  
8 correct?

9 A Yes, apparently the decision to re-tier.

10 Q I'm sorry.

11 A That's okay.

12 Q The decision to re-tier was made, and then you get a call  
13 from Mr. Sapan?

14 A Yes.

15 Q And I think you've already testified to that. I won't go  
16 through it right now, but you understood the import of that is that  
17 you would be speaking to Mr. Chang about the GSN issue, I think  
18 your words were.

19 A Yes.

20 Q Okay. And you and Mr. Chang speak, and at some point you  
21 put issues on the table, correct?

22 A Yes.

23 Q And what were the issues you were putting on the table?

24 A Right. So, you know, we -- from Rainbow's perspective,  
25 we were interested in gaining carriage for Wedding Central.

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So those were some of the issues that were on the list.

Q And why were you putting those issues on the table?

A To try to resolve them. I mean, there was -- there were elements that DIRECTV wanted from Rainbow, and there were elements that Rainbow wanted from DIRECTV. And as usual, we were trying to work out a solution that worked and provided value to both sides.

Q Okay. And if there could be some sort of solution, what did you understand would happen next?

A So if we were able to work out a solution on these DIRECTV/Rainbow issues, that may have a favorable impact on the GSN conversations.

Q Okay.

A I think that was what Mr. Chang's -- why Mr. Chang initially contacted Mr. Rutledge.

Q Okay. Now if you'd turn to Exhibit 260, if you will?

A Yes.

Q You were asked some questions about this proposal that you and Mr. Chang discussed, correct?

A Yes.

Q Can you tell the Judge what your recollection of that proposal was and was not?



1 MR. SCHMIDT: I thought those were Gordon rules.

2 BY MR. GORDON:

3 Q This is Cablevision Exhibit 850.

4 (Whereupon, the above-referred to document was marked as  
5 Cablevision Exhibit No. 850 for identification.)

6 BY MR. GORDON:

7 Q And is it a cover email on the first page where you  
8 forward on January 28th, 2011 an email to Josh Sapan, and you note,  
9 "FYI, I'll tell Derek," that's Mr. Chang --

10 A Yes.

11 Q -- "that I'll call him on Monday." Do you see that?

12 A Yes.

13 Q And then if you turn the document over, there is an email  
14 which is from Mr. Chang to you, Mr. Broussard, with the subject  
15 "GSN." Do you see it?

16 A Yes.

17 Q And that is dated January 28th, 2011, correct?

18 A Yes.

19 Q And Mr. Chang put GSN in the subject line, correct?

20 A Yes.

21 Q And when you saw that, what was your understanding of the  
22 subject that Mr. Chang was writing about?

23 A Cablevision's decision to re-tier Game Show Network.

24 Q Okay. And he writes, "Bob, hope you are still enjoying  
25 some Sundance." And that's a film festival?

1 A Yes.

2 Q Okay.

3 A And I was.

4 Q Okay.

5 (Laughter)

6 BY MR. GORDON:

7 Q And you write, "I wasn't aware, but I guess the deadline  
8 in approaching. Do you see that?

9 A Yes.

10 Q And did you understand that to mean the deadline for the  
11 re-tiering to be implemented?

12 A Yes.

13 Q Okay. And then he goes, "I wanted to see if Cablevision  
14 was final in its decision. Would obviously be ashamed, given the  
15 various relationships. Perhaps delaying your decision even for a  
16 short time might make some sense to see if there is anything else  
17 to work out." Do you see that?

18 A Yes.

19 Q So you of course didn't work for Cablevision, correct?

20 A Correct.

21 Q You worked for Rainbow?

22 A That is correct.

23 Q And Mr. Chang is saying he wants to see if the decision  
24 was final with Cablevision?

25 A Yes.

1 Q Right?

2 A Correct.

3 Q And then he goes on to say, "It would be a shame given  
4 the various relationships," right?

5 A Yes.

6 Q When you read that, what was your understanding as to  
7 what Mr. Chang was conveying to you?

8 A It's not something you like to see from one of your  
9 biggest clients. It's -- I think the message is, if they move  
10 forward, it may damage our relationship. It may have implications  
11 for our partnership.

12 Q And specifically, what would be some of those  
13 implications?

14 A You know, there's always -- even the issues that we were  
15 talking -- discussing at the time, you know, we -- I think he's --  
16 he might be implying that we're going to have trouble making  
17 progress on those issues then if Cablevision moves forward.

18 Q We'd like to offer 850 at this time, Your Honor.

19 JUDGE SIPPPEL: Any objection?

20 MR. SCHMIDT: None, Your Honor.

21 JUDGE SIPPPEL: It's received.

22 (Whereupon, the above-referred to document was received  
23 into evidence as Cablevision Exhibit No. 850.)

24 MR. GORDON: Cablevision 850, Your Honor, just for the  
25 record.

1 JUDGE SIPPEL: Now did you think this was a veiled  
2 threat?

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: You knew Mr. Chang a while. You had  
5 dinner with him and stuff. Does he do things like that?

6 THE WITNESS: Very nice guy, but he's a superb  
7 businessman. He's an excellent sharp businessman.

8 JUDGE SIPPEL: Okay. I hear you. Any -- what was it,  
9 re-cross?

10 MR. SCHMIDT: I have a few re-cross, Your Honor.

11 JUDGE SIPPEL: Is that the way it works, like that?

12 RE-CROSS EXAMINATION

13 BY MR. SCHMIDT:

14 Q Let's look at Exhibit 197.

15 MR. SCHMIDT: You were done, Mr. Cohen, right?

16 MR. GORDON: What?

17 MR. SCHMIDT: You were done?

18 MR. GORDON: Yes, sir.

19 BY MR. SCHMIDT:

20 Q Let's look at 197.

21

22 A Okay.

23 Q It was a loosey, what we have come to call a loosey.

24 (Laughter)

25 MR. COHEN: No, it's what you've come to call --

1 (Simultaneous speaking)

2 JUDGE SIPPEL: I think I started it.

3 THE WITNESS: Okay.

4 JUDGE SIPPEL: You know what that's from? When I was in  
5 high school years and years ago, there used to be a Irv's  
6 Candy Store on the corner of Nostrand and President, and Irv sold  
7 looseys. Ten cents a cigarette, which is very --

8 MR. COHEN: Your Honor, at the end of the day we'll  
9 discuss that we're both from Brooklyn, Your Honor. I actually  
10 heard you were from the Bronx based on a conversation you had with  
11 Mr. Zaccario.

12 JUDGE SIPPEL: Well, I like the Yankees, but that's got  
13 nothing to do with this.

14 (Laughter)

15 JUDGE SIPPEL: Anyway. So there you are. It's a term  
16 I've lived with since I was a kid.

17 MR. SCHMIDT: You're passing it on.

18 JUDGE SIPPEL: In a different context.

19 BY MR. SCHMIDT:

20 Q Do you see 197, the carriage agreement?

21 A Yes.

22 Q I think you said that you had your management fee for at  
23 least 15 years, as long as you can remember?

24 A Yes.

25 Q

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2 A

3 Q If we look at page 3 of the document --

4 A Yes.

5 Q -- and this is important, sir. Let me make sure we're  
6 all on the same page.

7

8

9 A

10

11 Q Yes.

12 JUDGE SIPPPEL:

13 BY MR. GORDON:

14 Q Do you see the language I'm reading?

15

16 A Yes.

17 Q

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20 A

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22 Q

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24 A

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22 Q

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24 A

25 Q

1 A

2 Q

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4 A

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7 A

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10 A

11 Q

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14 A

15 Q Okay. Let's look at Exhibit 363, please. And I'll  
16 direct your attention, if I may, to numbered page 11. It also says  
17 page 9 of 35, which is halfway through your binder. And just to  
18 orient this while everyone's pulling it up --

19 A What page?

20 Q Page 9 of 35.

21 A Nine of thirty-five? Okay.

22 Q Yes, it's the chart of carriage dated May 18th, 2009. Do  
23 you remember being asked questions about his by Mr. Gordon?

24 A Yes.

25 Q Including about how you

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2 A

3 Q

4 A

5 Q

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7 A

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9 Q

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11 A

12 Q Time Warner. You wanted carriage in other Time Warner  
13 systems, didn't you?

14 A Yes.

15 Q Like Los Angeles?

16 A Yes.

17 Q And like other parts around the country?

18 A Yes.

19 Q And you never got it?

20 A That is correct.

21 Q DIRECTV. I think you said with Mr. Gordon -- and maybe  
22 you can stick to this document we're looking at on page 8 where it  
23 says It's the page just above  
24 where we were under "Assumptions."

25 A Yes.

1 Q You were initially hoping to get DIRECTV carriage

2

3 A Yes.

4 Q But I believe you said on Mr. Gordon's question that by  
5 the time of October 2010,

6

7 A

8 Q Yes. Let's look at Exhibit 260. And I'll direct your  
9 attention to the email that we've been talking about that you sent  
10 Mr. Carroll and Mr. Sapan on December 18th, 2010 at 4:52 p.m.

11 A Yes.

12 Q Do you see that?

13 A Yes.

14 Q This is an email you wrote at the time you were having  
15 discussions with Mr. Chang, right?

16 A Yes.

17 Q These are your words we see here?

18 A Yes.

19 Q And your words are that you "spoke with Derek and made  
20 the proposal we discussed," right?

21 A Yes.

22 Q Your words are that you "explained to him that it all  
23 seemed like an equal exchange of value." Do you see that?

24 A Yes.

25 Q And your words were

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3 A Yes.

4 Q

5 A Yes.

6 Q Those are your words, right?

7 A Yes.

8 Q

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13 A

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15 Q

16 A

17 Q

18 A

19 Q

20 A

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22 Q

23 JUDGE SIPPEL:

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25 THE WITNESS:

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6 JUDGE SIPPEL:

7 MR. SCHMIDT:

8 JUDGE SIPPEL:

9 BY MR. SCHMIDT:

10 Q I'm going to show you what's been marked into evidence as  
11 Exhibit 39, please.

12 JUDGE SIPPEL: Thank you.

13 MR. SCHMIDT: Thank you, Your Honor.

14 BY MR. SCHMIDT:

15 Q Do you see this is an email from Mr. Rutledge in  
16 September 2009 to Mr. Bickham? That's an email chain that also  
17 includes an email from Tom Montemagno at the bottom. That's the  
18 one I'm going to ask you about.

19 JUDGE SIPPEL: And the subject is,

20

21 MR. SCHMIDT: Yes, Your Honor.

22 BY MR. SCHMIDT:

23 Q And what I'm going to direct your attention to, Mr.  
24 Broussard, is about halfway down the page in an email that Mr.  
25 Montemagno is writing to Mr. Bickham, he begins a paragraph that

1 says, "Finally." And you'll see your name in that sentence. Tell  
2 me when you're with me.

3 A Okay.

4 (Pause)

5 THE WITNESS: Okay.

6 BY MR. SCHMIDT:

7 Q So I'm just going to read it. Tell me if I've read it  
8 correctly.

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12 A

13 Q Who do you understand that to be referring to?

14 A Tom Rutledge.

15 Q Tom Rutledge. So let me start again.

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21 A

22 Q

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Did I read that correctly?

25 A Yes.

1 Q

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5 A

6 Q

7 A

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11 Q

12 A

13 Q Look in your binder at tab 98.

14 JUDGE SIPPEL: The big binder?

15 MR. SCHMIDT: This is the big binder, Your Honor.

16 JUDGE SIPPEL: Ninety-eight.

17 MR. SCHMIDT: Second to last exhibit in my re-cross.

18 JUDGE SIPPEL: Okay.

19 BY MR. SCHMIDT:

20 Q Do you see that there's an email at the bottom here that  
21 we talked about before?

22 A Yes.

23 Q Where it says

24 A Yes.

25 Q Mr. Broussard is you, obviously?

1 A Yes.

2 Q Who is Tom?

3 A Tom Rutledge.

4 Q And this says, "Mr. Rutledge tasked Broussard to come up  
5 with a list of asks for DIRECTV that would be worth our keeping GSN  
6 status quo," correct?

7 A Yes.

8 Q DIRECTV had just under million subscribers it could  
9 potentially offer?

10 A Yes.

11 Q And that would have taken Wedding Central from  
12 subscribers to subscribers, correct?

13 A Correct.

14 Q And within months of learning that DIRECTV -- well, let's  
15 go to the last document. You still have in front of you, what's  
16 the one Mr. Gordon marked? Exhibit 850, where Mr. Chang writes to  
17 you about GSN?

18 A Yes.

19 Q And this is dated at the end of January 2011?

20 A Yes.

21 Q And this is, "I guess the deadline is approaching. I  
22 wanted to see if Cablevision was final in its decision?"

23 A Yes.

24 Q Around this time Mr. Chang again communicated to you that  
25 DIRECTV would not carry Wedding Central, correct?

1 A Yes.

2 Q And within months of that, Wedding Central closed down,  
3 correct?

4 A Yes.

5 Q Let's look at this email. On page 2 of the email from  
6 Mr. Chang to you, he's specifically reaching out to you about GSN,  
7 right?

8 A Yes.

9 Q And he's specifically asking you if Cablevision was final  
10 in its decision regarding GSN, right?

11 A Yes.

12 Q And your response to that is not to send it to  
13 Cablevision, but to send it to your boss Mr. Sapan in Rainbow,  
14 correct?

15 A I -- yes, I flipped the email. I flipped the email to  
16 Josh.

17 Q And you say to Josh, your boss in Rainbow, that you will  
18 call Derek back on Monday, right?

19 A Yes.

20 Q Thank you.

21 MR. SCHMIDT: Nothing further.

22 MS. KANE: The Bureau has a few questions, Your Honor,

23 JUDGE SIPPEL: Okay. Yes. Please, Ms. Kane.

24 DIRECT EXAMINATION

25 BY MS. KANE:

1 Q Good afternoon, Mr. Broussard.

2 A Hello.

3 Q We will try to keep this brief because I'm sure  
4 everybody's a little hungry.

5 A Great. Thank you.

6 Q I know I am.

7 A Thank you.

8 Q And you've been on the stand for quite some time. My  
9 name is Pamela Kane. I represent the Enforcement Bureau of the  
10 Federal Communications Commission, and with me is my colleague Mr.  
11 Knowles-Kellett.

12 A Hello.

13 MR. KNOWLES-KELLETT: Hi.

14 BY MS. KANE:

15 Q If I could have you turn to CV Exhibit 339, which is your  
16 written direct testimony. I believe it's the first document in  
17 your spiral, or it's the last document in the binder, whichever is  
18 more convenient for you to use.

19 MR. SCHMIDT: The Enforcement Bureau doesn't take sides.

20 BY MS. KANE:

21 Q And if I could have you turn to page 3, paragraph 8?

22 A Yes.

23 Q I just want to clarify for the record, we've been using  
24 the term "affiliates" and "affiliation" and "affiliated" in  
25 multiple ways today, correct?

1 A Yes. It's very confusing.

2 Q In paragraph 8, the first sentence of that paragraph, it  
3 says, "The content descriptions contained in WE tv's affiliation  
4 agreements with MVPDs." Do you see where I was reading?

5 A Yes.

6 Q And I know we've looked at several affiliation agreements  
7 today, haven't we?

8 A Yes.

9 Q Okay. What is the definition of "affiliation" in that  
10 context?

11 A So here -- and it is confusing, because it's agreements  
12 with non-affiliates. And so here it -- we refer to our MVPD  
13 distribution partners as affiliates, much like CBS licenses its  
14 local television stations and calls those station groups  
15 affiliates. That I think where that name derives from, sort of  
16 copying the network structure. But these are just -- these are  
17 just our MVPD distribution partners, not affiliated companies.

18 Q If you'd turn to that same page, paragraph 10, the first  
19 sentence of that paragraph says, "I understand that in this  
20 proceeding, GSN claims that Cablevision somehow favored WE tv  
21 because Cablevision and WE tv are affiliated." Do you see where I  
22 was reading?

23 A Yes.

24 Q What is the definition that you were using for  
25 "affiliated" in that context?

1 A That's the more conventional use of the term  
2 "affiliated." Related, related companies.

3 Q So as we go through your testimony today, the definition  
4 of "affiliate," or your use of the term "affiliate," "affiliated,"  
5 "affiliation" is all within a general context, right? We'd have to  
6 look specifically to the context of your testimony to figure out  
7 which of the three you might be using, or which of the two, I'm  
8 sorry, you might be using?

9 A Yes. Yes.

10 Q Thank you for clarifying.

11 A Okay. No, it is -- it's an unfortunate use, so we've  
12 come to talk about them as carriage agreements as opposed to  
13 affiliate agreements because it is a -- it can be confusing.

14 Q So in the context of you using the term for an  
15 affiliation agreement, we're really just talking about carriage  
16 agreements, correct?

17 A Correct.

18 Q And when you talk about affiliates are you talking about  
19 the MVPDs or are you talking about those companies with which  
20 Rainbow is affiliated on a corporate structure?

21 A Yes, so usually, when we're talking -- when we're talking  
22 about an RV, we're talking about an MVPD distribution partners more  
23 commonly, because I think I talk about that more frequently. I'm  
24 not sure. Yes, so I think it's probably more common that I'm using  
25 it with respect to distribution partners. But as you say, it

1 depends on the context.

2 Q Thank you. I believe you testified earlier, and it may  
3 have been today, or it may have been yesterday afternoon, that you  
4 are familiar with set-top box polling data, correct?

5 A Yes.

6 Q Can you define what a set-top box data or polling data  
7 is?

8 A Yes. So paid television operators generally have the  
9 ability to procure what channel their set top box data are tuned to  
10 at any given time. So if you're a paid television subscriber, you  
11 unfortunately have to have certain equipment in your house, and the  
12 main piece of equipment is a set-top box. And that set-top box  
13 will be tuned to a certain channel, so at any given time a paid  
14 television operator can determine what box is tuned to what  
15 channel. And so when they aggregate all that information, they  
16 can tell you at any given time, there were X number of households  
17 that are tuned to channel 5, for example.

18 Q And does it measure simply household information?

19 A I think it's -- I -- and I'm -- this is way out of my  
20 area of expertise, but I think they can do it actually on a  
21 box-by-box basis, so you could have within a given household four  
22 boxes that are tuned to different channels, and they're actually  
23 measuring the -- based on the number of boxes as opposed to the  
24 number of households.

25 Q

1

2 A

3 And I know Cablevision has a very  
4 sophisticated set top box product today that we're speaking with  
5 about. And it's a really compelling product that they're -- that  
6 they're just bringing to market. And there are other paid  
7 television operators that make their data available to third  
8 parties for all sorts of research purposes. So for us to get  
9 access, we don't have ready access. So we really have to work with  
10 paid TV operators to gain access at this point.

11 Q

12

13 A

14 Q

15 A

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21 Cablevision has a relationship with ESPN where ESPN is utilizing  
22 the data, and I think they're having pretty good success with that  
23 new product so far.

24 Q If I were to look at a report that reflects this data,

25 what would I expect to see on it?

1       A       Well, I think part of the challenge is asking the right  
2 question, and it depends what you need the data for. Are you just  
3 measuring viewership and do you want -- so one purpose might be to  
4 compare the set-top box data against Nielsen data and see if  
5 there's a delta. And if there is a delta, what's the explanation  
6 for the delta? So you can pretty -- today if you go to a paid TV  
7 operator and try to secure some of the set-top box data, you would  
8 ask them can you present this information to me? You'd have to --  
9 you really have to tailor the question for exactly what it is you  
10 want. So I don't think there's a standard set-top box data report.  
11 It depends on who the customer is.

12       Q

13

14       A

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17       Q       Between the two, between set top box polling data and  
18 Nielsen data, what are the differences that you're aware of?

19       A       So Nielsen -- and I'm way outside my area of expertise  
20 now, but Nielsen is really based on a sampling methodology, and the  
21 set top box data, and it's sampling, but it's a much, much bigger  
22 sample, and it's a lot more households. So in Cablevision's case,  
23 it could be millions as opposed to Nielsen's sample size of tens of  
24 thousands.

25               The problem with the set-top box data is you don't

1 necessarily know who's sitting in front of the TV. You just know  
2 what channel the set top box is tuned to. Now, you can try to  
3 refine that by -- by comparing those set top boxes to who's in that  
4 household, and that's what the paid TV operators are trying to do  
5 to refine that data. Nielsen is constantly been trying to improve  
6 their product. So who's better? You know, that's a question  
7 that's being debated.

8 Q Thank you very much. That's all the Bureau --

9 JUDGE SIPPEL: Who processes -- I know Nielsen is an  
10 outside agency that reports the data to users.

11 THE WITNESS: Yes.

12 JUDGE SIPPEL: What about the set-top boxes? Is there an  
13 unrelated agent out there that collects the data?

14 THE WITNESS: You know, not yet. I do think that at one  
15 point Charter Communications got together with DISH Network and  
16 AT&T to aggregate their data so that you couldn't tell what  
17 platform it came from. And so that they were -- they engaged some  
18 third party, I assume to aggregate that data. But other than that,  
19 I think it's pretty much within -- it's all in house.

20 JUDGE SIPPEL: It's all in house?

21 THE WITNESS: It's all in house.

22 JUDGE SIPPEL: So is the data shared with anybody else  
23 outside?

24 THE WITNESS: I think the family -- I think -- I think  
25 paid TV operators are starting to get into the business of

1 licensing that data, because it can be very valuable information.

2 JUDGE SIPPEL: I would think so.

3 THE WITNESS: Very, valuable. It's a rich source of --  
4 it's a rich source of information. The -- it's a challenge though  
5 to harness it because there's so much information. It's a  
6 challenge to really harness it and use it effectively. And so,  
7 that's what a lot of the analytics people are focused on.

8 JUDGE SIPPEL: They're up for the challenge?

9 THE WITNESS: Yes, I think so.

10 JUDGE SIPPEL: Are we set to break?

11 MR. SCHMIDT: Can I just follow up on a question, Your  
12 Honor?

13 JUDGE SIPPEL: Oh, yes. Go ahead.

14 MR. SCHMIDT: On set-top box data.

15 JUDGE SIPPEL: Yes.

16 RE-CROSS-EXAMINATION

17 BY MR. SCHMIDT:

18 Q Just to be clear, it's not audited?

19 A You said you were done.

20 Q No, I --

21 (Simultaneous speaking)

22 (Laughter)

23 THE WITNESS: No, just kidding.

24 BY MR. SCHMIDT:

25 Q It's not audited, right?

1 JUDGE SIPPEL: Certainly.

2 MR. SCHMIDT: Yes.

3 JUDGE SIPPEL: Go ahead.

4 BY MR. SCHMIDT:

5 Q Set-top box data is not audited like Nielsen data is,  
6 right?

7 A I don't know.

8 Q Do you know what Cablevision considers to be a  
9 representative sample within its set-top box data set?

10 A I really don't know.

11 Q Do you know if ESPN pays for the access that they get?

12 A I don't know.

13 Q Okay. But you know that you consider it very valuable?

14 A I think set-top box data is -- it -- yes, I think it  
15 could be very valuable. I think it's a rich source of information.

