

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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Friday,  
July 17, 2015

Volume IX

Hearing Room A  
Room TW-A363

445 12th Street, SW

Washington, DC

The above-entitled matter came on for hearing, pursuant  
to notice, at 9:07 a.m.

BEFORE: THE HONORABLE RICHARD L. SIPPEL,

Chief Administrative Law Judge

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OTR: 9:07 a.m.

Lunch: 12:17 p.m. to 1:19 p.m.

OTR: 3:17 p.m.

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

2 9:07 a.m.

3 JUDGE SIPPEL: Let's go on the record. It's 9:00 this  
4 morning, a little bit after, and we are now in session, and Mr.  
5 Egan is still on the stand. You're under oath, sir.

6 THE WITNESS: Yes, sir.

7 JUDGE SIPPEL: And Mr. Schmidt?

8 MR. SCHMIDT: Yes, the two housekeeping matters were I  
9 think there were a couple of exhibits we moved in that had some  
10 highlighting and some very messy penmanship on them, and so we've  
11 been asked to provide clean copies. I have clean copies. It's  
12 exhibit, GSN Exhibit 372 and GSN Exhibit 409, and if I may  
13 approach, I'll pass them out.

14 JUDGE SIPPEL: Sure, thank you.

15 MR. SCHMIDT: Thank you, Your Honor.

16 JUDGE SIPPEL: GSN 372, this is a memo from Ruth Sandhaas  
17 to Steve Luttinger. It's dated October 28, 2010. The witness has  
18 this too?

19 MR. COHEN: No, it's not for this witness, Your Honor.

20 JUDGE SIPPEL: All right. Well, thank you. Where did we  
21 leave off? Who is up?

22 MR. SCHMIDT: Me, Your Honor, and hopefully I'll be done  
23 very quickly and let Mr. Egan make his event.

24 BY MR. SCHMIDT:

25 Q I just have a few lines of questions to finish, Mr. Egan.

1 Do you remember where we left off yesterday? I was asking you  
2 about female talent.

3 A Yes.

4 Q And you were -- you answered with respect to the defining  
5 the female target on the defining target programming for WE tv, and  
6 I just want to ask you about that term defining target programming  
7 that you used. Is that similar to the idea of tent pole or marquee  
8 programming?

9 A I would say it's related to it would be my answer, and  
10 that you know, tent pole generally means like a really big show,  
11 right, a really -- you know, Breaking Bad on AMC or Mad Men on AMC,  
12 so it's really like one series that holds everything -- holds the  
13 tent up and everything else is under it, whereas a defining genre  
14 of programming is, you know, there's more programming and there's  
15 a lot of shows in that category.

16 Q Did you conduct a specific analysis of GSN's defining  
17 target programming in terms how much investment GSN put into that  
18 programming?

19 A How much investment?

20 Q Yes.

21 A No.

22 Q Okay, did you do an analysis -- do you remember the pie  
23 charts with the genre that you did?

24 A My pie charts?

25 Q Yes, sir.

1 A Yes.

2 Q Yeah, did you do a pie chart like that for WE tv that  
3 looked just at the defining target programming for WE tv and how  
4 that shook out on genre?

5 A No, and just to be clear what I said was that the  
6 defining programming on WE tv is their reality, so it is one of  
7 those slices on that pie.

8 Q But you didn't do a specific analysis of, if you look at  
9 all the target defining programming on WE tv, how does it break out  
10 by genre, correct?

11 A Correct.

12 Q Okay, and did you do any kind of specific ratings  
13 comparison between ratings on WE tv's defining target programming  
14 versus ratings on GSN's defining target programming?

15 A No.

16 Q Okay, let me ask you about one -- I think you mentioned  
17 this yesterday, but I'm just, to be honest, not sure. Is  
18 Bridezillas one of the defining target programs on WE tv at least  
19 during this time period we're talking about, 2009 to 2011?

20 A Yes.

21 MR. SCHMIDT: Let me show you a document on that. If you  
22 look back at the binder I gave you, it's the one that says Game  
23 Show Network's cross examination binder. Look with me if you would  
24 at Exhibit 310.

25 JUDGE SIPPEL: While we're doing this, would you repeat

1 your definition of or your explanation of defining target program?

2 I missed some of that.

3 THE WITNESS: Sure, what I said, Your Honor, was that on  
4 WE tv, their defining target programming is their reality  
5 programming. That's where they most purely communicate their  
6 target programming and their target audience. And conversely on  
7 GSN, it's their game show programming. That's the game shows.

8 And so when I -- in my mind, when people -- when viewers  
9 think about each of these two channels, the first thing they think  
10 of is that defining genre, not that they won't think of movies on  
11 WE as well, but the first thing they're going to think of that  
12 defines the channel for them, I believe, is reality.

13 JUDGE SIPPEL: You said -- then you switched from the  
14 programs to genre in your explanation. Is there an equivalency  
15 standard there for programming and genre, defining target genre?

16 THE WITNESS: Well, so WE tv's target programming, as I  
17 described yesterday, is really programming of and about women in --

18 JUDGE SIPPEL: No, I understand.

19 THE WITNESS: -- family centered --

20 JUDGE SIPPEL: I've got that.

21 THE WITNESS: Okay.

22 JUDGE SIPPEL: I know exactly what that is. You said  
23 reality shows. I'm just simply asking, you seem to interchange  
24 program with genre for defining target -- with the concept of  
25 defining target. I'm asking you if that's true? Is that the

1 equivalent, if one is equivalent to the other?

2 THE WITNESS: So I understand your question. I believe  
3 the answer is yes, that WE tv's reality programs constitute their  
4 target programming.

5 JUDGE SIPPEL: No, I'm not asking it that way. I'm  
6 asking if defining target program, is the term you used, the term  
7 that Mr. Feldman --

8 MS. FLAHIVE-WU: Schmidt.

9 JUDGE SIPPEL: -- Mr. Schmidt asked you about, is the  
10 same thing as defining target genre?

11 THE WITNESS: Okay, yes, I think in the way that we're  
12 discussing it right here, I think the answer to that would be yes,  
13 yeah, because the target programming and the genre of reality is --  
14 best articulates, I guess is the word, their target programming,  
15 and those shows, those programs that are in there, are the reality  
16 shows. So I think the way that we're using them here, yes, I think  
17 that's correct.

18 JUDGE SIPPEL: But programs are not genre.

19 THE WITNESS: Oh, but programs are not genre. So  
20 programs fall within a genre. So I'll give you some particulars to  
21 maybe make these -

22 JUDGE SIPPEL: Don't make this too long.

23 THE WITNESS: No, so Braxton Family Values is a reality  
24 show on WE, as is Kendra is another reality show on WE. My Fair  
25 Wedding is another reality show.

1 JUDGE SIPPEL: Okay, that's enough.

2 THE WITNESS: So, you know, they all constitute that  
3 genre. They're all in that genre.

4 JUDGE SIPPEL: As a group they're in the genre, but if it  
5 was just one of those shows, you wouldn't be able to say it with  
6 much confidence I take it?

7 THE WITNESS: That it was the defining program? No,  
8 right.

9 JUDGE SIPPEL: Okay, thank you. I'm sorry, Mr. Schmidt,  
10 I didn't want to take up your time.

11 MR. SCHMIDT: No, no, no, Your Honor, I'm always grateful  
12 for Your Honor's questions. Let's go back to --

13 THE WITNESS: What was the exhibit?

14 MR. SCHMIDT: It was 310 please, sir, 310 in the GSN  
15 binder. It's an email from -- well, the email at the top is from  
16 Christina Pisano.

17 BY MR. SCHMIDT:

18 Q And what I'd like to ask you to look at is she's  
19 forwarding an email from Ray -- I'm going to get this wrong -  
20 Giacobelli dated July 8, 2009, discussing Bridezillas. Do you see  
21 that?

22 A I do, yes.

23 Q Look with me if you would in the full paragraph there  
24 they talk about Bridezilla's ratings. Do you see that?

25 A Let's see, so 18 to 34 are all down between five -- yes,

1 I see that.

2 Q Okay, and you went right to where I was going to ask you  
3 about. You understand this to be saying that Bridezilla's overall  
4 ratings are up 13 percent, right?

5 A I'm sorry, where is the 13 percent?

6 Q It's just right at the beginning of that paragraph.

7 A Oh, I'm sorry, yeah, in households, correct.

8 Q Yes, but at the same time their ratings in the key  
9 demographics of women 18 to 34, women 18 to 49, women 25 to 54 are  
10 all down?

11 A Correct.

12 Q At the same time, women 50 plus are up?

13 A Correct.

14 Q And men are up 117 percent?

15 A Correct.

16 Q That's obviously increases in demographics you said are  
17 not their key targets, right?

18 A Right, but you know, of course we're talking percentages  
19 here. We're not talking raw numbers. So it could still be, and  
20 I'm sure it is, that there are far more women watching Bridezillas  
21 than men. Moreover, this show premiered in 2004, and so it's  
22 getting a little worn out in 2009, and has been replaced in that  
23 prominence by Braxton and many other shows.

24 Q Okay, stick with my question. At the same time their  
25 ratings are down in the key demographics that you say they target,

1 the women 18 to 34, 18 to 49, and 25 to 54?

2 A You know, for the first five episodes, correct.

3 Q Okay, did you -- and that comes to my question. Did you  
4 do any ratings analysis of individuals shows, whether it's defining  
5 target programming or other shows on GSN versus WE tv, to look at  
6 how their ratings track generally during the time period you were  
7 looking at or specifically in terms of demographic factors?

8 A Particular shows?

9 Q Yes.

10 A No, I did a lot of work on the network total day, and  
11 prime time, and daytime in the demos that are the key demos at  
12 issue here, but I didn't then go down and look at the shows, no.

13 Q Look with me if you would at the second or third to last  
14 sentence in the paragraph we were looking at where Mr. Giacobelli  
15 writes, this does help ad sales, which is not just selling women,  
16 but more than ever adults 18 to 49 as well. Do you agree with that  
17 as a correct characterization of WE tv's approach in ad sales?

18 A Not as a characterization of WE tv in ad sales. I was  
19 with you until you characterized it that way. Clearly what the man  
20 is saying is that, you know, this show's demos are young women, and  
21 they're fading a little bit over the first five episodes, but of  
22 course, the men coming up is sort of an unexpected bonus.

23 And of course when we sell advertising, although our  
24 primary target audience is women, we're also going to get paid for  
25 the men that are in there, so it's actually kind of a mixed

1 blessing is what he's saying.

2 Q So to come back to my question, when he says, ad sales is  
3 not just selling women, but more than ever adults 18 to 49 as well,  
4 do you understand that to be an accurate characterization of WE  
5 tv's approach to ad sales or not?

6 A I don't. I don't understand it to be an accurate  
7 characterization of WE tv's ad sales, correct.

8 MR. SCHMIDT: Okay, let's talk about ratings data.

9 JUDGE SIPPEL: Before we go there, I'm quoting you now.  
10 You said in response to something Mr. Schmidt was asking you, you  
11 said, key demos at issue here. What are those key demos?

12 THE WITNESS: Well, Your Honor, in the complaint at the  
13 start of this, the program carriage complaint that GSN filed to  
14 start this whole proceeding, they said that we compete for  
15 audience. That's, you know, that was their claim, and that we  
16 compete specifically for the target audience of women 18 to 54, and  
17 we share that with -- we share that as our target audience with WE  
18 and we compete for it.

19 So to me, that's the key issue. That's the claim of  
20 similarity in audience, that very group. And that's why I say to  
21 Mr. Schmidt, you know, that's the key demo at issue.

22 JUDGE SIPPEL: 18 to 54?

23 THE WITNESS: Correct.

24 JUDGE SIPPEL: Not -

25 THE WITNESS: Women, women.

1 JUDGE SIPPEL: Women, I understand that, but not 25 to  
2 54?

3 THE WITNESS: Well, I explained that yesterday. I'm  
4 trying to shorten it following your direction here. So they  
5 actually filed a complaint and they said, we compete for women 25  
6 to 54, right? And then in a subsequent pleading filing, GSN  
7 amended that and they added 18 to 49-year-old women. So rather  
8 than each time I refer to these groups saying 18 to 49-year-old  
9 women and 25 to 54-year-old, I just combine them and I say women 18  
10 to 54.

11 JUDGE SIPPEL: And the demos, that means that's the what,  
12 that's the demographic?

13 THE WITNESS: Correct, so it's a combination --

14 JUDGE SIPPEL: It's a demographic group.

15 THE WITNESS: -- of gender and age.

16 JUDGE SIPPEL: Thank you.

17 MR. SCHMIDT: Turn with me if you would, sir, and this is  
18 at the start of the binder that Mr. Carney gave you, the  
19 Cablevision binder, to your direct testimony, Exhibit 332.

20 JUDGE SIPPEL: 332?

21 MR. SCHMIDT: Your Honor, this is the other binder, the  
22 Cablevision binder.

23 JUDGE SIPPEL: 332?

24 MR. SCHMIDT: Yes, Your Honor, back to Mr. Egan's direct  
25 testimony. And specifically I'd like to direct your testimony to

1 page 103. I'll ask you about some of the ratings data that you  
2 cite.

3 THE WITNESS: 102 you said?

4 MR. SCHMIDT: 103 please.

5 BY MR. SCHMIDT:

6 Q We talked yesterday. You see here on these pages charts  
7 of ratings data that continues on in this section of the report,  
8 and I think you said yesterday your firmed up focus was on local  
9 New York ratings data, and you said specifically that you used  
10 something called NSI ratings. Do you remember that?

11 A I do.

12 Q What does NSI stand for?

13 A Nielsen Station Index.

14 Q And you know there's another method of looking at local  
15 ratings called NTI, correct?

16 A No.

17 Q Do you know what NTI stands for?

18 A Yes.

19 Q What does NTI stand for?

20 A National -- or Nielsen Television Index.

21 Q Do NTI and NSI measure time differently?

22 A Do they measure time differently? They each measure day  
23 parts of whatever period of time you ask them to measure.

24 Q Okay, let me give a specific example. If a viewer  
25 watches for four minutes one channel and then turns their

1 television off, do you know how NSI counts that?

2 A I think you're referring to the frequency with which they  
3 measure the viewing audience, and I don't remember the exact  
4 numbers but I think I know where you're going, is that I believe  
5 that NTI uses a shorter interval to grab its measurements.

6 Q So in my example, how does NSI count a four-minute view?

7 A Like I said, I don't really remember the specific  
8 interval differences.

9 Q Okay, how does NTI count that four-minute view?

10 A And I'm saying the same thing. I don't remember the  
11 specific interval differences that each use.

12 Q And I take it the answer would be the same if I said how  
13 they count six-minutes?

14 A Correct, it would be the same.

15 Q Mr. Brooks -- and I can show you his testimony if you  
16 want to see it, but I'll just characterize it and then you tell me  
17 if you do want to see it. Mr. Brooks, I think, has testified that  
18 below five minutes NSI doesn't count, above -- five minutes and  
19 above, it rounds up to 15 minutes. Did you know that?

20 A I read that in Mr. Brooks' report or something like that,  
21 yeah.

22 Q Did you know that independently when you looked at your  
23 ratings data?

24 A No, I did not.

25 Q Whereas NTI counts every single minute. Did you know

1 that independent of Mr. Brooks' report?

2 A I didn't know that, no.

3 Q Okay, I think when I talked to you, you had ratings data  
4 in your initial report in this case, correct, this NSI ratings  
5 data?

6 A Yes.

7 Q When I talked to you about it during your deposition, I  
8 think at that time too you didn't know if they had different  
9 thresholds of viewing times in terms of how you count the data,  
10 correct?

11 A Correct.

12 Q And you didn't know if they actually generated the same  
13 ratings, correct?

14 A I didn't -- well, I don't -- I'm not sure what you mean  
15 by that question. Could you give me a little more detail of what  
16 you mean by that?

17 Q Yeah, I think what I'm getting at is you didn't know when  
18 you prepared your report at the time of your deposition whether the  
19 NSI and the NTI numbers would generate identical ratings from the  
20 same systems.

21 A Okay, whether they -- I don't know whether they would  
22 generate identical ratings. My opinion would be that they would be  
23 awfully, awfully close.

24 Q Okay.

25 A But I don't know whether they would be identical.

1 Q And when I asked you if there's a reason you chose NSI  
2 over NTI you couldn't give me a reason other than that that's what  
3 Cablevision provided you when you asked, right?

4 A No, that's not true.

5 MR. SCHMIDT: Okay, let me show you your testimony.

6 (Whereupon, the above-referred to document was marked as  
7 GSN Exhibit 420 for identification.)

8 BY MR. SCHMIDT:

9 Q Do you remember being deposed in January of 2013?

10 A I do.

11 MR. SCHMIDT: May I approach, Your Honor?

12 JUDGE SIPPEL: You may.

13 BY MR. SCHMIDT:

14 Q Look with me if you would, sir, at Page 420 of -- I'm  
15 sorry, Page 195 of your deposition, and I'll start on Line 195 Line  
16 19. I asked you, do you know what the difference between these two  
17 metrics is in terms of how they -- And you answer, I couldn't  
18 explain it to you now. I have at times in my life when I've needed  
19 to, but that is not something I did for this report. Did I read  
20 that correctly?

21 A Yes.

22 Q I then go on to ask at Line 24, and the reason I asked is  
23 because as I understand it, Mr. Brooks used NTI and you used NSI.  
24 Is there a reason why that you chose NSI over NTI as your data set?  
25 Answer, no, I asked for the local Nielsen ratings to be produced

1 for me, and so this is, you know, this is a summary of course of  
2 what was given to me, but the ratings given to me, I guess, were  
3 Nielsen NSI. Did I read that correctly?

4 A Yes.

5 Q And you were being as accurate as you could in that  
6 deposition?

7 A I was being exactly accurate.

8 Q Thank you.

9 A And as I said a minute ago, the NTI --

10 MR. SCHMIDT: I think you've answered the question, sir.

11 JUDGE SIPPEL: You have. You answered his question.

12 THE WITNESS: Okay.

13 BY MR. SCHMIDT:

14 Q Mr. Egan, do you agree with me that favorable channel  
15 placement can impact ratings?

16 A Yes, I do.

17 Q Did you know that WE tv concluded from their own data  
18 that Cablevision's channel placement of WE tv helped their ratings  
19 in the New York DMA?

20 A I don't remember that. I really didn't look into that.  
21 I remember a reference to something like that but, you know, I  
22 don't want to opine that I agree with something that I really  
23 didn't study.

24 MR. SCHMIDT: Okay, and ---

25 JUDGE SIPPEL: That answer would not be very helpful.

1 BY MR. SCHMIDT:

2 Q Do you remember seeing a document where WE tv concluded  
3 that, quote, WE greatly benefits from being placed near Lifetime  
4 and Bravo on CBC? Do you remember seeing ---

5 A I don't remember that, no.

6 O Okay, but you agree with the general proposition that  
7 favorable channel placement can help ratings?

8 A Yes.

9 Q Okay, did you do any kind of study of how Cablevision's  
10 channel placement for WE tv and their footprint compares to how  
11 other carriers give WE tv channel placement?

12 A No.

13 Q Do you agree with me that marketing provided by an MVPD  
14 for a network can impact a network's ratings?

15 A Generally it can, yeah.

16 Q Did you do any study of marketing support that  
17 Cablevision granted to WE tv versus whether that was comparable to  
18 marketing support provided by other MVPDs?

19 A No.

20 Q When you did your ratings look at the New York DMA, you  
21 would agree with me that a large portion of the New York DMA is  
22 driven by Cablevision homes, right?

23 A Yeah, sort of roughly half of it is, yes.

24 Q Roughly half, okay. Did you do anything to adjust for  
25 the fact that roughly half of the ratings that you were looking at

1 in your local New York market might be influenced by either  
2 Cablevision's channel placement of WE tv or Cablevision's marketing  
3 for WE tv?

4 A I didn't, and I don't know that I've ever seen anybody do  
5 something like that.

6 Q Did you try to conduct any analysis of how WE tv did in  
7 the New York marketplace outside of Cablevision homes?

8 A No, I looked at the market as a whole, which would  
9 include their homes, and I looked at the market -- just Cablevision  
10 homes.

11 Q Okay.

12 A So I saw that difference.

13 Q Okay.

14 A But then I didn't look at it, you know, the market  
15 excluding Cablevision's homes.

16 Q Okay, let's look at -- well, let me follow up on that.  
17 The market of Cablevision homes, was that based on set top box  
18 data?

19 A Just the Cablevision households?

20 Q Yes.

21 A No, that -- well, I did look at Cablevision set top data,  
22 but for a different metric, for region, for quantity of viewing.  
23 For ratings in the Cablevision households, I used Nielsen's,  
24 Nielsen's local ratings.

25 Q Okay.

1 A NSI.

2 Q Let me just ask you a question if I could about set top  
3 box data. If you flip two pages ahead in your report to Page 105.

4 A In my report?

5 MR. SCHMIDT: Yes, sir.

6 JUDGE SIPPEL: You mean testimony?

7 MR. SCHMIDT: Your testimony. I keep saying report.

8 Your testimony, thank you, Your Honor.

9 THE WITNESS: And what's the paragraph number?

10 MR. SCHMIDT: It's Paragraph 184. It's the sentence that  
11 carries over from 105 to 106.

12 THE WITNESS: Okay, I got it.

13 BY MR. SCHMIDT:

14 Q Let me just read the sentence in the record and then I'll  
15 ask you a question about it. First of all, this paragraph is  
16 talking about set top box data, right?

17 A Yes.

18 Q And you state in this carryover sentence, using a sample  
19 of approximately of its digital households, which has  
20 been designed to be representative of all of its expanded basic  
21 subscribers, Cablevision obtained viewing data for all of its  
22 channels reporting it internally in its ABN reports. Do you see  
23 that?

24 A I do.

25 Q What is the relevance, if any, of the fact that they use

1 a sample designed to be representative?

2 A It's just an explanation of the sample size and  
3 methodology, that's all.

4 Q Is it important that their sample be representative?

5 A Yes.

6 Q And have you seen any -- why is that important?

7 A Because then you can project results to the entire  
8 universe. If they're not representative, you should not be doing  
9 it.