16 Q

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18 A

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22 Q

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24 A

25 Q

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2 A I do not.

3 Q Thank you.

4 MR. GORDON: I have nothing, Your Honor.

5 JUDGE SIPPEL: Ms. Kane?

6 MS. KANE: Nothing more from the Bureau, Your Honor.

7 JUDGE SIPPEL: Nothing more from me.

8 THE WITNESS: Okay.

9 JUDGE SIPPEL: Are you prepared to go home now?

10 MR. GORDON: I am going to actually rush Mr. Broussard to  
11 his car so he can get home. I promised him at 2:00 shuttle.

12 THE WITNESS: Yes, if I push it to 3:00, it's fine.

13 JUDGE SIPPEL: Don't get in an accident and don't get any  
14 tickets. I can't fix tickets.

15 (Laughter)

16 (Whereupon, the witness was excused.)

17 JUDGE SIPPEL: Okay. We're in recess until 2:15, 2:20.

18 So, 2:20.

19 (Whereupon, the hearing was recessed at 1:04 p.m. to  
20 reconvene at 2:22 p.m.)

21 JUDGE SIPPEL: We're on the record.

22 MR. COHEN: Your Honor, before we call Mr. Egan, we had  
23 discussed yesterday our proffer on video evidence and I wonder if  
24 Your Honor would hear me out for just a few minutes --

25 JUDGE SIPPEL: Sure.

1 MR. COHEN: -- before we get the witness. So we have --

2 JUDGE SIPPEL: Do you want to hear what my problems are  
3 first and then you can address them?

4 MR. COHEN: Yes, sir.

5 JUDGE SIPPEL: How's that?

6 MR. COHEN: Absolutely.

7 JUDGE SIPPEL: I'll give you a -- I won't be a moving  
8 target. Let's see -- okay. First, let me ask you, is Mr. Egan's  
9 going to be the next witness?

10 MR. COHEN: Yes, Your Honor. Yes.

11 JUDGE SIPPEL: He certainly will bring in the -- he can  
12 bring up his -- He's viewed these sizzler reels, he can explain  
13 what he's seen and tell us about them. That's one way they can get  
14 in. But then we're stuck with the Commission rule. I'm not going  
15 to read that again but you know what I'm talking about.

16 MR. COHEN: I know exactly the rule, Your Honor.

17 JUDGE SIPPEL: And then I have other concerns. I have --  
18 if I let your sizzles in I'd have to -- I know I would be asked,  
19 I'm assuming I would be asked to let some game show sizzles in. So  
20 we could see it at a different approach.

21 MR. COHEN: Your Honor, I was going to offer sizzles for  
22 both sides. So that issue we could take off the table.

23 JUDGE SIPPEL: Well, they may not be the sizzles that  
24 Game Show wants -- that Mr. Schmidt wants.

25 MR. COHEN: Well, they've had -- they've had a long time

1 to think about this, Your Honor.

2 JUDGE SIPPEL: Oh, I see.

3 MR. COHEN: -- for two years.

4 JUDGE SIPPEL: So they haven't had --

5 MR. COHEN: Since 2013 is when we first said we were  
6 going to put sizzle reels on our --

7 JUDGE SIPPEL: Right. Oh, okay. So if it -- if there's  
8 going to be no more sizzle reels from Game Show, then I'll scratch  
9 that one off.

10 MS. FLAHIVE-WU: Well, Your Honor --

11 JUDGE SIPPEL: I'm not finished yet.

12 MS. FLAHIVE-WU: Okay.

13 JUDGE SIPPEL: Well, what are you -- what do you say?

14 MS. FLAHIVE-WU: I was going to say we've been aware of  
15 the rule and had that in mind when taking that approach to this  
16 litigation. So if something were to change, then we would have to  
17 revisit our approach.

18 JUDGE SIPPEL: You were very comfortable that the rule  
19 would keep it out?

20 MS. FLAHIVE-WU: Well, we're well aware of 1.357.

21 JUDGE SIPPEL: Yes.

22 MS. FLAHIVE-WU: And Your Honor's precedent in previous  
23 cases, and had made our litigation decisions accordingly.

24 JUDGE SIPPEL: Okay. That's seen now. This woman knows  
25 how to do it. She cites me for precedence.

1 (Laughter.)

2 JUDGE SIPPPEL: Only in argument. Only in argument. All  
3 right. I got the Commission rule, I'm very concerned about that,  
4 because the Commission doesn't like anybody to just, you know, defy  
5 their rules, overlook their rules, or not respect their rules  
6 unless there's a good reason. I'm going to let you talk about  
7 that.

8 MR. COHEN: Sure.

9 JUDGE SIPPPEL: Okay. So and then there's the confusion  
10 that it will create, that it is likely to cause. It's also going  
11 to be duplicative, because I'm sure we're going to hear the story  
12 about the - about the programming from Mr. Egan and it runs in the  
13 face of Rule 403, exclusion of relevant evidence on grounds of  
14 prejudice, confusion or waste of time. Although relevant, I mean,  
15 Rule 403 of the Federal Rules of Evidence here: evidence may be  
16 excluded if its probative value was substantially outweighed by the  
17 danger of unfair prejudice -- forget about that one -- confusion of  
18 the issues, or misleading a jury -- that doesn't count -- or by  
19 considerations of undue delay, waste of time, waste of time or a  
20 needless presentation of cumulative evidence and it's that last  
21 clause that gives me the most concern.

22 It's asking me to take a look at materials that I -- have  
23 formed some kind of a subjective view on them, which is -- I have  
24 difficulty looking at a film and then being able to relate it to  
25 testimony or record. I'm not going to recount my take on the

1 sizzles for a number of reasons, and it's -- we talked about this  
2 this morning, I mean, amongst my staff.

3           It's different from a situation where if you -- if you  
4 were defending a medical malpractice case and the malpractice  
5 occurs, is alleged to have, occurred in the operating room and you  
6 happen to have a film of the operation. Well, I guess they do this  
7 all the time now, that would be a situation when viewing the -- in  
8 effect, the scene of the crime or, like, the choke hold on Staten  
9 Island, you know, nothing like seeing that kind of evidence to get  
10 a clear picture on what it's all about. But this isn't going to  
11 give me a clear picture of what it's all about. So for all of  
12 those reasons, in all likelihood, after hearing her argument,  
13 that's what you're -- that is what -- well, let me put it this way.  
14 Those are the factors that you're arguing against.

15           MR. COHEN: And I understand and I appreciate that, Your  
16 Honor. It's very helpful and, obviously, we understood your  
17 predisposition going in.

18           JUDGE SIPPEL: Yes, sir.

19           MR. COHEN: So let me try to address your points in  
20 order.

21           JUDGE SIPPEL: Okay.

22           MR. COHEN: Let me start with 1357, which says that  
23 unless offered for the sole purpose of attempting to prove or  
24 demonstrate sound effect -- that's not us, right -- if you have  
25 mechanical or physical reproductions of sound waves shall not be

1 admitted in evidence. And then it goes on to say you can provide  
2 a typewritten transcript in lieu of the sound waves.

3 JUDGE SIPPEL: Correct. Right.

4 MR. COHEN: Your Honor, there's no doubt from this  
5 language, I think, in its plain reading, and also in some context  
6 I'm going to give in a moment that this relates only to sound  
7 recordings. What this clearly says, if you've got tape recording,  
8 give me a transcript of the tape recording rather than the tape and  
9 if the sound effect -- if this were some musical issue that  
10 couldn't be reduced to writing, then the rule doesn't apply. Now,  
11 Your Honor, this notion of sound versus audio-visual materials  
12 which include both sound and picture is actually the subject of the  
13 Copyright Act so --

14 JUDGE SIPPEL: All right. So let me stop you there.

15 MR. COHEN: Yes.

16 JUDGE SIPPEL: If it was a question of just a tape  
17 recording of the video, in other words, what was being said on the  
18 screen, I wouldn't see the screen but I'd be getting this  
19 recording.

20 MR. COHEN: Right.

21 JUDGE SIPPEL: See, that is what I -- was it 1.357? That  
22 would apply. But once you get into the video side of it --

23 MR. COHEN: I guess what I'm saying, Your Honor, is that  
24 this only applies to sound, and let me tell you why --

25 JUDGE SIPPEL: To sound?

1 MR. COHEN: Only to a sound recording and not an  
2 audio-visual recording that includes sound in a movie.

3 JUDGE SIPPEL: Okay.

4 MR. COHEN: So let me tell you why. I'm not totally  
5 making this up. There is a context for this, not for this rule but  
6 for the argument that I'm making, which is in the Copyright Act.  
7 And if Your Honor goes to -- and you can look at it at a break --  
8 it's Section 101 of the Copyright Act, it deals with copyrights in  
9 sound recordings which are, of course, mechanical or physical  
10 reproductions of sound waves.

11 And what the Copyright Act says is that audio-visual  
12 materials are not sound recordings. They're treated differently.  
13 So the Copyright Act makes a distinction between a sound recording,  
14 which is audio only, and if this were audio only I would agree with  
15 Your Honor, I would run afoul of 1357, and audio-visual works,  
16 which have both sight and sound, and of course that makes a  
17 difference here because the sizzle reels are not just the words.  
18 The sizzle reels are the words and the pictures, and the arguments  
19 we've been making all along, and you are right, and I'm going to  
20 come to Mr. Egan's testimony, he is going to talk about them. But  
21 the images which cannot be conveyed in a transcript are a  
22 significant part of what we're trying to demonstrate through the  
23 sizzle reels.

24 So I don't, I think on its face, Your Honor, we're only  
25 talking about a sound recording, and what I'm saying to Your Honor,

1 if you want context because there is only one case that we were  
2 able to find from the FCC, I think it's the Silver Store case which  
3 deals with a sound recording where somewhere someone tried to -- I  
4 think it was actually the Bureau --

5 JUDGE SIPPEL: Is that cited in your trial brief?

6 MR. COHEN: No, Your Honor.

7 JUDGE SIPPEL: Why not?

8 MR. COHEN: In our trial brief? Well, Your Honor, there  
9 was no motion to exclude this evidence so there's no in limine  
10 motion here. We've never seen formal objections other than an  
11 objection.

12 JUDGE SIPPEL: Because you know what our formal rulings  
13 were.

14 MR. COHEN: Which formal rulings, Your Honor?

15 JUDGE SIPPEL: My formal rulings? I don't know, Ms. Wu  
16 --

17 MR. COHEN: Yes. I'm aware of your formal rulings, Your  
18 Honor. I mean, I was here for the MASN case --

19 JUDGE SIPPEL: That's what I thought.

20 MR. COHEN: Yes. So what I'm saying to Your Honor is  
21 that, under the Copyright Act, there's a difference and if you look  
22 at the rule on its face it doesn't really have any applicability to  
23 something that has both pictures and sound. Because I could never  
24 replicate the images in a transcript and there's a difference  
25 between an audio-only medium and an audio-visual medium.

1 JUDGE SIPPPEL: How about -- I'm trying to think of the  
2 -- how about spot pictures? I mean, you can reduce pictures in a  
3 film to a paper. No, not every, not the whole thing --

4 MR. COHEN: Yes.

5 JUDGE SIPPPEL: -- someone wouldn't expect that. It  
6 would be taking key parts of the work, of the sizzle, reduce it to  
7 a picture and, of course, the complete sound, or complete  
8 recitation of the -- on the tape would be produced.

9 MR. COHEN: Right. Although, Your Honor, it is -

10 JUDGE SIPPPEL: It would take a little bit of editing --

11 MR. COHEN: Yes, it would take a little bit of editing.

12 I'm sure my friends on the other side would say that I engaged in  
13 inappropriate editing. But we were trying to submit the full  
14 sizzle reels.

15 So to go back to the MSN case -- I'm sorry, to the Wealth  
16 case where Your Honor -- the sizzle reels could not be introduced,  
17 one of the issues you raised with us, as well, was that we had  
18 created our own highlight reels, right. We had created the sizzle  
19 reels to show Your Honor and we understood Your Honor to say,  
20 obviously, you weren't going to admit it. The sizzle reels here  
21 are the actual sizzle reels. Mr. Zaccario testified in this trial  
22 on Page 747 and 748 of the transcript that they're created in the  
23 ordinary course. They're used to convey a sense of the network to  
24 advertisers. The similarity in the programing is, obviously, one  
25 of the issues that we're looking at.

1           There is going to be expert testimony. But I guess,  
2 Your Honor, to stay on this first issue, and I'll move on to the  
3 others, my contention is that 1357 does not apply to audio-visual  
4 recordings as opposed to audio-only sound recordings, and if the  
5 Commission had intended this rule to apply to audio-visual works,  
6 it would have said more than simply mechanical or physical  
7 reproductions of sound waves, because there is a context from the  
8 Copyright Act which distinguishes between sound recordings, which  
9 are covered by one section of the Copyright Act, and audio-visual  
10 recordings which are by definition, if you go to the definition of  
11 a sound recording in the Copyright Act, what you'll see is that it  
12 excludes audio-visual works.

13           So the copyright law understands the difference between  
14 audio-visual works and audio-only works. So if we were submitting  
15 an audio recording of their sizzle reel I'd have a 1357 problem.  
16 But I'd say, Your Honor, this rule just doesn't apply. It just  
17 doesn't apply.

18           JUDGE SIPPPEL: Because you think that the Copyright Act  
19 trumps three part 357?

20           MR. COHEN: No, Your Honor. No, I'm not saying that,  
21 Your Honor. I'm saying is we're trying to understand what's a  
22 physical reproduction of sound waves, right. That's the question,  
23 because that's all that excluded, mechanical or physical  
24 reproduction of sound waves. And what I'm saying is if you --  
25 there's no case law, there's no legislative history before the FCC

1 that tells you what those are. So what I'm suggesting is we do  
2 what we would ordinarily do, is we would look at other federal  
3 statutes to see what we can learn about those words -- ordinary  
4 legislative interpretation, statutory interpretation.

5 And what we learn when we look at the Copyright Act is  
6 that, in another place, we know that there is a distinction between  
7 a sound recording, which is what this deals with, and an  
8 audio-visual recording. And if the Commission had intended this  
9 rule to apply to audio-visual evidence, as opposed to pure audio  
10 evidence it could have said that. This has been in the Copyright  
11 Act since 1900, this distinction, or 1919.

12 JUDGE SIPPEL: 1919?

13 MR. COHEN: Well, the current act is 1976.

14 JUDGE SIPPEL: Well, this probably came in sometime in  
15 the late '30s.

16 MR. COHEN: Yes. So what I'm saying, Your Honor, is  
17 there is a clear distinction.

18 JUDGE SIPPEL: Maybe they -- but didn't they know about  
19 the Copyright Act when they drafted this?

20 MR. COHEN: In the '30s? I don't know, Your Honor.

21 JUDGE SIPPEL: Well, you said 1919.

22 MR. COHEN: Yes. But what I'm saying, Your Honor, is if  
23 they knew about it, then they knew that there's a difference  
24 between a sound recording and an audio-visual product, and that if  
25 they intended this to cover audio-visual works they could have

1 said so.

2 And again, it doesn't make any sense, because you can't  
3 really -- a transcript of a broadcast where the point is what does  
4 the programming look like, what are the images intended to convey  
5 -- just the argument that we're having -- can't possibly be reduced  
6 to a typewritten matter, you know: shall have such a matter  
7 typewritten on paper of the size prescribed by Section 149. We  
8 couldn't typewrite for Your Honor the pictures.

9 JUDGE SIPPEL: I've just explained to you how you could  
10 do that.

11 MR. COHEN: But, Your Honor --

12 JUDGE SIPPEL: You could bring pictures in hard copy and  
13 edit them in with the words and give me a feel --

14 MR. COHEN: Your Honor, I mean, we would --

15 JUDGE SIPPEL: - for what's on the tape.

16 MR. COHEN: We - as an alternative we would be happy to  
17 do that. As an alternative, we'd be happy to do that. I think it  
18 would be less useful for Your Honor and I think it would be subject  
19 to the argument that we were not -- that we were cherry picking,  
20 right, because we can't go frame by frame over a four-minute sizzle  
21 reel.

22 JUDGE SIPPEL: Mr. Schmidt can help you. Of course, he's  
23 limited to the sizzle reel. He can't go outside the sizzle reel.

24 MR. COHEN: So let me just tell you that -- let me  
25 address the other issues, Your Honor.

1 JUDGE SIPPEL: All right.

2 MR. COHEN: And then we'll contemplate that. But yes,  
3 that would be better than --

4 JUDGE SIPPEL: Before you move off of this, just a  
5 second.

6 MR. COHEN: Yes?

7 JUDGE SIPPEL: What are the sections of the Copyright  
8 Act?

9 MR. COHEN: So what I'm suggesting --

10 JUDGE SIPPEL: 101?

11 MR. COHEN: Section 101, your honor, are the definitions  
12 under the Copyright Act.

13 JUDGE SIPPEL: Okay.

14 MR. COHEN: And if you go to the definition of a sound  
15 recording, under the Copyright Act, you will see -- doing this from  
16 memory -- but you will see that it excludes audio-visual works.

17 JUDGE SIPPEL: So excludes audio-visual --

18 MR. COHEN: Audio-visual works. And so what I'm  
19 suggesting to Your Honor is that a mechanical or physical  
20 reproduction of a sound wave is a sound recording. That is a sound  
21 recording. That's what this is. You can have an analog or a  
22 digital but it's a sound recording, and an audio-visual --

23 JUDGE SIPPEL: -- digital.

24 MR. COHEN: Yes. I don't --

25 JUDGE SIPPEL: I know what you're saying.

1 MR. COHEN: Okay. So that's my argument.

2 JUDGE SIPPEL: I get your point. I get your point. Let  
3 me -- let me ask you one more question.

4 MR. COHEN: Of course, Your Honor.

5 JUDGE SIPPEL: And then you can go to your next point.

6 MR. COHEN: Yes.

7 JUDGE SIPPEL: I'm going to give you a hypothetical.  
8 Let's assume that there's a commentary on an opera, and there's a  
9 visual of the opera. It's a Solti opera. They have played and  
10 performed a Wagner opera and you see them, you know, the orchestra  
11 is being led by the -- Solti and there's commentary, because it's  
12 an educational thing. Is that covered by the Copyright Act?

13 MR. COHEN: Is the commentary copy --

14 JUDGE SIPPEL: Well, you got the picture --

15 MR. COHEN: If it's educational, Your Honor, it's fair  
16 use.

17 JUDGE SIPPEL: Fair use?

18 MR. COHEN: It's fair use.

19 JUDGE SIPPEL: All right. It's fair use. But it's  
20 marketed. Let's say it is educational, but you do have a universal  
21 people who are interested in Wagner. Obviously, most people are  
22 not interested in Wagner but you have this universe of people who  
23 are, and they're the ones that --

24 MR. COHEN: Should I be interested in Wagner? I don't  
25 know which way to go on this, Your Honor. I think I'm on the wrong

1 side.

2 JUDGE SIPPEL: He's a very contentious man. He has more  
3 issues than Donald Trump. He really does. So I'm not going to  
4 recommend him to anybody that doesn't have an interest in him. The  
5 point being that there isn't a relative -- a decent size number of  
6 people who would be buying this thing. But, again, you've had  
7 this combination of visual and commentary, and does this fit into  
8 that exception that you're talking about?

9 MR. COHEN: No. Well, Your Honor, there is -- let me be  
10 clear. You can copyright audio-visual works.

11 JUDGE SIPPEL: You can.

12 MR. COHEN: You can. The distinction that the copyright  
13 draws is there are certain things you can do under a compulsory  
14 license with sound recordings that you can't do with audio-visual  
15 works, right. I'm not suggesting one is copyrightable and one is  
16 not copyrightable. All I'm trying to suggest to Your Honor is if  
17 you want to know what a sound recording is at least the federal  
18 Copyright Act tells us that does not include audio-visual works and  
19 they're treated differently under the Copyright Act. My point is  
20 only the definition of a sound recording doesn't include it.

21 JUDGE SIPPEL: All right.

22 MR. COHEN: So let me put to one side your - the second  
23 issue you raised on sizzle reels. Just to be clear with respect to  
24 my proffer I had - -

25 JUDGE SIPPEL: Well, that's -- there are a couple more

1 thing that have been handed to me so let me --

2 MR. COHEN: Okay.

3 JUDGE SIPPEL: Just a few more, because I want you to  
4 have a full deck before your --

5 MR. COHEN: Absolutely, Your Honor.

6 JUDGE SIPPEL: Would -- here's a good one. I've got  
7 somebody in mind, but would a judge with a vision disability be  
8 able to hear this case?

9 MR. COHEN: Would a judge with a vision disability be  
10 able to hear the case? Your Honor, I don't know the answer for  
11 that. I will tell you, of course, that there are visually impaired  
12 and hearing impaired judges who sit as Article 3 judges. So I  
13 don't think we have separate federal rules of evidence or a  
14 separate set of rules. I mean, there would have to be some kind of  
15 work around. The main thing --

16 JUDGE SIPPEL: What is a work around?

17 MR. COHEN: What would that be?

18 JUDGE SIPPEL: Yes.

19 MR. COHEN: I don't -- well, first of all, I don't think  
20 we're dealing with that here.

21 JUDGE SIPPEL: No, we're not.

22 MR. COHEN: Right. So hypothetically I think there are  
23 judges. There's at least one judge in the Southern District of New  
24 York. I think it's Judge Berman. I think it's Judge -- it's one  
25 of the judges of the Southern District of New York and --

1 JUDGE SIPPEL: We have Judge Taylor right over here in  
2 the Court of Appeals --

3 MR. COHEN: -- you know, who is blind, and he tries cases  
4 and his clerks help him through it and we follow the federal rules  
5 of evidence. So --

6 JUDGE SIPPEL: But is he ever asked to, is there -- well,  
7 if there's an issue of that would require a viewing of film --

8 MR. COHEN: I don't know what he would do in that  
9 circumstance, Your Honor.

10 JUDGE SIPPEL: I mean, cases are assigned by the chief  
11 judge who would have some system for assignments.

12 MR. COHEN: Sure.

13 JUDGE SIPPEL: Might he be overlooked?

14 MR. COHEN: Yes. I don't know the answer to that, Your  
15 Honor.

16 JUDGE SIPPEL: Okay.

17 MR. COHEN: I can't answer that one.

18 JUDGE SIPPEL: I'm not sure of your second one but I  
19 think you answered my question, although it still puts me in a --  
20 well, doesn't really apply here. I see well enough. But if it's  
21 a question of the intent of the rule, the intent of the point that  
22 you're trying to make, there may be limitations on some judges.