10 Q And you understand the representative threshold to be

11

12 A There is no such thing as a representative threshold  
13 percentage.

14 Q Well, what's the reference to in your --

15 A It's just information to tell you that the sample size is

16

17 Q That's their standard?

18 A I'm sorry?

19 Q Is that their standard, the Cablevision standard as you  
20 understand it?

21 A For this set top box data, it was at that time. As I  
22 understand it, they now

23 Q Okay, and of the Cablevision footprint is  
24 about

25 A Correct.

1 Q Come back with me if you would to the chart on Page 103.  
2 You report overall total household ratings data at the top of the  
3 chart, and I think you show for GSN and for WE tv. So  
4 this is ratings in the New York marketplace including Cablevision  
5 homes?

6 A Well, to be clear, it's the what they call the hardwired  
7 universe of the New York City DMA. So there is 6.2 million  
8 households that are either cable or phone company cable systems,  
9 and that's what this is capturing.

10 Q Okay, and do you view these differences, for GSN and  
11 for WE tv as materially different?

12 A Yeah, it's materially different, but it's not  
13 significant. You know, they are similar ratings in my mind.

14 Q Okay, did you look at ratings for Wedding Central?

15 A No.

16 Q Do you know if Wedding Central was ever rated?

17 A As far I know, they weren't.

18 Q That doesn't keep you from saying that Wedding Central  
19 and WE tv are similarly situated in your view, right?

20 A Well, as you know from reading my testimony, there's a  
21 footnote in the paragraph where I explain that I looked at the  
22 programming on Wedding Central, and I explain in there why I think  
23 that demonstrates that they're similarly situated.

24 Q Okay, you didn't need ratings to make that determination  
25 for WE tv and Wedding Central?

1 A Well, they didn't have ratings as far as I know.

2 Q Right, that's my point.

3 So I couldn't use ratings.

4 Q Look with me if you would at Exhibit 654 in your binder,  
5 the one Mr. Carney gave you. This is one of these demographic  
6 ratings charts that we looked at, I believe, yesterday.

7 A Yes.

8 Q And so as I understand what this reports, it reports  
9 ratings for women 18 plus and then it breaks the women out into  
10 different age groups. Is that correct?

11 A Correct.

12 Q Again drawing on local demographic ratings, on New York  
13 market ratings including the Cablevision homes?

14 A The New York DMA hardwired universe, correct.

15 Q Am I correct that the origin of these kinds of  
16 demographics, women 18 to 49, women 25 to 54, is from the  
17 advertising world, that these are advertising demographics?

18 A These are the categories that the advertising community  
19 is looking for to buy, yes.

20 Q Okay, you didn't look at target advertisers, correct?

21 A Oh, no, not in my work here I didn't, no.

22 Q Are you aware that WE tv, going back to this point about  
23 these being New York ratings, are you aware that WE tv and GSN sell  
24 advertising on the basis of national ratings, not New York ratings?

25 A They do sell national. The networks themselves sell

1 national, and of course the local distributors sell local.

2 Q If we focus on the different age -- by local  
3 distributors, you mean Cablevision and Time Warner, not GSN and WE?

4 A Correct.

5 Q Okay, if we focus on the age groupings, you don't know  
6 how WE tv -- the networks that WE tv identifies as its competitors  
7 do on women 18 to 34, women 18 to 49, and women 25 to 54, do you?

8 A You know, I didn't study that, Mr. Schmidt, but there is  
9 a section in the report, I'm sure you remember, where in a response  
10 to Mr. Brooks, a claim he made, and in probing that I actually do  
11 present some ratings in the demos, those women demos for a bunch of  
12 these networks that you probably would consider in that competitive  
13 category.

14 Q You didn't do a full analysis?

15 A I didn't, no, it wasn't part of my similarly situated  
16 analysis.

17 MR. SCHMIDT: Okay, and you --

18 JUDGE SIPPEL: Was that an assignment you got from  
19 Cablevision or from Cablevision's lawyers? Did they give you the  
20 assignment of what they wanted you to look at?

21 THE WITNESS: Yes, sir, my assignment was to study GSN's  
22 claim that -- in the complaint that these two networks were  
23 similarly situated, and my assignment was quoted to have multiple  
24 experts, you know, as you know. My assignment was to look at the  
25 programming and the audience for similarity, to look at that claim

1 in the programming and in audience, and then other experts would  
2 look at other parts of it like advertising. Mr. Blasius will look  
3 at target advertising, but I wasn't to look at that.

4 And then the other part of my assignment was to respond  
5 to claims as appropriate by the GSN experts in those areas,  
6 audience --

7 JUDGE SIPPEL: In your areas?

8 THE WITNESS: Yes, exactly. And so like for instance, in  
9 this, Mr. Brooks made a claim in the audience area and in the  
10 programming area. Actually it was an overlapping claim. And so in  
11 responding to that, I did research that showed me some of the  
12 ratings and the demos, this supposedly competitive demo of women 18  
13 to 54, with not only WE and GSN, but some of these other networks  
14 as well.

15 BY MR. SCHMIDT:

16 Q And other than projecting based on their programming, you  
17 couldn't tell me how Wedding Central does in these different age  
18 demographics?

19 A I could not, no.

20 Q Let's go to the women 18 plus number and what that shows  
21 versus the other numbers. So as I understand it, your chart, you  
22 give the number of women 18 plus on the left side in kind of a  
23 stand alone group, and then on the right portion you disaggregate  
24 the women into different age groups. Is that correct?

25 A Although it's not the number of women, it's the rating.

1 Q The ratings, I'm sorry, the ratings for women 18 plus and  
2 then disaggregated into different age groups, correct?

3 A Correct.

4 Q And I think what you said yesterday was that the women 18  
5 plus, the numbers were pretty similar?

6 A Yes.

7 Q Just so I'm absolutely clear, if I were to ask you the  
8 audience demographics for WE, you would say it's women 18 plus,  
9 wouldn't you?

10 A No, I would say -- well, and I don't know what your  
11 question would be. But if you asked me just like you just did --

12 Q Yeah.

13 A Right, you know, I would say, no, it's women 18 to 54.

14 MR. SCHMIDT: If I asked you just like I just did, if I  
15 said to you what are the audience demographics for WE? You'd say  
16 18 plus, not 18 to 54?

17 MR. CARNEY: Objection, asked and answered.

18 THE WITNESS: You asked me that and I told you the  
19 answer. I would say it's women 18 to 54.

20 JUDGE SIPPEL: Sorry, go ahead.

21 MR. SCHMIDT: Sorry, there was an objection, so let me  
22 just ask my question and so Mr. Carney --

23 MR. CARNEY: I'll withdraw.

24 MR. SCHMIDT: Let me try it a little differently.

25 MR. CARNEY: Try it again.

1 BY MR. SCHMIDT:

2 Q If I said true/false, in 2009, 2010, 2011, the time  
3 periods you looked at, WE's audience demographics were women 18  
4 plus, you would say true, wouldn't you?

5 A No.

6 Q You would not say that?

7 A Right.

8 MR. SCHMIDT: Let's take a look at GSN Exhibit 417.

9 JUDGE SIPPEL: Before you go there I want to ask a  
10 question about 654 while we're still on it. What is this, it's  
11 called an outlier, women 65 plus? This is a CV exhibit.

12 THE WITNESS: Yes, this is a chart out of my testimony,  
13 and we took it out and blew it up.

14 JUDGE SIPPEL: But why 65 and over?

15 THE WITNESS: Why did I look at that, Your Honor?

16 JUDGE SIPPEL: But why is it on this chart?

17 THE WITNESS: Yes, okay, so --

18 JUDGE SIPPEL: What is that telling me?

19 THE WITNESS: So here's what it is. Mr. Brooks,  
20 throughout his work, stays at a high level. He looks at household  
21 ratings. He looks at people 18 plus ratings, and he looks at women  
22 18 plus ratings. Those are the three metrics he just constantly is  
23 looking at and reporting on, and that avoids addressing the  
24 specific claim by GSN in the complaint that started all of this.

25 JUDGE SIPPEL: You don't have to categorize his

1 testimony. Just tell me what the women 65 and over is supposed to  
2 be telling me.

3 THE WITNESS: So what it's telling you is that the reason  
4 that the ratings of women 18 plus are pretty similar between the  
5 two channels is because GSN has enormously high ratings in the  
6 women 65 plus that offsets its enormously low ratings in the women  
7 18 to 54, so the average of the two gets them to a and similar  
8 to WE. Whereas WE, the dynamic is very different as you can see.  
9 The red bars are all pretty consistent across all of these age  
10 groups. So WE is producing high ratings in that target demo of  
11 women 18 to 54. GSN is producing low ratings. But because women  
12 18 plus captures the older women as well, it's averaging to a  
13 similar number on women 18 plus.

14 JUDGE SIPPPEL: Well, I'm still not following that. Are  
15 you saying that the -- let me take the red bars going until you get  
16 to 65, the red bars for all of these other categories, 18 plus, 18  
17 to 34, 49, 25 to 54. Are all those red bars taking into account  
18 women 65 and over as well?

19 THE WITNESS: Oh, no, no, no.

20 JUDGE SIPPPEL: No, okay, and the same with the blue ones?

21 THE WITNESS: Correct.

22 JUDGE SIPPPEL: They don't take the 65 and over which you  
23 have for Game Show being much higher, is that right?

24 THE WITNESS: Well, they're not higher in the 18 to --

25 JUDGE SIPPPEL: No, I said -- I'm talking about women 65

1 and over. And that is the one that has not been considered in  
2 connection with these one, two, three, four other demos.

3 THE WITNESS: Correct.

4 JUDGE SIPPEL: Well, then I still ask the question, what  
5 is this doing out there, women 65 and over?

6 THE WITNESS: Again, Your Honor, we start on the left  
7 side.

8 JUDGE SIPPEL: Yes.

9 THE WITNESS: And that's women 18 plus.

10 JUDGE SIPPEL: Yes.

11 THE WITNESS: Okay, so women --

12 JUDGE SIPPEL: Go ahead. Go ahead.

13 THE WITNESS: So women 18 plus is made up of some women  
14 who are 19, some women who are 34, some women who are 54, and some  
15 women who are 66, right? And so what I'm doing here is I'm showing  
16 you the viewership in those categories. That's what I'm doing.

17 So I'm saying that -- how does each of these networks do  
18 for women who are 18 to 34? And you see the rating. How does each  
19 of these two networks do rating wise for women who are 18 to 49,  
20 etcetera, and how did each of these networks do for women who are  
21 65 plus? And I show you that.

22 JUDGE SIPPEL: But women 65 plus is not in any of these  
23 demo categories that you testify were -- right up front when I  
24 asked you the question, you said the issues in this case are  
25 females 18 and up. Was it 18 and over or 18 to 54?

1 THE WITNESS: Correct.

2 JUDGE SIPPEL: That's what you said.

3 THE WITNESS: Correct.

4 JUDGE SIPPEL: So what are we doing with women 65 and  
5 over?

6 THE WITNESS: Because if you, if you cover that bar up,  
7 those two bars, that women 65 plus, Your Honor.

8 JUDGE SIPPEL: Yes, sir.

9 THE WITNESS: If you cover that with your hand, right --

10 JUDGE SIPPEL: Yes, I will.

11 THE WITNESS: -- and you look at the women 18 plus rating  
12 and you see that they're pretty similar for the two networks,  
13 right?

14 JUDGE SIPPEL: I do.

15 THE WITNESS: Okay, then you look to the right and you  
16 see the bars of the different components of women 18 plus, and you  
17 say wait a minute, how can they be pretty similar? They're not  
18 similar in all of the other bars. If these are the components of  
19 women 18 plus, how can they be similar when every component is  
20 different? So if I don't show you the 65 plus, I'm not giving you  
21 all of the information. I'm holding something back. This way I'm  
22 telling you why they're similar in 18 plus is because the older  
23 women who are outside that demo that's at issue here, they're not  
24 in that demo, they're the ones who are bringing GSN up to a level  
25 similar to WE for women 18 plus.

1 JUDGE SIPPEL: And that's all it relates to is 18 plus.  
2 It doesn't relate to these other three.

3 THE WITNESS: Oh, that's correct, yes.

4 JUDGE SIPPEL: Well, I didn't understand that.

5 THE WITNESS: Yeah, so it's just -- you know what it is?  
6 It's just a way of understanding the women 18 plus.

7 JUDGE SIPPEL: I understand.

8 THE WITNESS: It's not a way of understanding the women  
9 18 to 54.

10 BY MR. SCHMIDT:

11 Q But just to pick up on that, Mr. Egan, if I said to you  
12 WE tv's audience demographics for 2009, 2010, and 2011, you would  
13 not tell me it's women 18 to 54, would you?

14 A If you asked me whether they --

15 Q What is their audience?

16 A What is their audience? I would say it's women 18 to 54,  
17 absolutely.

18 MR. SCHMIDT: If I asked you what is WE tv's audience  
19 demographics for 2009, 2010, and 2011, you would say women 18 plus,  
20 wouldn't you?

21 MR. CARNEY: Objection. Your Honor, respectfully, he's  
22 asked the question four times.

23 JUDGE SIPPEL: Well, the witness --

24 MR. CARNEY: And he's answered it three times.

25 JUDGE SIPPEL: No, I'm going to overrule the objection.

1 Go ahead.

2 BY MR. SCHMIDT:

3 Q If I asked you 2009, 2010, and 2011, your time period,  
4 for WE tv's audience demographics, you would say it's women 18  
5 plus, wouldn't you?

6 A What do you want me to say? I answered the question four  
7 times.

8 Q What is the answer?

9 A The answer is no.

10 MR. SCHMIDT: Okay, let's look at Exhibit 417.

11 (Whereupon, the above-referred to document was marked as  
12 GSN Exhibit 417 for identification.)

13 MR. SCHMIDT: May I approach, Your Honor?

14 JUDGE SIPPEL: Yes.

15 BY MR. SCHMIDT:

16 Q Do you recall giving testimony in the Wealth TV case or  
17 giving a report in the Wealth TV case? That's your testimony.

18 A I do.

19 Q That testimony was under oath?

20 A It was.

21 Q It was truthful and it was based on your extensive  
22 industry knowledge?

23 A Mm-hmm.

24 Q Do you recall testifying about WE tv in the Wealth case?

25 A Vaguely.

1 Q Do you recall giving specific audience demographics for  
2 WE tv in the Wealth case?

3 A Vaguely.

4 MR. SCHMIDT: Let me help you. Look with me if you would  
5 at Table 7.

6 JUDGE SIPPEL: Vaguely tells me you don't remember.  
7 There's not a vague recollection. You either remember or you don't  
8 remember.

9 THE WITNESS: Well, I remember --

10 JUDGE SIPPEL: No, don't argue with me. You're going to  
11 be shown it.

12 THE WITNESS: It wasn't an argument.

13 JUDGE SIPPEL: Okay.

14 BY MR. SCHMIDT:

15 Q Look with me if you would at Page 19, Table 7 of your  
16 report. Actually first before you do that, can you look at the  
17 date of this report? Do you see that this is dated April 2009,  
18 this testimony?

19 A Yes.

20 Q Look with me if you would at Table 7 of your testimony on  
21 Page 19.

22 A Yes.

23 Q And you have different channels listed. You list some of  
24 their programming, and you have a heading audience demographics.  
25 Do you see that?

1 A Yes.

2 Q And for one of the channels, specifically Comedy Central,  
3 you give an age range that is 18 to 54, right?

4 A Yes.

5 Q For WE tv, your original age range is 35 plus, correct?

6 A Women 35 plus, correct.

7 Q And for WE tv, your new demographic for WE tv is women 18  
8 plus, right?

9 A Correct.

10 Q And you specifically site the Bridezillas show and other  
11 recent romantic movies, right?

12 A Yes.

13 Q Look with me if you would, go back to your report please  
14 at the beginning of your testimony. And according to your --  
15 before we leave the chart at Exhibit 654 -- I'm sorry, I called you  
16 away from it, but could you go back quickly to 654, the chart?

17 A Yes.

18 Q Do you agree with me that women 18 plus according to your  
19 chart are pretty similar?

20 A Yes.

21 Q Okay, look with me if you would at your testimony please,  
22 Exhibit 332 at the beginning of your binder.

23 A Yes.

24 Q I'm looking at Page 111, Paragraph 194, where you say the  
25 rankings -- the very last sentence where you comment on GSN having

1 much less of a female skew. Do you see that?

2 A I do.

3 Q You don't dispute with me that the female skew for GSN  
4 approaches percent, do you?

5 A I do dispute that, yes.

6 Q Do you recall testifying that on a national basis from  
7 2009 to 2011 it's somewhere from percent?

8 A I believe you're referring to my response to a question  
9 in a deposition, and if that's in fact what you're asking me, then  
10 I do remember that, yes.

11 Q Okay, and do you know that WE tv in fact characterizes  
12 GSN's female skew as at or approaching percent?

13 A Well, you'd have to show me what you're referring to  
14 before I could say yes or no.

15 Q Okay, look with me if you would in the binder I gave you  
16 at Exhibit 169, and this is a document, a spreadsheet or something  
17 that was produced by Cablevision. If you look at the second page,  
18 do you see there's a list of networks and their female skew?

19 JUDGE SIPPEL: Where are you now?

20 MR. SCHMIDT: Your Honor, it's Exhibit 169 in the binder  
21 we passed out, GSN Exhibit 169.

22 JUDGE SIPPEL: So this is -- where is -- okay.

23 BY MR. SCHMIDT:

24 Q Do you see that there's a list of networks here in their  
25 female skew?

1 A Are you asking me that, Mr. Schmidt?

2 Q Yes, sir.

3 A Okay, I do, yes.

4 Q Do you see that GSN is reported as having a female skew  
5 at this point in time of percent?

6 A I do.

7 Q Do you disagree with that number?

8 A I don't know what -- I've seen many, many skews, you  
9 know, dozens of skew reports. I don't know what this report is.  
10 I don't know what context it's in. I don't know anything about  
11 this. I can tell you that I agree with what you said, that it says  
12 here that GSN has a female skew of percent, correct.

13 Q Do you disagree with that being the number at that point  
14 in time?

15 A I don't have any doubt it's what's on this report. I  
16 don't know what report this is. So, you know, with that caveat,  
17 no.

18 Q I didn't ask you -- I think we can all agree the page  
19 says percent. My question is different. Was percent the  
20 correct number at that point in time?

21 A For what?

22 Q For the female skew of GSN.

23 A I don't know.

24 JUDGE SIPPEL: What was the date? What's the point in  
25 time?

1 MR. SCHMIDT: I believe -- do you see at the bottom where  
2 it says first quarter of 2012?

3 THE WITNESS: Yes.

4 MR. SCHMIDT: Nothing further.

5 JUDGE SIPPEL: Yes, Mr. Carney.

6 MR. CARNEY: Yes, thank you. I think we can start.

7 MR. SCHMIDT: Mr. Egan, I kept my promise. I was short.

8 WITNESS: You were.

9 MR. SCHMIDT: Can I move 417 into evidence, Your Honor?

10 JUDGE SIPPEL: 417, is that the testimony?

11 MR. SCHMIDT: That's the testimony from Wealth TV.

12 JUDGE SIPPEL: Any objection?

13 MR. CARNEY: No objection, Your Honor.

14 JUDGE SIPPEL: Okay, it's in.

15 (Whereupon, the above-referred to document was received  
16 into evidence as GS Exhibit 417.)

17 REDIRECT EXAMINATION

18 BY MR. CARNEY:

19 Q Mr. Egan, let me start by referring you to Paragraph 24  
20 of your testimony, so Exhibit 332 at the beginning of yesterday.

21 JUDGE SIPPEL: Paragraph 24.

22 BY MR. CARNEY:

23 Q Yesterday you testified about your genre classifications.  
24 Do you recall that?

25 A I do.

1 Q Does the game show genre have any characteristics? I  
2 refer you to your Paragraph 24.

3 A Yes, it does.

4 Q Can you explain?

5 A Sure. Game shows -- the genre of game shows has some  
6 defining attributes. I would say most fundamentally, it's a  
7 contest. It's a game. There's a competition going on with prizes  
8 awarded to the winners. Its got a game show host, which is almost  
9 a caricature in America now, game show hosts, who's controlling  
10 everything, sort of the ringmaster of the circus, if you will.

11 It's very scripted. It goes through the same segments  
12 each time, building to the final climax of the contest. Its got a  
13 very simple production technique. We talked about this a little  
14 bit yesterday, Judge. It's almost always on one single set, set up  
15 in the studio, and they leave it set up. So the whole show is shot  
16 there. That means it's a very simple production. You probably  
17 have three, maybe four cameras in a semi-circle, and they're just  
18 switching among them live. It's a very simple shoot. Then there's  
19 very little post-production.

20 You don't have to put the pieces together because you  
21 shot it in real time. It's got a lot of show business elements.  
22 Like I said, it's almost like a vaudeville or a circus thing.  
23 You've got lights that flash, and you've got music that builds to  
24 a climax. You've got a cheering and boisterous audience. Those  
25 are the imitative -- those are the elements that are imitated to

1 make the shows in the game show genre.

2 Q You recall, do you not, Mr. Egan, that Mr. Schmidt ran  
3 through a bunch of different individual shows yesterday when you  
4 were talking about genres. Do you recall that?

5 A I do.

6 Q One of those pairings were two shows called, first,  
7 Unforgettable Celebrity Wedding Gowns and Unforgettable Wedding  
8 Venues. Do you remember that?

9 A I do.

10 Q Those programs have similar names, correct?

11 A They do.

12 Q But did you define those -- let me ask a better question.  
13 Did you characterize those programs as having different genres?

14 A I did. I believe Unforgettable Wedding Gowns I defined  
15 as fashion shopping, and the other show is a documentary, I  
16 believe.

17 Q Why were you able to characterize them in different  
18 genres?

19 A Because I didn't just take the network's description. I  
20 didn't do what the network description of the show said. I  
21 actually went and I looked at the shows, and I read everything  
22 about them. In doing so, I could see these were different genre  
23 shows, that the one, the unforgettable wedding gown, was all about  
24 the gowns. That's what it was focused on. It wasn't about the  
25 people wearing the gowns or the interaction of the families of

1 those people. It was about the gown. The Unforgettable Wedding  
2 Venues wasn't about a product. It was a documentary that was  
3 showing all these different venues, where people had these  
4 unforgettable weddings. It's always adding some context, like a  
5 documentary does.

6 Q Thank you. You saw a document that Mr. Schmidt showed  
7 you yesterday -- I believe it was GSN 408 -- which was a business  
8 document, in which WE was referring to wedding as a genre. Is it  
9 correct that you do not agree that weddings are a genre?

10 A Correct.

11 Q Does WE's use of the term genre in this document give you  
12 any pause or cause you to rethink your genre categorizations in any  
13 way?

14 A No. They're using it more loosely than I do. They're  
15 using it colloquially. Some of these things are sales pitches,  
16 where they're trying to tell a cable operator that hey, this is  
17 important. You should give me a channel for it. They're using it  
18 much more loosely. Mine's a much more academic exercise looking at  
19 genres.

20 JUDGE SIPPEL: Does the industry look at it the same way  
21 that you do? Do they look at it academically, or do they wing it?

22 WITNESS: The industry in the sales calls, that kind of  
23 thing, would generally wing it. Remember, Your Honor, that's not  
24 my -- that wasn't my (Simultaneous speaking).

25 JUDGE SIPPEL: No, you answered my question. Besides

1 that, I don't remember anyway.

2 BY MR. CARNEY:

3 Q Let me ask you, when you say wing it, your testimony was  
4 that they use it colloquially, in a different sense than you do.  
5 Is that correct?

6 A Right, much broader, especially if I'm trying to --  
7 again, I'm standing in front of Comcast and I've got to make the  
8 subject seem pretty important for them to give me a channel, so I'm  
9 going to say it's a genre.

10 Q Let's switch gears. You talked yesterday about your  
11 testimony in the Tennis Channel case. Can you tell me what you did  
12 to look at programming in the Tennis Channel case?

13 A Sure. Whenever I have an assignment like this -- this is  
14 the third one -- I start by looking at programming, look at the  
15 schedules and the shows. I did that for Wealth. I did it for GSN,  
16 and I did it for Tennis. For Wealth and GSN, it was immediately  
17 clear to me that the genres were different, and that I was going to  
18 have to a full-blown genre analysis to profile each channel, and  
19 then be able to compare them and see how different they are. When  
20 I looked at Tennis, Versus, Golf Channel, it was immediately clear  
21 that they were all in the same genre.

22 JUDGE SIPPEL: Were there three? Are there three  
23 networks you're talking about there?

24 WITNESS: Yes, Tennis, Versus, and Golf.

25 JUDGE SIPPEL: I don't want it to be confused that it was

1 Tennis versus Golf. Seriously, the transcript --

2 WITNESS: No, I got you. I know. I could see  
3 immediately that the genre was the broad genre we call sports. I  
4 wrote that in my report. I said it in court. But I could also see  
5 immediately that they were very different by the attributes of  
6 sports networks that distinguish sports networks. So I went in and  
7 looked at that and profiled them by that.

8 BY MR. CARNEY:

9 Q Mr. Schmidt discussed with you some of the other things  
10 that you did in Tennis with respect to the management operations  
11 and the like. Here, in this case, did Cablevision give you the  
12 assignment to look at Cablevision's business conduct here?

13 A No.

14 Q Did it ask you to assess the business rationale for the  
15 retying of GSN?

16 A No.

17 Q Did it ask you to take a look at advertising competition?

18 A No.

19 Q Was your assignment to compare WE tv and other  
20 programming networks, other than GSN, with respect to programming  
21 or audience?

22 A No.

23 Q Did it ask you to look at other networks that GSN had  
24 similar programming or audiences with?

25 A No.

1           JUDGE SIPPPEL: I want to follow up on that line. You had  
2 the hypothetical -- you said a person going in trying to sell  
3 Comcast is -- I'm going to paraphrase now, but he might wing genre,  
4 as opposed to thinking it through and giving the academic  
5 explanation. The busy Comcast person doesn't want to get into  
6 that. He simply wants to hear your pitch. He wants to get on with  
7 other business. Supposing he was walking into that room, his  
8 right-hand person says, "I just overheard a conversation in the  
9 men's room or the women's room," whatever, I won't get into that,  
10 "that this Comcast guy is looking for entertainment." You're going  
11 in to pitch WE tv, and you say, "Boy, I so much want to land this  
12 account." You're a pretty nimble guy on your feet, and all of a  
13 sudden, you start to switch your pitch from the genre of -- to a  
14 genre of entertainment. Could something like that happen? He's  
15 trying to say, "Look, this stuff is great entertainment."

16           WITNESS: Could something like that happen? Conceivably  
17 it could happen, yes.

18           JUDGE SIPPPEL: I'm trying to see how confined the genre  
19 characteristic is. If you get instructions to give him this genre,  
20 and you find out that he wants a different genre, but you see that  
21 the programming's flexible in that regard --

22           WITNESS: I see what you're saying. I wouldn't --

23           JUDGE SIPPPEL: Because you're smart. You're going to --

24           WITNESS: I wouldn't think so, Your Honor, because mainly  
25 what cable is, cable is -- why did cable even start? Why did it

1 produce all these channels? Because it was trying to come up with  
2 slices, so you can go on demand and get your women's program, get  
3 your game shows. That's what it's all about. I think it would be  
4 unusual for a salesman to go in and --

5 JUDGE SIPPEL: It would be unusual, but it could be done.

6 WITNESS: Yes.

7 JUDGE SIPPEL: It could happen.

8 WITNESS: I'm sure, yes.

9 MR. CARNEY: Thank you, Your Honor. May I approach? I'd  
10 like to hand out CV Exhibit 162, which is in evidence.

11 BY MR. CARNEY:

12 Q Mr. Egan, what do you understand CV Exhibit 162 to be?

13 A This appears to be the presentation deck by GSN for  
14 Cablevision shortly after the retiering, February 8, 2011.

15 Q I'll ask you to turn to Page 4 of 28. On Page 4 of 28,  
16 there's a heading that says increased investment in original  
17 programming. Do you see that?

18 A I do.

19 Q What does this page signify to you?

20 A It says original hours, so original programming hours are  
21 up 143 percent for GSN in their 2011 projections. That's what  
22 they're projecting we're going to do. We're going to increase our  
23 original programming hours -- the number of hours we air in 2011 to  
24 343 hours and increase 143 percent over, I guess it's this  
25 four-year period. I guess it's versus 2008. What they're trying

1 to do is -- again, it's a sales pitch. They're making a sales  
2 pitch to Cablevision that we should be on expanded basic because  
3 we've become more valuable to you because we're investing more  
4 money in original programming.

5 Q How does this slide relate to your opinions on the  
6 importance of programming expenditures?

7 A As I said yesterday in my testimony is that cable  
8 operators value high quality original programming. GSN knows that,  
9 so they're in there pitching Cablevision with a carrot that hey, I  
10 know you like original programming, so here it is. We're investing  
11 more.

12 Q Yesterday Mr. Schmidt directed -- you can put that aside.  
13 Yesterday, Mr. Schmidt directed you to Paragraph 86 of your direct  
14 testimony. You testified about some relative programming  
15 expenditures between WE and GSN, with respect to the expenditures  
16 on original programming. Do you remember that?

17 A I do.

18 Q Do you recall your testimony, as reflected here, that at  
19 least for one year, the expenditures were somewhat similar.

20 A Yes.

21 Q Right, you remember that? But is your programming  
22 expenditure analysis limited to just original programming?

23 A No, it's not. I looked at the total programming spend.

24 Q What else does that encompass?

25 A It certainly encompasses acquisitions acquisitions, if we

1 go down in my report, my testimony, two paragraphs, so now we're at  
2 Paragraph 88, following where we were on 86, I continued. I said,  
3 "Nonetheless, the far bigger difference in program expenditures  
4 between the two networks' spending appears to be in the area of  
5 acquired programming. According to GSN, it spent  
6 on programming acquisitions in 2011. Contrast, WE  
7 tv spent license its acquired series and movies."

8 JUDGE SIPPEL: Are we supposed to be in closed session  
9 for this stuff?

10 MR. COHEN: I don't think so, Your Honor.

11 MR. CARNEY: I guess this is maybe where GSN --

12 MR. SCHMIDT: 2010 and 2011 time frame.

13 MR. CARNEY: I think we're fine.

14 MR. SCHMIDT: Thank you for asking, Your Honor.

15 JUDGE SIPPEL: Thank you for the answer.

16 WITNESS: The point is that whereas they were spending  
17 similar amounts in original in that time period, WE tv was spending  
18 times what GSN was on another component, which is driving  
19 their programming spend. As I say in the report, The reason they  
20 had to spend that money is they're buying shows that are off  
21 network that are well known, Ghost Whisperer, Golden Girls,  
22 Frazier, movies like You've Got Mail. These are popular. The  
23 sellers in the marketplace charge more for them.

24 BY MR. CARNEY:

25 Q Let me switch to a different topic, if I might.

1 Yesterday you were shown GSN 418, which was your 2011 declaration  
2 in this case. Do you remember that?

3 A Right.

4 MR. CARNEY: Your Honor, I don't know if you still have  
5 that. I have a couple of extra copies, but you may well have it.  
6 This is 418.

7 JUDGE SIPPEL: I have got 418. I do.

8 MR. CARNEY: It's entitled Declaration of Michael Egan on  
9 the front.

10 JUDGE SIPPEL: That was dated December of 2011.

11 MR. CARNEY: Correct. This is GSN 418. Does anybody --  
12 you find -- okay, good.

13 BY MR. CARNEY:

14 Q Mr. Egan, do you have that?

15 A I do.

16 JUDGE SIPPEL: Do you need one, Nick?

17 MR. CARNEY: No, we're fine, thank you.

18 BY MR. CARNEY:

19 Q You testified yesterday that WE tv's look and feel was  
20 conveyed in part by its color scheme. You mentioned pastel colors,  
21 particularly pink, is that correct?

22 A Yes.

23 Q Do you recall that?

24 A I do.

25 Q Have you seen WE tv business documents that reflect those

1 pastel colors?

2 A I have.

3 Q Okay. In that document, turn to -- on the bottom, where  
4 it's branded, you see it's 418, and then there's a decimal point,  
5 and then numbers. Turn to 418.082.

6 JUDGE SIPPEL: 418.082.

7 WITNESS: Yes.

8 BY MR. CARNEY:

9 Q It's on the back side.

10 A It's on the back side.

11 MR. CARNEY: Your Honor, it'll look like this, this  
12 picture.

13 JUDGE SIPPEL: I got it.

14 MR. CARNEY: Got it? Okay.

15 BY MR. CARNEY:

16 Q Mr. Egan, this is your declaration. Are these appendices  
17 to this declaration from 2011?

18 A Yes, my declaration, in addition to the text, had a  
19 number of appendices, exhibits.

20 Q What are you showing with this particular page of your  
21 appendix?

22 A This shows you two screen shots, just pictures that I  
23 took of the websites of each network. The top is GSN, and the  
24 bottom is WE tv. This was referenced in my text. This was  
25 referenced when I was talking about the target programming, the

1 look and feel and the subject matter of each network. I was  
2 talking about how I looked at many things to determine what the  
3 target programming of each was. That included looking at their  
4 websites. I referenced that I think it's informative to see the  
5 difference, even in their websites, because they reflect the  
6 difference of their television channels.

7           If we look at the top, the GSN website, it's blue.  
8 There's a boy standing, he's like king of the hill. He's standing  
9 up top. The other image that you see on there is a young man.  
10 There's no women on this page. "The world needs more winners," it  
11 screams at you. If you look at those little buttons throughout it,  
12 on a computer, you can click on those. It's all games, prizes,  
13 cash competition, games, enter giveaway. It tells you what it is.  
14 Then conversely, we look down below, and we see pastels.

15           Here's their website. It's pastels. There's a lot of  
16 pink. All the colors are soft pastels. There's a lot of women  
17 faces there. Your little clip of one of the shows, that's probably  
18 My Fair Wedding. You can look at the faces there. They're  
19 dominated by female faces. I thought this was informative,  
20 clearly, of look and feel, but it's also informative of subject  
21 matter difference.

22       Q     Let's just look at a couple quick examples. Turn to  
23 418.087 a few pages later. Do you see that --

24           JUDGE SIPPEL: Where are you now?

25           MR. CARNEY: I'm sorry, same document, GSN Exhibit 418,

1 and we're looking at the Page 418.087.

2 JUDGE SIPPEL: All right, before you get there, I'm still  
3 on 82. Why is it that -- I'm going up to the blue section here,  
4 which you say blue is illustrative and designates men in a general  
5 way. Why is shows highlighted in there -- you see the button up  
6 there, shows?

7 WITNESS: I do.

8 JUDGE SIPPEL: Why is that highlighted there?

9 WITNESS: I'm not sure, Your Honor. This is a computer  
10 screen that I've captured on a website. It may be that my cursor  
11 was on there, so it's highlighting where your cursor is, but I  
12 don't really know, to be honest with you.

13 JUDGE SIPPEL: The comparison, that might be a whole  
14 different -- the top one may be significantly different than the  
15 bottom one, in the sense of what you can button in, if I can use  
16 that term. Because shows is -- I don't know what you've got down  
17 there for the women that you can push a button on. Is there  
18 anything? Joan and Melissa, Joan Knows Best, etc.?

19 MR. CARNEY: Your Honor, I think it does say, actually,  
20 if you look -- Your Honor, first to answer your question, under the  
21 WE -- what these are -- is it correct, Mr. Egan, if I can just  
22 clarify -- these are the home web pages of both of these networks  
23 at this time.

24 WITNESS: Correct.

25 MR. CARNEY: I think for Your Honor's purpose, if you

1 look at the (Simultaneous speaking).

2 JUDGE SIPPEL: Are you telling him what to testify to  
3 now? Let him finish my question.

4 MR. CARNEY: I was just trying to help.

5 JUDGE SIPPEL: You probably were, but I still want to  
6 have my question answered. Go ahead.

7 WITNESS: We can actually determine that by looking at  
8 the screenshots. If you look at the top, you see there's the URL,  
9 top left, tv.gsn.com.

10 JUDGE SIPPEL: Wait a minute, where are you? You lost me  
11 now.

12 WITNESS: The blue one, at the top.

13 JUDGE SIPPEL: The blue one, at the top, says  
14 (Simultaneous speaking).

15 WITNESS: Going all the way to the top bar, which is --

16 JUDGE SIPPEL: Oh, tv.gsn.com?

17 WITNESS: Right. That's the address. That's what they  
18 call a URL. That's telling us you went to -- this is the home page  
19 of the website. If it was some subcategory, like a button in like  
20 you talked about, then there would be an extension for that button  
21 that would follow the gsn.com. It would show you that detail as  
22 you click in. I believe this is the home page, where when you go  
23 to the website, boom, this is what you see.

24 JUDGE SIPPEL: This has got a button down here that says  
25 home.

1 WITNESS: Right.

2 JUDGE SIPPEL: So you hit that button, you'll be right  
3 where you are?

4 WITNESS: Correct, yes.

5 JUDGE SIPPEL: I don't know what you're going to get to,  
6 but you're going to get All Games, Cash Competition, My GSN.  
7 What's My GSN?

8 WITNESS: I don't remember.

9 JUDGE SIPPEL: Then you've got Shows. What's comparable  
10 down with WE tv?

11 WITNESS: If we go down to WE tv and we look at that same  
12 address bar, the white horizontal bar --

13 JUDGE SIPPEL: It's wetv.com, is that where it is?

14 WITNESS: Right, so again, I believe that's telling us  
15 we're on the home page.

16 JUDGE SIPPEL: But you don't have the same options as you  
17 do up here for GSN.

18 WITNESS: Every company does its websites differently.  
19 They choose -- those are almost like channels within the website,  
20 so you can tune in to different things. So they're telling you  
21 we've got channels of shows. We've got channels of weddings.  
22 We've got a channel where you can see our schedule, so on and so  
23 forth. That's what WE is telling you there. Click on that one,  
24 and we'll drill into that. Kind of using your phrase, hit that  
25 button and we'll go into that channel.

1 JUDGE SIPPPEL: The only thing this exhibit is telling me  
2 is that Cablevision thinks that blue is for boys and pink is for  
3 girls, or blue is for men and pink is for women. You're going to  
4 different results when you go into the different methods of gaining  
5 access to what's inside. I can't make a comparison from this.

6 WITNESS: I get your point that you could go in and  
7 change the image. I understand that. I think that's what you're  
8 saying. I get that.

9 JUDGE SIPPPEL: You're going to change the image. You're  
10 going to get different products -- can I use that word -- different  
11 programs. I don't know if -- if I go into cash competitions, I  
12 don't know if that's going to be in blue or pink. Suppose it's in  
13 pink. Then I've got to say whoa.

14 WITNESS: I get your point. I was agreeing with you that  
15 in theory, if you clicked into a different button here, it might  
16 change the color. I get that.

17 JUDGE SIPPPEL: I'm using it as an extreme example. It  
18 could change a lot of things.

19 WITNESS: Right. I agree. But I can tell you that this  
20 is the home page, so when you --

21 JUDGE SIPPPEL: Yes, so you told me that.

22 WITNESS: -- go to it, it's like --

23 JUDGE SIPPPEL: You told me that. You told me enough.  
24 Wait just a second now. I want to ask Mr. Carney -- he wants to  
25 pursue that at all, or if you want to move on?

1 BY MR. CARNEY:

2 Q With respect to your look and feel conclusion, Mr. Egan,  
3 does this comparison of the home page of both WE and GSN support  
4 your conclusions?

5 A Yes, it does. I believe it communicates the visual  
6 elements -- a visual element that distinguishes these two networks.

7 Q Let's move on, if we can.

8 JUDGE SIPPEL: I didn't mean to delay you.

9 MR. CARNEY: No, that's fine, Your Honor, of course.

10 BY MR. CARNEY:

11 Q Let's move on to 418.087.

12 A Same document?

13 Q Yes. There's a page here from another WE tv business  
14 document, correct?

15 A Yes.

16 Q Why was this significant to you?

17 A This is a page from an MVPD presentation. I thought --  
18 I had it here, actually, to focus on ratings, I believe. I  
19 referred to it in the ratings section part. It does, again, show  
20 you the pastel use. That's the color scheme that they're using on  
21 the page.

22 Q Last example, just turn a few pages back to 418.092,  
23 which is a slide that says, "WE empowers women." Do you see that?

24 A I do.

25 Q Is this another WE tv business document?

1       A       It is. This is their presentation the WE sales force  
2 used at that time, when they went out to affiliates, MVPDs to  
3 recruit them to be part of their public relations campaign, "WE  
4 empowers women." I know where you're going. What this is doing is  
5 it's showing us pastel colors, flowery images, which again comports  
6 with my description of the difference in look and feel.

7           JUDGE SIPPPEL: My daughter's the president of an NGO  
8 account. It's called Women for Equity -- I'm sorry, Equity in  
9 Gender Health -- Women for Equity in Gender Health. She uses a  
10 scheme of purple. She doesn't use any lavender. Should I tell her  
11 -- I said, "There's been a genre investigation and it shows that--"

12          WITNESS: No, it's an interesting point. First of all,  
13 let's all admit that I'm not choosing the colors here. The  
14 networks did. I'm just reporting.

15          JUDGE SIPPPEL: I understand.

16          WITNESS: So don't shoot the messenger. But the purple  
17 thing is a very interesting thing. You will see, I think, even in  
18 some of these -- I don't want to waste your time -- even in some of  
19 these, I think you'll see some purple. I can tell you that WE tv  
20 -- if you went to their television channels right now -- not their  
21 channel, to their website right now, it's dominated by purple.  
22 It's an interesting thing you've picked up on. It's actually a  
23 deeper purple, a little bit deeper now than it was a few years  
24 back. They've deepened the color or the hue -- would that be the  
25 right -- whatever you say for a color, it's a deeper purple than it

1 used to be. They've always had a lot of pastels. The purple that  
2 they used was sort of a pastel purple. It was softer. Now it's a  
3 little bit harder, so it's interesting.

4 JUDGE SIPPPEL: I guess there's something interesting  
5 about that. Thank you.

6 BY MR. CARNEY:

7 Q Do you know who Kim Martin is?

8 A I do, general manager of WE.

9 Q Have you read Kim Martin's deposition in this case?

10 A I have.

11 MR. COHEN: May I approach, Your Honor? I just want to  
12 pass out a page from Kim Martin's deposition, the designation of  
13 which has been introduced here. We've marked this for  
14 identification as CV Exhibit 670, just a short snippet.

15 (Whereupon, the above-referred to document was marked as  
16 CV Exhibit 670 for identification.)

17 JUDGE SIPPPEL: This is in evidence?

18 MR. CARNEY: It's part of the designations, Your Honor,  
19 yes. It's been submitted.

20 BY MR. CARNEY:

21 Q Let me just turn your attention, Mr. Egan, to the  
22 testimony here. I'm looking specifically at Line 6 through 13.  
23 I'll just read it quickly. "Question: The first thing I think you  
24 mentioned was well, you mentioned marketing materials being female  
25 oriented. Could you tell me what you mean by that? Answer: The

1 materials are -- have a female appeal, in terms of the look, the  
2 feel, the tone, the vibe, the style, very feminine." Do you see  
3 that, Mr. Egan?

4 A I do.

5 Q Is that consistent with your opinions on the look and  
6 feel of WE tv?

7 A 100 percent consistent.

8 Q You can put that aside. Mr. Schmidt asked you this  
9 morning about NSI versus NTI. Do you recall that?

10 A I do.

11 Q Can you explain again why you used NSI, as opposed to  
12 NTI?

13 A Because NSI is the local rating system used in the  
14 marketplace by the commerce that produces tens, if not hundreds of  
15 millions of dollars of transactions. That is the commerce for  
16 determining local ratings in the New York DMA use the NSI local  
17 custom toolbox tool to pull it out. When advertisers look for  
18 ratings, agencies look for ratings, when Cablevision or Time Warner  
19 Cable or anyone else is pitching an ad agency, they're typically  
20 pulling the NSI ratings to show local ratings. That's why Nielsen  
21 set it up. They have local ratings system, and they have a  
22 national ratings system. They set up the local one to be used  
23 locally, to sell the local market.