23 MR. COHEN: Yes.

24 JUDGE SIPPEL: I mean, I'm just a little bit impatient,  
25 but you said there were only 10 or 15 minutes.

1 MR. COHEN: They're typically five minutes each.

2 JUDGE SIPPEL: Yes. You know, I got tested for  
3 narcolepsy one time. You know, I'm going to tell you the story,  
4 and the way they get you started, as an introduction -- this is not  
5 by the medical people themselves, but the administrative -- and  
6 they put you in a room and they ask you to watch a film for an  
7 hour. I slept through the film.

8 MR. COHEN: Well, it's perhaps that the video of this  
9 trial may actually become, you know, something --

10 JUDGE SIPPEL: A narcolepsy --

11 MR. COHEN: And so it could happen. Your Honor, let me  
12 - let me be clear --

13 (Simultaneous Speaking.)

14 MR. COHEN: What we are intending to proffer, just to  
15 deal with your second point about GSN, we were going to submit  
16 sizzle reels from the upfronts, Mr. Zaccario has testified, we've  
17 had testimony upfront through the kick-off ad campaigns for GSN for  
18 2008.

19 JUDGE SIPPEL: How many of them?

20 MR. COHEN: There are two from 2008, which are our trial  
21 exhibits 216 and 217. One from -- two from 2010, which is 223 and  
22 224. On the WE side we were going to submit 2009, which is Exhibit  
23 220, and 2010, which is 219 and I think the 2011 upfronts from  
24 both. For WE it's 218 and for GSN it's 222. So we're talking  
25 about 20 minutes - less than 20 minutes in the aggregate of those

1 sizzle reels. So that was to try to address your second question  
2 about whether Mr. Schmidt would want to submit GSN sizzles. We were  
3 intending to submit both, because it's the contrast between them  
4 both that we think is the issue.

5 On 403, Your Honor, both sides have cited case law for  
6 Your Honor that, largely, 403 doesn't apply bench trials. 403 is  
7 a rule, federal rule, that's largely for the protection of juries.  
8 There's lots of case law. It's cited in both sides' briefs in the  
9 in limine motions that we filed and that they opposed and it's also  
10 cited in connection with the objections that Your Honor got before  
11 we resolved our objections. But I think both sides would agree  
12 that 403 is really a jury issue, that the way that the courts have  
13 interpreted 403 is that experienced judges can handle prejudice  
14 issues.

15 JUDGE SIPPEL: Prejudice, perhaps. I'm not talking about  
16 --

17 MR. COHEN: Now cumulative.

18 JUDGE SIPPEL: It's the cumulative, and it's the time  
19 consuming.

20 MR. COHEN: Yes, so let me -- so why don't --

21 JUDGE SIPPEL: -- I mean, it's --

22 MR. COHEN: Well, the confusion issue, Your Honor, really  
23 is a jury issue.

24 JUDGE SIPPEL: Yes, but a film -- people can be confused  
25 by a film.

1 MR. COHEN: Right. People can be confused by witnesses  
2 sometimes.

3 JUDGE SIPPEL: Well --

4 MR. COHEN: You know, and I think we're --

5 JUDGE SIPPEL: But those are words. Those are words.

6 MR. COHEN: Yes. No, they are words and so I think we're  
7 trying to put those in context. Now, on the cumulative issue, Your  
8 Honor, I mean, to some extent Mr. Egan's going to testify about  
9 this, obviously. But to some extent, you know, he's going to be  
10 cross examined. That's not really what the programming is. You  
11 say the programming is this, isn't the programing that. This is,  
12 in a way, the source material, right.

13 It's best evidence, you know, ordinarily under a best  
14 evidence kind of rule, right. Now, Mr. Egan's commentary on this  
15 is important, but ordinarily you don't apply cumulative evidence to  
16 the underlying source documents. If we just had a memorandum,  
17 right, if there had been testimony from a witness all about some  
18 memo that he wrote, right, and he testified for half an hour about  
19 a memo and it turns out the memo is 50 pages long and it's  
20 submitted in evidence we would not exclude that memorandum on the  
21 theory its cumulative. We would say that's the best evidence of  
22 the underlying source material and I'm going to take it. So, you  
23 know, I don't think, Your Honor, that's a reason to do that. So I  
24 think --

25 JUDGE SIPPEL: It's like this exhibit here, right?

1 MR. COHEN: That's a -- that's a good one. We took it.

2 JUDGE SIPPEL: Back up to what's being said.

3 MR. COHEN: Yes.

4 JUDGE SIPPEL: Well, I don't have to read this. It just  
5 has to be available so it can be checked against what was said.

6 MR. COHEN: Correct, Your Honor. But here what I'm saying  
7 is we think that the 20 minutes or so of sizzle reels are an  
8 important way to corroborate what Mr. Egan and others, our fact  
9 witnesses, talked about, the feel of the network. You heard from  
10 Ms. Doree, right. You're going to hear from Mr. Egan about the  
11 programming and 20 minutes of sizzle reels. We're not -- we didn't  
12 voice over them with commentaries. There are no pictures. There's  
13 no highlighting.

14 It's simply what was produced by the two sides in the  
15 ordinary course to give advertisers their best, to convey what they  
16 thought their network was like, to put their best foot forward as  
17 other, as witnesses have testified with respect to advertisers. So,  
18 again, Your Honor, I want to move on to the testimony and I think  
19 you've been very patient with me. So just to summarize --

20 JUDGE SIPPEL: Well, I'm interested in your argument.

21 MR. COHEN: Yes. I don't think 1357 applies. I don't  
22 think you have a 403 issue. I don't think it's going to be  
23 burdensome in terms of time.

24 JUDGE SIPPEL: All right.

25 MR. COHEN: Those are our arguments in a nutshell.

1 JUDGE SIPPEL: Well, here's -- my ruling is this. I'm  
2 definitely, I'm excluding the reels. Now, I'd like about two  
3 minutes off -- five minutes off the record to just consult with my  
4 staff about some other aspects of it. You said that as a fallback  
5 you would undertake the task of a script with still pictures and  
6 some editing. Let me give a thought to that, okay?

7 MR. COHEN: Yes, Your Honor.

8 JUDGE SIPPEL: Give me five minutes to think about it.

9 MR. COHEN: Sure.

10 MS. KANE: Your Honor, before you do that the Bureau just  
11 wants to raise the --

12 JUDGE SIPPEL: I'm sorry. I apologize, Ms. Kane.

13 MS. KANE: That's okay. We just wanted to raise the  
14 concern about how these -- and it does seem that you're inclined  
15 not to admit them, but if in fact you were to admit them we're not  
16 sure that there's a process by which they could be made publically  
17 available as part of the public record, since that record is made  
18 available on the electronic system, the ECSF system. Unlike the  
19 document that you just held up as the backup data, which was  
20 produced both in disc form and printed form, it's unclear that we  
21 could do a public version of the disc form of the sizzle reels.

22 JUDGE SIPPEL: Well, that could be a DVD.

23 MS. KANE: But it could, Your Honor, but I don't know how  
24 that would be -- how we would work with the secretary's office to  
25 ensure that that is part of the public record on ECFS, which is

1 where this is maintained.

2 MR. COHEN: Your Honor --

3 MS. KANE: So, as I said, we haven't looked into that for  
4 the -- with the secretary's office, but we are not aware of any  
5 methodology by which they could make a CD or a DVD available on  
6 ECFS as part of the public record.

7 JUDGE SIPPEL: I'm not going to worry about that.

8 MS. FLAHIVE-WU: Your Honor, if I might.

9 JUDGE SIPPEL: Yes, Ms. Wu, yes.

10 MS. FLAHIVE-WU: Well, first of all, I think we all agree  
11 that 1357 does apply to this proceeding and --

12 JUDGE SIPPEL: Well, I'm applying it to this proceeding.

13 MS. FLAHIVE-WU: And GSN has been aware of that, as well  
14 as your prior precedent, and has litigated this case accordingly.  
15 I just want to quickly address Mr. Cohen's points about the  
16 Copyright Act. I take it that Mr. Cohen has articulated the  
17 position that audio-visual is different than audio and therefore  
18 1357 -- the materials that he wants to put in are outside the scope  
19 of 1357.

20 Respectfully, we disagree. 1357, as we read the plain  
21 words of the rule, includes and reaches audio-visual materials  
22 including the types of sizzle materials that Mr. Cohen has  
23 suggested we put into the record. As to the Copyright Act issue  
24 that Mr. Cohen raised, I would note that 1357 was -- the rule was  
25 initiated before the 1976 revisions to the Copyright Act and

1 therefore I don't think that we can learn anything from the  
2 Copyright Act definitions in Section 101 of the Copyright Act.

3 They were enacted after Rule 1357. And just, finally,  
4 given that there's no dispute that 1357 applies to this proceeding  
5 and that based on the plain reading of the statute it extends to  
6 audio-visual materials, including the sizzle reels, we would be  
7 concerned about the integrity of this record on appeal if there  
8 were a change in course.

9 JUDGE SIPPEL: Well, do you see -- do you have a  
10 specific reading of 1357 that supports your argument that says that  
11 audio-video would be, is intended to be included?

12 MS. FLAHIVE-WU: Well, as we read it, audio and sound  
13 recording that is a component of audio-visual, in addition having  
14 looked at the case law applying 1357, there's never been a case in  
15 which the Commission declined to enforce 1357. Basically, in its  
16 history 1357 has been used to keep out recordings. We haven't  
17 found any notations suggesting otherwise.

18 JUDGE SIPPEL: All right. Do you want to respond to  
19 that?

20 MR. COHEN: Yes. Your Honor, so I don't think there's a  
21 single case under 1357 that has applied it to an audio-visual  
22 recording. I'm not aware of a case. If Ms. Wu has one for you,  
23 I'm happy to hear that. But she says it applies to audio-visual I  
24 don't --

25 JUDGE SIPPEL: Has your side searched for such a case?

1 MR. COHEN: We have. I have only found one case  
2 interpreting 1357. How have you done?

3 MS. FLAHIVE-WU: I found two, Your Honor. Neither  
4 explicitly reaches audio-visual. But under the plain reading for  
5 sound effect, mechanical or physical reproductions of sound waves  
6 that does extend to audio-visual, as I read it.

7 MR. COHEN: Your Honor, if you Google -- which, of  
8 course, is the way everybody gets all their information today -- if  
9 you Google a mechanical and physical reproduction of a sound wave,  
10 you're going to get to a sound recording, not to an audio-visual  
11 recording. So there's nothing about the plain language. A  
12 mechanical or physical reproduction of sound wave is not a motion  
13 picture or a television. It's just not. So that's our argument,  
14 Your Honor, but I -

15 JUDGE SIPPEL: It sounds like as an issue for Justice  
16 Scalia.

17 MR. COHEN: He was my contracts professor, Your Honor.

18 JUDGE SIPPEL: Was he really?

19 MR. COHEN: Yes.

20 JUDGE SIPPEL: What do you know? Did you learn contracts  
21 with him?

22 MR. COHEN: I did learn contracts from him. Contracts  
23 and administrative law. I had him for -- he had just come back to  
24 -- he had just come to the law school with the University of  
25 Chicago from the Justice Department. He had worked. he had been

1 the --

2 JUDGE SIPPEL: He was up in the Office of Legal --

3 MR. COHEN: Right. He was the head of the Office of  
4 Legal Counsel.

5 JUDGE SIPPEL: Yes, that's right.

6 MR. COHEN: Right.

7 JUDGE SIPPEL: My gosh. He didn't think too much of  
8 administrative law judges and he even bothered to say it. So you  
9 probably had a poor education. That's okay. He's a smart man.  
10 Let me go off the record --

11 MR. COHEN: Sure.

12 JUDGE SIPPEL: - for five minutes.

13 (Whereupon, the proceedings went off the record at 2:53  
14 p.m. and resumed at 3:02 p.m.)

15 JUDGE SIPPEL: We're back on the record.

16 I am not going to allow it in under 357. However, the  
17 option, the second option that I gave you, you understood what I  
18 was saying. And let's say that's option B, subpart A. Subpart B  
19 of option B would be hire some kind of an expert firm that knows  
20 how to do this, how to reduce something in writing, I mean  
21 something in, you know, individual form. Get it accurately  
22 compressed into a -- apparently there are people who can do this in  
23 the most convincing way.

24 MR. COHEN: We'll check on that, Your Honor. But, you  
25 know, I don't know how quickly we can get it done.

1 JUDGE SIPPEL: That's all right.

2 MR. COHEN: I think on a non-professional side it wasn't  
3 going to be done. I'm not sure it will actually convey what we're  
4 trying to convey. That might actually confuse the record. So --

5 JUDGE SIPPEL: Well, it's up to you.

6 MR. COHEN: I understand that, Your Honor.

7 JUDGE SIPPEL: I'm just giving you these options.

8 MR. COHEN: Right. I mean I understand that you're not  
9 taking the sizzle reels which, of course, is what we asked for.

10 JUDGE SIPPEL: Yes.

11 MR. COHEN: And we will only go to option B in the event  
12 that we think it can advance the record. And I've chatted with Mr.  
13 Schmidt and I've chatted with some of our folks and I have some  
14 concern that 1,000 pages of stills may actually not be of any use  
15 to Your Honor. And if we reach that conclusion --

16 JUDGE SIPPEL: A thousand would not be.

17 MR. COHEN: Yeah.

18 JUDGE SIPPEL: You'd have to limit the page numbers.

19 MR. COHEN: But if we limit, or even a selected number.  
20 So we may decide not to do that. But let us find out what the  
21 possibilities are and we'll report back.

22 JUDGE SIPPEL: Fair enough.

23 MR. COHEN: Okay.

24 MR. SCHMIDT: We'll obviously talk with them about that  
25 and any grounds we have to object.

1 MR. COHEN: Well, we certainly don't want to make the  
2 record confusing, and I have a little concern after chatting with  
3 people it might be confusing to put in stills. It may not actually  
4 convey what either side wants to convey.

5 JUDGE SIPPEL: Yes, this is a perfect illustration of the  
6 tail wagging the dog.

7 MR. COHEN: Yes. So we're ready to proceed. Mr. Carney  
8 is ready to call Mr. Egan.

9 JUDGE SIPPEL: Mr. Carney, you may proceed, sir.

10 MR. CARNEY: Thank you, Your Honor. Michael Egan to the  
11 stand, please.

12 JUDGE SIPPEL: Come forward please, sir. How are you  
13 doing today?

14 MR. EGAN: Yes, sir, how are you?

15 JUDGE SIPPEL: Good. How are you doing?

16 MR. EGAN: Nice to see you again, Your Honor.

17 JUDGE SIPPEL: Nice to see you too.

18 Will you raise your right hand.

19 WHEREUPON,

20 MICHAEL EGAN

21 was called as a witness by Counsel for the Defendant and, having  
22 been first duly sworn, assumed the witness stand, was examined and  
23 testified as follows:

24 MR. CARNEY: May I approach, Your Honor, with binders  
25 again?

1 JUDGE SIPPPEL: Back to the binders.

2 MR. SCHMIDT: Back to the binders.

3 JUDGE SIPPPEL: You can remove your jacket by the way if it  
4 gets too warm.

5 THE WITNESS: I was hoping you would say that.

6 JUDGE SIPPPEL: After arguing with Mr. Cohen about 357 I  
7 think I worked up some dander here.

8 Okay. You're on, sir.

9 MR. CARNEY: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. CARNEY:

12 Q Mr. Egan, where you are employed?

13 A I'm employed by Renaissance Media Partners, my consulting  
14 company.

15 Q Okay. Now, the Presiding Judge is obviously familiar  
16 with your background from your other cases. But since it's been a  
17 little while why don't you take a minute and refresh the Court on  
18 your professional background?

19 A Sure. Well, Your Honor, I've been in the cable business  
20 for over 30 years. I began in the program creation production side  
21 of the business in New York City and then moved to the cable system  
22 owner/operator side of the business with two different MSOs for a  
23 little bit less than 20 years. Had a lot of roles, corporate roles  
24 in those companies. But always was the primary programming chief,  
25 negotiating all affiliation agreements, working with programmers as

1 they developed their services.

2 I then after the second of those companies was sold to  
3 Charter I set up Renaissance Media Partners, my consulting company,  
4 based in Monroe, New York. And I do consulting work, strategic  
5 analysis and recommendations of affiliation and licensing issues  
6 for both cable operators, for programmers and for other content  
7 owners or licensors.

8 I've also done expert witness work, including appearing  
9 here twice in two program carriage complaints.

10 JUDGE SIPPEL: What were they?

11 THE WITNESS: For Wealth TV the first time and the second  
12 time was Tennis Channel. And in both of those cases part of my  
13 assignment was a similarly situated analysis regarding programming  
14 and regarding audiences.

15 JUDGE SIPPEL: And did you, did you formulate your  
16 opinions to the defendants in both cases?

17 THE WITNESS: Yes.

18 JUDGE SIPPEL: Okay. So you're a defense witness kind of  
19 a guy.

20 THE WITNESS: I'd be happy to be a witness for plaintiff.  
21 Haven't been asked yet.

22 JUDGE SIPPEL: Well they might not pay enough anyway.

23 MR. SCHMIDT: I don't think we pay much, Your Honor.

24 JUDGE SIPPEL: Watch out, your nose is getting longer.

25 (Laughter.)

1 JUDGE SIPPEL: Okay, let's move on.

2 MR. CARNEY: Thank you, Your Honor.

3 BY MR. CARNEY:

4 Q Mr. Egan, please turn to the very front of your book  
5 which is, which shows CV Exhibit 332. What is this?

6 A This is my Direct Testimony in the case.

7 Q Okay. Is there anything in your Direct Testimony that  
8 you wish to change?

9 A No.

10 JUDGE SIPPEL: Do I have a copy of this?

11 MR. CARNEY: It's right in the front of the binder, Your  
12 Honor. Right in front. Right there.

13 JUDGE SIPPEL: Oh, right here. I see.

14 MR. CARNEY: Yes.

15 JUDGE SIPPEL: You snuck it in here.

16 MR. CARNEY: I did. You were welcoming Mr. Egan.

17 JUDGE SIPPEL: Go right ahead.

18 BY MR. CARNEY:

19 Q All right. Ask you to turn to CV Exhibit 333 which is  
20 the middle of the binder. And what's that, Mr. Egan?

21 A These are the appendices to my Direct Testimony and also  
22 a list of my relied-upon material.

23 Q Okay. Anything in your appendices that you wish to  
24 change?

25 A No.

1 MR. SCHMIDT: Your Honor, we'd move both Exhibit CV 332  
2 and 333 into evidence.

3 JUDGE SIPPEL: Any objection?

4 MR. SCHMIDT: No objection, Your Honor, obviously subject  
5 to our ability to challenge Mr. Egan as we've agreed to  
6 post-direct.

7 JUDGE SIPPEL: Right. Then these exhibits are received,  
8 they're proffered and received.

9 (Whereupon, the above-referred to documents were received  
10 in evidence as CV Exhibits 332 and 333.)

11 MR. CARNEY: Thank you, Your Honor.

12 BY MR. CARNEY:

13 Q Mr. Egan, if you could summarize for the Presiding Judge  
14 your fundamental conclusions here as a result of you work?

15 A Sure. I have three conclusions, Your Honor. My first  
16 conclusion is regarding programming. During the five-and-a-half  
17 year time period that I looked at the programming of GSN and WE tv,  
18 which encompassed 2009, '10, '11, '12, '13 and half of 2014, during  
19 that time period the programming on GSN was extremely dissimilar to  
20 that on WE tv and on Wedding Central before its termination in  
21 2011. And I came to this conclusion based on a comprehensive renew  
22 -- review of the multiple factors laid out by the FCC in their 2011  
23 Second Report and Order, as well as one additional factor in  
24 programming that I think is distinguishing,.

25 My second opinion is regarding audience. And during that

1 same five-and-a-half year time period I came to the conclusion that  
2 the audience of GSN was extremely dissimilar to what of WE tv and  
3 Wedding Central. And again I came to that conclusion after a  
4 comprehensive review of the facts laid out in the Second Report and  
5 Order for examining audiences.

6 And my last conclusion, general conclusion, is that many  
7 of the claims made by the GSN experts are erroneous. And I would  
8 characterize them in general, and this is many and they are  
9 detailed in my work, but I would characterize them as being flawed  
10 by insubstantial amounts of information, of data, whether it's on  
11 the programming side or the audience side, and cherry-picked  
12 information, picking pieces here and there to fit the story.

13 Q Now, Mr. Egan, you've mentioned that you conducted  
14 analyses both in the Wealth TV case and then later in the Tennis  
15 Channel case; correct?

16 A Yes.

17 Q Are your analyses here like the ones you performed in  
18 those two actions?

19 A Well, in all three cases I performed an analysis of the  
20 similarity of programming and audiences. And in all three cases I,  
21 from a programming analysis, I pulled together representative and  
22 comprehensive samples of programming. I didn't cherry pick small  
23 pieces here and there, I made sure I applied a scientific method to  
24 get a sample of programming that was representative, meaning it was  
25 representative of the entire time period, whether it was a year or

1 in this case, as we're talking about, five-and-a-half years. So I  
2 did that in all, all three cases as well.

3 And in all three cases I looked at a lot of shows, an  
4 awful lot of shows.

5 However, I would say from there, the methodology of this  
6 case that I followed is a lot closer to the methodology I followed  
7 in the Wealth TV case. In the Wealth case and in this case I did  
8 a full-blown genre analysis. In the Wealth case and this case I  
9 did a full blown look and feel analysis. In the Wealth case and  
10 this case I did a full blown target audience analysis.

11 In all three cases I did a full blown actual audience  
12 analysis. And in the Tennis case and in this case I did a full  
13 blown program expenditure analysis.

14 Q Let's turn to your opinions, Mr. Egan. First, what was  
15 the time period covered by your work here?

16 A So the initial, in my initial testimony filed in 2013 I  
17 covered the first three years of my five-and-a-half year period:  
18 2009, '10 and '11. And then in the fall of, well, in December of  
19 2014 I filed my testimony, supplemental testimony and it covered  
20 2012, '13 and the first half of 2014.

21 Q I'd like to focus for the time being on the initial  
22 period of 2009 through '11, if I can. So let's focus on your  
23 programming analyses first. What methodology did you employ to  
24 conduct your programming analyses for that time period?

25 A So what I did to study programming is I looked at the two

1 factors for that the FCC laid out in that Second Report and Order,  
2 the two factors for programming they laid out, the first one being  
3 genre and the second one being target programming. And I added one  
4 other factor that I think is distinguishing, and that's programming  
5 expenditure. So I looked at three programming factors.

6 JUDGE SIPPEL: Programming expenditures?

7 THE WITNESS: Yes. What the network spends on programming  
8 in a year.

9 JUDGE SIPPEL: I got it.

10 THE WITNESS: Okay. I looked at an enormous amount of  
11 material. I, I watched full or, well, multiple or one or more  
12 episodes, best way to put it, put it, of 55 different series  
13 between the two channels. And that time totaled 58 hours of  
14 watching.

15 In addition I looked at clips and I looked at sizzle  
16 reels with clips on them for many more shows. And that totaled  
17 about another three hours.

18 I looked at all their daily programming schedules of what  
19 they were carrying through this time period. I looked at their  
20 websites. I looked at their press releases. I looked at the  
21 presentations they made to MVPDs to tell them what they carry and  
22 who their audiences are. I looked at the presentations they made  
23 to management, to the management that make their ownership, to  
24 their board of directors to tell them what we're doing. I looked  
25 at their presentations to advertisers, the upfront season when they

1 get up there and they tell them who they are.

2 I looked at industry websites. There are a lot of  
3 websites that are TV industry databases. You know, they'll tell  
4 you when a show aired, how many episodes it had. I referred to  
5 that stuff. Many of them classified by Your Honor. So I looked at  
6 that.

7 I referred to a number of textbooks. I actually taught  
8 a course in television production at, one at Syracuse University.  
9 I taught one on a high school level. And I have the textbooks from  
10 then. I referred to those. I found some other textbooks and I  
11 looked at sections of those on genre and certain genres. I  
12 Googled. I looked at an enormous of material to come to the  
13 conclusions I did about programming.

14 BY MR. CARNEY:

15 Q Let's turn to your genre analysis.

16 A Okay.

17 Q What did you do specifically to conduct a genre analysis?

18 A I did essentially the same genre analysis I did on Wealth  
19 TV. So what I did is I looked at this 3-year period, 2009, '10,  
20 '11, and what I did is using a random number generator I chose a  
21 common week for each quarter of each year. So 2009 I came up using  
22 the random number generator I chose a week in the first quarter of  
23 the year. And I got the schedule, the grids for that week for each  
24 network.

25 Then I did the same thing for the second quarter, the

1 third quarter, the fourth quarter of 2009. And I did that for each  
2 year. So I ended up with 12 weeks, common weeks of program  
3 schedules for each network, 24 in total.

4 And I, I ended up with an enormous sample of programming.  
5 So during the entire period of time, those three years, GSN aired  
6 66 different shows. My sample weeks, those 12 sample weeks,  
7 captured 47 of the 60 weeks -- 66 shows. That's over 70 percent of  
8 their programming.

9 And WE tv aired 260 different shows over those three  
10 years. And my samples picked up 106 of those programs, 40 percent  
11 sample size.

12 So between the fact that I used a scientific method to  
13 make sure that I was picking a representative sample and the  
14 enormous size, relatively enormous size of the sample, I am  
15 extremely confident that the programming I looked at represents  
16 these networks during that time period.

17 So once we had the grids for those 12 weeks we then  
18 applied a genre analysis and classified each hour of programming  
19 during those weeks by the genre it fell into. And I should say  
20 that I didn't do all of this work myself. I employed the services  
21 of, in this initial period, a long-term colleague of mine, in fact  
22 the same fellow who worked with me on Wealth TV case doing this, a  
23 gentleman by the name of Lew Scharfberg. And he's a long-time  
24 programming executive. And he assisted me in categorizing each of  
25 these shows.

1           And everything that he did, he and I talked about his  
2 results and I stamped and endorsed everything in my final decisions  
3 there.

4       Q     Mr. Egan, why don't we turn to CV Exhibit 650 which is  
5 towards the back of the book, Your Honor. Six five zero.

6           JUDGE SIPPEL: Six five zero. Thank you.

7           (Whereupon, the above-referred to document was marked for  
8 identification as CV Exhibit 650.)

9           Is this in evidence, 332?

10          MR. CARNEY: Yes. I'm sorry, 332 is in evidence.

11          JUDGE SIPPEL: I received that. Okay.

12          MR. CARNEY: Yes, you received that.

13          JUDGE SIPPEL: Now we're going to 650?

14          MR. CARNEY: Yes.

15          BY MR. CARNEY:

16       Q     And there are two pages in 650, Mr. Egan. What are these  
17 two documents?

18       A     So this is one of those 12 sample weeks that I mentioned.  
19 So this is the fourth quarter of 2010, the sample week that was  
20 chosen by the random number generator, the week of December 13,  
21 2010. And you'll see that the first page is GSN. If you flip to  
22 the next page you'll see it's the very same week for WE tv.

23           Down on the bottom of the page is the same key on each  
24 page and it is the genres that, that we found in the programming.  
25 And each genre has got a color code to it. So we can see that the

1 top left-most box is talk. And it's sort of a salmon color. And  
2 then the next one down is reality and it's red, and then drama and  
3 so forth.

4 So the color matches, you know, the genre. And so then  
5 what we did is we colored in the grids to make a visual  
6 representation of the genre composition for each of these weeks.

7 Q Okay. And what do these two documents show?

8 A Well, they show quite clearly the dissimilarity, the  
9 stark dissimilarity between these two networks by genre. You can  
10 see at a glance that GSN is --

11 JUDGE SIPPEL: Could you give us a definition of genre,  
12 your definition of it?

13 THE WITNESS: Sure. So genre is a term that comes  
14 originally out of, you know, written literature but it's been then  
15 adapted for film and television, so forth. So genre is literary  
16 works that whose narrative follows a structure that's become  
17 commonplace, so by, you know, by convention. So it's the  
18 conventions that have been established through, through use.

19 So, for instance, a western. So I can say to you, oh,  
20 it's a western, and you're going to have a pretty good idea of what  
21 I'm talking about. You know, there's going to be good guys and bad  
22 guys. There's probably going to be a showdown at high noon. It's  
23 going to be set in a western landscape for the most part.

24 And, you know, I could say to you it's a drama. So  
25 you're going to know what a drama is. Now there's different types

1 of drama, but that's a major category.

2 I'm going to say to you it's a comedy. So you know, you  
3 know, it's humorous. You know, of course, that there are different  
4 categories within the comedy genre.

5 And it's become a convention in television, probably the  
6 most talked about convention over the last 15 years, is reality.  
7 So I can say to you it's a reality show, and you immediately  
8 recognize certain characteristics, certain conventions that are  
9 used in reality.

10 Same thing with game show, although game show is a lot  
11 longer existence. Game show, you know, started on radio. That's  
12 where game shows came from, but they called them quiz shows. And  
13 then they morphed into television and the, you know, larger name of  
14 games began to be used. But it has a convention. You understand  
15 a lot about it by.

16 So that's what genre is.

17 JUDGE SIPPEL: Is reality TV broken into different -- has  
18 their own subsets of genres? Reality, you know.

19 THE WITNESS: There are. There are. So what, you know  
20 just like --

21 JUDGE SIPPEL: Depends on how you want to get it?

22 THE WITNESS: Yeah. But it's actually a good example of  
23 how these, this genre stuff works. So reality television came  
24 along and sort of started in fits and starts. But, you know, I'll  
25 say certainly by the '80s reality was becoming more and more common

1 on television.

2           The name reality was not yet invented though, I don't  
3 think, by that point. So you saw shows like Cops and 911 where the  
4 unusual or new aspect of it was that you had this unfettered  
5 reality playing out. The camera was like a surveillance camera, a  
6 camera on the wall, and it was just taping, you know, filming what  
7 was going on. It wasn't directing. Like a drama is scripted;  
8 right? This is unscripted drama. Okay? Unscripted drama. So  
9 real life happening and the camera is capturing it. And then the  
10 producers of the show go back and, you know, put it together. And  
11 you're, it's like you're dropped in on the scene and you're seeing  
12 it.

13           And you see that, if you remember the show Cops, you went  
14 out with these cops and you saw real action happening, you know,  
15 real cop action.

16           And then on --

17           JUDGE SIPPEL: It's still on I think.

18           THE WITNESS: I'm sorry?

19           JUDGE SIPPEL: Isn't that still on, Cops?

20           THE WITNESS: Maybe. Maybe. Some of these shows I  
21 followed it's hard to watch them at all anymore.

22           JUDGE SIPPEL: I'm hearing that. But they're cheap to  
23 produce aren't they, by comparison?

24           THE WITNESS: Yes. And that's actually an interesting  
25 aspect. That's really one of the reasons they were invented, you

1 know, necessity being the mother of invention. What happened in  
2 the '80s is that cable television came along and it blew up the  
3 broadcasting business. Revenues were suddenly threatened.

4 But talent and writers and all still wanted to get paid  
5 the same fees that they'd been paid previous to revenues dropping.  
6 And so long story short, there was a lot of labor strikes. There  
7 were some strikes, writers' strikes. And so they began to produce  
8 shows and you didn't need a writer or you could hire non-union  
9 people to do it.

10 And so it began, you began to see more and more of these  
11 shows. And all of a sudden people started to realize, hey, these  
12 are pretty good shows, this is interesting. People liked the new  
13 genre of television. And so that's what happened.

14 Then along came the Real World on MTV. And that was when  
15 cable, a cable channel suddenly sort of established the new reality  
16 genre. And I don't know whether you ever saw it or read about it  
17 but it was a show where the young people, you know, right in the  
18 demo for MTV, were living together. And you saw the stresses and  
19 strains of the relationships in the house. And you were following  
20 it and it was real, you know, Real World.

21 And so then, you know, there were more and more  
22 imitations of that. And that actually, now we're getting into to  
23 answering your question here. I'm now at it.

24 So along in about 2000, the year 2000 there's a lot of  
25 these reality shows, but some genius decides to introduce

1 competition into the reality genre. And all of a sudden Survivor  
2 comes on the scene and it's a gigantic hit. And it invents the  
3 category, the sub-genre if you will, of reality competition shows,  
4 all right, where it's reality, you're still seeing, you know, on  
5 Survivor they're still, the camera is still following these tribes.  
6 They divide the contestants into tribes there and they, they follow  
7 them. And you're seeing the unfettered reality. It's not scripted  
8 drama, it's unscripted drama. The host isn't directing things. So  
9 it's still, it's still reality but now they're competing and you're  
10 following the competition.

11 And it plays out. It's an elimination period that plays  
12 out over the season, over, you know, whatever the 13 to 26 weeks.  
13 One by one contestants are eliminated through this competition.

14 And that really sets off shockwaves through the industry.  
15 And it really becomes to be imitated. So now you have either a  
16 sub-genre, or if you want to call it its own genre of reality  
17 competition you would get no argument from me. And in fact, the  
18 Academy of Television Arts and Science that runs the Emmy Awards,  
19 you all know the Emmy Awards.

20 JUDGE SIPPEL: I never got one but I know what you mean.

21 THE WITNESS: Yeah. I actually have gotten one.

22 (Laughter.)

23 JUDGE SIPPEL: Congratulations.

24 THE WITNESS: Anyway, they --

25 JUDGE SIPPEL: Many of our experts have gotten those.

1 THE WITNESS: So they, the Emmys decide, you know what, so  
2 this is, this is the way it works. So now we've got a category  
3 that's really a new form, a new convention where it's reality but  
4 it's competition reality. And it's got all the elements of reality  
5 and then it's got competition on it, in it as well.

6 So they actually began they split their reality category  
7 of Emmy Awards and they've created one now for reality competition.  
8 So there's actually a second reality category Emmy.

9 So and, you know, these databases that I mentioned  
10 earlier that classify things by genre --

11 JUDGE SIPPEL: Yes.

12 THE WITNESS: -- then they began calling shows like  
13 Survivor reality competition.

14 What I do in my work because I didn't need to go down to  
15 the sub-genre level really to distinguish these, these things, I  
16 just stayed at the higher level. So if a show was a reality show,  
17 good old-fashioned reality show or a reality competition show, I  
18 just called it reality. But I don't argue that there are -- that  
19 there aren't reality competition shows and that they might not be  
20 their own genre. I think they are.

21 MR. CARNEY: Mr. Egan -- Your Honor, you, I don't mean to  
22 interrupt you.

23 JUDGE SIPPEL: No, no, no.

24 MR. CARNEY: Just in the interest of moving things along  
25 here.

1 THE WITNESS: Yes.

2 BY MR. CARNEY:

3 Q So just go back to 650, right. So I think the Court had  
4 asked some questions and you weren't quite done with your answer.  
5 So what, just briefly what are the conclusions you drew from these  
6 two pages in 650?

7 A So at a glance you can see that GSN is brown with a  
8 little bit of blue. The little bit of blue represents the poker  
9 gaming shows. So GSN was brown and a little blue. And, you know,  
10 very, very few genres, only two in fact.

11 And you go over to, to WE and it's a rainbow of colors.  
12 So it tells you immediately that WE has many, many genres and it's  
13 dominated by the red which is reality, the yellow which is drama,  
14 the blue which is comedy. And so you can see, you know, at a  
15 glance that these things are nothing like each other by genre.

16 Q Thank you. So this is just one week from your sample  
17 weeks that you testified to. If we were to look at other weeks  
18 would they look materially different?

19 A They would still be dominated by the same contrast. WE  
20 tv would be rainbow, many genres, and GSN would be one or two  
21 genres.

22 MR. CARNEY: Thank you. Your Honor, we move into evidence  
23 CVX 650.

24 JUDGE SIPPEL: Any objection?

25 MR. SCHMIDT: No objection, Your Honor.

1 JUDGE SIPPEL: It's received in evidence.

2 (Whereupon, the above-referred to document was  
3 received in evidence as CV Exhibit 650.)

4 Is the blue High Stakes Poker is that a reality game, a  
5 reality show rather?

6 THE WITNESS: That is not. It's a gaming show. People  
7 are playing poker.

8 JUDGE SIPPEL: Yes, I know.

9 THE WITNESS: It's not a reality show though, no. There's  
10 no, none of that unfettered reality playing out. You're not  
11 seeing, you know, the contestants after they're -- you know,  
12 they're playing a game. If it were a reality show, once the game's  
13 over then they might go off to have, you know, into the break room  
14 or something and the camera would follow them. And now you'd see  
15 them talking and arguing or, you know, whatever they'd be doing.  
16 There isn't any of that in these shows, not the ones I've seen.  
17 It's simply the filming of a poker game.

18 JUDGE SIPPEL: And you don't think that that would qualify  
19 for reality?

20 THE WITNESS: I don't think so because it's not the  
21 unscripted drama of reality. You know, as I say, you're not seeing  
22 the stresses and strains that would typically be off camera.  
23 What's off camera in a reality show is on camera. What's off  
24 camera in a poker game is off camera, you're not seeing it.

25 JUDGE SIPPEL: All right.

1 BY MR. CARNEY:

2 Q Mr. Egan, let's turn back to your direct written  
3 testimony. I'll ask you to turn to paragraph 30 which is on page,  
4 starts on page 27, Your Honor, and moves over to page 28. I'm  
5 going to be focused on page 28. So go to paragraph 30, page 28.

6 Now, referring you to that paragraph, Mr. Egan, what did  
7 you conclude as a result of your three years of genre analysis?

8 A Well, you can see the three bullets at the top of page 28  
9 that sum up the difference over these -- that represent the  
10 difference for this three-year period, 2009, '10, '11.

11 So GSN devoted 98 percent of its broadcast hours to its  
12 defining genres of game shows and poker gaming, while WE aired that  
13 content in less than 1 percent of its hours. 98 percent to 1.

14 WE tv devoted 46 percent of its broadcast hours to the  
15 reality genre, while GSN had the content in less than 1 percent of  
16 its air time.

17 And WE tv devoted 93 percent of its air time to its top  
18 five genres, which were reality, comedy, drama, movie and news.  
19 And meanwhile GSN had that content in less than 3 percent of its  
20 hours.

21 Q Let me ask you to turn to CV, in the book CV 651, which  
22 is again in the back of the book. Apologies for the flipping  
23 around, Your Honor. But so 651 --

24 JUDGE SIPPPEL: I'm used to it.

25 MR. CARNEY: We all are.

1 JUDGE SIPPEL: Six five one.

2 MR. CARNEY: Yes.

3 (Whereupon, the above-referred to document was marked for  
4 identification as CV Exhibit 651.)

5 BY MR. CARNEY:

6 Q And there's a chart there, Mr. Egan. Can you tell us  
7 what this is?

8 A So this is a graphical representation of the genre  
9 composition of each network for the three years 2009 to '11. So  
10 the list of the genres is the same one that were in that key on the  
11 three pages is down the middle there. On the left you have the GSN  
12 pie and you can see the brown is the game shows again. So getting  
13 the game shows and the gaming, 98 percent of the GSN pie is  
14 dedicated to game shows and gaming.

15 And if we go over to the right, WE tv, it's top five  
16 genres, reality, comedy, drama, movies, news equal 93 percent of  
17 its air time. And you can see that represented in the pie.

18 You can compare the little slices. So the big brown on  
19 Game Show Network is the game shows, 91 percent. If we look for  
20 that same brown over on the WE side it's a little tiny slice that  
21 says less than 1 percent.

22 So this represents the stark difference in genres of the  
23 two networks.

24 Q And was this chart prepared under your direction?

25 A Oh, absolutely.

1 Q And does it accurately reflect the conclusions of your  
2 genre analysis?

3 A Yes.

4 Q Okay. Is there any other evidence you've seen in the  
5 course of your work from the record that cooperates your genre  
6 analysis?

7 A Well, as I mentioned, I looked at a lot of materials.  
8 And I specifically looked to see what the networks themselves told  
9 their audiences, in other words, the upfront community. What did  
10 they put on the sizzle reels to communicate to people the  
11 programming? What did they put in their presentations to MVPDs, so  
12 on and so forth? So I looked, I looked at that.

13 And what GSN said to the world in those pieces is that  
14 we're game shows. And what WE tv said is we are reality, comedy,  
15 drama, so forth, programming targeted to certain age groups of  
16 women.

17 MR. CARNEY: Your Honor, I neglected to move Exhibit 651,  
18 the pie chart, into evidence. We here so move, hereby move.

19 MR. SCHMIDT: No objection.

20 JUDGE SIPPPEL: Received.

21 (Whereupon, the above-referred to document was received  
22 in evidence as CV Exhibit 651.)

23 MR. CARNEY: Thank you, Your Honor.

24 BY MR. CARNEY:

25 Q So let's switch over to the target programming, Mr. Egan.

1 First, what is target programming?

2 A Target programming again it's a factor specified by the  
3 FCC for examination of programming similarity. And what it is is  
4 a very simple concept. It's the programming that a network seeks  
5 to air to reach its target audience.

6 And it's very much tied to the brand promise of a  
7 network, if you think about it. So, you know, ESPN's brand and  
8 their slogan is "The Worldwide Leader in Sports." That's what ESPN  
9 says about itself and that's what it's, that's what it's  
10 programming is. It's sports all day, every day, and it's high-end  
11 sports. They're a worldwide leader after all, so they have the  
12 NFL, you know, they have the College Football Championship games.  
13 That's ESPN.

14 And so target programming I think is articulated through  
15 the -- on the screen, on the television by its subject matter:  
16 What's it about? And also by its look and feel: What's its  
17 personality?

18 JUDGE SIPPEL: Is that a brand?

19 THE WITNESS: It's a brand, yes.

20 BY MR. CARNEY:

21 Q So let's talk about subject matter first. Did you draw  
22 any conclusions about the subject matter of the programming between  
23 WE tv and GSN?

24 A I did. WE tv, the subject matter of WE tv is it's for  
25 and about women in their family-centered years, roughly 18 to 54.

1 It's all about weddings, families, friends, building a career and  
2 the stresses and strains that come along with that. How do you do  
3 all those things at once? And you see it played out in their  
4 reality shows. You see it in one show they had is called Mary  
5 Mary. It's a gospel duo. And they're -- they're popular.

6 And so, you know, it's all about week after week you  
7 follow these two. They're sisters. And it's all about the  
8 stresses and strains of building a successful recording or  
9 performing career with your sister who happens to be your best  
10 friend but at times is your enemy, of course. And it plays out  
11 over weeks. And you're there. You're, you know, the fly on the  
12 wall. You're watching them have their good times and their bad  
13 times.

14 And, you know, that's what WE tv is all about. You see  
15 it in their comedies. You see it in their dramas where they're  
16 mostly female protagonists. And they're, you know, they're dealing  
17 with the issues that are special there.

18 And on the other hand, GSN is about contests. It's about  
19 games. The subject matter is the game. When you're watching  
20 Family Feud it's not about the families, it's about the game.  
21 Everybody is having a good time, they're playing the game and  
22 they're laughing and they're having a good time, and you're doing  
23 the same thing at home.

24 So WE tv, subject matter for and about women 18 to 54.  
25 GSN all about games for people who want to play along with the

1 game.

2 Q The other element of target programming you mentioned is  
3 the look and feel of the programming. What conclusions did you  
4 draw about the look and feel of these two networks?

5 A So look and feel is a content element. It's deliberately  
6 created by producers and by networks to articulate that brand that  
7 you mentioned, that personality. Who are we? What is this? And  
8 it's done through the talents on the screen, the way they style  
9 them, it's done by the music, it's done by the lighting, the  
10 pacing, all of these things.

11 It's done by the slogans. WE tv -- I told you the ESPN  
12 slogan: "Worldwide Leader in Sports." WE tv's slogan: "Every Kind  
13 of Family, All Kinds of Drama." They're telling you that's what  
14 this is about.

15 Conversely, GSN's slogan is, that I saw, is "Play Every  
16 Day" and "The World Needs More Winners." They're telling you what  
17 they are.

18 And, you know, Bonnie Hammer who is the Chairwoman of NBC  
19 Universal, a quote from her is that cable networks brand themselves  
20 by look and feel.

21 The president of the USA Network, I have it in my report,  
22 actually talks about they're going to take their look and feel as  
23 they move into a new genre of programming, and take their existing  
24 look and feel from drama, they're going to try to move it into  
25 reality they were moving into.

1           Even GSN stood in front of the advertising community when  
2 it was telling the world who it was, I think it was just 2013  
3 upfront presentation, and said by way of explaining how it was  
4 going to hopefully change its programming in the years ahead and it  
5 says that we're going to move away from the traditional look and  
6 feel of game shows.

7           So it's a common term in the industry.

8       Q     Since we just talked about it a little earlier, Mr. Egan,  
9 do sizzle reels of a programming network convey the look and feel  
10 of the network?

11       A     Absolutely. They convey the subject matter. They convey  
12 the target programming and the target audience. They convey the  
13 subject matter: What are our shows about? They convey the look and  
14 feel: What do they look like on TV? And then and they also address  
15 the target audience.

16       Q     Can you give us an example of a document or two that  
17 reflects each network's respective target programming?

18       A     Sure. I brought along some documents from the upfront  
19 season presentations.

20       Q     All right. Let's turn to CV 100 in the book please.

21           JUDGE SIPPEL: Are these -- oh, are the game shows, you've  
22 got 91 percent in the brown showing game shows, are they more  
23 expensive to produce than the reality programming that you're  
24 citing for WE tv?