24 JUDGE SIPPEL: What does NSI stand for again?

25 WITNESS: Nielsen Station Index.

1 JUDGE SIPPEL: Thank you.

2 BY MR. CARNEY:

3 Q Just talk about set top box data. Mr. Schmidt asked a  
4 couple of questions about that. Did you study, Mr. Egan, whether  
5 Cablevision's sample was the minimum sample size that it  
6 could rely upon to have reliable data? Did you study that, by the  
7 way?

8 A No.

9 Q Do you know what the Nielsen sample size is in the New  
10 York DMA with respect to its local ratings?

11 A For the cable universe -- for the entire universe,  
12 broadcast and cable, there's approximately 1,000 in their sample.  
13 For the cable universe, the hardwire universe, there's  
14 approximately 750.

15 Q Is that substantially smaller than Cablevision's  
16 sample?

17 A It is because their sample is closer to .

18 Q Let me switch topics again. Mr. Schmidt had showed you  
19 some of your work from the Wealth TV case. Do you remember that?

20 A I do.

21 Q We looked at a chart showing audiences for WE tv. Do you  
22 recall that?

23 A I do.

24 COURT REPORTER: Sorry, we have to pause.

25 (Whereupon, the above-entitled hearing went off the

1 record at 10:25 a.m. and went back on the record at 10:26 a.m.)

2 BY MR. CARNEY:

3 Q In the Wealth TV case, did you do a comprehensive study  
4 of -- I'm sorry, withdraw. I'll tell you what, in the Wealth TV  
5 case, did you do a comprehensive study of WE TV's audience at that  
6 time?

7 A No.

8 Q And that case took place in 2009, correct?

9 A Correct.

10 Q Okay.

11 JUDGE SIPPEL: That is when we were early into these  
12 issues.

13 THE WITNESS: Yes, that's right, Your Honor.

14 JUDGE SIPPEL: Horse-and-buggy stuff.

15 MR. CARNEY: Your Honor, I have no further questions.

16 MR. SCHMIDT: I just have a very few.

17 RE-CROSS-EXAMINATION

18 BY MR. SCHMIDT:

19 Q Mr. Egan, when you were shown Ms. Martin's testimony at  
20 670, you were asked whether you agreed with her as to this  
21 statement you made that they have a female appeal in terms of the  
22 look, the feel, the tone, the vibe, the style, very feminine. Do  
23 you remember that question?

24 A I do.

25 Q You disagree with her that Weddings is a genre? True?

1 A I do.

2 Q Exhibit 162, this GSN Cablevision document that you were  
3 asked about that Mr. Carney showed you --

4 A Yes.

5 Q -- in the document that Mr. Carney showed you, turn to  
6 page 6, please. Do you see the heading on page 6 where it says,  
7 "GSN Produces Significantly More Original Programming than Many  
8 Competitors," and it has GSN at 207 hours in 2010, WE TV at 134,  
9 Style and Oxygen. Do you see that?

10 A I do.

11 Q To put it parochially, GSN has eaten WE TV's lunch in  
12 terms of original programming, according to this data, correct?

13 A Oh, I don't know about that. What it says is that in  
14 2010 they've got, you know, more original programming hours than  
15 the hours. That's what it says today.

16 JUDGE SIPPEL: Wait a minute. Who's "they" and "the  
17 others"?

18 THE WITNESS: Oh, the same that Mr. Schmidt was referring  
19 to. So, GSN has more original programming hours than the other  
20 three channels that are listed here.

21 JUDGE SIPPEL: And that's WE, Style, and Oxygen?

22 THE WITNESS: Correct.

23 BY MR. SCHMIDT:

24 Q Do you accept the accuracy of the data in this document  
25 that Mr. Carney showed you on the original programming?

1       A       I can't comment on the accuracy of it.  I didn't prepare  
2   it.

3       Q       Okay.

4               JUDGE SIPPEL:  Do you always check the accuracy of a  
5   graph like this that you have not prepared?

6               THE WITNESS:  Yes, again, it is going to depend on my  
7   purpose, but, generally, I do, particularly if it is a granular  
8   look I'm doing.  So, you know, like this is the number of hours is  
9   really the important issue.  Then, I'm going to check those hours.  
10  Bu, like if we were looking at this to the look and feel, and it  
11  was really the color that was at issue, then I wouldn't check those  
12  hours.

13              BY MR. SCHMIDT:

14       Q       You talked about acquired shows that WE TV has.  Do you  
15  recall that?

16       A       Yes.

17       Q       Are the acquired shows you mentioned the reality shows  
18  that are WE TV's defining target programming?

19       A       The ones I mentioned, oh, no.

20       Q       And can you tell me how many, if any, of the acquired  
21  shows are defining target programming for WE TV?

22       A       I'm sorry, I don't know --

23       Q       The percentage of the acquired shows that you mentioned  
24  when you were talking about programming expenditures, could you  
25  tell me how many of those would fit within your definition of WE

1 TV's defining target programming?

2 A Okay. So, none of those that I just mentioned would fall  
3 into the category of its reality programming.

4 Q Thank you.

5 Look with me, if you would, at your declaration. You  
6 were shown a website on page 82 of your declaration for GSN. Do  
7 you remember that?

8 A I do remember it, yes.

9 Q Are you aware that GSN has a television show that we'll  
10 hear about today and an independent games business that we will not  
11 hear about today?

12 A Yes, I am.

13 Q Do you know whether this website you have was accessed  
14 through the game show website portal or the television website  
15 portal?

16 A Through the television website portal.

17 Q Are you sure about that?

18 A Yes, and I accessed it. Yes.

19 Q Okay. Look and feel. Look with me, if you would, at the  
20 binder that I gave you, Exhibit 268. Do you see pastels on this  
21 cover GSN document?

22 A I do, yes.

23 Q And if we just flip through the document, if you will  
24 look at page 3 of the document, it has "243" at the back, on the  
25 overview is that a picture of a woman?

1 A Yes.

2 MR. SCHMIDT: Let me just let the judge catch up. I'm  
3 getting ahead of myself.

4 JUDGE SIPPEL: Yes, this 268 I'm --

5 MR. SCHMIDT: It's 268, Your Honor.

6 JUDGE SIPPEL: Yes, I know that's the number you gave me.  
7 I'm trying -- okay, I do have it.

8 MR. SCHMIDT: With the pastels on the cover. And then,  
9 we just talked about the woman on page 243.

10 JUDGE SIPPEL: The next page?

11 MR. SCHMIDT: And then, I'm going to flip to a couple of  
12 pages ahead, 246.

13 JUDGE SIPPEL: Now you're going to go to 246?

14 MR. SCHMIDT: Yes, please.

15 JUDGE SIPPEL: I've got it.

16 BY MR. SCHMIDT:

17 Q Do you see the heading there is "Viewer"?

18 A Yes.

19 Q And the picture is a woman?

20 A Yes.

21 Q And do you see "We live to entertain and serve," and the  
22 first group listed is women 25 to 54? Do you see that?

23 A I do.

24 Q If you flip ahead to 247, do you see that that has data  
25 on women 18 to 34 and women 18 to 49?

1 A Yes.

2 Q Do you see that continues onto page 48?

3 A Yes.

4 Q Forty-nine?

5 A Yes.

6 Q Fifty?

7 A Yes.

8 Q Fifty-one?

9 A Yes.

10 Q If we flip ahead to 55, do you see "GSN recognizes women  
11 of all ages"?

12 A I see that header, yes.

13 Q And on the next page there's one of GSN's target  
14 programming, the Newlywed Game, female host, target: women 25 to  
15 54. Do you see that?

16 A I do.

17 Q If you slip two pages ahead, there's GSN Live.

18 JUDGE SIPPEL: Give us the page number.

19 MR. SCHMIDT: Two fifty-eight, Your Honor.

20 JUDGE SIPPEL: Got it.

21 THE WITNESS: Yes.

22 BY MR. SCHMIDT:

23 Q And again, target: women 25 to 54?

24 A Yes.

25 Q Flip on tab back in your binder, tab 267. Do you see

1 that this is a proposal to overstock?

2 A It appears to be, yes.

3 Q If you flip to the next, to page 655, do you see the  
4 first picture is of a woman?

5 A Yes.

6 Q 656, GSN viewer, do you see the picture there is a woman?

7 A I do.

8 Q Do you see "Programming" on 657? One of the talent there  
9 is a woman; one is a comedian?

10 A Yes.

11 JUDGE SIPPEL: A male comedian.

12 BY MR. SCHMIDT:

13 Q A male comedian?

14 A I do. I see him.

15 Q Flip ahead to page 660, "Baggage". A picture again. Do  
16 you see this description of "Baggage" on page 660?

17 A Yes.

18 Q Again, a woman? Correct?

19 A Oh, yes. I'm sorry.

20 Q And again, a female audience is the primary target?

21 A That's what it says.

22 Q 662, two pages later, again, a woman; again, a female  
23 audience as the target?

24 A Yes, I see it.

25 Q And are you aware that this particular talent -- do you

1 know who that is?

2 A I think that's Carnie Wilson maybe.

3 Q Yes. Are you aware that GSN also had a reality show  
4 regarding her?

5 A Very much so, yes.

6 Q Two pages ahead, 664, another show, two out of three  
7 hosts are women; target audience, women?

8 A Yes.

9 Q Let me close by giving you -- do you know who Elizabeth  
10 Doree is?

11 JUDGE SIPPEL: How do you spell the last name?

12 MR. SCHMIDT: D-O-R-E-E.

13 BY MR. SCHMIDT:

14 Q Do you know who she is?

15 A I do.

16 Q Who is she?

17 A She's a programming executive at WE TV.

18 Q Are you aware that she testified a few days ago in this  
19 case?

20 A I am.

21 Q Let me pass to you -- if I may approach, Your Honor?

22 JUDGE SIPPEL: Yes.

23 BY MR. SCHMIDT:

24 Q This is her binder that she was given by -- Mr. Gordon,  
25 right? -- by Mr. Gordon when he conducted his direct examination of

1 Ms. Doree.

2 MR. SCHMIDT: I'm not going to pass the binder out to  
3 everyone, but I will show the group. So, the documents that I am  
4 going to cite in the binder.

5 BY MR. SCHMIDT:

6 Q Look behind tab 1 of Ms. Doree's binder, please. Do you  
7 see the charts there?

8 MR. SCHMIDT: I'm going to pass these charts to the  
9 group, if I may. They have been marked as Exhibit 131 and 138.

10 BY MR. SCHMIDT:

11 Q So, there are two behind tab 1. Do you see those, Mr.  
12 Egan, 131 and 188?

13 A Where is 188?

14 Q I think there is a blue sheet in there, and then, 188 is  
15 right after that.

16 MR. SCHMIDT: Your Honor, may I approach?

17 JUDGE SIPPEL: Please.

18 MR. SCHMIDT: Thank you.

19 THE WITNESS: Oh, I got it. Okay.

20 BY MR. SCHMIDT:

21 Q Do you see that these are WE TV categorizations of their  
22 programming; they have a color code?

23 A Yes.

24 Q These do not track your genre categorizations, true?

25 A They're not doing it on this, these documents.

1 Q Do you know why WE TV uses these categorizations?

2 A No.

3 Q Okay. Look with me at the first one, if you would.

4 MR. CARNEY: Your Honor, we let the first question go,  
5 but I do have to object to this as being beyond the scope of my  
6 redirect here. Mr. Schmidt could have used this during his cross,  
7 and I think we're getting a little far afield of my questioning.

8 JUDGE SIPPEL: I don't see that. I'm going to overrule  
9 that objection.

10 BY MR. SCHMIDT:

11 Q So, look with me, if you would, at page 5 of 8 in Exhibit  
12 131, please.

13 MR. CARNEY: Five of 6?

14 MR. SCHMIDT: Five of 6. I'm sorry. Thank you. Yes, 5  
15 of 6.

16 BY MR. SCHMIDT:

17 Q Do you have that there?

18 A Yes.

19 Q And just to take an example, if you look at the --  
20 terrible colors -- the deep pink that is in the Sunday window from  
21 eight o'clock to one o'clock, do you see that band? Those are all  
22 the same color?

23 A Yes.

24 Q And if just look at those shows, you see in there a show  
25 that you would classify as documentary and other shows that you

1 would classify as reality, correct?

2 A I've got to take a look here. It's kind of a hard thing  
3 even reading them.

4 Q Let me read them for the record. And if you want me to  
5 put in front of you -- I was just searching for it myself -- your  
6 classification, I would be happy to do so.

7 But, for example, Platinum Weddings and Bridezillas you  
8 classified as reality, correct?

9 A Correct, yes.

10 Q And Disney Dream Weddings you had classified as  
11 documentary, correct?

12 A Correct.

13 Q Stick with that binder, if you would. The last question,  
14 the last document. Look at the direct testimony right at the  
15 beginning of the binder. And I will pass out copies of it.

16 Do you see the direct testimony of Ms. Elizabeth Doree?

17 A I do.

18 MR. SCHMIDT: May I approach, Your Honor?

19 JUDGE SIPPEL: Yes.

20 BY MR. SCHMIDT:

21 Q Let me refer you, if I may --

22 A Yes, is it the same thing? Yes.

23 Q Sorry.

24 Do you see at the beginning of the Cablevision binder for  
25 Ms. Doree where it has her direct testimony?

1 A I do.

2 Q If you will look at page 6 of her direct testimony --

3 JUDGE SIPPEL: We also have with 338 --

4 MR. SCHMIDT: Exactly, Your Honor, Exhibit Cablevision

5 338.

6 BY MR. SCHMIDT:

7 Q Do you see in paragraph 12, paragraph 12 states, "I have  
8 discussed below representative types of women's programming that  
9 aired on WE TV during the relevant period."? Did I read that  
10 correctly?

11 A Yes.

12 Q She, then, lists original reality women's programming,  
13 reality wedding programming -- that's not your genre analysis,  
14 correct?

15 A This is not genre analysis, correct.

16 Q That's all. Thank you, sir.

17 JUDGE SIPPEL: No more questions?

18 MS. KANE: Your Honor, the Bureau has some questions.

19 JUDGE SIPPEL: Go ahead.

20 CROSS-EXAMINATION

21 BY MS. KANE:

22 Q Good morning, Mr. Egan.

23 A Good morning.

24 Q My name is Pamela Kane. I represent the Enforcement  
25 Bureau. And with me is my colleague, Mr. Knowles-Kellett. We just

1 have a few questions.

2 Following up on some of the judge's questions he had  
3 earlier today, can you give us a definition of what it means to be  
4 target programming, separate from the context of a specific  
5 channel? But is there a definition of what it means to be target  
6 programming?

7 A So, target programming is the programming that a network  
8 seeks to air to deliver its target audience.

9 Q And what about target genre?

10 A I don't think it is a phrase that I use. I'm not sure  
11 what target genre would really mean. I think that target  
12 programming is pretty clear as to what it is. Target genre, I  
13 guess if I were using the phrase, I would use it in the sense of  
14 saying this is the genre that I think is going to deliver my  
15 audience best and communicate who we are as a network, our brand.  
16 So, I would stretch to say I think that would probably be the  
17 meaning of it, but it is not a term that I'm familiar with.

18 Q Can I have you turn in your direct testimony notebook to  
19 CV 654? And I believe you will recognize it as a chart that the  
20 judge had some questions about.

21 A Yes.

22 Q I just want to make sure we all understand what the far  
23 left chart or the far two left columns represent. Could you  
24 explain again clearly what those two left columns, how you achieved  
25 the numbers in those two left columns?

1       A       These are Nielsen ratings.  You know, I acquired the  
2       local New York DMA hardwired Nielsen ratings.  And I got them from  
3       multiple years.  This is representing 2009 and '10 combined.  So,  
4       it is combining the numbers to an average of 2009-2010, full year,  
5       365 days in the broadcast year, total day, right?  So, it is the  
6       entire channel over two years.

7               Then, Nielsen allows you to not only just look at ratings  
8       in households, but, then, you can look at groups to see how you are  
9       doing in different groups.  So, this is specifically asking, okay,  
10      tell me the rating that each of GSN and WE drew over that time  
11      period for only women 18-plus.

12      Q       And the columns to the right of that, how did you come up  
13      with the numbers for the columns to the right of that?

14      A       So, then, what I did is I took those ratings, right, from  
15      Nielsen, and I just translated them.  Oh, these ratings come from  
16      Nielsen, if that's your question.  These are their ratings in those  
17      demos.

18              So, again, I had Cablevision run the full ratings report.  
19      So, we had women 18-plus, but at the same time they ran the ratings  
20      for each network over the same time period in the demos of women 18  
21      to 34, women 18 to 49, women 25 to 54.  I think I had them run  
22      women 55-plus and women 65-plus.  So, I could stratify it then and  
23      see what this aggregate meant in its components of which women who  
24      are 18 or older are watching each of these channels, you know,  
25      which women by age.

1           And these are the ratings. These are Nielsen's ratings.  
2   And then, I just depicted them as a bar graph, so we could see them  
3   graphically. And that is what this is.

4       Q     So, I just want to clarify that, if I took the averages  
5   of the columns on the right, it wouldn't necessarily match up to  
6   the columns on the left, correct, because there are several  
7   overlapping categories on the right?

8       A     Correct, yes. Yes.

9       Q     Now I believe the judge also asked you some questions  
10  about programming. I just have a question as to whether, can a  
11  particular program fall into multiple genres?

12      A     Can one program fall into multiple genres? I, as a  
13  programming expert, am firmly convinced that the answer to that is  
14  no; that the exercise that I go through here, as a programming  
15  expert, is to look very carefully at the attributes of a program,  
16  and where does the preponderance of those attributes fall?

17           Now some are going to be a closer call than others. Some  
18  are going to be obvious on their face. When you look at Family  
19  Feud, you know it is a game show. When you look at Braxton Family  
20  Values, you know it is a reality show, if you understand the  
21  genres.

22           But some, a handful, are going to be closer. And so,  
23  what I did, if you read my full testimony, I laid out attributes  
24  for the game show network and I actually went through that in  
25  response to Mr. Carney's question. I did the same thing for

1 reality shows.

2 And the reason I did that is that GSN's experts had  
3 attempted to blur those two genres. So, I wanted to unblur them  
4 and make them clear, and I did that. I created that rubric and  
5 used that in looking at the shows.

6 Q Okay. Thank you.

7 A And I believe, if you are careful like that, you will get  
8 a preponderance of evidence that will tell you one way or the  
9 other.

10 Q So, it's your testimony today that a single show couldn't  
11 possibly fall into two different genres, correct?

12 A I haven't seen one that does.

13 Q So, when you answered the judge earlier, he gave you a  
14 hypothetical about somebody who had to think on the fly. Would  
15 they be misrepresenting that a show fell into a different genre?

16 A If a show --

17 Q Do you recall the judge's hypothetical --

18 A I do.

19 Q -- to you where he said they had concluded that a show  
20 fell into one genre, and then, it turned out that the advertisers  
21 wanted a different genre. He asked you, I believe, whether or not  
22 that could occur; could you think on the fly and could you put a  
23 show into a different genre. How do you correlate that with your  
24 conclusions right now that you couldn't possibly move one show into  
25 a different genre?

1       A       By the way I prefaced my answer. So, my exercise is a  
2 different exercise than a sales pitch where I am trying to get  
3 someone to take my network or buy advertising on it, two different  
4 exercises. Mine is similarly situated in programming analysis  
5 looking at genre, looking at target programming, looking at  
6 programming expense.

7               And so, I'm going through the components of the genres  
8 and I place it carefully and make that decision carefully based on  
9 evidence.

10       Q       But an advertiser couldn't put something into two  
11 different genres?

12       A       Could an advertiser? I think they could colloquially,  
13 the same way we talked about Ms. Martin calling wedding a genre,  
14 which I don't think is a genre. I think it is a subject matter  
15 that we find in many genres. But I could see an advertiser doing  
16 a similar thing in the course of business because they are not  
17 doing the academic exercise that I am doing.

18       Q       Again, I believe Mr. Schmidt may have asked you about  
19 this yesterday afternoon, but where did you obtain the genres that  
20 you used for your analysis?

21       A       The genres I used in my analysis are the same genres I  
22 used in the Wealth TV case originally.

23       Q       Well, I understand that, but where did those originate  
24 from? Is there a source of that? Did you use a Nielsen genre? Or  
25 did you just develop the genres for your purposes?

1       A       Those are very common genres.  You will find them in  
2 Nielsen.  You will find them in the listing services, like TRIVIA  
3 Media Services that provide the listings to newspapers and to the  
4 electronic guides on your TV, where they will categorize things by  
5 genre.  You will find them in Emmys.

6               I mean, I looked at many, many different places to see if  
7 my genres were generally lining up with the genres that others  
8 used.  And they do.  Now there are some differences here or there,  
9 but, you know --

10       Q       I just wanted to understand where they had originated  
11 from.

12       A       Yes.

13       Q       If I could have you turn back to -- and again, I believe  
14 this is in the binder that Mr. Carney gave you on your direct -- CV  
15 Exhibit 650.

16               JUDGE SIPPEL:  This is direct testimony?

17               MS. KANE:  The direct testimony binder, Your Honor.

18               JUDGE SIPPEL:  650?

19               MS. KANE:  650.

20               JUDGE SIPPEL:  Yes.

21               BY MS. KANE:

22       Q       I just wanted to clarify with you, Mr. Egan, the source  
23 of each of the two charts that are represented in Exhibit 650.

24       A       Where did they come from?

25       Q       Yes.

1 A So, we took them out of my direct testimony where they  
2 appear; each of the sample weeks appears there. And we blew them  
3 up and put them on the page. These categorizations were made by  
4 myself and Lew Schargberg, the expert I mentioned.