25           THE WITNESS: I'd have to say in general, since we're

1 talking in generalities, --

2 JUDGE SIPPEL: Yes, I understand that.

3 THE WITNESS: -- I would say in general they are less  
4 expensive to produce.

5 JUDGE SIPPEL: The game shows are?

6 THE WITNESS: The game shows are. And I'll tell you why.  
7 It's really very logical. You know, 99 percent of the time a game  
8 show is shot on a studio stage. And you set up that stage and then  
9 you film five or six of them at a time. And there's almost no  
10 editing. There's a little what they call post-production  
11 sweetening. But very quickly you have five or six shows.

12 A reality show is very different. Let's -- you know, the  
13 reality show is about a whole number of people. I mentioned Mary,  
14 May, I'll just stick with that. So now the camera is going to  
15 follow the two protagonists of Mary Mary as they're on tour. And  
16 it's capturing them in the hotel rooms and the restaurants,  
17 performing on stage, back home. So it's got a lot of production  
18 going on. And then its, you know, post-production is pretty  
19 complicated too. It takes weeks to get a show together.

20 So typically a reality show will be a lot more expensive  
21 than a game show. Now there's always going to be exceptions. You  
22 know, if you have a -- I don't know, I'm making this up, you know,  
23 for an example, I don't really know exactly -- but, you know, if  
24 you get a star, Howie Mandel, you know he's a well-known comedian,  
25 maybe you've got to pay him a big talent fee to host Deal or No

1 Deal. I don't know, so maybe that drives that show up.

2 But, you know, 90 percent of the game shows don't have  
3 that kind of talent attached to them and so they're going to be  
4 much less expensive than a reality show, which is also less,  
5 typically, less expensive than a drama or a comedy to shoot.

6 JUDGE SIPPEL: Well, yeah, once they get scripted I guess  
7 that puts it in a different category; am I right?

8 THE WITNESS: Once they get?

9 JUDGE SIPPEL: Scripted.

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: Okay. Go ahead.

12 MR. CARNEY: Thank you, Your Honor.

13 BY MR. CARNEY:

14 Q Let's turn back to CV Exhibit 100 which is in evidence.  
15 What do you understand that document to be, Mr. Egan?

16 A This is the WE tv 2010 - 2011 upfront presentation. So  
17 in the spring of every year the industry, television industry has  
18 their upfront season. And the networks come and they stand up in  
19 front of the world, but specifically the advertising community they  
20 want to sell their ads to, as well as the trade press, and they  
21 tell them what their plans for their programming are for later that  
22 fall and then the following spring. So that's why it's called 2010  
23 - '11. And this would have been done in the spring of 2010.

24 And it's one network after the other. So what I did is  
25 I brought along the WE tv presentation so you can see where they

1 tell this to the world their programming is about. And then we can  
2 also look at the GSN programming and see what they tell the world  
3 it's all about.

4 Q So I'll ask you to turn to page 14 of 31 of this  
5 document.

6 JUDGE SIPPPEL: What tab are you on?

7 MR. CARNEY: 14 of 31, tab --

8 MR. COHEN: It's CV 100, Your Honor.

9 MR. CARNEY: Oh, CV 100. I'm sorry.

10 JUDGE SIPPPEL: That's what I was on.

11 MR. CARNEY: No, CV 100?

12 JUDGE SIPPPEL: No, I have it.

13 MR. CARNEY: 14 of 31.

14 BY MR. CARNEY:

15 Q What's on this page, Mr. Egan?

16 A So I'll just wait a minute to give the Judge a chance to  
17 look through it.

18 MR. SCHMIDT: What page is this?

19 MR. CARNEY: Fourteen.

20 JUDGE SIPPPEL: 14 of 31.

21 MR. SCHMIDT: Thank you. I'm with you. Reset of study.

22 MR. CARNEY: No, I think it says "Programming Mirrors."  
23 There you go, that's the one.

24 THE WITNESS: Okay, so WE tv stood up in front of the  
25 world and described its target programming, it's target audience as

1 follows, "Our programming mirrors the key turning points in WE tv  
2 viewers' lives: marriage, babies, kids, teens, extended families."  
3 That's the subject matter of WE tv. And the shows listed under it  
4 for the most part are reality shows that fall into the categories  
5 exploring each one of those headings there, marriage, babies, kids,  
6 teens, so on and so forth. That's what WE tv told the world their  
7 programming was.

8 BY MR. CARNEY:

9 Q Okay, now let's turn to CV Exhibit 656 which again is in  
10 the back of the book. Six five six, Your Honor.

11 JUDGE SIPPEL: Six five six. Okay, just a minute while I  
12 get that over here.

13 MR. CARNEY: Of course. It's in the second-to-last  
14 document.

15 JUDGE SIPPEL: Upfront presentation?

16 MR. CARNEY: Correct.

17 (Whereupon, the above-referred to document was marked for  
18 identification as CV Exhibit 656.)

19 BY MR. CARNEY:

20 Q So what's this document, Mr. Egan, that's been marked for  
21 identification as Exhibit 656?

22 A So in the very same upfront season, you know, either just  
23 before or just after WE tv stood up there and told them their  
24 programming was all about the key turning points of women's lives,  
25 GSN stood up there in the upfront and told the same group of people

1 what their programming was, their target programming was. And if  
2 you look at the page 3 of it, of this, down towards the bottom.

3 MR. CARNEY: Let the Judge get there. Page 3 of 19, Your  
4 Honor.

5 THE WITNESS: Down towards the bottom.

6 JUDGE SIPPEL: I got it.

7 THE WITNESS: You see some bullets. So GSN stood up there  
8 and said the GSN TV audience enjoys most programming, participation  
9 and winning, classic game shows, contemporary game shows, new  
10 twists on old game shows, opportunities to play along at home, and  
11 opportunity to win money. That's what our programming is.

12 And I don't see a word there about women and I certainly  
13 don't see anything about women and the turning points in their  
14 lives or what -- or their ages.

15 MR. CARNEY: Your Honor, we move Exhibit, CV Exhibit 656  
16 in evidence.

17 JUDGE SIPPEL: Six five six.

18 MR. SCHMIDT: Just if we're clear, Your Honor, that this  
19 is not in fact our upfront presentation. This is notes supporting  
20 our upfront presentation which is a different document. So long as  
21 we're clear on that we have no objection. I don't want it  
22 misrepresented for the record.

23 JUDGE SIPPEL: With that qualification this document is  
24 received as CV Exhibit 656.

25 (Whereupon, the above-referred to document was received

1 in evidence as CV Exhibit 656.)

2 BY MR. CARNEY:

3 Q Okay. Mr. Egan, let me move to another topic quickly so  
4 we can move along here. Did you also look at relative programming  
5 expenditures between the two networks?

6 A I did. Your Honor, --

7 Q Could you briefly just summarize what you found with  
8 respect to the programming expenditures?

9 A Sure. I believe programming expenditures is helpful in  
10 distinguishing networks because it indicates the relative -- the  
11 marketplace valuations placed on the programming. It's indicative  
12 of it.

13 So, the marketplace being the buyers who are the MVPDs  
14 paying the license fees to buy this stuff, as well as the sellers,  
15 the program producers whose programming the network is buying. And  
16 the price that each of these puts on on these things and is willing  
17 to pay or to sell at I think is indicative of this distinguishing  
18 feature of networks.

19 And so cable operators and satellite operators, the  
20 MVPDs, they really value high quality original programming but it's  
21 very expensive to make. They also value branded, well known,  
22 high-recognition off network series, dramas, comedies that people  
23 already know because they were successful on broadcast TV, on  
24 broadcast networks. But of course because they were successful  
25 licensing them and airing them on your cable network thereafter is

1 also expensive.

2 So a network that spends more money every year has a  
3 greater capability of producing high quality original programming  
4 and acquiring already successful off-network programming. And when  
5 I looked at the programming expenditures for the two networks what  
6 I found is that in each of these years, '09, '10 and '11, WE tv  
7 spent two-and-a-half to three times the amount of money that GSN  
8 did on programming.

9 And then I said, well, you know, let me test that one  
10 other way. And I looked at the tier groups by number of customers,  
11 number of subscribers each of these networks had. And they're in  
12 the same tier group because they're very close in subscriber  
13 counts, national subscriber counts. And I found that WE tv spent  
14 more than the average of its peers and GSN spent far less, which  
15 didn't surprise me because game shows are relatively inexpensive.

16 And so, you know, my opinion is then that WE tv had  
17 greater capability in each of these years, spent more money and, in  
18 fact, I think they achieved it. I think that they came up with  
19 more original programming series; Braxton Sisters, Braxton Family  
20 as an example, Bridezillas, that break through the clutter and have  
21 some name recognition, which is really what cable networks are  
22 trying to do. And conversely, they were able to license well-known  
23 things like Golden Girls and Charmed and Frasier, things that were  
24 pre-sold, popular.

25 JUDGE SIPPEL: Is there a different between branding and

1 brand and name recognition or is that the same thing?

2 THE WITNESS: No. Branding, you know, being a verb, that  
3 means that you're employing tactics to create a brand in the  
4 marketplace. You know, I'm trying to, I'm WE tv and I'm trying to  
5 make sure that people understand I'm a channel oriented for women  
6 18 to 54. I'm branding, I'm doing things to brand it. My --

7 JUDGE SIPPPEL: Yes, but once you're branded, you're  
8 branded?

9 THE WITNESS: Yeah, exactly. So what I'm trying to do is  
10 create the brand. That's where I'm going.

11 JUDGE SIPPPEL: Yes.

12 THE WITNESS: Yes.

13 JUDGE SIPPPEL: Okay. And what about name recognition?

14 THE WITNESS: So name recognition, you know, would be,  
15 would be part of brand. But like a TV show itself, you know, one  
16 show, Law and Order. You know, well that's a bad example. Frasier  
17 isn't really a brand but it's a show, a well-known show, people  
18 know it. And so if Frasier is on a network it's going to attract  
19 a certain amount of tune-in simply because people know that.

20 Like Seinfeld. Seinfeld's on, you know, at 11:00 o'clock  
21 all across the country and people tune to it.

22 JUDGE SIPPPEL: All around the world.

23 THE WITNESS: All around the world.

24 JUDGE SIPPPEL: Well, is Seinfeld a brand?

25 THE WITNESS: Seinfeld has become a brand, it's so well

1 known, yeah. But it's a television show and people know what it is  
2 and so they'll tune to it. So, you know, that's why televisions  
3 stations license Seinfeld because they know they don't have to do  
4 an awful lot of marketing, all they've got to do is just let people  
5 know it's Seinfeld. They don't have to tell them what Seinfeld is.  
6 They don't have to create the brand. They don't have to do the  
7 branding of Seinfeld, it's done. They've just got to tell people  
8 we have that brand, that Seinfeld, and then people will tune in.

9 MR. CARNEY: Your Honor, I have a couple of things to  
10 still cover with Mr. Egan.

11 BY MR. CARNEY:

12 Q Let's talk about your audience analysis, if we can. What  
13 was your approach to assessing the similarity in the audience?

14 A So, very similar, same time period, 2009 to 2011 is what  
15 I am going to talk about first.

16 So, I looked at the factors specified by the FCC Second  
17 Report and Order target audience and actual audience.

18 Q Okay, let's start with target audience. What is target  
19 audience?

20 A So, target audience is the audience that a network is  
21 actively programming and branding to reach. Who are you trying to  
22 get to? What viewers do you want?

23 Q Okay. What did you conclude about the target audiences  
24 of the two networks?

25 A So, during this period that I looked at, WE tv is

1 remarkably disciplined and laser-focused on women 18 to 49, 25 to  
2 54. For this exercise, to shorten it, I am going to call that  
3 women 18 to 54, just combine the two demos. And we talked about  
4 the programming and how it does it but you see it in their own  
5 reporting internally. You see it in their presentations to MVPDs  
6 when they go out. You see it in their presentations to  
7 advertisers. This is who they are chasing.

8           Conversely, GSN is, in these years, all over the place.  
9 GSN sometimes talks of households. Sometimes they talk of people  
10 18 plus, which would mean men or women. They talk about men 18  
11 plus. They talk about women 18 plus. They talk about women 25 to  
12 54. They talk about men 18 to 49. So, they talk about multiple  
13 different what I will just call demos or audiences. And there is  
14 no one primary.

15           So, a target audience is the primary audience you are  
16 seeking to attract. WE tv, women 18 to 54. During these years GSN  
17 has multiple targets.

18           MR. SCHMIDT: Your Honor, can I just interpose an  
19 objection? We have had now a bunch of really long answers. We are  
20 coming up on an hour of direct testimony, where I think the answer  
21 gets a little bit away from the question. Can I just ask the  
22 witness to stick to the question? Because I think we are seriously  
23 jeopardizing our schedule.

24           JUDGE SIPPEL: All right, I will try and discipline that.

25           MR. CARNEY: Your Honor, thank you. We are trying to

1 move it along.

2 MR. SCHMIDT: So, there was no commentary on the  
3 question.

4 THE WITNESS: Just the answer.

5 JUDGE SIPPEL: Yes. Yes, you have a tendency to run with  
6 the answer, if you know what I mean.

7 THE WITNESS: I do.

8 JUDGE SIPPEL: Okay.

9 MR. CARNEY: Thank you, Your Honor. Thank you, Your  
10 Honor. We are moving along here.

11 BY MR. CARNEY:

12 Q So, let me ask you, Mr. Egan, can you show us an example  
13 or two of documents that support your conclusion with respect to  
14 target audiences?

15 A Yes, I brought along some information showing the  
16 audiences they track.

17 MR. CARNEY: Okay, can you turn to the very last  
18 document, Your Honor, CV Exhibit 657?

19 JUDGE SIPPEL: 657?

20 MR. CARNEY: The last one in the book, Your Honor, yes.

21 (Whereupon, the above-referred to document was marked as  
22 CV Exhibit No. 657 for identification.)

23 BY MR. CARNEY:

24 Q So, what is this document, Mr. Egan?

25 A So, when a network tracks internally and reports

1 internally is indicative of the audience they care about, they care  
2 most about. So, what you see in 657 is the cover memo to a ratings  
3 tracking for WE tv, where they talk about their weekly ratings.

4 And if we flip to, let's see if I can get you to it --  
5 there is a lot of pages here. They are all pretty indicative but  
6 if we go to --

7 JUDGE SIPPEL: Well the subject of this is "Where We Are  
8 Weekly Reports." Is Glenne Spell, that edit -- I'm sorry -- that  
9 wrote this?

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: Who is Glenne Spell, do we know?

12 THE WITNESS: She is a person in the WE tv Research  
13 Department.

14 JUDGE SIPPEL: Okay.

15 THE WITNESS: And she has gathered up the weekly ratings  
16 and passing them along so that people know, you know ad sales and  
17 programming people know how the past week went in ratings.

18 And if we --

19 BT MR. CARNEY:

20 Q I was going to direct your attention to page 9 of 17, Mr.  
21 Egan. I would ask you to take a look at that and tell us what is  
22 being shown on that page that you found pertinent.

23 A So, if you look at page nine, the heading on it, WE  
24 competitors' prime time performance by week for women 18 to 49.  
25 So, it is telling you right there who they are chasing.

1           And if you look down below in the grid down below and you  
2 read across, you can see the headings in that grid, in that table.  
3 There are additional demos they are tracking. They have got  
4 household. They have got women 18 to 49, women 25 to 54, women 18  
5 to 34, people two plus. And then they have a median age. It is  
6 quite clear that they are focused in on this 18 to 54-year-old  
7 group.

8           MR. CARNEY: Okay. So, let's also now turn, Your Honor,  
9 to CV Exhibit 143 in the middle of the book. It is a GSN document.

10           And while we are looking there, Your Honor, I keep  
11 neglecting to move these into evidence. Could we move Exhibit CV  
12 657 into evidence, please?

13           JUDGE SIPPEL: Any objection?

14           MR. SCHMIDT: Sorry, I'm just looking at it. No  
15 objection, Your Honor.

16           JUDGE SIPPEL: It is received.

17           (Whereupon, the above-referred to document was received  
18 into evidence as CV Exhibit No. 657.)

19           BY MR. CARNEY:

20           Q     So, now we are turning to Exhibit 143. What do you  
21 understand this document to be, Mr. Egan?

22           A     So, in December of every year, GSN management reports to  
23 ownership to the Board of Directors for companies that own it and  
24 they report on their performance in their past year and they  
25 present the budget for the next year. And that is what this

1 document is for, I believe -- I flip to the page where it tells you  
2 -- I believe it is December 10, 2010. December 10th, 2010 -- this  
3 is page 23, 2010 review, 2011 budget.

4 Q All right, I will ask you to turn to --

5 JUDGE SIPPEL: That is already received in evidence,  
6 isn't it?

7 MR. CARNEY: Yes, it is, Your Honor. This is in  
8 evidence.

9 JUDGE SIPPEL: Can I just ask you a quick question? You  
10 kept referring to the FCC's Second Report and Order. Can you  
11 identify that a little bit better than that?

12 THE WITNESS: Sure. So in I think it was August of 2011,  
13 the FCC wrote a lengthy document called a Second Report and Order.  
14 And it contained a number of things but one thing that it contained  
15 was a discussion of how to pursue this issue of similarly situated  
16 cable networks.

17 And it was building on the activity that had occurred in  
18 the preceding years, MASN and WE tv and maybe some others and it  
19 laid out these factors that it recommended should be considered.

20 MR. CARNEY: All right, turning back to Exhibit 143, we  
21 are on page 39 of 57.

22 JUDGE SIPPEL: Thirty-nine?

23 MR. CARNEY: Page 39, Your Honor, yes, of 57. Exhibit  
24 143.

25 BY MR. CARNEY:

1 Q What is shown on this page, Mr. Egan?

2 A So, page 39 shows you the audience that GSN is telling --  
3 the GSN management is telling its ownership its tracking in 2010  
4 and what it will track in 2011. What is its target audience that  
5 it is seeking to reach? And so it says P 25 to 54, P 18 to 49.  
6 That means people, men and women.

7 MR. SCHMIDT: I will just object to him testifying about  
8 the state of mind of GSN witnesses when we have heard from them  
9 directly to the contrary, Your Honor.

10 JUDGE SIPPEL: Well, let's try it again. Let's have him  
11 answer the question.

12 BY MR. CARNEY:

13 Q In your expert opinion, Mr. Egan, in doing your target  
14 audience analysis, did you find this information that you found in  
15 CV Exhibit 143 pertinent to your work?

16 A I did because it told me what management considered its  
17 targets and what it was telling its ownership it had been tracking  
18 and would continue to track.

19 JUDGE SIPPEL: Good.

20 MR. SCHMIDT: I have the same objection, Your Honor.  
21 Again, the testimony was this is what management is telling us are  
22 targets. That word doesn't appear anywhere on this page and the  
23 testimony was just to the contrary.

24 MR. CARNEY: Your Honor, if I can just respond quickly.  
25 This is expert testimony. These are materials that an expert

1 properly may rely upon in formulating his opinion and it is  
2 appropriate for him to testify about.

3 JUDGE SIPPEL: Well, he can do all those things, like you  
4 say, Mr. Carney, but that is true, he is not intimately familiar  
5 with how management functions. All he has to do is testify that  
6 this is data that reports bumpty bump. And he knows it is a  
7 business document, an internal business document, so we can make  
8 the connection.

9 MR. CARNEY: Okay.

10 JUDGE SIPPEL: But he can't testify as -- well, the  
11 objection is sustained.

12 BY MR. CARNEY:

13 Q Is it helpful, Mr. Egan, to characterize this as data  
14 that you found reliable and pertinent to your inquiry when you were  
15 evaluating it?

16 A Yes.

17 JUDGE SIPPEL: By the way, when I said good, I meant  
18 good, there was a short answer. That is all I meant.

19 MR. CARNEY: Thank you, Your Honor. Let's keep moving  
20 and I will try to wrap up quickly.

21 BY MR. CARNEY:

22 Q The other prong of the audience analysis had to do with  
23 actual audiences. Correct, Mr. Egan?

24 A Yes.

25 Q Okay and how did you assess the actual audience issue and

1 what were your conclusions?

2 A Well, I look at the actual audience being the viewers.

3 And I looked at Nielsen ratings, Nielsen demo rankers, gender skew  
4 by GfK MRI. And I also looked at a Beta study and the only reason  
5 I looked at that is Mr. Brooks talked a lot about it, so I was  
6 responding to him.

7 Q And what did you conclude about the actual audiences?

8 A Well, I concluded that the actual audiences do not -- of  
9 each network are very different. I concluded that over the course  
10 of a year, twice as many of Cablevision subscribers tuned to WE tv  
11 as tuned to GSN. That of those who tuned to the two channels, a  
12 far higher proportion of the WE tv viewers were women.

13 Of the women watching GSN, they tended to be far older  
14 than the women watching WE tv. And in that demo that is stated in  
15 the complaint that I read that started this process, the GSN  
16 complaint, where they articulated that the networks share a target  
17 demo of women 25 to 54 and competed for that, that in that demo, WE  
18 tv delivered far, far more viewers than GSN did.

19 Q Can you turn to Exhibit CV 652, Mr. Egan? Again, toward  
20 the back of the book.

21 JUDGE SIPPEL: Give it to me again.

22 MR. CARNEY: Yes, Your Honor, 652.

23 (Whereupon, the above-referred to document was marked as  
24 CV Exhibit No. 652 for identification.)

25 BY MR. CARNEY:

1 Q Mr. Egan, what is this chart here?

2 A So, this chart gets at the GSN complaint -- claim, as I  
3 read it. As I just said, originally GSN said that GSN and WE  
4 shared a target demo audience of women 25 to 54. It later then  
5 amended that, expanded that in the pleadings to include women 18 to  
6 49.

7 So, again, I am looking at women 18 to 49, their actual  
8 audiences. And these bar graphs, the one on the left, represents  
9 the proportion of the adult viewers that fall into that category  
10 for each of the two networks, the red being WE tv, the blue being  
11 GSN.

12 As you can see, percent of WE tv's actual adult  
13 audience is women between the ages of 18 to 54 and only percent  
14 of GSN's is.

15 If we move to the right, so we get a little older and we  
16 just look at women 55 plus, the ratios virtually flip. As you can  
17 see, percent, the majority of GSN's adult viewers are women 55  
18 plus, only percent of WE tv's are.

19 And if we get even a little older, 65 plus, percent of  
20 GSN's adult viewers are women 65 plus and percent of WE.

21 MR. CARNEY: Okay, Your Honor, we move Exhibit 652 into  
22 evidence.

23 JUDGE SIPPEL: Any objection?

24 MR. SCHMIDT: No objection, Your Honor.

25 JUDGE SIPPEL: Received.

1 (Whereupon, the above-referred to document was received  
2 into evidence as CV Exhibit No. 652.)