5 Q Well, I just need the source of the information.

6 A I'm sorry?

7 Q The source is listed at the bottom of the first page, for  
8 example, in Exhibit 650, correct?

9 A Yes, CV Exhibit 333 is my direct testimony.

10 Q Right.

11 A And it is Appendix A, Exhibit 2D, yes.

12 Q Can you point that to us in your direct testimony? In  
13 that CV Exhibit 333, which I believe is part of that same binder?  
14 I believe it is the second tab.

15 JUDGE SIPPEL: It's in front, isn't it?

16 THE WITNESS: Well, remember, we said that the appendices  
17 for my testimony -- oh, yes, they are there. Okay. Hopefully,  
18 they are there. They should be there.

19 (Pause.)

20 It looks like it is page 40.

21 BY MS. KANE:

22 Q Page 40? And that's the chart that you used to create  
23 the first page of 650?

24 A Correct.

25 Q And I just want to confirm that you didn't use the chart

1 that starts at 155 of 180.

2 A Page --

3 Q 155.

4 JUDGE SIPPEL: Are you back again to the written  
5 testimony?

6 MS. KANE: No, I'm still in the same exhibit, Your Honor,  
7 155 of 180. So, it is just later in that document.

8 I'm sorry, not -- yes, 155.

9 THE WITNESS: That's the beginning of the exhibit there?

10 BY MS. KANE:

11 Q Correct.

12 A Is there a specific page you're asking me about in there,  
13 then, that follows?

14 Q The next page or any of the pages that follow. I guess  
15 what I was referring to on 155 is, what does that say?

16 A Okay. So, remember, I did an update for the subsequent  
17 years. I did 2009, '10, and '11 first, and I did the genre  
18 analysis and the schedule coding, and all that. And then, for my  
19 testimony, I submitted the supplemental testimony; I submitted in  
20 December of 2014. I updated my findings. And so, this section  
21 here is the appendices to that updated testimony.

22 Q But it says Exhibit 2D, correct? I just want to make sur  
23 the record is clear that the 2D you are referring to in the Exhibit  
24 650 is that earlier page, page 40, and that you were not referring  
25 to Exhibit 2D that starts on 155.

1 A That's correct.

2 Q Correct?

3 A That's correct.

4 Q Right. But there happened to be two 2Ds --

5 A Yes.

6 Q -- in Appendix A of your report, correct?

7 A Okay, and they are both labeled "2D", correct, and  
8 they're -- what? -- two years apart in time. But, yes, I believe  
9 that the reference in 650 is accurate to Exhibit 333, page 40.

10 Q And can we look at the second page of Exhibit 650 and,  
11 again, also confirm which page in your appendices of the 180 the  
12 source document for Exhibit 2C refers to?

13 A Sure. So, it would be that same week, you know, the same  
14 common week. And so, it would be page 26, the WE TV schedule.

15 Q Okay. I know it's difficult to look at both of them, but  
16 you didn't maintain the color coding between what is in your  
17 appendices and what is in the exhibit, correct, in terms of using  
18 the same colors, or did you try to?

19 A I tried to. And I remember every printer prints a color  
20 differently, and every kind of stock shows it a little differently.  
21 So, I tried to. That was the intent.

22 Q Well, in comparing page 26 to the second page of 650, I  
23 believe the first -- some of the writing is a little small -- but  
24 10:00 to 4:30 p.m. on Tuesday, December 14th, appears to be  
25 categorized as a documentary in CV Exhibit 650 and appears to be a

1 comedy on page 26. And I just --

2 MR. COHEN: Could you tell us the name of the show? That  
3 might be easier, if you can read it?

4 MS. KANE: Women Behind Bars.

5 BY MS. KANE:

6 Q And I just wondered whether that was you had made a  
7 change in the two between the time you had created the two exhibits  
8 or if it was just a miscoloration.

9 A I'm having a hard time even reading the one --

10 Q I know, they are very difficult to read, and they are  
11 difficult for me to read even.

12 MS. KANE: Are we reading those at 650 or where are you  
13 trying to read them?

14 THE WITNESS: We are comparing Exhibit page 650, Exhibit  
15 650, page 2 --

16 JUDGE SIPPEL: Yes.

17 THE WITNESS: -- to Exhibit 333, page 26. We're  
18 comparing those two.

19 JUDGE SIPPEL: You mean 332? Exhibit 332?

20 MS. KANE: Oh, Your Honor, we are comparing Exhibit 333,  
21 page 26 of 180.

22 JUDGE SIPPEL: I'm sorry. I've got it. Okay,  
23 Appendices. Oh, okay.

24 MS. KANE: Right. And then, we are comparing that to the  
25 second page of Exhibit 650, page 2.

1 BY MS. KANE:

2 Q And my question had to do with whether you had  
3 recategorized or put Women Behind Bars in a different genre between  
4 the times you had created your appendices and the time that Exhibit  
5 650 -- or if that was just a miscoloration problem.

6 A I'm struggling to read the name of the show here.

7 MR. SCHMIDT: Your Honor, if it would help, and if Pamela  
8 doesn't object, I will pass up the two pages that I pulled out.

9 MR. COHEN: Can we try to clear this up quickly, Your  
10 Honor?

11 JUDGE SIPPEL: So, do you want to go off the record to  
12 clear it up?

13 MR. COHEN: Yes, can we just --

14 MR. SCHMIDT: But I think the witness should answer the  
15 question, you know.

16 BY MS. KANE:

17 Q I would like to get a sense of whether or not this was  
18 just -- again, you had either looked at the information and knew  
19 and recategorized it --

20 A No. No. So, I think, actually, what has happened is  
21 more fundamental. If I can make out what this -- it seems to me  
22 when I look at page 26, Exhibit 333, you are pointing to the show  
23 that begins at 10 o'clock a.m., right?

24 Q On Tuesday, the 14th, correct?

25 A Yes. And as best I can make it out, it is Golden Girls,

1 I think is what it says. And then, when I look at the other  
2 exhibit, 650, and I look at that same spot, it is not Golden Girls;  
3 it is Women Behind Bars, which is a documentary, right, and Golden  
4 Girls is a comedy.

5 So, it seems to me that you have spotted actually isn't  
6 a genre change; it is a show change. For some reason -- and I  
7 don't know -- when the exhibit for 650 was prepared to show here,  
8 for some reason, that show was mistakenly changed, you know,  
9 however it was picked up. The way these things are done, right,  
10 you're picking up an electronic file. And in a graphic  
11 presentation or creation, the show got switched, which is very odd  
12 since the rest of them seem to be the same.

13 Q Thank you for the clarification. If I could --

14 JUDGE SIPPEL: Well, wait a minute. So, where it says  
15 "Women Behind Bars" on 650, page 2, should be Golden Girls?

16 THE WITNESS: Correct. So, in my original testimony,  
17 Your Honor --

18 JUDGE SIPPEL: Yes?

19 THE WITNESS: -- which is Exhibit 333 --

20 JUDGE SIPPEL: Yes.

21 THE WITNESS: -- as submitted, the appendix was Golden  
22 Girls in that slot. For some reason, when the graphic was  
23 presented, was prepared for presentation here, that slot became  
24 Women Behind Bars.

25 MR. CARNEY: Your Honor, we're happy to correct it and

1 provide the Court with the proper demonstrative for 650 that  
2 squares with Mr. Egan's testimony.

3 JUDGE SIPPEL: Well, no, I understand. Mr. Egan has  
4 explained all about this as best he can do, I guess. But I am just  
5 wondering, is there more of that kind of stuff that is in these  
6 graphs and whatnot? In other words, misleading or incorrect  
7 information.

8 MR. CARNEY: Your Honor, 650 was intended always to be  
9 demonstrative of what Mr. Egan reported in his actual appendices,  
10 which are in evidence. If the demonstrative was erroneous, we will  
11 triple-check it and provide the Court with one that squares  
12 precisely with Mr. Egan's testimony.

13 JUDGE SIPPEL: Well, I don't think it's demonstrative  
14 evidence. This is repetitive evidence and perhaps it was included  
15 this way because of the difficulty of reading it in the appendices  
16 or some of the appendices.

17 I mean, 333 is really not independent of 332.

18 MR. CARNEY: That's correct, Your Honor.

19 JUDGE SIPPEL: It happened to be a different location.

20 All right. Okay. Do you have anything more on this?

21 MS. KANE: We do, not on this exhibit. We have a few  
22 more questions, Your Honor.

23 JUDGE SIPPEL: Keep going.

24 BY MS. KANE:

25 Q Mr. Egan, if you could turn to the next exhibit in that

1 same book, which is 651, I believe? It is the pie charts we have  
2 been looking at.

3 A Yes.

4 Q Do you recall the source of the information for these pie  
5 charts?

6 A The source of the information that designates the slices  
7 and all is my genre classifications that appear in my testimony and  
8 the appendices that have all the detail by genre. So, again, if we  
9 go back to 333 and we find the details where I calculated all the  
10 hours of each network by genre -- so, for instance, if we go to  
11 page 161 --

12 JUDGE SIPPEL: Of what?

13 THE WITNESS: Of Exhibit 333.

14 JUDGE SIPPEL: 61 or 161?

15 THE WITNESS: 161.

16 JUDGE SIPPEL: Thank you. Okay.

17 THE WITNESS: Okay?

18 JUDGE SIPPEL: Let me get there.

19 BY MS. KANE:

20 Q I'm sorry, Mr. Egan, can you repeat that? What page are  
21 you on?

22 A Oh, so I think the answer you're looking for is the  
23 information comes from my testimony. And again, this is a  
24 demonstrative. And so, if we go to my testimony, Exhibit 333, page  
25 161 --

1 Q 161 of 180?

2 A Yes.

3 JUDGE SIPPEL: Yes, and don't try to characterize this as  
4 demonstrative. This is not demonstrative.

5 THE WITNESS: Oh, okay.

6 JUDGE SIPPEL: That's a very technical term.

7 THE WITNESS: Yes, right.

8 JUDGE SIPPEL: And I can explain to you off the record  
9 maybe.

10 THE WITNESS: Okay. Got it.

11 So, 161 has my year-by-year -- I'm sorry, I did this  
12 wrong now. I'm pointing you to the updates information. I've got  
13 to find the same thing for the original work.

14 JUDGE SIPPEL: All right. So, 161 is the updated  
15 information from an earlier version that you are going to point us  
16 to?

17 THE WITNESS: No, remember, Your Honor, I came back in  
18 2014 --

19 JUDGE SIPPEL: Yes.

20 THE WITNESS: -- and I did another genre analysis. I did  
21 the original one in 2009, '10, and '11, and I came back and I did  
22 one for '12, '13, and '14. Remember?

23 And so, the pie chart is the '09, '10, and '11, the  
24 original time period I did a genre analysis for. That is what the  
25 pie chart is showing us.

1 JUDGE SIPPPEL: Where is that?

2 THE WITNESS: That is in that Exhibit 651.

3 JUDGE SIPPPEL: All right. Here, I've got it right here.

4 THE WITNESS: Okay. So, the question was, you know, where  
5 did you get this data from that shows the different percentages  
6 that the genres represent on the networks? And at first, in  
7 responding to that question, I spoke too quickly because I flipped  
8 through and I saw the source information for the update, but that's  
9 not accurate because this is not the update. So, I have to find --

10 MR. CARNEY: Page 18.

11 THE WITNESS: I'm sorry?

12 MR. CARNEY: Page 18.

13 THE WITNESS: It's page 18? So, I have to find the  
14 corollary for the original time period. And so, if we go to, for  
15 instance, yes, page 18 of 180, Your Honor, and Exhibit 333, page 18  
16 of --

17 JUDGE SIPPPEL: I've got everything except the page 18.  
18 I've got to get that. I'm getting there. I'm getting there.

19 THE WITNESS: I know, it is a lot of information.

20 JUDGE SIPPPEL: Well, no, it's that the pages stick  
21 together, is my problem. If I could separate these pages -- okay,  
22 I'm on page 18 now. Okay.

23 THE WITNESS: Okay. So, if we look up at the top, it is  
24 WE TV programming by genre, 2009 to '11. Do you see that heading?

25 JUDGE SIPPPEL: Yes. Yes, yes.

1 THE WITNESS: Okay. And then, right below it, it says,  
2 "Three-Year Summary, 2009 to 2011". And the percentages below that  
3 are the calculations that I referred to. So, the first column is  
4 the genre and the second column is the hours of programming in that  
5 genre over those three years. The third column is what percentage  
6 of total air time, when you include paid programming, does that  
7 represent and what percentage of programming does that represent if  
8 you exclude paid programming? You know, paid programming is those  
9 overnight hours where they run infomercials, right?

10 JUDGE SIPPEL: Well, no, I don't know if that's right,  
11 but is that what you're telling me it is?

12 THE WITNESS: Yes, it is generally every network sells  
13 infomercials in that overnight time.

14 JUDGE SIPPEL: And that's paid programming?

15 THE WITNESS: That's called paid programming. That's the  
16 offhand name, yes.

17 BY MS. KANE:

18 Q Mr. Egan, just to try to clarify, we are just trying to  
19 get where the source is. Did you also derive information from page  
20 32 of 180 for those pie charts?

21 A Yes. So, that would be the GSN side. So, the WE is the  
22 WE pie and the GSN on 32 is the GSN pie.

23 Q Just a few more questions for you. I believe you  
24 testified that you did a comparison of some of the programming  
25 between GSN and WE TV, correct?

1 A The programming? Oh, absolutely, yes.

2 Q Are you aware whether WE TV ever aired game shows or what  
3 you would classify as a game show?

4 A Yes. And again, remember, I'm always talking about the  
5 defined time periods that I refer to here, and they aired a couple  
6 of game shows. They represented less than 1 percent of the air  
7 time in each of those years when they aired them. So, they aired  
8 two or three game shows over this time period.

9 Q Do you recall which those were during the time period  
10 that you studied?

11 A Oh, there was one that was, like America's Cutest Puppy,  
12 I think was one. You know, I could find them because don't forget  
13 that on my exhibits I actually show you all the programming on each  
14 network by genre.

15 So, for instance, if we go to page 6 of 180 in Exhibit  
16 333, you could see how much information this was. It was a lot of  
17 information to work with. And so, if you look at page 6 and you  
18 look at the left block headed "WE TV," 106 total titles. And if  
19 you look, then, down on the right side there, you will see game  
20 show, one title, 1 percent. The name of the show is America's  
21 Cutest Puppies.

22 Q Can you tell me what about -- did you look at that  
23 particular show?

24 A The show?

25 Q Yes.

1 A Yes.

2 Q And would you agree that that should be classified as a  
3 game show under your genre?

4 A Yes.

5 Q And why is that?

6 A Because it follows most of the elements of the game show  
7 rubric that I rattled through earlier. So, you know, it is a set.  
8 They shoot that show on a set, and there is a host, an MC, almost  
9 like a ringmaster, and he comes out and the dogs compete. And it's  
10 a competition and one of them wins. It is a game show. And then,  
11 it is over. And they get a prize, you know, for winning, and then,  
12 it is over.

13 Q Do you know how long that show ran?

14 A Oh, very short. It was not successful. I don't off the  
15 top of my head remember the number of that. It may very well be in  
16 the testimony stated. I just don't remember it. But it was short.  
17 It was not successful for WE.

18 JUDGE SIPPEL: You know, there is a program on about  
19 family films. There are little kids going down a slide, and then,  
20 they hit something and they fall on their head, and everybody goes  
21 "Haha." And they run these things, it runs maybe for an hour.  
22 Anyway, it runs through maybe five to six of these things with the  
23 ringmaster and that kind of stuff. And then, they award a prize at  
24 the end. Now that doesn't sound to me like that is a game show.

25 THE WITNESS: It doesn't sound like it is to me, either,

1 Your Honor. I'm not sure of the show. So, again, I don't want to  
2 speak authoritatively, but, you know, it sounds to me like it is  
3 not a game show.

4 JUDGE SIPPEL: America's Funniest Home Videos.

5 THE WITNESS: Oh, right, right.

6 JUDGE SIPPEL: Do you know the show now? Do you know the  
7 program?

8 THE WITNESS: I do. I am not intimately familiar with  
9 it, but I've seen clips like you just described. I've seen that,  
10 you know.

11 JUDGE SIPPEL: Well, I've explained it is not an  
12 intricate thing to watch. I mean, it is just very simple. I just  
13 explained it.

14 And again, what is your thought about that being a game  
15 show versus being whatever it is? What is it?

16 THE WITNESS: Yes. Again, I'm doing this without doing  
17 the work I would do if I were to testify. But, to be responsive to  
18 your question, it doesn't sound like a game show to me because a  
19 game show, you've got a host who's running the show and you have  
20 a --

21 JUDGE SIPPEL: Well, they've got a host here. They've  
22 got a host here.

23 THE WITNESS: Oh, they've got a host? And is the point  
24 that the -- I don't even know the point of the show, but is it  
25 which of these videos is the funniest one, and whoever it is, you

1 are going to get a prize? Is that your --

2 JUDGE SIPPEL: Exactly.

3 THE WITNESS: Okay.

4 JUDGE SIPPEL: And then, they come back the following  
5 week and compete again. I mean, this is an ongoing thing. You can  
6 make a lot of money --

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: -- if you let your kid fall on his head.

9 THE WITNESS: And is there any footage in there, Your  
10 Honor, where, other than that stunt, do you see that same kid like  
11 with his family backstage after the stunt and they're --

12 JUDGE SIPPEL: They're usually right there in the studio.

13 THE WITNESS: Okay. Yes, it does sound, it would sound  
14 to me, you know, like based on what I'm hearing right here, that it  
15 may be a game show, but --

16 JUDGE SIPPEL: It's a close call?

17 THE WITNESS: I'm sorry?

18 JUDGE SIPPEL: It's a close call?

19 THE WITNESS: I don't know that it's a close call because  
20 I don't have the video of the show and I can't watch a bunch of it,  
21 but based on what you're saying to me here, I would say it is a  
22 game show; that there is a host and he is running, he or she is  
23 running the show. And, okay, so here's the contest. We're going  
24 to decide which of these is the funniest one. And there might even  
25 be an audience, a studio audience watching.

1 JUDGE SIPPEL: There is a studio audience.

2 THE WITNESS: Oh, yes, it is sounding more and more like  
3 a game show now. And in the studio audience, you probably hear  
4 them react. They laugh or something like that, right?

5 JUDGE SIPPEL: Yes, it's live. I think it's live --

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: -- watching it live.

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: But they have the people right there. It  
10 is not a scripted thing.

11 THE WITNESS: Uh-hum.

12 JUDGE SIPPEL: The family is right there, and they go  
13 "Oohs" and "ahs" and all that kind of stuff.

14 THE WITNESS: Right.

15 JUDGE SIPPEL: And the little kid sits there and he  
16 smiles when the father tells him, "We got \$10,000 for you falling  
17 on your head."

18 (Laughter.)

19 THE WITNESS: It sounds like child abuse.

20 (Laughter.)

21 JUDGE SIPPEL: It is.

22 THE WITNESS: It sounds to me like a game show.

23 JUDGE SIPPEL: All right. Okay. Okay.

24 Do you want anything on that?

25 BY MS. KANE:

1 Q Mr. Egan, I still have just one more question.

2 A I'm ready.

3 Q I believe you testified several times that you conducted  
4 a look-and-feel analysis, correct?

5 A Correct.

6 Q From looking at the look-and-feel, were you able to  
7 determine or is one able to determine the particular age  
8 demographic of that network, or just that it is targeting women  
9 versus men?

10 A I think you can. I believe so, yes. I think that the  
11 elements -- remember, we talked about subject matter or I talked  
12 about subject matter and look-and-feel making up target  
13 programming. So, I think that both of those elements at times are  
14 going to speak to age, you know. I think that look-and-feel,  
15 though, encompasses the talent on the screen, you know, the  
16 protagonists of the show, and so on and so forth. And so, I think  
17 it does indicate age, yes.

18 Q So, using pink versus blue would tell you that it is  
19 targeting a particular age demographic?

20 A Not that element. I don't think that the color part  
21 does, no.

22 Q What specific part of the look-and-feel would enable you  
23 to have a target?

24 A Again, the ages of the women that are portrayed. So, you  
25 know, if we are seeing women with families, you know, and they are

1 in that age, I think that is indicating age. You know, maybe the  
2 music used is more contemporary.

3 Q Did you review any music in --

4 A I'm sorry?

5 Q Did you review music associated with these two channels?

6 A Well, in some of these shows there's a lot of music on WE  
7 because they are about musical families, like Braxton Family  
8 Values, Mary Mary. And so, you know, you are hearing the music in  
9 the performance, and so forth.

10 So, I think different elements at different times, not  
11 all the time, but at different times they are going to speak to  
12 look-and-feel, speak to age.

13 MS. KANE: I think that is all from the Bureau, Your  
14 Honor.

15 JUDGE SIPPEL: Okay. I just want to ask one more follow-  
16 up question on what I was asking you before about America's  
17 Funniest Videos. I mean, the way you explained it back to me, you  
18 understand what is there, the gist of the show. Do you think that  
19 appeals more to women or men?

20 THE WITNESS: America's Funniest Home Videos?

21 JUDGE SIPPEL: Yes, Funniest Home Videos. You've got a  
22 little kid --

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: -- falling on his head. Everybody laughs.  
25 And, of course, the kid is right there with the family.

1 THE WITNESS: My opinion is that it is equally appealing  
2 or unappealing to each gender. I don't think there is a gender  
3 skew in the show we are talking about right now.

4 JUDGE SIPPEL: Okay. I mean, it is not like the Biggest  
5 Catch or something like that, about the fishing, which is  
6 clearly --

7 THE WITNESS: No.

8 JUDGE SIPPEL: Yes.

9 THE WITNESS: The Deadliest Catch.

10 JUDGE SIPPEL: The Deadliest Catch, yes.

11 But, okay. Well, that's your answer.

12 THE WITNESS: Right.

13 JUDGE SIPPEL: Is that it, then?

14 MR. CARNEY: Yes, Your Honor.

15 MR. SCHMIDT: Yes, Your Honor.

16 JUDGE SIPPEL: I hate to say this, but we are going to  
17 take a -- can we afford a 15-minute recess?

18 MR. COHEN: Oh, yes. Yes, yes. If we start in 15  
19 minutes, Your Honor, I think we are going to be well down --

20 JUDGE SIPPEL: Is your schedule okay?

21 MR. SPERLING: I appreciate the consideration, Your  
22 Honor. I think it will be fine.

23 JUDGE SIPPEL: Okay.

24 (Whereupon, the foregoing matter went off the record at  
25 11:16 a.m. and went back on the record at 11:30 a.m.)

1 JUDGE SIPPPEL: I was waiting Mr. Carney so I could tell  
2 you and Mr. Egan that after deliberating for 12 minutes, we decided  
3 we had no more questions.

4 (Laughter)

5 JUDGE SIPPPEL: So, have a nice trip back, sir.

6 MR. EGAN: Thank you.

7 MR. CARNEY: Thank you, Your Honor.

8 JUDGE SIPPPEL: Anybody have anything else?

9 MR. CARNEY: No, Your Honor.

10 MR. COHEN: We'll go get our next witness, Your Honor.

11 (Whereupon, the above-entitled matter went off the record  
12 at 11:30 a.m. and resumed at 11:32 a.m.)

13 JUDGE SIPPPEL: Sir, raise your right hand.

14 Whereupon,

15 LAWRENCE BLASIUS

16 was called as a witness by Counsel for the Defendant and having  
17 been first duly sworn, assumed the witness stand, was examined and  
18 testified as follows:

19 JUDGE SIPPPEL: As you can see how we're attired, you can  
20 take your jacket off.

21 MR. BLASIUS: Yes, would you mind?

22 JUDGE SIPPPEL: Not at all, sir. Not at all. If the  
23 Commission can't give us air conditioning, we're going to take our  
24 coats off.

25 MR. KROUP: Paul, did you have something?

1 MR. SCHMIDT: No.

2 MR. KROUP: Okay. Your Honor, as we've been doing, we're  
3 going to pass out some books.

4 JUDGE SIPPEL: Thank you, sir.

5 MR. KROUP: A little smaller than you're used to. I hope  
6 that's okay.

7 JUDGE SIPPEL: That's fine.

8 MR. KROUP: Okay.

9 MR. COHEN: Your Honor, if you don't mind, I'm just going  
10 to get rid, in front of the witness, all these books from Mr. Egan.

11 JUDGE SIPPEL: Sure.

12 MR. COHEN: You shouldn't be burdened with that.

13 MR. KROUP: Ready to go?

14 JUDGE SIPPEL: You may proceed counsel.

15 DIRECT EXAMINATION

16 BY MR. KROUP:

17 Q Mr. Blasius, could you please tell the Court what your  
18 assignment was in this litigation?

19 A Sure. My assignment was to, from an advertiser's  
20 perspective, take a look at both GSN and WE tv.

21 JUDGE SIPPEL: From an advertise -- oh, do you have --  
22 you're not a -- well, okay, you're here as an expert?

23 MR. BLASIUS: Correct.

24 JUDGE SIPPEL: Go ahead.

25 BY MR. KROUP:

1 Q And as an expert witness Mr. Blasius, your experience has  
2 been -- is your entire professional experience in the advertising  
3 world?

4 A Pretty much, yes.

5 Q Did you prepare written direct testimony in this case?

6 A I did.

7 Q Okay. And is it the document that appears at the cover  
8 of the book we've just handed out?

9 A Yes. I believe it is.

10 Q Labeled CV Exhibit 228?

11 A Yes.

12 (Whereupon, the above-referred to document was marked as  
13 CV Exhibit No. 228 for identification.)

14 MR. KROUP: Okay. If you turn to page 32 of your written  
15 direct testimony Mr. Blasius, that's your signature there on that  
16 page?

17 MR. BLASIUS: Yes, it is.

18 BY MR. KROUP:

19 Q And it's dated March 11, 2013, is that correct?

20 A Yes.

21 Q Have your opinions changed at all since you originally  
22 submitted this written direct testimony in March 2013?

23 A No, they have not.

24 MR. KROUP: Your Honor, at this time I'd like to move CV  
25 Exhibit 228 into evidence.

1 JUDGE SIPPEL: Any Objection?

2 MR. SPERLING: Your Honor, we're happy to have it come in  
3 subject to our ability to continue to assert our objections in the  
4 post-trial briefing, as we've agreed with respect to the other  
5 experts.

6 JUDGE SIPPEL: With that qualification, we'll receive CV  
7 Exhibit 228 in evidence.

8 (Whereupon, the above-referred to document was received  
9 into evidence as CV Exhibit No. 228.)

10 JUDGE SIPPEL: You may proceed.

11 MR. KROUP: So, Mr. Blasius, before we start to talk  
12 about the substance of your opinions, why don't you give us a sense  
13 of your professional background.

14 MR. BLASIUS: Sure. The first 30 years of my career in  
15 advertising, I was employed by several major agencies and one major  
16 client. The last 28 of the 30 years, I spent as a national  
17 broadcast buyer of national television.

18 So, for instance cable television, network television,  
19 and syndication.

20 JUDGE SIPPEL: And when you say a buyer, you mean buying  
21 programs?

22 MR. BLASIUS: Buying commercials on programs.

23 JUDGE SIPPEL: Okay.

24 MR. KROUP: So, you said you worked from some agencies,  
25 Mr. Blasius. Maybe you could just run through the names of those

1 agencies for us and tell us, you know, their size and what they  
2 did.

3 MR. BLASIUS: Sure. I started in an agency named Ted  
4 Bates, which was at the time one of the largest agencies in the  
5 business.

6 JUDGE SIPPEL: Was that on Madison Avenue?

7 MR. BLASIUS: No, it was actually on Broadway. 1515  
8 Broadway.

9 JUDGE SIPPEL: Is that just as good a venue as Madison  
10 Avenue?

11 MR. BLASIUS: They got -- probably got a better deal on  
12 the office space.

13 (Laughter)

14 JUDGE SIPPEL: It all comes down to money, doesn't it?  
15 Go ahead, I'm sorry.

16 MR. BLASIUS: I started as a media researcher. I spent  
17 about a year and a half in media research supporting the various  
18 media groups at Ted Bates.

19 From there I went to a company called BBD&O. I started  
20 as a media planner. And then within six months, I was switched  
21 into the national broadcast buying unit.

22 And I spent roughly eight or nine years as a buyer at  
23 BBD&O. From there, I moved to a company called Busch Media Group,  
24 which was the in-house media group for Anheuser Busch.

25 We were based in New York, big client out in St. Louis.

1 I spent roughly four years there. And from there I went to a  
2 company called Foote, Cone & Belding. Again, one of the largest  
3 agencies in the business.

4 They later became True North. And my division was called  
5 TN Media. In 2001 a company called Interpublic, one of the big  
6 four communications companies bought Truth North.

7 And it was at that point that it was decided that myself  
8 and a corollary from one of the Interpublic units would found what  
9 I would describe as a sort of uber negotiating unit -- uber  
10 negotiation unit.

11 And what we did is, we leveraged all of the billings for  
12 Interpublic in the national television marketplace.

13 JUDGE SIPPEL: What does that mean, leveraged?

14 MR. BLASIUS: Well, we sort of had -- the thought being,  
15 you know, the more clout you have, the better deals you would get  
16 in the marketplace.

17 JUDGE SIPPEL: What do you mean by clout?

18 MR. BLASIUS: Size. You know, concentration of billings.

19 MR. KROUP: So, just to respond, if you were done, Your  
20 Honor, just to sort of respond to the Judge's question, Mr.  
21 Blasius.

22 MR. BLASIUS: Sure.

23 MR. KROUP: It's my understanding that Interpublic  
24 controlled actually many different advertising firms, is that  
25 correct?

1 MR. BLASIUS: Yes.

2 BY MR. KROUP:

3 Q And so in your role at Magna Global, were you negotiating  
4 on behalf of all of those advertising firms or the majority of them  
5 in purchasing ad time?

6 A Yes. There were primarily two divisions of Interpublic  
7 that we focused on. One of them was Universal McCann, one of the  
8 major brands in the media business, as well as Initiative Media.

9 Q Now, Mr. Blasius, throughout these stages in your career  
10 that you've described, were you involved in the purchase of  
11 advertising time on national cable networks?

12 A Yes. Very much so.

13 Q Could you just for the record and for the Court's  
14 benefit, give some example of some of the clients you worked for  
15 over the years in purchasing national advertising time?

16 A Sure. Companies like Matel, companies like Frito-Lay,  
17 Pepsi Cola. When I got to Interpublic, I actually worked on the  
18 Coca-Cola business, so I saw both sides of the cola wars.

19 Mazda Motors, Levi Strauss, Colgate Palmolive, you know,  
20 brands like that.

21 JUDGE SIPPEL: And I'll just -- the cola wars would make  
22 a good program.

23 (Laughter)

24 JUDGE SIPPEL: There's enough material there.

25 MR. BLASIUS: It could be. There's a lot of stories, you

1 know, in that business.

2 MR. KROUP: And so, understanding Mr. Blasius, that you  
3 might not be able to do it with much precision, could you ballpark  
4 for us the amount of money you have been responsible for spending  
5 on behalf of your clients over the years on national advertising?

6 MR. BLASIUS: Sure. I mean, I never kept a running total  
7 as I was, you know, knocking down business. But it was probably in  
8 the area of tens of billions of dollars.

9 BY MR. KROUP:

10 Q Mr. Blasius, when did you leave Magna Global, which was  
11 the last position you described?

12 A I left Magna in July 2008.

13 Q And what have you been doing professionally since then?

14 A I formed an LLC, Blasius Media and Marketing, in fact  
15 it's called. And since then I've been working on a variety of  
16 mostly supply-side projects.

17 This is now my second expert witness experience, in fact.

18 Q Okay.

19 JUDGE SIPPEL: Where was the first one?

20 MR. BLASIUS: I was an expert witness in a rights fee  
21 arbitration between the New Jersey Nets and the YES Network.

22 JUDGE SIPPEL: Between the New Jersey Nets and the which  
23 network?

24 MR. BLASIUS: The S Network.

25 JUDGE SIPPEL: Oh, the S Network. We all know what that

1 is.

2 MR. BLASIUS: Yes, the local sports network.

3 JUDGE SIPPEL: Yes. Yes. Did you ever get approached  
4 for consulting Mad Men?

5 (Laughter)

6 JUDGE SIPPEL: With your background? I mean it sounds --  
7 Well they must -- somebody must have consulted with that.

8 MR. BLASIUS: Yes. I'm sure. I was, you know, I would  
9 have been the guy who I guess was the network television guy there.  
10 The guy with the glasses, the heavy set guy with the glasses in  
11 that show.

12 (Laughter)

13 MR. BLASIUS: Yes. That's sort of the closest character  
14 to what I did during the course of my career.

15 JUDGE SIPPEL: I got it. I think I know who you mean.

16 MR. BLASIUS: Um-hum.

17 JUDGE SIPPEL: But you think it was -- it caught the  
18 flavor of what the game is all about?

19 MR. BLASIUS: Absolutely. In fact, you know, it's  
20 remarkable how, I mean, you know, 20 or 30 years later, the sort of  
21 story lines that they got into were very much like the experience  
22 I had in advertising.

23 Scarily enough.

24 JUDGE SIPPEL: So do you think it's a documentary, or is  
25 it --

1 (Laughter)

2 MR. BLASIUS: Well I mean, -- yes. And in some ways, it  
3 was fact-based.

4 JUDGE SIPPEL: It was fact based? Okay.

5 MR. BLASIUS: Yes. You know, in a lot of ways, sure.

6 JUDGE SIPPEL: Okay. Well, that's not what we're here  
7 for. But thank you very much.

8 MR. KROUP: So, Mr. Blasius, let's move into talking  
9 about the opinions that you're offering here.

10 MR. BLASIUS: Sure.

11 BY MR. KROUP:

12 Q In doing the work that you did in this case, how did you  
13 approach it? What did you look at, and what was your goal?

14 A Well, I tried to approach it as I would as a national  
15 television buyer. So, the kinds of analysis I did were very much  
16 like I would have done if I were buying television time.

17 Q And in terms of buying television time, why don't you  
18 describe for the Court's benefit, you know, how that works in  
19 practice when you're an advertising buyer. What is your  
20 interaction with the client? How does it go?

21 A Sure. Well, you know, in the business, every product,  
22 every brand has a target audience. Be it women 18 to 49, be it,  
23 you know, viewers 12 to 34. You know, men 50 plus, et cetera, et  
24 cetera.

25 And what you try to do in buying national television, is

1 you try to match the profile of the network you're doing business  
2 with, or the networks, more to the point, you're doing business  
3 with, with the target audience of the product you're looking to  
4 advertise.

5 Q And how do you determine as an advertising buyer, whether  
6 the network you're doing business with matches the profile of the  
7 target audience of the brand you're looking to advertise?

8 A Well, there are a variety of sort of Nielsen-based tools  
9 that we use to do that.

10 Q So, could you describe at a high level what those tools  
11 are for the Court?

12 A Well, things like -- I mean, the currency of the  
13 television business is ratings. But also things like median age.  
14 Things like audience concentration.

15 Q Okay. Let's talk about the first one of the things you  
16 mentioned, Nielsen ratings. And if you could turn to what's been  
17 marked as CV Exhibit 762 in the small book.

18 A Sure.

19 (Whereupon, the above-referred to document was marked as  
20 CV Exhibit No. 762 for identification.)

21 MR. KROUP: It should be the first document or the second  
22 document after Mr. Blasius' opinion, Your Honor.

23 JUDGE SIPPEL: Um-hum. I have it.

24 MR. KROUP: Okay. And just for the record, CV Exhibit  
25 762 is a table that we've taken from your written direct testimony

1 --

2 MR. BLASIUS: Yes.

3 MR. KROUP: That appears at page 13 of your written  
4 direct testimony. So, Mr. Blasius, could you please describe for  
5 the Court, the time periods and the demographic ratings that are  
6 being shown here on CV Exhibit 762?

7 MR. BLASIUS: Sure. On the website, I looked at two  
8 different time frames, 6P to 1A, as well as the 24 hour, 6A to 6A.

9 JUDGE SIPPEL: Is that a.m. to a.m.?

10 MR. BLASIUS: Well, it's I guess really 5:59, I guess.  
11 Just, you know, or it's 6A to 5:59. It's just a 24 hour number.

12 JUDGE SIPPEL: A 24 hour number, okay. 6:00 to 6:00.

13 MR. BLASIUS: Right. Okay. And this was all during the  
14 course of broadcast year 2009/2010. And if you --

15 JUDGE SIPPEL: Is that a calendar year or is that a --

16 MR. BLASIUS: No. It's actually what we call a broadcast  
17 year.

18 JUDGE SIPPEL: Well, what months does this start in?

19 MR. BLASIUS: It starts in late September and runs  
20 through the following September.

21 JUDGE SIPPEL: September to September.

22 MR. BLASIUS: Right.

23 JUDGE SIPPEL: Okay. That's when the -- okay. Well,  
24 that's when the good stuff comes on, right?

25 MR. BLASIUS: Well, that's when, you know, that would be

1 when the broadcast networks preview most of their new shows for the  
2 year.

3 JUDGE SIPPPEL: Uh-huh, uh-huh.

4 MR. BLASIUS: Yes.

5 MR. KROUP: And what about at the top of this table, Mr.  
6 Blasius, what demographic information did you call out here in your  
7 analysis?

8 MR. BLASIUS: Well, in this particular chart I've  
9 detailed household ratings, women 18 to 49, as well as women 25 to  
10 54.

11 BY MR. KROUP:

12 Q Why did you focus on women 18 to 49 and women 25 to 54 in  
13 your analysis here?

14 A Well, in the national television business, you know, my  
15 guess would be, and I don't have an exact number for it, but women  
16 18 to 49 and women 25 to 54 probably represents at least 50 percent  
17 of the business being done in the marketplace.

18 Q Is it also your understanding based on your review of  
19 some of the materials in this case that GSN claims that it's  
20 competing against WE tv in those two demographics?

21 A Yes. That's my understanding.

22 Q Let's walk through this chart a little bit, Mr. Blasius.

23 A Yes.

24 Q Could you describe for the Court the ratings that you're  
25 showing for GSN and WE tv with respect to just for example, the

1 women 25 to 54 demographic?

2 A Sure. If you go to the very last column on the right,  
3 under RTG, the first line is again 6P to 1A, Monday through Sunday.  
4 And in this case, on average GSN delivered a rating against  
5 women 25 to 54.

6 Next cluster down, WE tv on the other hand delivered at  
7 rating within the women 25 to 54 audience.

8 Q And if we move further down the page, what relationship  
9 do we see in the total day ratings that you've calculated?

10 A Well, it's similarly, my apologies.

11 Q No worries.

12 A Similarly, in the case of GSN, it delivered on a 24 hour  
13 basis a And in the case of WE, it delivered a

14 Q So, in your experience purchasing national television  
15 time on behalf of advertisers Mr. Blasius, what is the significance  
16 of the ratings differentials we've just looked at in the women 25  
17 to 54 demographic?

18 A In terms of?

19 Q What -- would they be significant, the difference between  
20 WE TV's ratings and GSN's ratings?

21 A On the surface of it, yes. Very much so. And in this  
22 case, you're looking at a rating on WE which is  
of GSN in the 6P to 1A time frame.

24 Q And would the ratings in the total day time frame also be  
25 regarded as significant in your experience?

1 A Yes.

2 Q And, for the Court's benefit, why do national advertising  
3 buyers look at Nielsen ratings? Why would you look at this kind of  
4 data when you buy?

5 A Well again, Nielsen ratings are the currency for the  
6 business we do. And what you're looking to do is maximize in terms  
7 of both concentration, which I know we'll talk about in a bit.

8 But also, the absolute number of people involved  
9 audience-wise. So, for instance, if you go across to the line  
10 under women 25 to 54, which has the 000, the rating translates  
11 to in that demographic, people on average being delivered in  
12 the case of GSN.

13 Whereas in the case of WE tv, you're talking about  
14 people being delivered per spot, on average.

15 Q And would that difference in delivery be considered  
16 significant from your perspective?

17 A Absolutely.

18 Q So, staying on this table, Mr. Blasius, you had also  
19 said, mentioned a couple of times, what you referred to as audience  
20 concentration.

21 A Yes.

22 Q Can you describe for the Court what that means?

23 A When you buy a spot, you're essentially getting the  
24 entire run of, you know, audience-wise of the commercial. So, you  
25 know, a given spot reaches anywhere people two plus, and it then

1 becomes broken down into specific demographics.

2 So what you're looking to do when you buy a spot is to  
3 maximize the concentration of the audience in your demographic  
4 which matches the profile of the product you're looking to  
5 advertise.

6 Q So, could you --

7 JUDGE SIPPEL: Well, you say you're buying a spot.

8 MR. BLASIUS: Right.

9 JUDGE SIPPEL: Is that buying a specific advertisement?

10 MR. BLASIUS: Yes. It's a 30 second commercial, a 60  
11 second commercial, that kind of thing.

12 MR. KROUP: So, Mr. Blasius, could you maybe give us an  
13 example by way of speaking about women 25 to 54, the kind of  
14 audience concentration metric you're talking about?

15 MR. BLASIUS: Well, in this particular chart, I'm looking  
16 at what's called viewers per viewing household.

17 BY MR. KROUP:

18 Q So, pause there for a second.

19 A Yes.

20 Q Viewers per viewing household. Is that the VPVH column  
21 on this chart?

22 A Yes, it is.

23 Q So VPVH is an acronym we've seen in a few documents in  
24 this case.

25 A Yes.

1 Q But I'm not sure the Court has heard testimony about it.  
2 Could you describe what VPVH is?

3 A Well, the simplest way to describe it is, if there are  
4 ten households that your commercial is being fed to, if there were,  
5 in those households, five women 25 to 54, the corresponding VPVH in  
6 that case would be a .5.

7 So in the case of GSN as an example, in those ten  
8 households, they would deliver on average women 25 to 54.  
9 Whereas in the WE delivery, you're talking about a number close to  
10 in my original example.

11 In this case, in the 6P to 1A time frame.

12 JUDGE SIPPEL: And those are women in the household that  
13 fit that demographic?

14 MR. BLASIUS: Correct. Sorry, let me make sure I  
15 understand the question by giving you this answer. Which is that  
16 you know, if there are ten different households that are seeing the  
17 commercial, the persons actually in the audience --

18 JUDGE SIPPEL: Household meaning what, just a house with  
19 people in it?

20 MR. BLASIUS: Yes. Just a house with TVs in it,  
21 essentially.

22 JUDGE SIPPEL: Okay.

23 MR. BLASIUS: Yes. But if in those ten households there  
24 are five women 25 to 54, again, that corresponds to a VPVH of .5.

25 JUDGE SIPPEL: Well, how would you know that there are

1 five women?

2 MR. BLASIUS: Well, that's all measured by Nielsen.

3 JUDGE SIPPEL: They can measure how many people in a  
4 house are that age group?

5 MR. BLASIUS: Correct.

6 JUDGE SIPPEL: How can they do that?

7 MR. BLASIUS: Well, they do it with these days, with  
8 something that's called a peplemeter.

9 JUDGE SIPPEL: Yes.

10 MR. BLASIUS: I might be a little bit beyond my area of  
11 expertise if I get into the specifics of Nielsen Media Research.

12 JUDGE SIPPEL: No. Go on.

13 MR. BLASIUS: But, it's essentially a peplemeter. And  
14 every time you're in front of the television, because you've agreed  
15 to participate in the survey, every time you actually are in the  
16 room watching television, you have to hit a button.

17 It's sort of like a remote control button.

18 JUDGE SIPPEL: Yes.

19 MR. BLASIUS: To let the survey know that you're actually  
20 participating in the room for that particular show.

21 JUDGE SIPPEL: But do they know that -- they know what  
22 your household consists of in terms of the demo?

23 MR. BLASIUS: Yes.

24 JUDGE SIPPEL: So they called you ahead of time and  
25 they've --

1 MR. BLASIVS: Correct.

2 JUDGE SIPPET: Somehow they've convinced you to  
3 participate so they know exactly what they're dealing with.

4 MR. BLASIVS: Correct.

5 JUDGE SIPPET: Okay.

6 MR. BLASIVS: So, and you're marginally compensated for  
7 participating in the survey.

8 JUDGE SIPPET: All right. Yes, I would expect so, okay.

9 MR. KROUP: So, just to make sure the record is clear on  
10 this, Mr. Blasius, Nielsen is tracking the number of households  
11 that tune into any given program?