3 MR. CARNEY: Thank you, Your Honor.

4 JUDGE SIPPEL: It looks familiar.

5 MR. CARNEY: Indeed, it does. This is Mr. Egan's  
6 testimony and it may be something --

7 MR. SCHMIDT: I think this is what Mr. Cohen passed out  
8 the other day.

9 MR. CARNEY: -- that Mr. Cohen shared yesterday.

10 MR. COHEN: It is more. It is based on the same data but  
11 it is slightly different.

12 JUDGE SIPPEL: Slightly different?

13 MR. COHEN: Yes, it was page 113 of his report, Your  
14 Honor, that contains similar information.

15 BY MR. CARNEY:

16 Q Mr. Egan, in the interest of time, I am going to skip  
17 through to your 2012 to 2014 analysis because I don't want to take  
18 up any more of the court's time here. That analysis is contained  
19 in your testimony. Correct?

20 A Yes.

21 Q Okay. And as a result of the continued work that you did  
22 on programming and audience in the 2012 to 2014 period, did your  
23 opinions about the similarity of the networks, in terms of  
24 programming and audience, differ in any way?

25 A No.

1 MR. CARNEY: Okay, one last topic, Your Honor.

2 BY MR. CARNEY:

3 Q GSN's experts have also rendered opinions regarding the  
4 programming similarity and the audience similarity of the two  
5 networks. Is that true?

6 A Yes.

7 Q And do you have criticisms of GSN's experts in this  
8 regard?

9 A I have many that are detailed in the report.

10 Q Let's just touch on a couple of high points. First, what  
11 are your principle criticisms of the manner in which GSN's experts  
12 assessed the programming between the two networks?

13 JUDGE SIPPEL: Well, let's give it a name, the person,  
14 the expert.

15 THE WITNESS: Okay. So, I find many of Mr. Brooks'  
16 claims and Dr. Singer's claims about programming to be flawed  
17 because their data that they are using, their programming samples  
18 are incomplete, non-representative. Specifically -- and their  
19 programming analysis is likewise incomplete. So, neither of them  
20 does a genre analysis. Neither of them does a target programming  
21 analysis. They cherry pick shows.

22 I think Mr. Brooks, again, for an example, in the 2009 to  
23 2011 period, I think Mr. Brooks refers to 9 shows out of 66 aired  
24 on GSN over that three-year period. And similarly, he refers to 11  
25 shows on WE out of the 260 that aired. And I find even that

1 handful are cherry picked. So, I don't think he can project from  
2 his sample to characterize the networks.

3 Q Let's turn to audience. What are your principle  
4 criticisms of the work of Mr. Brooks and/or Dr. Singer with respect  
5 to their approach to audience?

6 A Similarly, I think that the audience data that Mr. Brooks  
7 uses, Mr. Brooks does far more with audience than Dr. Singer.

8 Q So, let's focus on Mr. Brooks.

9 A So, I find that the data that Mr. Brooks uses for  
10 audience is really too broad. So, again, it is not representing  
11 the real, the actual audiences of these networks.

12 MR. CARNEY: Okay and to illustrate, can you turn to  
13 what has been marked for identification as CV 654, Your Honor?

14 (Whereupon, the above-referred to document was marked as  
15 CV Exhibit No. 654 for identification.)

16 BY MR. CARNEY:

17 Q CV 654, which again, is at the back of the book.

18 A So, this is a chart out of my --

19 MR. CARNEY: Hold on a second. Are you there with us,  
20 Your Honor?

21 JUDGE SIPPPEL: I'm with you.

22 MR. CARNEY: Okay, thank you.

23 BY MR. CARNEY:

24 Q Go ahead, Mr. Egan.

25 A This is a chart blown up from my report, my testimony.

1 And again, as I said, Mr. Brooks sticks to households, these broad  
2 metrics, households, people 18 plus, women 18 plus, which again,  
3 for me, is avoiding the issue. The claim is that the networks are  
4 competing for women 18 to 54. So, evaluating it at those levels is  
5 not getting at the issue.

6 So, I tried to get at the issue. He talks about women 18  
7 plus ratings and makes the point that some of these network  
8 audiences, the actual audiences are pretty similar. And if you do  
9 look at women 18 plus, which is the bars on the left on this bar  
10 graph, he is right, they are pretty similar. WE pulls a  
11 rating and GSN pulls a

12 So, WE is only about 15 percent higher. It was pretty  
13 similar. But the reason that they are similar is that WE produces  
14 a high rating all across the demo of interest, women 18 to 54,  
15 while GSN pulls a very low rating in that age group. And then GSN  
16 saves the day by producing an enormously high rating in the women  
17 65 plus.

18 And these bars lay that out for you. You can see women  
19 18 to 54 there is three graphs there, three bar graphs that  
20 illuminate that. WE tv produces a to rating, while GSN  
21 is producing a to a And then again, that dynamic  
22 reverses entirely, when you get to women 55 plus, with  
23 GSN having a rating and WE having a

24 So, the average of the low ratings in the women 18 to 54  
25 and the high ratings in the women 65 plus for GSN is what then

1 averages it to a to be similar to WE's

2 MR. CARNEY: Thank you, Mr. Egan.

3 Your Honor, at this point, I have no further questions.

4 JUDGE SIPPEL: Cross-examination?

5 MR. CARNEY: Your Honor, before I turn it over, let me  
6 move in Exhibit 654.

7 JUDGE SIPPEL: No objection to 654?

8 MR. SCHMIDT: No objection.

9 JUDGE SIPPEL: It is received.

10 (Whereupon, the above-referred to document was received  
11 into evidence as CV Exhibit No. 654.)

12 MR. CARNEY: Thank you, Your Honor.

13 MR. SCHMIDT: Your Honor, may I take one minute? I am  
14 going to start with the board, as I suggested to Your Honor and  
15 opposing counsel.

16 JUDGE SIPPEL: Do you want to go off the record?

17 MR. SCHMIDT: No, I don't need to go off the record.

18 JUDGE SIPPEL: Okay, let's do it.

19 MR. SCHMIDT: I'm ready to go.

20 CROSS-EXAMINATION

21 BY MR. SCHMIDT:

22 Q Mr. Egan, it is good to see you again.

23 A Good to see you.

24 Q I am going to try to be very, very focused in my  
25 questions. You have given me a nearly 200-page report to work

1 with. I am not going to go through every page but there is a lot  
2 for me to cover. And so I am going to try to be very focused and  
3 would ask you to be very focused in your answers. Is that fair?

4 A Absolutely.

5 COURT REPORTER: Sorry, Your Honor, can we go off the  
6 record? I've lost that microphone.

7 MR. SCHMIDT: Hold on for a second.

8 COURT REPORTER: I'm sorry, Your Honor. We just need to  
9 pause for a second. I think something got jostled.

10 JUDGE SIPPEL: That's fine.

11 (Whereupon, the above-entitled matter went off the record  
12 at 4:13 p.m. and resumed at 4:13 p.m.)

13 MR. SCHMIDT: So, Mr. Egan, what I would like to start  
14 with -- are we all set? Is everybody set? May I begin?

15 JUDGE SIPPEL: Yes. Proceed, please, Mr. Schmidt.

16 BY MR. SCHMIDT:

17 Q What I would like to start with is the factors that you  
18 looked at. And I think you have already talked about this. One of  
19 your factors is genre. Correct?

20 A Yes.

21 Q One of your factors is target programming, which includes  
22 look and feel. Right?

23 A Yes.

24 Q One of your factors is programming expenditures.

25 A Yes.

1 Q One of your factors is actual audience, right?

2 A Yes.

3 Q And as I understand it, on actual audience, you did not  
4 look at national Nielsen data; you looked at local data.

5 A I only looked at national in response to Mr. Brooks.

6 Q Let me focus for now on the affirmative parts of your  
7 testimony.

8 A Okay, got it.

9 Q For the affirmative parts, you just looked at local.  
10 Right?

11 A Yes.

12 Q And do you recall the name of the local data you looked  
13 at?

14 A It was Nielsen's local custom toolbox reports for the New  
15 York DMA hardwire, they call it, which is all the cable and phone  
16 company cable systems.

17 Q Do you remember talking about something about the NSI  
18 Nielsen data versus NTI?

19 A Yes.

20 Q Which one did you look at?

21 A NSI.

22 Q Okay, I'm just going to write NSI. I'm probably spelling  
23 Nielsen wrong. And then you looked at target audience, correct?

24 A I did. Don't forget I also looked at other things for  
25 actual audience but I did look at NSI Nielsen.

1 Q Okay. Cablevision. I am going to ask you about  
2 Cablevision. Did they do any kind of genre analysis with respect  
3 to Wedding Central, WE tv, or GSN?

4 A I don't know.

5 Q None you can point me to?

6 A None I can point you to.

7 Q Did they do any kind of look and feel analysis with  
8 respect to GSN, WE, or Wedding Central?

9 A It was not in my scope of work. So, I don't know.

10 Q Okay, nothing you can point me to.

11 A Correct.

12 Q Did they do any kind of specific programming expenditure  
13 analysis for GSN, WE, or Wedding Central?

14 A Again, not in my scope. I don't know.

15 Q Did they look at NSI Nielsen data to determine actual  
16 audience?

17 A I didn't see it and not in my scope. So, I don't know.

18 Q Do you know if they looked at target audience?

19 A Not in my scope, don't know.

20 Q Let's talk about some things that you didn't look at. I  
21 want to just ask you about those.

22 As I understand it, you did not consider whether  
23 Cablevision's decisions for WE tv and Wedding Central were  
24 reasonable. True?

25 A I did not, no.

1 Q You didn't consider what networks WE tv considers to be  
2 its key competitors. True?

3 A I did not.

4 Q You mentioned some of the FCC standards, when the judge  
5 was talking with you. Do you remember that?

6 A Yes.

7 Q You didn't look at target advertising. Correct?

8 A I did not.

9 Q You know that is an FCC factor?

10 A I do.

11 Q You didn't look at license fees. Correct?

12 A Correct.

13 Q Do you know that is an FCC factor?

14 A Yes.

15 Q Do you have an understanding that is  
16 that Cablevision was paying to WE tv than it was to GSN in  
17 fees?

18 A I don't know.

19 Q In your affirmative testimony, in terms of coming up with  
20 your original opinions, you didn't look at national ratings.  
21 Right?

22 A Correct.

23 Q In your affirmative opinions, you didn't look at Beta  
24 survey data. Correct?

25 A Correct.

1 Q And in fact, I think you say in your report, it is just  
2 not relevant.

3 A I don't know exactly what I say in the report but I don't  
4 think it is relevant to the exercise I was doing. Probably, I said  
5 something to that effect.

6 Q You didn't look at ownership and management of the  
7 respective networks. Correct?

8 A Correct.

9 Q And you didn't look at other MVPD carriage decisions.  
10 Correct?

11 A Correct.

12 Q Now, let's go back to this first factor and what you did  
13 look at. You said you didn't look at the key competitors for WE  
14 tv. Right?

15 A Correct.

16 Q Okay. So, you can't tell me if you applied these  
17 standards to a key competitor of WE tv -- let's pick one,  
18 how would come out under your analysis. Correct?

19 A Correct.

20 Q And if I were to go through the list,  
21 the answer would be the same for each of those. You can't  
22 tell me whether the competitors WE tv considers to be their  
23 competitors that track up with your analysis of similarly situated.  
24 Correct?

25 A Whether they would be -- whether I would determine that

1 they are similar to WE?

2 Q Yes.

3 A I can't tell you that.

4 Q And if I asked you the same question for GSN, you  
5 couldn't tell me whether GSN is similarly situated to any of these  
6 competitors of WE tv, according to your criteria. Correct?

7 A Correct.

8 Q Now, I believe you testified -- the Judge asked you a  
9 question about prior testimony. And as I track it, you have  
10 testified at least four times on behalf of cable companies. Is  
11 that right?

12 A Wait a minute, I have to do the math. So, I testified on  
13 behalf of Bloomberg -- not Bloomberg -- Comcast. I have testified  
14 on behalf of Time Warner and now Cablevision. So, in FCC  
15 proceedings, I think I have testified on behalf of MVPDs three  
16 times.

17 Q Three times, okay. Is there another litigation you were  
18 involved with where you testified on behalf of a cable company?

19 A Yes, I was just recently involved in a civil suit and I  
20 was an expert for a small little independent cable company in  
21 Tennessee.

22 Q And you have never testified against a cable company, I  
23 think you said. Right?

24 A No.

25 Q Okay, let's focus on the three FCC cases because I think

1 you got where I was going there. And I am not going to try to do  
2 an exhaustive list but I want to cover some key ones.

3 In Wealth TV, you did genre, right?

4 A I did.

5 Q And you did look and feel, right?

6 A Yes.

7 Q In Tennis, you didn't do genre. You did subgenre, right?

8 A No.

9 MR. SCHMIDT: Okay, can I get Exhibit 416, please?

10 Mr. Egan, I feel like I have been holding out on you. On  
11 this score, I haven't passed out binders yet.

12 Judge, may I approach?

13 JUDGE SIPPEL: Yes, sure.

14 MR. SCHMIDT: Thank you.

15 BY MR. SCHMIDT:

16 Q Okay, sorry for the delay, Mr. Egan. Let me direct your  
17 attention to the binder, if I may.

18 JUDGE SIPPEL: This is called Game Shown  
19 Cross-Examination. That is what the book is captioned, so you know  
20 what you are looking at.

21 BY MR. SCHMIDT:

22 Q And let me tell you what I was going off. If you look at  
23 tab 416, it is the Tennis Channel decision; paragraph 29 on page  
24 14.

25 A So, it's Exhibit 416?

1 Q Yes, sir.

2 A And what am I on?

3 Q Paragraph 29 on page 14.

4 A Yes.

5 (Whereupon, the above-referred to document was marked as  
6 GSN Exhibit No. 416 for identification.)

7 BY MR. SCHMIDT:

8 Q It says rather than relying upon a genre analysis, Mr.  
9 Egan based his conclusions that Tennis Channel and the two Comcast  
10 affiliates have dissimilar programming upon subgenres.

11 A Yes.

12 Q Was that accurate?

13 A No.

14 Q Okay, then I will move on. You can put that to the side.  
15 I will leave genre off. There is no genre, then, in Tennis  
16 Channel.

17 A You know, this is tricky because you want me to give you  
18 yes or no answers and the question doesn't lend itself to that.

19 So, if you would like me to answer your question, I can  
20 do it but I can't do it with yes or no.

21 Q Okay, let me try a different question. Did you do genre?

22 A I considered genre in the Tennis Channel case.

23 Q You did?

24 A I just said that. I did.

25 Q All right.

1 A And you will recall, because you were there, that it --

2 Q I think there is no question pending. I think you have  
3 answered my question.

4 MR. CARNEY: Your Honor, he would like to finish --

5 JUDGE SIPPEL: No, no, no. He's right. That is the  
6 answer.

7 MR. CARNEY: Okay, very well.

8 JUDGE SIPPEL: Anything beyond that would not be  
9 responsive to the answer. I meant question.

10 BY MR. SCHMIDT:

11 Q Now, I'm going to put genre, subgenre here. Recognizing  
12 your testimony in genre, we have put in the opinion saying  
13 subgenre.

14 Did you do look and feel with Tennis Channel?

15 A No.

16 Q Did you look at the management team in Tennis Channel?

17 A To be honest with you, I don't remember.

18 MR. SCHMIDT: Okay, let me try to help you. Could you  
19 pull 414?

20 (Whereupon, the above-referred to document was marked as  
21 GSN Exhibit No. 414 for identification.)

22 MR. SCHMIDT: I will give you written direct from the  
23 Tennis Channel case. May I approach, Your Honor?

24 JUDGE SIPPEL: Thank you.

25 MR. COHEN: How long is this going to go on?

1 THE WITNESS: Yes, at some point, I would --

2 MR. COHEN: -- actually process while we are separated.  
3 Is this going to go on for the entire cross-examination?

4 MR. SCHMIDT: Are we keeping you guys apart?

5 MR. COHEN: Yes, I mean, Your Honor, what I am saying is  
6 there is constant consultation among counsel.

7 MR. SCHMIDT: I'm going to be done with this in five  
8 minutes.

9 JUDGE SIPPEL: Do you want to go over there?

10 MR. SCHMIDT: I don't object if he goes over there. I am  
11 going to be done with this in five minutes.

12 JUDGE SIPPEL: Wait just a second. Wait a minute. Now,  
13 you have got two people talking.

14 MR. SCHMIDT: I'm sorry, Your Honor.

15 JUDGE SIPPEL: Just hold your horses.

16 MR. COHEN: If it is five minutes, Your Honor, I withdraw  
17 my comments.

18 JUDGE SIPPEL: Let's see how we do.

19 BY MR. SCHMIDT:

20 Q Look with me, if you would, at paragraph eight of your  
21 testimony on the Tennis Channel. And do you see sub little Roman  
22 numeral two, you talk about ownership and management?

23 A I do, yes.

24 Q Did you look at national Nielsen ratings in Tennis  
25 Channel?

1       A       I can sit here and let him right that down as if I had  
2 considered it but this doesn't say that I considered it.

3               JUDGE SIPPEL: Well, the fact that he writes it on his  
4 blackboard doesn't make it your testimony.

5               THE WITNESS: Okay, great. As long as we know that.

6               BY MR. SCHMIDT:

7       Q       Did you consider national Nielsen ratings? Just so the  
8 record is complete on this --

9       A       I believe I did.

10              JUDGE SIPPEL: You have got to -- one of you have to let  
11 the other one finish.

12              BY MR. SCHMIDT:

13       Q       Go ahead, Mr. Egan.

14       A       Okay. Yes.

15              MR. SCHMIDT: And I will go ahead, Your Honor, and move  
16 Exhibit 414 into evidence.

17              JUDGE SIPPEL: Any objection?

18              MR. CARNEY: No objection, Your Honor.

19              JUDGE SIPPEL: Received.

20              (Whereupon, the above-referred to document was received  
21 into evidence as GSN Exhibit No. 414.)

22              BY MR. SCHMIDT:

23       Q       Did you consider the decisions of other MVPDs in Tennis  
24 Channel?

25       A       Yes, briefly.

1 Q If we take this forward to GSN, you have considered  
2 genre.

3 A Yes.

4 Q You have not considered subgenre. I think you answered  
5 that to the Judge, right?

6 A Yes.

7 Q You have gone back to look and feel.

8 A Yes.

9 Q You have not done ownership and management.

10 A Nope.

11 Q You have not done national Nielsen.

12 A In GSN -- not in the affirmative. Right.

13 Q And you haven't considered the carriage decisions of  
14 other MVPDs.

15 A No.

16 MR. SCHMIDT: That's all on that, Your Honor. I suggest  
17 we take a quick break.

18 JUDGE SIPPEL: How much longer before you can finish  
19 this?

20 MR. SCHMIDT: It is going to be very hard for me to  
21 finish today, given what I got from the witness. I will tell you  
22 that I am already through with a lot of what I thought was going to  
23 take a lot of time. I am about a third of the way through.

24 JUDGE SIPPEL: All right, well, let's take our break. It  
25 is 4:30. We will come back at quarter at five. I wanted to leave

1 before six o'clock. I can wait as late as six. I can't go beyond  
2 six.

3 MR. SCHMIDT: We're trying to get --

4 JUDGE SIPPEL: I know you are.

5 (Simultaneous speaking.)

6 MR. SCHMIDT: -- done by tomorrow but not so late in the  
7 day. Mr. Sperling could explain and we could figure out a path to  
8 get there. And that would leave us with just Mr. Orszag for  
9 Monday, if we could accomplish that.

10 MR. CARNEY: I actually think if we --

11 JUDGE SIPPEL: Do you want to go off the record? Let's  
12 go off the record.

13 (Whereupon, the above-entitled matter went off the record  
14 at 4:29 p.m. and resumed at 4:44 p.m.)

15 JUDGE SIPPEL: We're back on the record. Thank you, sir.

16 BY MR. SCHMIDT:

17 Q Sir, let's talk about genre, if we may.

18 A Yes.

19 Q I promise you I won't be doing any more just writing on  
20 boards.

21 JUDGE SIPPEL: No, I thought it was fun.

22 BY MR. SCHMIDT:

23 Q All right. Let's now look, if we could, at CV --

24 JUDGE SIPPEL: No, I mean, that was very helpful. I'm  
25 not being critical of you at all. We don't have to have those made

1 a part of the record, but that was completely demonstrative.

2 MR. SCHMIDT: It was completely demonstrative, yes.

3 JUDGE SIPPEL: The one this morning, a big difference.

4 MR. SCHMIDT: Yes, and I've already talked with Mr.  
5 Cohen. We are going to put that in a non-ugly form, in a prettier  
6 form, and give it to them to make sure they are fine with it. And  
7 then, we will submit it.

8 JUDGE SIPPEL: Fair enough. Fair enough.

9 MR. SCHMIDT: Okay, thank you.

10 BY MR. SCHMIDT:

11 Q Look with me, if you would -- I'm not going to ask you  
12 detailed questions about it yet. But if you go to 650, this is  
13 your genre coding.

14 A 650 in your book?

15 Q Your binder.

16 A Oh, okay.

17 Q And if you look at the WE TV one, for example --

18 A Yes.

19 Q -- WE TV never prepared genre codes that matches this,  
20 did they?

21 A I don't know. I didn't see it.

22 Q They did use some color-coding that we saw with Ms.  
23 Doree, but you weren't tracking that and doing your genre coding,  
24 were you?

25 A No.

1 Q And you didn't see GSN doing any color-coding like this,  
2 did you?

3 A Not that I recall.

4 JUDGE SIPPEL: I can't see -- 650, is that what you're on  
5 now?

6 MR. SCHMIDT: Yes, but it is in the --

7 JUDGE SIPPEL: It is in his direct testimony?

8 MR. SCHMIDT: Yes, Your Honor.

9 That's actually all I plan to ask on that for now, Your  
10 Honor.

11 JUDGE SIPPEL: I'm sorry.

12 BY MR. SCHMIDT:

13 Q You agree with me, Mr. Egan, that programming can be in  
14 a different genre, but still compete?

15 A That last word I would drop. It can be a different  
16 genre, but --

17 Q Still compete?

18 A Oh, still competes? Yes.

19 Q For example, soap opera is a genre, right?

20 A Yes.

21 Q And you know that

22

23 A I've seen references to that. I didn't study it, but,  
24 yes, I've seen some documents that say that.

25 Q And you know that most, if not all, of the content on

1 SOAPnet is in the soap genre?

2 A I don't know that. I know that SOAPnet also carried  
3 reality shows and some other shows.

4 Q Could you tell me what percentage of the SOAPnet genre  
5 was soap operas?

6 A Don't know.

7 Q Do you know if it's 80 percent, 90 percent?

8 A Don't know.

9 Q Okay. So, just for example, look, if you would, in the  
10 binder that Mr. Carney gave you at your Exhibit 651.

11 JUDGE SIPPPEL: This is your direct testimony.

12 THE WITNESS: Yes.

13 JUDGE SIPPPEL: Oh, the pie-shape?

14 MR. SCHMIDT: Yes, the two pie charts.

15 BY MR. SCHMIDT:

16 Q If I substituted out -- do you see where in your Exhibit  
17 651 you have WE TV on the right broken down by genre, right?