12 MR. BLASIVS: Correct.

13 BY MR. KROUP:

14 Q Irregardless of who in that household is watching, right?

15 A Correct.

16 Q The other thing -- another thing that Nielsen tracks is  
17 the number of people in a particular demographic that are tuned  
18 into a particular program, right?

19 A Correct.

20 Q And so, the VPVH measure you've just described is  
21 calculating the percentage of the audience in total households as  
22 it relates to the particular demographic you're concerned about?

23 A That's actually a very good way of describing it.

24 Q Is VPVH in your experience something that advertising  
25 buyers pay attention to and care about when they're advertising?

1 A Absolutely.

2 Q And why do advertising buyers concern themselves with a  
3 metric like VPVH?

4 A Because it's a measure of the audience concentration of  
5 the program you're purchasing advertising in.

6 Q And why do advertising buyers concern themselves with  
7 audience concentration?

8 A Because again, what you're looking to do when you buy a  
9 television spot is deliver the highest concentration of your actual  
10 target audience for a specific product.

11 Q So, there are certainly, looking at this table, there  
12 would certainly for example, be viewers of WE tv that are outside  
13 the women 25 to 54 demographic?

14 A Oh, absolutely.

15 Q I mean, in your experience as an advertising buyer, would  
16 those viewers be considered just a bonus or an extra? Why would  
17 you care about capturing them or not capturing them?

18 A Well, the predominant view on that would be that the  
19 viewers outside of your target audience would essentially be  
20 wasted. You know, the message essentially would be falling on deaf  
21 ears.

22 So, if I have a certain -- I'll use the example of video  
23 games. You know, video games and you know, I'm not -- video games  
24 would probably have a target audience of viewers 12 to 34.

25 So if I'm 49, 50 years old, I mean, I'm not really -- I

1 don't really care that much about video games.

2 So what you want to do in terms of reaching the consumer  
3 for your product, is maximize the amount as a percentage of the  
4 total audience for that particular network or that particular  
5 program.

6 You want to be sure that in the case of the video games,  
7 you're delivering the highest concentration of viewers 12 to 34.

8 JUDGE SIPPPEL: But don't you also have to relate the  
9 product to that? I mean, if you've got a demo of was it -- I'm  
10 picking up the lingo now.

11 (Laughter)

12 JUDGE SIPPPEL: Of 12 to 24 for video games, --

13 MR. BLASIUS: Yes.

14 JUDGE SIPPPEL: You're not going to trying to -- you're  
15 not going to be trying to sell them for a charcoal burner or  
16 something like that. Right, you want to --

17 MR. BLASIUS: Well, exactly.

18 JUDGE SIPPPEL: So, you have to access the product and in  
19 conjunction with all these other things?

20 MR. BLASIUS: Correct. So, you're looking to find those  
21 programs, those networks which actually deliver, as opposed to the  
22 people -- as opposed to the networks and programs which would be  
23 appropriate for the charcoal burner.

24 You're looking to find programs and networks which in  
25 fact would be appropriate for the video games.

1 MR. KROUP: Mr. Blasius, before we leave this chart, the  
2 difference in audience concentration as described by the VPVH  
3 numbers you've seen here, --

4 MR. BLASIUS: Um-hum.

5 BY MR. KROUP:

6 Q Comparing WE tv to GSN in the women 25 to 54 demographic,  
7 would those be considered significant from an advertiser's  
8 perspective?

9 A Based --

10 MR. SPERLING: Your Honor, I'm going to object before the  
11 witness answers. All the VPVH data appears in the chart. And the  
12 witness expresses no opinion, I believe, in his direct testimony,  
13 his written direct testimony about the significance.

14 This would be an entirely new opinion that we didn't have  
15 the opportunity to hear about or to cross-examine the witness about  
16 it at his deposition.

17 JUDGE SIPPEL: The area --

18 MR. KROUP: Your Honor, --

19 JUDGE SIPPEL: Yes, go ahead.

20 MR. KROUP: In response, and I'll need one second to look  
21 at it. But, this certainly appears in paragraph 30 and 31 of Mr.  
22 Blasius's written direct testimony. He concerns himself with  
23 audience concentration metrics including VPVH.

24 And this is certainly fair ground for testimony.

25 MR. SPERLING: Your Honor, again, the data appears. I

1 don't believe that there's an expression of an opinion about its  
2 significant.

3 If I'm mistaken, I'd be happy to have Mr. Kroup point me  
4 to it. And if I'm mistaken, I'll withdraw the objection.

5 MR. KROUP: If you'd like to take a moment to look at  
6 paragraphs 30 and 31, Mr. Sperling. Okay, I'm starting at the  
7 sentence that says moreover.

8 MR. SPERLING: I see, yes.

9 MR. KROUP: Moreover, when comparing the two networks on  
10 a VPVH basis, WE tv consistently delivers more than twice the  
11 concentration of women 18 to 49 and women 25 to 54 viewers, whether  
12 during primetime or total day.

13 Would you like me to read on?

14 MR. SPERLING: I think I would because, Your Honor,  
15 that's an expression of quantity. Mr. Kroup asked a different  
16 question, which was the witness' opinion about the significance of  
17 that quantity.

18 So, unless there's an expression of opinion about that in  
19 his written direct testimony, I don't think it's appropriate for  
20 him to offer such an opinion for the very first time now.

21 MR. KROUP: Well, Your Honor, if I may just -- if I may  
22 be heard again?

23 JUDGE SIPPEL: Well, he's saying that the opinion, that  
24 opinion was not offered in the direct testimony. And you should  
25 not be permitted to get the opinion out now on live testimony.

1 MR. KROUP: I understand that, Your Honor. I think that  
2 that reading of Mr. Blasius' direct testimony is incredibly narrow.  
3 I'd like to call Mr. Sperling and the Court's attention to another  
4 paragraph.

5 JUDGE SIPPEL: Go ahead.

6 MR. KROUP: In his opinion, paragraph 31, in which Mr.  
7 Blasius describes GSN's difficulty in delivering a high  
8 concentration of viewers in the target demographics on a VPVH  
9 basis. And talks about the significance of that from a pricing  
10 perspective.

11 JUDGE SIPPEL: Wait a minute, where is he -- where does  
12 he talk about the significance of it?

13 MR. KROUP: So, this is paragraph 31.

14 JUDGE SIPPEL: Yes.

15 MR. KROUP: GSN's difficulty in delivering a high  
16 concentration of two of the more important demographics to  
17 advertisers is significant because in order to compete effectively  
18 on a cost per thousand basis with other networks better able to  
19 deliver those demographics, it must substantially discount the  
20 pricing of its inventory.

21 And he goes on to do some media math as we call it.

22 JUDGE SIPPEL: Well, wait a minute, let me get to Mr.  
23 Sperling. This sounds like he's getting into significance, the  
24 characteristics of the significance there.

25 MR. SPERLING: Your Honor, I just need to make two points

1 about that. The first is, there's no reference there to viewers  
2 per viewing household, which is the subject of the opinion he was  
3 asked to offer now.

4 He also, and if you would prefer that I address this on  
5 cross, I'm happy to. But, he goes onto a condition the view that  
6 he does express here about concentration on a set of assumptions,  
7 which have not been articulated that now is a basis for his  
8 conclusion.

9 JUDGE SIPPEL: Well, I think that's something you'd want  
10 to either develop on cross-examine, or you can point all this out  
11 in findings, and you know, if you want to take the position that  
12 the witness really hasn't testified as an expert to deliver the  
13 goods.

14 MR. SPERLING: I'll address it on cross, Your Honor.  
15 That's fine.

16 JUDGE SIPPEL: Okay. But I think you do have a point.  
17 Why don't you ask your witness if he understands what the  
18 significance of data is in the statistical sense, as opposed to  
19 being in the colloquial sense.

20 MR. KROUP: I will pose that question, Your Honor. I can  
21 -- if I can make a proffer. Mr. Blasius is really only here to  
22 testify about the significance of this data to an advertising  
23 buyer, someone who has an industry experience.

24 He was asked in his deposition whether he viewed some of  
25 these numbers as statistically significantly, say to an economist.

1 JUDGE SIPPET: Yes.

2 MR. KROUP: And he very candidly then said he wasn't  
3 offering that opinion. So --

4 JUDGE SIPPET: So, significance, if it's coming from Mr.  
5 Blasius, is not that I mean it in the economic sense. It's in the  
6 trade sense. Or in the genre of advertising. Let's say it that  
7 way.

8 (Laughter)

9 MR. KROUP: That's correct, Your Honor. I mean, here --

10 JUDGE SIPPET: I hear you. I hear you.

11 MR. KROUP: Okay.

12 JUDGE SIPPET: Go ahead. Go back to your -- yes, go  
13 ahead. I'm going to overrule the objection.

14 MR. KROUP: Okay. So, Mr. Blasius, if we could go back  
15 to what my original question.

16 MR. BLASIUS: Sure.

17 MR. KROUP: What, from an advertising perspective, or  
18 would the differences in VPVH we just looked at, between GSN and WE  
19 tv, would they be meaningful to an advertiser who is looking to  
20 purchase time on national network television?

21 MR. BLASIUS: Oh, absolutely. Absolutely.

22 MR. KROUP: Okay. And why would they be meaningful?

23 MR. BLASIUS: Well, in the case of the women 25 to 54  
24 again, when you compare the VPVH to the what this  
25 underscores is the fact that on the concentration basis, audience

1 concentration basis, you're talking about more then double the  
2 concentration in that cell on WE versus GSN.

3 JUDGE SIPPEL: Wait a minute. Where are you picking  
4 those number from?

5 MR. BLASIUS: It's under women 25 to 54 on that page.  
6 Right under the VPVH numbers.

7 JUDGE SIPPEL: Right,

8 MR. BLASIUS: So yes. WE TV has

9 JUDGE SIPPEL: Oh, I see.

10 MR. BLASIUS: Whereas GSN has a

11 JUDGE SIPPEL: I see it.

12 MR. BLASIUS: Okay.

13 MR. KROUP: Before we -- before we move on from CV 762,  
14 I'd like to offer it into evidence, Your Honor.

15 JUDGE SIPPEL: Objection?

16 MR. SPERLING: Your Honor, no objection subject just to  
17 our confirmation that is in fact identical to Table One that  
18 appears in Mr. Blasius' written direct testimony, which it appears  
19 to do. But we'd just like a chance to confirm it.

20 JUDGE SIPPEL: Okay. Subject to that qualification, CV  
21 Exhibit 228 is received.

22 MR. KROUP: I was actually moving CV Exhibit 762, Your  
23 Honor, which is the table.

24 JUDGE SIPPEL: Correction. Correct that. 762 is  
25 received.

1           (Whereupon, the above-referred to document was received  
2 into evidence as CV Exhibit No. 762.)

3           JUDGE SIPPEL: I keep thinking this is all one Exhibit.  
4 But it's not.

5           MR. KROUP: Okay. Mr. Blasius, in connection with your  
6 work in this case, did you look at other measures of what you've  
7 called audience concentration? Which is the percentage of the  
8 target demographic as a portion of the whole audience of this?

9           MR. BLASIUS: Yes, I do.

10          MR. KROUP: Okay. You can turn to what's been marked as  
11 CV Exhibit 763 in the small book.

12          MR. BLASIUS: Yes.

13          (Whereupon, the above-referred to document was marked as  
14 CV Exhibit No. 763 for identification.)

15          MR. KROUP: And just for the record, CV Exhibit 763 is a  
16 call out of Table Three in Mr. Blasius' written direct testimony.

17          So, Mr. Blasius, with reference to CV Exhibit 763, could  
18 you please describe the other audience composition work you've done  
19 in connection --

20          MR. BLASIUS: Sure.

21          BY MR. KROUP:

22          Q       --- with comparing WE tv and GSN from an advertiser's  
23 perspective?

24          A       Sure. This particular chart references persons in U.S.  
25 TV households. And compares GSN's delivery as well as WE tv's

1 delivery against the -- what's called the composition of persons in  
2 U.S. TV households.

3 If you go across the top of the page, and people two  
4 plus, and TV households represents, at this point in time, in  
5 2009/2010, roughly 292 million people two plus.

6 Continuing across the page left to right, of that total  
7 of 292,040, women 18 to 49 represented 66,000,000, or 80,000 of  
8 that total. And women 25 to 54 represented 62,850,000.

9 Now the percentages below that correlate to the  
10 percentage of women 18 to 49 as well as women 25 to 54 in U.S. TV  
11 households.

12 So in the case of women 18 to 49, women 18 to 49 make up  
13 roughly 22 or 23 percent. And in the case of women 25 to 54, they  
14 make up roughly 21 to 22 percent.

15 Q So --

16 A So -- sorry.

17 Q Well, you may have been anticipating my next question,  
18 Mr. Blasius. With reference to the women 25 to 54 demographics,  
19 specifically, could you describe the work you did on audience  
20 concentration shown on this chart as to GSN and WE tv?

21 A Right. Again, using the same, you know 6P to 1A, as well  
22 as 6A to 6A for rates, if you take the GSN line going across, on  
23 average a spot on GSN would deliver people two plus.

24 And of that total of , on average it would be  
25 women 18 to 49. And on average women 25 to 54.

1           That represents           percent of their total delivery  
2 people two plus, in the case of women 18 to 49. And           percent  
3 women 25 to 54 of people two plus.

4       Q     So, now, what about WE? And you can even just stay with  
5 women 25 to 54 as an example if you want --

6       A     Sure, sure.

7       Q     --- Mr. Blasius.

8       A     In the case of WE, you're talking about, you know their  
9 average of people two plus, was           Of that total  
10           were women 25 to 54 on average.

11           Which correlates to roughly a           percent percentage  
12 of the total audience.

13       Q     So, Mr. Blasius, again, staying with women 25 to 54.

14       A     Yes.

15       Q     With respect to the population of persons in total U.S.  
16 TV households and in the -- of women 25 to 54, and then the two  
17 demographics you just described for WE TV and GSN, could you  
18 explain the significance or meaningfulness of that material to an  
19 advertiser?

20       A     Sure. What this analysis tells you is the concentration  
21 of -- in the case of women 25 to 54, it tells you what the  
22 concentration is of women 25 to 54 on both GSN and WE.

23           And in this case, what you do to sort of figure out the  
24 real concentration is to look at the two correlating percentages on  
25 women 25 to 54. In the case of GSN, you're talking about

1 percent. In the case of WE, you're talking about percent.

2 You index those percentages against the index of -- what  
3 you see them against the percentage of that demo of persons in U.S.  
4 TV households in total.

5 And you come up with indices which indicate in the case  
6 of GSN that in women 25 to 54, GSN underdelivers or under indexes,  
7 let's say, versus the population.

8 While in the case of WE TV, they actually over index  
9 quite significantly versus the skew of the population.

10 Q So, just to be clear on the vocabulary you're using, Mr.  
11 Blasius.

12 A Sure.

13 Q Would an index that exactly matched the percentage of  
14 viewers in the target demographic in the U.S. population, would  
15 that be a 100 index?

16 A That top line, yes. That would be the 100 index.

17 Q Okay. And so --

18 A That essentially flat across.

19 Q Looking at the row for example for GSN that says index  
20 versus population in the 6P to 1A --

21 A Yes.

22 Q --- time period for women 25 to 54, does the number  
23 describe under indexing?

24 A Yes, it does.

25 Q And the corresponding row for WE tv of a that

1 describes in turn over indexing?

2 A Yes. Yes, it does.

3 Q How, if at all, would the audience composition and  
4 indexing information you've just described, as comparing WE tv and  
5 GSN, be meaningful to an advertiser seeking to make a buy?

6 A Well, again, if you're looking for your product to  
7 deliver a women 25 to 54 audience, what you're looking to do, or  
8 what you try to do is find vehicles, networks, programs, which in  
9 fact over index versus the population.

10 Because what you're doing is delivering a higher  
11 concentration of those viewers you're looking to reach with your  
12 commercial.

13 JUDGE SIPPEL: In other words, more is better?

14 MR. BLASIUS: In this case, more is better. Yes.

15 MR. KROUP: Your Honor, at this time, I'd like to move CV  
16 Exhibit 763 into evidence.

17 JUDGE SIPPEL: Is there any objection?

18 MR. SPERLING: Your Honor, our position is the same. No  
19 objection subject simply to our confirmation that the table that's  
20 presented here is identical to the table as it appears in his  
21 written direct testimony.

22 JUDGE SIPPEL: Subject to that condition, Exhibit -- CV  
23 Exhibit 763 is received.

24 (Whereupon, the above-referred to document was received  
25 into evidence as CV Exhibit No. 763.)

1           MR. KROUP: Mr. Blasius, did you perform further work in  
2 your analysis not related to indexing in the population of viewers  
3 of GSN and WE tv?

4           MR. BLASIUS: Yes, I did.

5           MR. KROUP: And if you turn to tab -- the tab labeled CV  
6 Exhibit 764, --

7           MR. BLASIUS: Um-hum.

8           MR. KROUP: Is your analysis, or the top line of your  
9 analysis set forth on this Exhibit, which is taken from -- let me  
10 look though my notes, Table Four, I believe of your written direct  
11 testimony?

12          MR. BLASIUS: Yes, it is.

13          (Whereupon, the above-referred to document was marked as  
14 CV Exhibit No. 764 for identification.)

15          BY MR. KROUP:

16          Q     So, why don't you describe for the Court, the work that  
17 is being illustrated here on CV Exhibit 764.

18          A     Well, just sort of to pick up, you know, where I left off  
19 on the women 18 to 49 and women 25 to 54 chart, I then looked at a  
20 variety of demos, women 18 plus, women 18 to 24, women 18 to 34, 18  
21 to 49, et cetera, et cetera. All the way down the line to women 65  
22 plus.

23                And I did the same analysis comparing the average  
24 delivery for both GSN and WE versus the population, just as I had  
25 done on the previous Exhibit.

1 Q Well, why don't we take as an example, because we've been  
2 using it, women 25 to 54.

3 A Okay.

4 Q Could you describe the index numbers here for women 25 to  
5 54 as they relate to GSN and WE tv?

6 A Yes. And here again, you're talking about the difference  
7 between GSN at an index of and an index of on WE tv versus  
8 the population.

9 Q Now looking at another demographic on this table, let's  
10 go all the way to the bottom. Let's go all the way to the bottom  
11 --

12 A Sure.

13 Q --- and look at women 65 plus.

14 A Yes.

15 Q What index numbers are being shown here as they relate to  
16 WE TV and GSN?

17 A Well in the case of GSN, it's a substantial over  
18 indexing. The number here is versus the population. And in  
19 the case of WE tv, it's a .

20 Q So, when you say a substantial over indexing, Mr.  
21 Blasius, of who would that translate into delivery above the  
22 U.S. median percentage?

23 A Well, what that underscores is the fact that in the case  
24 of GSN, it over indexes substantially in terms of the concentration  
25 of its audience delivered against that demo cell women 65 plus.

1 Q does the just represent that GSN actually delivers  
2 times as many women in that demographic as it would if it only  
3 delivered the national average?

4 A Yes, it does. As a percentage of, yes, U.S. TV  
5 households.

6 Q So, Mr. Blasius, with respect to each of these  
7 demographics, you have also set forth a rank. Could you describe  
8 the work you performed and the analysis you conducted to arrive at  
9 the rank numbers --

10 A Yes.

11 Q --- that are set forth? And maybe if we could go back to  
12 women 25 to 54, we could start there. And you could describe the  
13 ranks of GSN and WE tv.

14 A Sure. What I did was to -- and I looked at a set of 77  
15 ad supported cable networks. And what I did was to look at the  
16 ranking in each of those demographics network by network by  
17 network. So again, we'll use the women 25 to 54 rank.

18 In the case of GSN, out of a list of the 77 networks, GSN  
19 was ranked 54th. Whereas in the case of WE tv, they would rank  
20 fourth.

21 Q And going back to women 65 plus again, for example, could  
22 you describe the ranks set forth in that row?

23 A Sure. On a women 65 plus basis, the rank for GSN was  
24 two, and the rank for WE TV was 16.

25 Q So, Mr. Blasius, could you describe how if at all, the

1 data set forth on CV Exhibit 764 would be meaningful to someone, an  
2 advertiser seeking to make a buy of national advertising time on  
3 one of these two networks?

4 A Well, what this chart reveals and what this analysis  
5 reveals, is you know, across a variety of demos, what the real  
6 concentration of audience is in each specific demo.

7 Q And based on the analysis you set forth here, if you were  
8 a national advertising buyer seeking to purchase time to target a  
9 women 25 to 54 demographic for example, --

10 A Yes.

11 Q Would you view GSN and WE tv as similar?

12 A Not at all.

13 MR. KROUP: Okay. Let's move onto one final -- actually,  
14 excuse me, Your Honor, I'd like to move CV Exhibit 764 before we  
15 move onto the next Exhibit.

16 MR. SPERLING: Your Honor, no objection again, subject to  
17 our confirmation that the Exhibit is in fact identical to Table  
18 Three as it appears in the witness's written direct testimony.

19 JUDGE SIPPEL: Okay. Subject to Mr. Sperling's  
20 qualification, Exhibit 764 of Cablevision is received.

21 (Whereupon, the above-referred to document was received  
22 into evidence as CV Exhibit 764.)

23 MR. KROUP: One final Exhibit we'll look at Mr. Blasius  
24 is CV Exhibit 765. So, let's turn there.

25 (Whereupon, the above-referred to document was marked as

1 CV Exhibit 765 for identification.)

2 MR. KROUP: And early on in your testimony, you stated  
3 that median age is one of the metrics that an advertiser would look  
4 at in choosing to purchase time on a network.

5 Could you describe the work that you conducted regarding  
6 median age that's set forth here on CV Exhibit 765?

7 MR. BLASIUS: Sure. You know, I did look at three  
8 different demographics. But, let's use the middle column, female  
9 two plus, as the example.