18 A Yes.

19 Q And on the left, you have GSN and the 91 percent applies  
20 to game shows. Do you see that?

21 A Yes.

22 Q If I changed the bottom to SOAPnet and did 91 percent  
23 soaps, do you know if that's accurate or not?

24 A Accurate in terms of representation of what?

25 Q SOAPnet.

1 A Oh, I have no idea.

2 Q So, for example, let me just show you something. We've  
3 had it for demonstrative purposes. Let me just explain to you what  
4 we have done here, Mr. Egan. We took your Exhibit 651 and replaced  
5 GSN with SOAPnet and changed games to soap. Do you see that? And  
6 then, the smaller wedges we changes to "other". Do you see that?

7 A I do, yes.

8 Q Do you know if that's accurate or inaccurate as to  
9 SOAPnet?

10 A I don't know.

11 Q Okay. But you don't dispute that

12

13 A I don't know, Mr. Schmidt.

14

15

16

17 Q You would agree with me that WE TV has no appreciably  
18 soap genre, correct?

19 A Correct.

20 Q Okay. Let me ask you another principle about --

21 JUDGE SIPPEL: I don't know if you want me to move this  
22 in, Your Honor.

23 JUDGE SIPPEL: Well, if you have testimony about it, why  
24 not?

25 MR. SCHMIDT: I'll move it in.

1 MR. CARNEY: Well, Your Honor, we do object because this  
2 is not based, unlike MR. Egan's pie chart, this is not based on any  
3 kind of empirical analysis. This is a hypothetical positive by Mr.  
4 Schmidt that Mr. Egan had no commentary on in terms of actual  
5 knowledge one way or another. So, we don't think this has it. He  
6 could certainly use it for cross-examination purposes, but there's  
7 no evidentiary basis for this. There's no data on SOAPnet  
8 programming that justifies this type of depiction.

9 MR. SCHMIDT: And to be direct, Your Honor, we didn't do  
10 the math here. We got these last night. We wanted to see what it  
11 would look like with SOAPnet and ask the witness about it. I've  
12 done that. I don't have a problem with it coming into evidence in  
13 terms of the witness' testimony, but we don't intend to proffer it  
14 affirmatively as evidence. It is really to make --

15 MR. CARNEY: Well, Your Honor, we do have a problem with  
16 it coming into evidence.

17 JUDGE SIPPEL: Do you take it as demonstrative evidence?

18 MR. CARNEY: Certainly Mr. Schmidt, as we understand,  
19 could ask the questions he asked on it, but I think our objection,  
20 Your Honor, is he has asked the questions he has asked relying upon  
21 this document as a demonstrative. It should not come into  
22 evidence. There is no evidentiary basis for the sourcing for this.  
23 We don't know where this is coming from other than just a  
24 hypothetical that Mr. Schmidt --

25 JUDGE SIPPEL: No, I am not offering it for the truth of

1 the matters. I am just saying it ties in with his testimony.  
2 Thus, the demonstrative comment of mine. That's all.

3 MR. CARNEY: The demonstrative, Your Honor, can be  
4 reflected and made part of the record. In terms of Mr. Schmidt's,  
5 we just are objecting to it coming into evidence.

6 JUDGE SIPPEL: Well, okay, then we won't take it. I'm  
7 going to sustain the objection, and we will not consider this as  
8 evidence. Maybe I can figure out a way to have it go up with the  
9 record because it ties in with his testimony, but it is not that  
10 important.

11 MR. SCHMIDT: That's our view, Your Honor.

12 JUDGE SIPPEL: Okay.

13 BY MR. SCHMIDT:

14 Q Let me turn to a new principle of genre. We talked about  
15 things competing even though they are in different genres. Is the  
16 converse true, that things in the same genre can appeal to very  
17 different audiences?

18 A Yes.

19 Q And just to give the judge a few examples of that, one of  
20 your genres is the movie genre, right?

21 A Yes.

22 Q One movie could be The Shining, which is a horror movie,  
23 correct?

24 A Yes.

25 Q One move could be Sleepless in Seattle, which is a

1 romantic comedy, correct?

2 A Yes.

3 Q Those appeal to very different audiences?

4 A Yes.

5 Q Very different themes?

6 A Yes.

7 Q The same genre?

8 A Yes.

9 Q Another example is reality shows. Are you familiar with  
10 a show called My Fair Wedding?

11 A I am.

12 Q What's that?

13 A That's a show on WE TV hosted by David Tutera. It is  
14 about a wedding planner.

15 Q That's a reality show?

16 A It's a reality show.

17 Q Are you familiar with a show called Deadliest Catch?

18 A I am.

19 Q What's that?

20 A It is a show about catching big fish.

21 Q Okay. Is that a reality show?

22 A Yes.

23 Q Totally different themes?

24 A Yes.

25 Q Totally different audiences?

1 A Yes.

2 Q The same genre?

3 A The same genre.

4 Q You agree that the genre mix like you show in Exhibit 651  
5 can change over time within one channel?

6 A Yes.

7 Q In fact, it has changed quite considerably over the  
8 lifetime of WE TV, right?

9 A Over its lifetime?

10 Q Yes.

11 A Is that the question? Yes.

12 Q It started out doing a lot of movies?

13 A Yes. It, in fact, had a different name, Romance  
14 Classics.

15 Q Does that mean that WE TV has been appealing to different  
16 audiences over time, targeting different audiences?

17 A I think that the accurate answer to your question is that  
18 it has been appealing to different audiences, and that is why they  
19 moved into the reality programming, is that they wanted to get  
20 younger. The romance movies were appealing to women, but older.  
21 So, they moved into the reality to get younger with it.

22 Q Okay. Let's talk about the list of genres that you used  
23 in your analysis. And maybe just to help frame us, I think in the  
24 binder I gave you -- which one is the appendix? Yes, if you look  
25 at the end of the binder I gave you, first, there are the GSN

1 exhibits, and then, at the very end there are the Cablevision  
2 exhibits. And the very last exhibit is Cablevision 333. Tell me  
3 when you're there, sir.

4 A Yes.

5 MR. SCHMIDT: So, Judge, this is in the GSN binder, not  
6 the Cablevision binder.

7 BY MR. SCHMIDT:

8 Q And as I understand Exhibit 333, Cablevision Exhibit 333,  
9 which I think you now have in front of you, Mr. Egan, these are  
10 different appendices to your report?

11 A Yes.

12 Q A hundred and eighty pages?

13 A Yes.

14 JUDGE SIPPEL: And what tab are you on?

15 THE WITNESS: Tab, it is the very last one, Your Honor,  
16 it's tab 333.

17 JUDGE SIPPEL: I have it.

18 MR. SCHMIDT: Cablevision 333.

19 BY MR. SCHMIDT:

20 Q If we look at page 8 of 9 in this document, as I  
21 understand that, that's where genre classification begins?

22 A That's where my genre classification is what?

23 Q Begins? That's the start of your listing of the  
24 different programs on WE and the genres?

25 A Oh, yes. That's right, yes.

1 JUDGE SIPPEL: Well, this is 8 of 108?

2 MR. SCHMIDT: Yes.

3 JUDGE SIPPEL: Okay.

4 MR. SCHMIDT: Did I misspeak? I'm sorry. That's what I  
5 meant, Your Honor.

6 BY MR. SCHMIDT:

7 Q And that continues. You do the WE TV genre rankings.  
8 And then, starting on page 14, you do the GSN genre rankings, is  
9 that correct?

10 A Correct.

11 Q And as I understand what you did for WE TV, you see that  
12 there is a program, there is a genre, and there is a description.  
13 Do you see that?

14 A Yes.

15 Q And the description is taken from WE TV, correct?

16 A Yes.

17 Q The program is the name of the show. The genre is your  
18 classification?

19 A Yes.

20 Q In the case of GSN, the description was written by you,  
21 right?

22 A Most were not. Most were taken from GSN's website.

23 Q Were there some that you wrote?

24 A Yes.

25 Q That's I think what I had in mind.

1 I want to focus on the different genres you have. So,  
2 for example, if we look at page 8 where you start categorizing WE  
3 TV shows by genre, the first genre is news, news, news,  
4 documentary, reality, and it continues down. Do you see that?

5 A I do.

6 Q You didn't go to an industry publication to generate your  
7 genre list, did you?

8 A To an industry publication --

9 Q Yes.

10 A -- to generate my genre? For the most part, no, but, as  
11 I said earlier, there were cases where I consulted industry  
12 databases for their classifications.

13 Q You've never published your genre categories in any  
14 publication --

15 A No.

16 Q -- outside the courtroom? And there are different  
17 publications that list genres. For example, Nielsen has genres,  
18 right?

19 A Nielsen has genres.

20 Q You didn't use Nielsen genres?

21 A Again, I look at Nielsen's genres along with many other  
22 sources, including TRIVIA Media Services, who I got the listings  
23 from. And I considered those, but I think what you're asking --  
24 maybe you can correct me if I'm wrong -- did I just go to one  
25 source like Nielsen and just say, "Okay, that's the genre."? And

1 the answer to that is no.

2 Q Right. Nielsen would have a different genre list than  
3 you would?

4 A I don't know that they would have any different genre  
5 than what I have here. I don't know the answer to that.

6 Q Okay. You didn't look at how WE described their shows in  
7 submissions to Nielsen, did you, in terms of genre?

8 A I did not, but Mr. Brooks raised it for some shows. So,  
9 those I looked at.

10 Q Okay, but you didn't do that across the board?

11 A No.

12 Q Let me ask you about a few --

13 JUDGE SIPPEL: Where did Mr. Brooks raise this? Did you  
14 get the written testimony, you did, in advance of the hearing?

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: Did you pick it off his written testimony?

17 THE WITNESS: What happened, Your Honor, we went through  
18 pleadings that went through the Media Bureau and declarations. And  
19 Mr. Brooks -- and there was a sequence of them -- and Mr. Brooks  
20 raised --

21 JUDGE SIPPEL: Well, this is back before the case was  
22 sent to hearing then?

23 THE WITNESS: Correct.

24 JUDGE SIPPEL: I see. So, that's what you relied on.

25 Okay, that's what you're talking about?

1 THE WITNESS: That's what I referred to.

2 JUDGE SIPPEL: Okay.

3 MR. SCHMIDT: So, Your Honor, not to confuse things, but  
4 I would recommend that Your Honor keep Cablevision Exhibit 333 in  
5 front of Your Honor.

6 BY MR. SCHMIDT:

7 Q I am going to very quickly question you, Mr. Egan, on  
8 Cablevision Exhibit 650 from your binder. I don't know that you  
9 need to look at it to answer the questions.

10 A Okay. All right. Got you.

11 Q But, if you do, please feel free to. But I just want you  
12 to know what I'm referencing, and I just want to give some more  
13 examples of overlap across genres.

14 JUDGE SIPPEL: So, what are you warning me about?

15 MR. SCHMIDT: Just I don't think Your Honor needs to go  
16 back to this, but that's what I'm questioning the witness about.  
17 We're going to go back and forth between the two.

18 JUDGE SIPPEL: Well, I'll follow your advice.

19 (Laughter.)

20 MR. SCHMIDT: That would be the first time someone has  
21 ever said that to me, Your Honor.

22 JUDGE SIPPEL: It's late. It's late.

23 (Laughter.)

24 MR. SCHMIDT: It is late.

25 BY MR. SCHMIDT:

1 Q If you look at your genre for WE TV, for WE TV, yes, one  
2 of the categories is comedy, right?

3 A Yes.

4 Q And that is what you apply to --

5 MR. SCHMIDT: May I approach, Your Honor?

6 JUDGE SIPPEL: You sure may.

7 BY MR. SCHMIDT:

8 Q That's what you apply to the Golden Girls, correct?

9 A Yes.

10 Q It's true, is it not, though, that there are several  
11 movies listed on there that are, in fact, comedies?

12 A Listed on this page?

13 Q Yes. And the ones I was looking at were Miss  
14 Congeniality and there's another one that I'm going to forget the  
15 name of, Miss Congeniality and First Wives Club. Those are  
16 comedies, correct?

17 A Yes, I'll grant you that.

18 Q But you classified them as movies?

19 A Correct.

20 Q Are you aware that many game shows have comedic elements?

21 A Yes.

22 Q In fact, some of them actually have comedians as hosts.  
23 Are you aware of that?

24 A Yes.

25 Q And just to give a few examples -- well, let me ask you,

1 do you know of comedian hosts for game shows on GSN?

2 A I do, but I'm drawing a blank. I know that there are.

3 You know, there are so many shows; I can't tell you off the top of  
4 my head.

5 Q Fair enough. Sherri Shepherd?

6 A Yes.

7 Q Steve Harvey?

8 A Yes.

9 Q Howie Mandel?

10 A Yes.

11 Q Drew Carey?

12 A Who's left?

13 Q Drew Carey?

14 A Yes.

15 Q Larry Miller?

16 A I don't know Larry Miller.

17 Q Okay. But you would never categorize those as comedic or  
18 comedies?

19 A The show that they're hosting, would I classify it by  
20 genre as a comedy?

21 Q Yes.

22 A No.

23 Q The judge asked you a question about high stakes poker  
24 and whether it was reality. Do you recall that?

25 A I do.

1 Q Do you know what makes high stakes poker high stakes?

2 A I don't recall.

3 Q Okay. I think you said something to the effect of  
4 reality TV is like being a fly on the wall and watching?

5 A Yes.

6 Q High stakes poker is people hanging out in a house poker  
7 setting, as opposed to a tournament, and playing with their own  
8 money?

9 A I'll take your word for it. I don't remember.

10 Q Okay. But that wouldn't make it reality to you?

11 A No, because reality is a narrative formula. And what you  
12 just described doesn't fit that unfettered reality unfolding  
13 formula.

14 Q Okay. Let's go back, and this is why I suggested you  
15 keep Exhibit 333 in front of you --

16 A Yes.

17 Q This is your listing of the different shows and the  
18 different genres. I just want to give a few examples of these, and  
19 then, we will move on to something else.

20 Look with me, if you would, at page 13. You have a show  
21 listed called Unforgettable Celebrity Wedding Gowns, correct?

22 A Yes.

23 Q And that's about just what it sounds like, wedding  
24 dresses of celebrities?

25 A Yes.

1 Q Right below that you have Unforgettable Wedding Venues.  
2 Do you see that?

3 A I do.

4 Q And that's about unforgettable weddings in different  
5 venues?

6 A It is, yes.

7 Q The wedding gown one, you categorized as fashion and  
8 shopping, correct?

9 A Correct.

10 Q The Unforgettable Wedding Venues, you classified as  
11 documentary, right?

12 A Correct.

13 Q Would you expect those to appeal to substantially similar  
14 audiences?

15 A I would expect them to appeal to substantially similar  
16 audiences, yes.

17 Q A couple of more examples. Page 11, Platinum Babies, do  
18 you see Platinum Babies?

19 A I'm sorry, this --

20 Q I'm sorry. Do you see Platinum Babies?

21 A Oh, yes, I do.

22 Q Opulent lifestyles of babies, right?

23 A Actually, let me find Platinum Babies. So, Platinum  
24 Babies is about the products, the platinum stroller, you know, the  
25 bejeweled teething ring. It is about those products.

1 Q Okay. Using the words of WE TV, "the opulent lifestyle  
2 of babies"?

3 A It's not lifestyle. It's about the product itself.

4 Q Okay. Platinum Weddings, "the most gorgeous opulent  
5 weddings"?

6 A Yes.

7 Q Okay. Would you expect those to appeal to substantially  
8 similar audiences, Platinum Babies and Platinum Weddings?

9 A Substantially similar, yes.

10 Q Okay, but you have them, again, in different genres,  
11 fashion and shopping versus realities?

12 A I do because one is about the products and one is about  
13 the relationships of the people in the show that are getting  
14 married.

15 Q Okay. Further down that page, Sin City Weddings, do you  
16 see that?

17 A I do.

18 Q That's about weddings in Las Vegas, and you have that as  
19 reality, correct?

20 A Correct.

21 Q Two pages before, page 9, you have Disney Dream Weddings,  
22 a documentary. That's about weddings in Disney World, correct?

23 A No.

24 Q But it says, "This WE TV original special showcases the  
25 different types of fantasy weddings that Walt Disney World has to

1 offer."

2 A Right. So, the Disney Dream Weddings is about the  
3 location and what makes this thing so special. It has got a  
4 documentary interpretative aspect to it.

5 Q Okay. One focuses on weddings in Las Vegas, right?

6 A One is about the people involved in the weddings in Las  
7 Vegas.

8 Q And one focuses on weddings in Disney World, right?

9 A No. As I said, it's about the venues there, and it is a  
10 documentary format showing those and interpreting them. I think it  
11 even ranks them, to be honest with you.

12 Q Okay. Would you expect those to appeal to substantially  
13 similar audiences, Disney Dream Weddings and --

14 A I would. I would, yes.

15 Q And different genres, right?

16 A Yes.

17 Q The last one, and then we can move on, look with me, if  
18 you would -- and this one I'm going to ask you to put two pages  
19 side-by-side -- so, look with me, if you would, at page 8, Amazing  
20 Wedding Cakes. Do you see that on page 8?

21 A I do.

22 Q And then, if you flip ahead to Wedding Cake Masters on  
23 page 13 -- and the reason I asked you to put them side-by-side is  
24 right from the first sentence, "This original series shows the  
25 unique side to weddings," right through the last sentence, "This is

1 definitely not your mother's wedding cake!", they're identical  
2 descriptions, right?

3 A I don't know that they're identical descriptions. One is  
4 a reality show, Amazing Wedding Cakes, in which you see these  
5 designers and their stresses they're going through trying to make  
6 the cakes. And you see the cinema verite, the drama unfolding.  
7 And then, the Wedding Cake Masters is all focused on the particular  
8 cakes and what makes that particular cake special. You aren't  
9 seeing any drama between the people who are making the cakes.

10 Q Okay. Amazing Wedding Cakes, description for the record,  
11 "This original series shows the unique side to weddings. Meet  
12 incredible designers who are pushing the boundaries of what wedding  
13 cakes can be. These icing artists are astonishing brides and  
14 grooms across the country with their fantastic, elaborate,  
15 delicious creations. This is definitely not your mother's wedding  
16 cake!" That's a reality show, correct?

17 A To be honest with you, I wasn't paying attention, but I'm  
18 going to say you read the Amazing Wedding Cakes description from  
19 WE; then, that's correct.

20 Q And you classify that reality?

21 A I did.

22 Q Wedding Cake Masters on page 13, does that sound  
23 familiar? "This original series shows a unique side to weddings.  
24 Meet four credible designers who are pushing the boundaries of what  
25 wedding cakes can be. These icing artists are astonishing brides

1 and grooms across the country with their fantastic, elaborate,  
2 delicious creations. This is definitely not your mother's wedding  
3 cake!" That you classify as food and drink, right?

4 A Correct. And had I relied only on the network's  
5 descriptions as given to me, I might have classified the two of  
6 them in the same genre. But, since I didn't do that, and I looked  
7 at the shows and discussed them with Mr. Scharfberger, I realized  
8 one was a reality show and one was not.

9 Q Okay. Would you expect those two shows with identical WE  
10 TV descriptions to appeal to substantially-similar audiences?

11 A Substantially similar, I think, yes.

12 Q Okay. Now we've touched on a lot of wedding-related  
13 shows throughout this list, right?

14 A Yes.

15 Q And that's a pretty -- I don't want to characterize it,  
16 but you've seen that through a number of WE TV shows, right?

17 A Yes.

18 Q And, of course, that was the focus of Wedding Central,  
19 right?

20 A Yes.

21 Q Do you consider wedding to be a genre?

22 A No.

23 Q Do you know that Kim Martin considers wedding to be a  
24 genre?

25 A I believe I read that in her deposition.

1 Q Have you seen Wedding Central documents where they talk  
2 about weddings as a distinct genre?

3 A I don't recall seeing that.

4 (Whereupon, the document was marked as GSN Exhibit  
5 No. 408 for identification.)

6 Q Okay. Let me just point you to one. Look with me, if  
7 you would, at Exhibit 408, please, in the binder I gave you, GSN  
8 408, probably two-thirds of the way back.

9 A I've got it.

10 JUDGE SIPPEL: GSN 408. Now which binder is this one?  
11 Is this cross-examination or is this back to --

12 MR. SCHMIDT: Cross-examination, Your Honor.

13 JUDGE SIPPEL: And 408?

14 MR. SCHMIDT: Yes, please, Your Honor.

15 BY MR. SCHMIDT:

16 Q And I'll represent to you that this is a document that  
17 was produced by Cablevision in this case. If you turn to the  
18 second page of the document, you see a caption, "Cablevision  
19 Systems Corporation Wedding Central Strategic Planning Meeting".  
20 Do you see that? "2010 Budget and Long-Term Plan"?

21 A I do.

22 Q And do you see it's dated September 26th, 2009?

23 A Yes.

24 Q Flip ahead with me two pages, if you would.

25 JUDGE SIPPEL: Is this in evidence already?

1 MR. SCHMIDT: This is in evidence I think from earlier  
2 today.

3 MR. COHEN: Yes.

4 BY MR. SCHMIDT:

5 Q If you look at the bottom, sir, the pages are numbered  
6 408.001, 002.

7 A Yes.

8 Q Look at 003.

9 A Yes.

10 Q Situation Analysis under the Executive Summary, "The  
11 wedding industry is a \$60 billion business and no network owns the  
12 genre." Did I read that correctly?

13 A Yes.

14 Q Let's look at one other. Let's look at one other  
15 exhibit. Do you have GSN Exhibit 44 in your binder, sir?

16 A Yes.

17 Q And do you see that this is an email from Kim Martin to  
18 Elaine Waldman, Jan Eric Diedrichsen, and Kenetta Bailey?

19 A Yes.

20 Q Do you know what Ms. Martin's role with respect to WE TV  
21 was?

22 A General Manager.

23 Q I'm sorry. With respect to Wedding Central?

24 A General Manager. General Manager.

25 Q Okay. And do you know what Ms. Waldman's role was?

1 A Oh, no, I don't.

2 Q Let's look at, do you see there's an attachment to this  
3 that is slides presented by Wedding Central? It begins on the page  
4 with Bates No. 972. It looks like --

5 A Yes.

6 Q -- it's a presentation of Comcast in November 2009.

7 A I see it.

8 JUDGE SIPPEL: What page are you on?

9 MR. SCHMIDT: It is the page where the slides start with  
10 the number 972. It is the third page of the document.

11 JUDGE SIPPEL: All right.

12 BY MR. SCHMIDT:

13 Q Flip ahead with me to the page a couple back that is  
14 numbered 975.

15 A Got it.

16 Q Do you see where Wedding Central is --

17 A Do I see where Wedding Central is? No.

18 Q No, I stopped in the middle of my question.

19 A No.

20 Q Do you see where Wedding Central is saying to Comcast at  
21 the top of the slide, "Dating relationships and weddings, an  
22 untapped genre that is now available, but not on Comcast."?

23 A I see that slide.

24 Q Do you disagree with that characterization of weddings as  
25 a genre?

1 A I do.

2 Q And also with the characterization of dating and  
3 relationships as a genre?

4 A Oh, well, I think she is saying here they're one genre,  
5 but I --

6 JUDGE SIPPEL: Well, wait. You didn't answer his  
7 question. Can you answer his question?

8 THE WITNESS: Your Honor, I was trying to -- yes. I'm  
9 not sure how to answer your question. As I understand your  
10 question here, she is calling it one genre, and I disagree with the  
11 classification. If she is calling it two, I disagree with that as  
12 well.

13 BY MR. SCHMIDT:

14 Q Okay. Thank you.

15 You have in your report, as I understand it, your first  
16 conducted a genre analysis for programming before 2010, or maybe up  
17 through 2010, right?

18 A No.

19 Q Okay, '11? I'm sorry. Through '11?

20 A Do you have a question?

21 Q Yes. You went through '11 in your first analysis of  
22 genres?

23 A Yes.

24 Q Okay. And then, you went back and you did a genre  
25 analysis from 2012 to 2014, correct?

1 A No.

2 Q Let's take a look at your direct testimony. I think  
3 you're going to have to go back to your binder. And I'm sure I'm  
4 just not quite hitting it right. I'm not trying to trick you on  
5 this one.

6 But if you will look at the beginning of the Cablevision  
7 binder, Exhibit 332?

8 JUDGE SIPPEL: Exhibit 232?

9 MR. SCHMIDT: 332, Your Honor.

10 JUDGE SIPPEL: 332.

11 MR. SCHMIDT: It's the testimony right at the beginning.

12 BY MR. SCHMIDT:

13 Q And if you go way back to what we have referred to as  
14 "the cheap seats" that paid 152 at the back of the report --

15 (Laughter.)

16 A Yes.

17 Q Do you see where it says, "From 2012 through 2014, GSN's  
18 programming was extremely dissimilar to that on WE TV."?

19 A Right, and the reason I answered your question no -- and  
20 you've asked me to be short, so I was -- I didn't look at all of  
21 2014.

22 Q Okay.

23 A I looked at through June of 2014.

24 Q I appreciate that precision, and I wasn't trying to  
25 overstate it.

1           So, at some point between 2012 and 2014, you conducted a  
2 further genre analysis covering programming from that time period?

3           A     In the fall of 2014, I did the further genre analysis for  
4 the years subsequent to the retiering, 2012, '13, through the first  
5 half of '14.

6           Q     Why did you do that?

7           A     Because the case had gone into a second round of  
8 testimony, and Mr. Brooks and Dr. Singer had submitted  
9 supplementary reports that addressed the years subsequent to the  
10 retiering. And so, I was asked to do the same.

11          Q     Okay. Do you have a view as to whether it is important  
12 to your analysis to look at 2012 through 2014 programming?

13           MR. CARNEY: Important -- I'm going to lodge an  
14 objection, Your Honor. Could you rephrase? Important how?

15           BY MR. SCHMIDT:

16          Q     Is it relevant to your analysis?

17           JUDGE SIPPEL: Well, I'm going to overrule that  
18 objection.

19           MR. SCHMIDT: Okay.

20           JUDGE SIPPEL: I think the witness can handle that  
21 question.

22           THE WITNESS: My point of view is that, again, when we  
23 say 2014, from this point forward, unless you tell me differently,  
24 I am going to assume you mean through the first half of 2014?

25           BY MR. SCHMIDT:

1 Q Fair point.

2 A Okay. So, it was important to -- I'm not sure what your  
3 question was, but if this answers it -- it was important to my  
4 assignment to look at the programming through the second half of  
5 2014, yes.

6 Q Let's talk about programming expenditures. And you've  
7 offered a view on programming expenditures, correct?

8 A Yes.

9 Q Stay with your direct testimony there and flip, if you  
10 would, to page 55, paragraph 86.

11 JUDGE SIPPEL: Are we still with the CV evidence?

12 MR. SCHMIDT: Yes, Your Honor.

13 JUDGE SIPPEL: And the tab is?

14 MR. SCHMIDT: The first tab, CV 333 -- 332. I'm sorry.  
15 The direct.

16 JUDGE SIPPEL: Is that the exhibit you are talking about?

17 MR. SCHMIDT: That is the direct testimony, yes.

18 JUDGE SIPPEL: Yes, Exhibit 332.

19 MR. SCHMIDT: Yes.

20 JUDGE SIPPEL: It doesn't have a tab.

21 MR. SCHMIDT: You're right, it does not have a tab.

22 JUDGE SIPPEL: It's 332.

23 MR. SCHMIDT: It stands alone.

24 JUDGE SIPPEL: But what page?

25 MR. SCHMIDT: Page 55, please.

1 JUDGE SIPPEL: Do you have the page, Mr. Egan?

2 THE WITNESS: I'm there.

3 JUDGE SIPPEL: Okay.

4 BY MR. SCHMIDT:

5 Q Do you see where -- this is your programming expenditures  
6 analysis, correct?

7 A This is for the first period, the initial period, yes,  
8 2009 through '11, yes.

9 Q And I believe what you say is, "During 2009, 2010, and  
10 2011, WE TV and GSN each produced a significant amount of original  
11 programming." Did I read that accurately?

12 A Yes.

13 Q And the next part is what I want to focus on. It's your  
14 determination that in that window they were spending somewhat  
15 comparable total amounts of money to do so.

16 A To produce original programming, yes.

17 Q Yes. And, in fact, the one example you give before the  
18 tiering -- do you remember when the tiering was?

19 A The tiering I believe was in early 2011. It might have  
20 been February 1st or so.

21 Q Before the tiering, the one example you have is GSN  
22 actually spent more on original programming than WE TV, correct?  
23 A little bit more?

24 A Oh, ? Is that --

25 Q Yes.

1 A Yes, correct.

2 Q And the example you give where GSN spent less was after  
3 the tiering, when WE was able to accelerate its investment,  
4 correct?

5 A Correct.

6 Q And if I can count the difference between those two, it  
7 is what, roughly

8 A The difference between the expenditures by the two  
9 networks in that year of 2011?

10 Q The year of the tiering, yes.

11 A Yes, that's roughly it.

12 Q Okay. Do you know how that compares to the amount of  
13 damages that GSN has claimed it experienced just in terms of lost  
14 affiliate fees and lost advertising revenue from the tiering?

15 MR. CARNEY: Objection, Your Honor. It is well within  
16 the scope of his testimony.

17 JUDGE SIPPEL: Well, yes, we will see what kind of answer  
18 you get. I'm overruling it.

19 THE WITNESS: No.

20 BY MR. SCHMIDT:

21 Q Okay. Did you evaluate Wedding Central's programming  
22 expenditures?

23 A No.

24 Q Do you know if they even had any?

25 A I'm sorry?

1 Q Do you know if they even had any? And the reason I --  
2 let me back up and ask a different question, if I could.

3 JUDGE SIPPEL: Well, let him answer. Do you want him to  
4 answer that question?

5 MR. SCHMIDT: I was going to lay a foundation, if I  
6 could, Your Honor.

7 JUDGE SIPPEL: All right.

8 BY MR. SCHMIDT:

9 Q Do you know that Wedding Central got a lot of their  
10 programming from WE TV?

11 A Yes. My testimony specifies that it was about 75 percent  
12 of their programming in 2010 had previously aired on WE TV.

13 Q Do you know if Wedding Central had any programming  
14 expenditures at all, either in terms of payments to WE TV or  
15 otherwise?

16 A I don't know.

17 Q It's your opinion, I take it, that WE TV and Wedding  
18 Central are similarly situated under your analysis?

19 A Yes. And let me clarify. Remember now, my scope is  
20 similarly situated in programming and in audience. And so, with  
21 that finetuning, yes.

22 Q Let's talk for just a moment about look and feel.  
23 There's no source like a book or an encyclopedia or a list of  
24 categories I could go to to articulate an objective standard for  
25 look and feel, is there?

1       A       There's no book that I know of.  There may be a book.  I  
2       don't know of a book that describes the factors.  As I said  
3       earlier, there's a lot of discussion among industry professionals  
4       that you can go to, yes.

5       Q       But there's no criteria I could apply and say this tells  
6       me the look and feel of Wedding Central; this tells me the look and  
7       feel of GSN; this tells me the look and feel of WE TV?

8       A       I think there is, and I think I articulated it.

9       Q       But it's not published anywhere, is it?

10      A       Not that I'm aware of.

11      Q       Okay.  Let's look at page 39 of your report where you  
12      discuss, I believe, target programming, including look and feel.  
13      And I just want to ask you about a couple of things you touch on in  
14      here.

15             One is you talk about the fact that WE TV in your term  
16      runs something referred to as "chick flicks".  Do you see that?  At  
17      the top?

18      A       Can you point me to the line?

19      Q       Of course.  At the top of page 39 in your testimony, do  
20      you see the reference you have to WE TV running chick flicks?

21      A       Oh, so this is the paragraph where I'm talking about the  
22      different genres, and I describe them.  I say the movie and some of  
23      those films are often referred to as chick flicks.  Yes, I'm with  
24      you.

25      Q       And chick flicks is not a genre, is it?

1 A No.

2 Q Okay. Do you know if Wedding Central ran what you call  
3 chick flicks?

4 A You're testing my memory, Mr. Schmidt. I don't recall.

5 Q Okay. Let's flip ahead a few pages.

6 JUDGE SIPPEL: Would chick flicks be called a branding or  
7 a brand?

8 THE WITNESS: I think you could say that, yes. It would  
9 be branding a type of film.

10 BY MR. SCHMIDT:

11 Q Look with me, if you would, at page 43.

12 JUDGE SIPPEL: Before you go there, on this point here,  
13 I think I heard you testify that WE TV and Wedding Channel, that --  
14 well, let me say that it was the Wedding Channel -- that wedding is  
15 not a brand. Did you testify to that?

16 THE WITNESS: He asked me do I think wedding is a genre.

17 JUDGE SIPPEL: Oh, a genre.

18 THE WITNESS: And I said no.

19 JUDGE SIPPEL: Is it a brand?

20 THE WITNESS: No, it is a subject matter. It is a scene.

21 JUDGE SIPPEL: It's a subject matter.

22 THE WITNESS: Yes.

23 JUDGE SIPPEL: Does Wedding Circle (sic) have any kind of  
24 brand at all?

25 THE WITNESS: Wedding Central.

1 JUDGE SIPPPEL: Circle. Is it Circle or Central?

2 THE WITNESS: Central. Does it have a brand? You know,  
3 I would say, Your Honor, that it didn't exist long enough to have  
4 a brand, right. A brand is something you build and earn.

5 I think it clearly had a subject matter, a theme, if you  
6 will, of weddings, right. But I don't think it really had been  
7 around long enough that you could say Wedding Central had a brand.

8 JUDGE SIPPPEL: What about WE TV?

9 THE WITNESS: WE TV has a very strong brand. For those  
10 who are aware of WE TV, it is a targeted service, like most cable  
11 services are. So, it is going to be a portion of the subscriber  
12 base is not aware of any channel. But, for those who are aware of  
13 WE TV, I think it has a very strong brand.

14 JUDGE SIPPPEL: What is it?

15 THE WITNESS: It is programming for and about women 18 to  
16 54 and the subjects that they deal with and how their lives, how  
17 their days are filled.

18 JUDGE SIPPPEL: Okay.

19 BY MR. SCHMIDT:

20 Q So, look with me, if you would, Mr. Egan, at page 43 of  
21 your report. And I'm focused specifically on paragraph 62. This  
22 is part of your look-and-feel analysis, as I understand is, is that  
23 right?

24 A Paragraph 52 or 62?

25 Q Sixty-two. I'm sorry.

1 A Okay. Yes.

2 Q Okay. In 62, you talk about GSN and you make the comment  
3 that, I believe, the website is primarily deep blue in color. Do  
4 you see that?

5 A Let me just catch up because I want to make sure that we  
6 are in the section --

7 Q Of course.

8 A -- on look and feel, because --

9 Q Of course. Please do.

10 A -- that is what you asked me. I think we are in the  
11 section on subject matter here, if my pages haven't been  
12 bolloxed-up here.

13 Q Then, let me ask it to you with respect to subject  
14 matter. Do you see that you reference in paragraph 62 that GSN was  
15 primarily deep blue in color?

16 A I do see that, yes.

17 Q Are you aware that blue is traditionally viewed as a male  
18 color?

19 A Am I?

20 Q Yes.

21 A Yes.

22 Q Okay. And do you see that you read above for WE "Its  
23 color palette was dominated by pastels."? It's about --

24 A I do. I see that, yes.

25 Q And by that, you mean most especially pink?

1 A Probably primarily pink. I mean, it's not the only  
2 pastel color on there, but, you know, probably, but not -- I  
3 wouldn't say overwhelmingly.

4 Q Pink being a stereotypical women's color?

5 A I'm sorry?

6 Q Pink being a stereotypical women's color?

7 A I think that's stereotypically considered a women's  
8 color, yes.

9 Q In fact, do you recall citing pink in your original -- I  
10 forget if it was a report. I think it was your first report.

11 A I don't recall.

12 Q I might have to show it to you.

13 MR. SCHMIDT: Yes, I don't know that we need to mark this  
14 into evidence, Your Honor. Who knows? Well, I guess this is  
15 Exhibit 418.

16 (Whereupon, the document was marked as GSN Exhibit No.  
17 418 for identification.)

18 JUDGE SIPPEL: So, should I be changing my shirt?

19 (Laughter.)

20 MR. SCHMIDT: Well, Your Honor, that's the point I'm  
21 trying to make. We've moved past those colors was my point.

22 (Laughter.)

23 BY MR. SCHMIDT:

24 Q Do you see on page -- I'll help you out -- page 16 --

25 A Which page?

1 Q It's page 16, paragraph 25.

2 JUDGE SIPPEL: Now what does this document represent?

3 This is not his testimony.

4 MR. SCHMIDT: This is, I believe -- Mr. Egan, what is  
5 this document?

6 JUDGE SIPPEL: It's your declaration.

7 BY MR. SCHMIDT:

8 Q Is this your declaration in this case from December of  
9 2011? If you look at 49, that's where I see the date.

10 A So, December 12th, 2011 --

11 Q Okay.

12 A -- seems to be the date. And I would say that was the  
13 initial declaration that I did in this proceeding.

14 Q Okay. Do you see on page 25, originally, you focused on  
15 pink? Page 25, at the end of paragraph 25. I'm sorry. Page 16,  
16 at the end of paragraph 25, do you see where you originally focused  
17 on pink for WE TV?

18 A Do you mean where I say, "Its color palette is dominated  
19 by pastels, most especially pink."?

20 Q Yes.

21 A I see that.

22 Q One of the points that you make in your current testimony  
23 -- and if you would like me to point you to it, it is on page 46 of  
24 your current testimony, at the beginning of the Cablevision binder,  
25 Exhibit 332, Cablevision Exhibit 332.

1 MR. SCHMIDT: Yes, I suppose I should move that last one,  
2 Exhibit 418, into evidence, Your Honor.

3 JUDGE SIPPEL: Any objection?

4 MR. CARNEY: No objection.

5 JUDGE SIPPEL: 418 is in.

6 (Whereupon, the document marked as GSN Exhibit No.  
7 418 for identification was received in evidence.)

8 JUDGE SIPPEL: Was this prepared as an answer, as support  
9 of the answer to the Complaint?

10 MR. COHEN: Your Honor, we exchanged expert reports,  
11 several rounds of expert reports. This declaration was one of  
12 those expert reports.

13 JUDGE SIPPEL: Very early on, December --

14 MR. COHEN: There was testimony --

15 MR. CARNEY: I think, actually, Judge, that is exactly  
16 what happened. The fact was that this was in response to --  
17 supporting the original answer, right?

18 THE WITNESS: Yes, this was part of the answer. So,  
19 there was a Complaint.

20 JUDGE SIPPEL: Yes, a complaint, yes.

21 THE WITNESS: And then, there was an answer. And this  
22 was a declaration supporting the --

23 JUDGE SIPPEL: That supported the answer.

24 THE WITNESS: -- answer.

25 JUDGE SIPPEL: Okay. The date is what triggered my

1 question. Okay.

2 BY MR. SCHMIDT:

3 Q Are you with me back in your testimony, your current  
4 testimony, Exhibit 332, the first thing in your Cablevision binder?

5 JUDGE SIPPEL: 332?

6 MR. SCHMIDT: 332, Your Honor, the first one in the  
7 Cablevision binder.

8 JUDGE SIPPEL: I've got it.

9 MR. SCHMIDT: Page 46, please.

10 JUDGE SIPPEL: So, do you think you improved on your  
11 declaration --

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: -- with your latest direct testimony?

14 THE WITNESS: I think so.

15 BY MR. SCHMIDT:

16 Q I think we can agree it got longer, right, Mr. Egan?

17 A Yes, it got longer and even better.

18 (Laughter.)

19 Q Okay. That's what we're here for.

20 Let's look at page 46.

21 JUDGE SIPPEL: Have you read Cablevision's 10K report?

22 (Laughter.)

23 That's a page-turner. I'm just kidding, sir.

24 Go ahead.

25 BY MR. SCHMIDT:

1 Q Do you see paragraph 68 you did a count of the number of  
2 show hosts on GSN? Do you see that?

3 A Yes.

4 Q Of the male talent on GSN, right?

5 A Yes.

6 Q Did you count how much of the key talent on WE TV is  
7 female?

8 A I believe I did at the time, and I don't recall what the  
9 number was.

10 Q Okay. Do you know that, in fact, a lot of their key  
11 series talent is male on WE TV?

12 A I think that a significant portion is.

13 Q Okay. For example, let's look back to the binder I gave  
14 you.

15 A Okay.

16 Q And do you see in the binder I gave you GSN Exhibit 352?

17 JUDGE SIPPEL: Tab 352?

18 MR. SCHMIDT: Yes, please, Your Honor.

19 THE WITNESS: Yes.

20 BY MR. SCHMIDT:

21 Q Do you see this as an email in December 2008 of Kenetta  
22 Bailey?

23 A Yes.

24 Q I forget if I asked you; do you know who she is?

25 A I don't know if you asked me, but I believe she was a

1 marketing executive for WE TV at that time.

2 Q Okay. And if you will look, do you see that this is a  
3 discussion about the new tagline for WE TV?

4 A Yes.

5 Q If you look, do you see the numbered items where some of  
6 the taglines they considered are listed?

7 A Yes.

8 Q Right below that is a discussion of the fact that coming  
9 out of the meeting the majority agreed that the tagline  
10 "Fascinating real women" was the pick? "However, concern expressed  
11 in the meeting and in conversations with Kim gave us pause about  
12 the word 'women' in the tagline. First, we wouldn't want to  
13 alienate men who are co-viewers." Do you see that?

14 A Yes.

15 Q And the fact that they don't want to alienate men who are  
16 co-viewers, that doesn't change the fact that they are  
17 female-focused, right?

18 A Correct.

19 Q Okay. She, then, says, "Second, we wouldn't want to have  
20 a disconnect in viewers' minds, given some of our key series talent  
21 are male." Do you see that?

22 A Yes.

23 Q Is that one of the documents you reviewed that indicated  
24 that some of WE TV's key series talent is male?

25 A This document is not -- I reviewed many, many documents

1 and looked at their shows, and this document was not one of them.

2 Q Okay. Can you give me any quantification right now of,  
3 when she says, "some of our key series talent are male," how much  
4 of it is?

5 A Well, of course, this is 2008, right? You realize that.  
6 And my testimony speaks of 2009 and forward. So, I can't tell you  
7 what it was in 2008.

8 Q Can you tell me what it was in 2009 or 2010?

9 A The reality shows are WE, which are really their  
10 defining, or were their defining target programming, the majority  
11 of the protagonists in those things were women.

12 MR. SCHMIDT: Your Honor, I'm about three-quarters of the  
13 way through my questioning. I'm not going to finish before 6:00,  
14 and I have another big block coming up. I think if we break here,  
15 I can finish pretty quickly in the morning. Or I can keep going.  
16 I'm good either way, but my preference would be to break now and  
17 finish in the morning and be quick.

18 JUDGE SIPPEL: Okay. Are you okay with that, Mr. Cohen?  
19 Really, Mr. Carney is in charge.

20 MR. CARNEY: That's fine, Your Honor.

21 JUDGE SIPPEL: Okay, let's do that.

22 MR. SCHMIDT: And I will say, I asked Mr. Egan at the  
23 beginning to be concise with his answers. He has, and that's how  
24 considerate -- we appreciate that.

25 JUDGE SIPPEL: Yes, we have improved as we have gone

1 along. That is the beauty of keeping people late.

2 (Laughter.)

3 Okay with you, Mr. Egan?

4 THE WITNESS: I would much prefer to go to 6:00. I have  
5 already been held over an extra day here, and we have cancelled  
6 this testimony multiple times. So, I would prefer to go to 6:00,  
7 so that we can get out 20 minutes earlier tomorrow.

8 JUDGE SIPPEL: Let's go.

9 MR. CARNEY: Your Honor --

10 JUDGE SIPPEL: What were you going to say?

11 MR. CARNEY: We're not going to finish tonight.

12 MR. COHEN: Let's break, Your Honor. We will talk to Mr.  
13 Egan. Okay?

14 JUDGE SIPPEL: Calm him down?

15 (Laughter.)

16 MR. COHEN: He has had a long day.

17 JUDGE SIPPEL: I know, I can see that.

18 MR. COHEN: And it is a long, long thing, and we have  
19 inconvenienced him and he has something tomorrow.

20 THE WITNESS: I have people coming from out of town  
21 tomorrow.

22 MR. COHEN: And he has told us for a long time.

23 JUDGE SIPPEL: I like to accommodate witnesses as best I  
24 can.

25 MR. COHEN: I think we will be, Your Honor.

1           JUDGE SIPPEL:  Yes, because it is almost 20 of 6:00.  So,  
2  you are not losing that much time.  But, anyway, that's my point.  
3  That is my take on it.

4           MR. COHEN:  We will see you at 9:00 tomorrow, Your Honor.

5           JUDGE SIPPEL:  We are going to see you at nine o'clock in  
6  the morning.

7           THE WITNESS:  Thank you, Your Honor.

8           JUDGE SIPPEL:  Thank you very much.

9           You're still under oath.  Talk to counsel, but don't talk  
10 to other witnesses in the case.

11          THE WITNESS:  Okay, got it.

12          JUDGE SIPPEL:  Okay?  Let's go.

13          (Whereupon, at 5:38 p.m., the hearing was recessed for  
14 the day.)

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