10 In the case of GSN and this is again it's on a 6P to 1A  
11 basis. The median age on average for GSN delivery wise is a  
12 Where as in the case of WE tv, it's a An difference.

13 BY MR. KROUP:

14 Q And what significance would that have to an advertiser  
15 seeking to target women 25 to 54?

16 A Well again, I mean, you know, if you think about the  
17 that GSN has in the way of delivery, on the women 25 to 54 basis,  
18 more then half of the audience you'd be delivering with a  
19 commercial on GSN would be outside of your target audience.

20 Whereas in the case of WE with a median age, you're  
21 talking about an average of -- you know, an audience which is  
22 comfortably within the demo you're looking to deliver.

23 Q And before we turn you over for cross examination, Mr.  
24 Blasius, I'd like to just go back through these different metrics  
25 and ask one question about each of them.

1 A Sure.

2 Q Is the calculation of Nielsen ratings something that  
3 advertisers do in the normal course when determining when to  
4 purchase time on the television network?

5 A Yes.

6 Q And is the calculation of VPVH something that advertisers  
7 use in the normal course when choosing to purchase time on a  
8 television network?

9 A Yes.

10 Q And is the analysis you set forth concerning viewer  
11 concentration as a percentage of total audience something that  
12 advertisers do in the ordinary course when choosing to purchase  
13 time on a television network?

14 A Yes.

15 Q And is the analysis you set forth concerning indexing  
16 something that advertisers do in the ordinary course when choosing  
17 to purchase time on a television network?

18 A Yes.

19 Q And is the ranking of networks by the index or audience  
20 concentration measure, something that advertisers do in the normal  
21 and ordinary course?

22 A Yes. Absolutely.

23 Q And median age calculations, are those another thing that  
24 advertisers in your experience rely on in the ordinary course in  
25 purchasing advertising?

1 A Yes.

2 Q Okay. Mr. Blasius, could you just sum up your  
3 conclusions for the Court as they concern GSN and WE tv? Just  
4 briefly.

5 A Sure. I mean, based on the analysis I performed, I would  
6 not consider GSN and WE tv to be at all similar.

7 MR. KROUP: No further questions, Your Honor.

8 JUDGE SIPPEL: It's quarter after 12:00. Do we want to  
9 break for lunch at this time?

10 MR. KROUP: Oh, I'm sorry, Your Honor, before we have  
11 that discussion, I'd like to move CV Exhibit 765 as well.

12 JUDGE SIPPEL: Oh, I overlooked that myself. Any  
13 objection?

14 MR. SPERLING: Your Honor, no objection subject to our  
15 confirmation that it's the same as Table Two in Mr. Blasius's  
16 written report.

17 And Mr. Cohen alerted me that I misspoke with respect to  
18 the previous Exhibit that Cablevision sought to move into evidence,  
19 764, the one that we want to confirm it is identical to, it's not  
20 Table Three, but Table Four in Mr. Blasius's written direct.

21 JUDGE SIPPEL: Subject to those qualifications, Exhibit  
22 765 is received into evidence.

23 (Whereupon, the above-referred to document was received  
24 into evidence as CV Exhibit 765.)

25 MR. KROUP: Okay. And as to Your Honor's question, I

1 have no further questions for the witness. You know, we -- it's  
2 really up to the Court whether you'd like to break for lunch or  
3 whether we can push on.

4 JUDGE SIPPEL: It seems like a convenient time to break.  
5 What's the thinking? Let's go off the record.

6 (Whereupon, the above-entitled matter went off the record  
7 at 12:17 p.m. and resumed at 1:19 p.m.)

8 JUDGE SIPPEL: Please be seated.

9 Let's go right on the record.

10 Mr. Sperling.

11 MR. SPERLING: Thank you, Your Honor.

12 JUDGE SIPPEL: Your witness.

13 MR. SPERLING: Thank you, Your Honor.

14 WHEREUPON,

15 LAWRENCE BLASIUS

16 called as a witness by Counsel for the Defendant and, having been  
17 previously duly sworn, resumed the witness stand, was examined and  
18 testified further as follows:

19 CROSS-EXAMINATION

20 BY MR. SPERLING:

21 Q Good afternoon, Mr. Blasius.

22 A Good afternoon.

23 Q My name is Jonathan Sperling. I represent GSN.

24 You testified earlier in response to some of Mr. Kroup's  
25 questions that you've been an expert in one other matter; correct?

1 You've been an expert witness in one other case; is that correct?

2 A Yes. Yes, yes.

3 Q And that was a right's fee arbitration?

4 A Correct.

5 Q And that case didn't call for you to express an opinion  
6 on whether two networks were similarly situated from an ad buyer's  
7 perspective, did it?

8 A No.

9 Q So this is the first time and the only time in which  
10 you've offered an expert opinion on that subject; right?

11 A Correct.

12 Q Your written direct testimony which is Cablevision  
13 Exhibit 228 in front of the binder that Mr. Kroup gave you, I just  
14 wanted to go over and make sure that we were dealing from the same  
15 deck in terms of what your opinions were.

16 I'll ask you a few questions --

17 A Sure.

18 Q -- about them.

19 So first of all, you testify in your written direct  
20 testimony that there are four key factors that an ad buyer would  
21 look at in determining whether two networks were similarly situated  
22 from an ad buyer's perspective; correct?

23 A Correct.

24 Q Can we take a look, please, at page eight of your written  
25 direct, CV 228. And if you look at paragraph 19 on that page I just

1 want to read along and make sure that I have it right. The first  
2 sentence says, "The objective criteria most important to  
3 advertising agencies in organizing and evaluating on which  
4 programming networks to place advertisements are:

5 "One, cost per thousand viewers, CPM;

6 "Two, demographic ratings;

7 "Three, median age;

8 "And, four, audience skew/concentration."

9 Did I read that correctly?

10 A Yes, you did.

11 Q Okay. And that in fact is your opinion; correct?

12 A Yes.

13 Q That all four of those are key considerations in --

14 A Oh, absolutely.

15 Q -- determining whether to make an ad buy?

16 A Absolutely.

17 Q And I apologize. The court reporter has to take down  
18 what I say and what you say, so I have to try to avoid talking over  
19 you and I will ask you to do the same for me because she's very  
20 competent but it's hard for her to take down two people at the same  
21 time.

22 A I understand.

23 JUDGE SIPPEL: Thank you, Mr. Sperling. That is necessary  
24 in this case. Just slow down.

25 BY MR. SPERLING:

1 Q Now just to be clear, you're not saying that these are  
2 the only four considerations that an ad buyer would ever take into  
3 account; correct?

4 A No, I'm not saying that.

5 Q There are others, and whatever others there are you  
6 didn't account for them in your analysis here?

7 A Correct.

8 Q Let's go through each of these four. The first one you  
9 identify is cost per thousand viewers; right?

10 A Yes.

11 Q That's known as CPM?

12 A Yes.

13 Q And the "M" just stands for thousand; correct?

14 A Correct.

15 Q And that's the price that an advertiser pays for delivery  
16 of a thousand viewers, a thousand sets of eyeballs when it's buying  
17 a certain amount of a demographic; correct?

18 A Correct.

19 Q And any ad buyer who is making a purchase decision would  
20 know what the CPM is because that forms the pricing basis for their  
21 purchase; right?

22 A Correct.

23 Q When Mr. Kroup went through with you your direct  
24 testimony this morning he didn't ask you anything about CPM, did  
25 me?

1 A He did not.

2 Q And the reason why he didn't do that is you didn't have  
3 any CPM data when you performed your analysis; right?

4 A Correct.

5 Q So in preparing your opinion you didn't take account of  
6 what you identified as a key data point that any ad buyer would  
7 actually have available to them when they're making that purchase  
8 decision; right?

9 A Correct.

10 Q Before we talk about the other three considerations,  
11 those were largely based -- or the other three factors that you  
12 looked at, your analyses were largely based on Nielsen data; right?

13 A Yes.

14 Q And Nielsen provides data in a variety of different ways  
15 or on a variety of different matrices; correct?

16 A Correct.

17 Q And one of the types of Nielsen data you can get is known  
18 as L3 which is live viewing of the program plus three days of DVR  
19 playback?

20 A Correct.

21 Q And another is C3 which is live viewing of just the  
22 commercials as well as three days of DVR playback?

23 A Correct.

24 Q And you used the C3 data; correct?

25 A I did.

1 Q But if I understand your deposition testimony correctly,  
2 you agree that the L3 data would be substantially like the C3 data;  
3 correct?

4 A Not necessarily, no.

5 Q Well, let me maybe ask a better question. Don't you  
6 agree that directionally any comparison of GSN to WE would likely  
7 be the same if you looked at L3 data as if you looked at C3 data?

8 A Since I didn't look at that data I can't really say that.

9 Q Okay. Mr. Blasius, I'm going to hand you a document in  
10 just a second.

11 (Pause.)

12 MR. SPERLING: Okay, it's late at the end of the second  
13 week so we had a little bit of logistical working. Your Honor, may  
14 I approach?

15 JUDGE SIPPEL: You certainly may.

16 MR. SPERLING: Mr. Blasius, I'm going to hand you --

17 THE WITNESS: Okay.

18 MR. SPERLING: -- what I have crudely hand-marked GSN  
19 Exhibit 447 for identification.

20 And, Your Honor, I'm going to do the same for you. We're  
21 happy to provide --

22 JUDGE SIPPEL: Thank you.

23 MR. SPERLING: -- stickered versions.

24 (Whereupon, the above-referred to document was marked for  
25 identification GSN Exhibit 447.)

1 BY MR. SPERLING:

2 Q Mr. Blasius, if I can ask you please to turn to page 49  
3 of your deposition transcript. Mr. Blasius, if you remember, you  
4 sat for deposition --

5 A Forty-seven?

6 Q Forty-nine.

7 A Forty-nine. I'm there.

8 Q If you could actually, let me take you back one page to  
9 page 48. On line 19 there's a question. And picking up on line 21  
10 you see there's a question: "Is it possible that you could have two  
11 networks, let's take GSN and WE, and GSN does less well on C3 but  
12 does better on live-plus-3, would you expect their relative  
13 position would be about the same?"

14 And you answered on the next page at line 3: "You know,  
15 I didn't get into the issue. I didn't take a good look at it. And  
16 maybe taking a good look at it is the wrong way to phrase it. It's  
17 not necessarily what I would have been asked to look at."

18 You see that?

19 A I do.

20 Q And then you go on to say at line 13 -- and I don't mean  
21 to skip anything that you think is material, I'm just trying to be  
22 efficient here. So if you want to read what's in between, please  
23 go right ahead. But you go on to say at line 13: "My expectation  
24 as it relates to this matter would be that as long as you compared  
25 GSN to WE on the same basis, be it C-plus-3, be it live same day,

1 be it, you know, live plus seven days, it would be consistent."

2 MR. KROUP: Just for the moment, if Mr. Sperling could  
3 continue to read through line 24 of that page for context we'd  
4 appreciate that.

5 JUDGE SIPPEL: I'm sorry, are you going to do that?

6 MR. SPERLING: I wasn't planning to, Your Honor.

7 MR. KROUP: Well, it's a completeness objection, Your  
8 Honor. The witness gave a more complete answer than Mr. Sperling  
9 is reading further down on the page and --

10 JUDGE SIPPEL: Well, you can do that on redirect.

11 MR. KROUP: I certainly can, Your Honor.

12 BY MR. SPERLING:

13 Q Mr. Blasius, to be clear, I'm not trying to commit you to  
14 the idea that the L3 data is going to show exactly the same numbers  
15 as the C3 data, but isn't it the case that you would expect the  
16 rankings of the networks, how they compare to one another, to be  
17 generally consistent whether you're looking at the C3 data or the  
18 L3 data?

19 A I -- it could be. But I don't know that to be the case  
20 without looking at the data.

21 Q So were you not testifying truthfully when you said at  
22 your deposition that your expectation is that it would be  
23 consistent?

24 MR. KROUP: Objection, Your Honor. This is why I objected  
25 earlier and asked Mr. Sperling to read the following exchange of

1 questions and answers for context.

2 JUDGE SIPPEL: Well, okay.

3 MR. KROUP: He shouldn't be impeached on something that  
4 -- on one, one line from, of 25 on this page when he answered the  
5 question completely further on.

6 MR. SPERLING: Your Honor, in the interests of efficiency  
7 I will accept his objection and we'll cut to the heart of it.

8 BY MR. SPERLING:

9 Q Mr. Blasius, why don't you take a look at what Mr. Kroup  
10 wants to look at which is line 22. And you say there: "Again I  
11 would want to look at the numbers to make sure but my expectation  
12 would be no, but I can't say that with absolute certainty."

13 Do you see that?

14 A Yes, I do.

15 Q What's the question you were answering when you said  
16 that?

17 A Well, I believe that I was answering the question of  
18 whether C-plus-3 or L-plus-3 would generate the same directional  
19 relationship between the two networks.

20 Q And so at the passage I pointed you to you said, did you  
21 not, that you expected it would be consistent regardless of whether  
22 you're looking at C3 or L3?

23 A Which line is that you're looking at?

24 Q At lines 13 to 17. Yes or no, did you testify there that  
25 you believe that it would be consistent regardless of which set of

1 Nielsen data you were looking at?

2 A Well, can I read that to you? It's -- I said my  
3 expectation would be that they would be directionally similar. But  
4 I can't testify to the fact that they absolutely would be without  
5 looking at the data.

6 Q So, Mr. Blasius, that's great. And I just want you to  
7 listen carefully to my question because you'll get out of here much  
8 sooner this afternoon. I'm not asking you to testify that they are  
9 100 percent identical.

10 A Right.

11 Q You understand that?

12 A I understand that.

13 Q My question is, did you testify at your deposition that  
14 you expected that they would be consistent in what they showed,  
15 those two sets of data?

16 A That's what I said, yes.

17 Q Okay. And is that your belief today?

18 A Again, without looking at the data?

19 Q What is your expectation without looking at the data? Is  
20 your expectation that they would be consistent?

21 A I'm not sure at this point I would have an expectation  
22 without looking at the data.

23 Q What happened between the time of your deposition and now  
24 to change your expectation?

25 A Absolutely nothing. I'm just -- all I'm saying is that

1 without looking at the data I'm reluctant to pin myself down by  
2 saying they -- they would be directionally similar.

3 Q Was your testimony at your deposition where you said that  
4 you expected that they would be consistent false testimony?

5 A No, it was not.

6 Q It was the truth when you said it?

7 A Yes, absolutely.

8 Q And it's still the truth; right?

9 A Yes.

10 Q In your written direct testimony -- you can put the  
11 deposition transcript away if you want -- you concluded that GSN  
12 and WE tv were not similar in your opinion from the perspective of  
13 an ad buyer; correct?

14 A Correct.

15 Q And you also concluded that WE tv's competitive set  
16 included networks such as Lifetime, Style, TLC and Oxygen --

17 A Correct.

18 Q -- correct?

19 Let's take a look actually at page 18 of your written  
20 direct testimony.

21 A Okay.

22 Q And if you look at the very last line on page 18 you see  
23 it says, "As the various exhibits above should underscore, in my  
24 opinion advertisers would likely view the competitive set for WE tv  
25 to include networks such as Lifetime, Style, TLC or Oxygen, and not

1 include GSN."

2 A Correct.

3 Q I read that correctly?

4 A You did.

5 Q And that's your opinion; correct?

6 A That's my opinion.

7 Q And by "competitive set," just to make sure you and I  
8 mean the same thing, you mean networks that advertisers would view  
9 as similar for purposes of making a purchasing decision; correct?

10 A Yes.

11 Q Let me start by asking you about audience skew and  
12 concentration. And if you want you can turn to the book that Mr.  
13 Kroup gave you. And I believe it's Cablevision Exhibit 763 in that  
14 binder. We'll talk about that one first.

15 A Seven sixty-three?

16 Q Seven sixty-three.

17 A Okay.

18 Q You concluded that the differences in audience skew  
19 between GSN and WE were significant; correct?

20 A I did.

21 Q How different do the two skews have to be -- let me  
22 rephrase that.

23 JUDGE SIPPEL: Not statistically significant?

24 BY MR. SPERLING:

25 Q Let's start with the Judge's question. When you say that

1 the difference is significant you don't mean statistically  
2 significant, do you?

3 A No.

4 Q And you didn't perform any sort of calculation to  
5 determine whether it was statistically significant or not?

6 A I did not.

7 Q There is no methodology that you have that you can point  
8 to that allows you to determine at what point the difference in  
9 skew becomes significant, is there?

10 A As you ask the question, no.

11 Q There's no empirical metric that one can look at and say  
12 below this number is significant and above this number it is --  
13 it's not significant?

14 A Not to my knowledge, no.

15 Q So you're just testifying about your personal impression  
16 about how significant it is or isn't; correct?

17 A Correct.

18 Q Now, looking at CV Exhibit 763, where in this table will  
19 I find a calculation of the audience composition and population  
20 skew of Oxygen?

21 A On this page you will not find it.

22 Q And I also won't find here a calculation of audience  
23 composition and population skew for TLC; correct?

24 A Correct.

25 Q And the same thing for Lifetime; right?

1 A Correct.

2 Q And the same thing for Style?

3 A Correct.

4 Q And those are the four audiences that you said are part  
5 of WE's competitive set; correct?

6 A The four networks, yes.

7 Q Four networks. Thank you.

8 And to be clear, I don't want to limit you to the tab, if  
9 we look at Cablevision Exhibit 228 I won't find a calculation for  
10 audience composition and population skew for Lifetime, Style, TLC  
11 or Oxygen anywhere in your written direct testimony will I?

12 A Correct.

13 Q You don't have any benchmark against which you determined  
14 whether the skew of GSN as compared to the skew of WE tv was or  
15 wasn't significant; right?

16 A A benchmark meaning -- by a benchmark you mean what?

17 Q Is there some reference point that you look at to  
18 determine whether as compared to other networks GSN is similar or  
19 not similar to WE from that buyer's perspective? There's not, is  
20 there?

21 A You would, you would look at a ranker to see where they  
22 rank relative to one another on specific demos.

23 Q Have you provided rankings for -- let's turn the page,  
24 let's turn on this, to ask the question why don't we turn to the  
25 next tab in your binder, Cablevision Exhibit 764.

1           And here you have rankings of the type that you were  
2 describing; correct?

3       A     Correct.

4       Q     But there's no ranking here for Lifetime; right?

5       A     Correct.

6       Q     And no ranking here for Style?

7       A     Correct.

8       Q     Or for Oxygen; correct?

9       A     Correct.

10      Q     And no ranking for TLC; right?

11      A     Correct.

12      Q     So again my question was, is there some reference point  
13 against which one can compare to determine that GSN is not similar  
14 to WE and the networks in GSN's competitive set are similar to WE?

15      A     Well, this is the top page of a rather lengthy or some  
16 rather lengthy rankers which I performed during the course of the  
17 assignment.

18      Q     And my question is, in your written direct testimony is  
19 there any expression of a benchmark that you compared against to  
20 determine that the difference between WE and GSN was significant?

21      And the answer to that question is no, isn't it?

22      A     The answer to that question is no, the way you phrased  
23 it.

24      Q     Now, Mr. Kroup also talked to you -- also asked you some  
25 questions about median age. Do you remember that?

1 A I do.

2 Q And I think in your data analysis you said that GSN's  
3 median total day viewer age was Does that sound familiar?

4 A Which page of which exhibit are we looking at?

5 Q I am looking at -- trying to do it in your binder -- it's  
6 Cablevision Exhibit 765.

7 A Okay, I've got it.

8 Q And you say that GSN has a median age of for females  
9 two plus. Am I reading that correctly?

10 A Yes, that's correct.

11 Q And then you compare that to WE's median age; right?

12 A Yes, for the four sets.

13 Q And back to the Judge's question there too, your opinion  
14 that the difference between those is significant, you don't mean  
15 statistically significant; right?

16 A No.

17 Q Now, when you identified the median ages of GSN and WE  
18 you actually looked at data just for a single quarter; right?

19 A I honestly don't recall.

20 Q Let me try and refresh --

21 A Actually the way -- actually the footnote at the bottom  
22 of that particular page indicates I looked at a full year's data.

23 Q Well why don't we try and look at that data.

24 Mr. Blasius, I let you off -- I let you off easy for a  
25 while but now I'm actually going to have to hand you a binder of

1 exhibits just like Mr. Kroup did.

2 JUDGE SIPPEL: Heavy lifting.

3 MR. SPERLING: I'll hand those out. Your Honor, they're  
4 getting smaller and smaller.

5 JUDGE SIPPEL: Good observation. Don't let him lull you  
6 into complacency.

7 MR. SPERLING: Your Honor, I'm sorry, give me just a  
8 moment.

9 (Pause.)

10 MR. SCHMIDT: While they're looking, Your Honor, Mr.  
11 Cohen and I have talked briefly about this. This is that issue I  
12 raised about prepared for litigation.

13 MR. COHEN: Yes. Because I think we're creating some  
14 confusion. You've already put this in evidence as GSN we think  
15 it's 163. And I think the record could be confused.

16 MR. SPERLING: Which one are you looking at?

17 MR. COHEN: 442.

18 MR. SPERLING: 442.

19 MR. COHEN: I don't want the record to get confused about  
20 two different --

21 MR. SPERLING: Yeah, multiple exhibits with the same --  
22 same exhibit number.

23 MR. COHEN: Yeah. So if you want to just take 30 seconds  
24 to confirm that I think that would be worthwhile.

25 MR. SPERLING: Yes.

1 MR. SCHMIDT: This is a Cablevision for this document,  
2 right?

3 MR. SPERLING: Yes. But he has a question for marking.

4 MR. SCHMIDT: No, I was actually raising a different issue  
5 which is --

6 MR. COHEN: Mr. Schmidt is raising that, we'll check the  
7 number, I believe it's GSN 163.

8 MR. SCHMIDT: Yes.

9 MR. COHEN: GSN 163 like Cablevision 174, those are the  
10 two documents that we had a discussion last week, Your Honor, about  
11 whether they were prepared for the purposes of litigation. 174 was  
12 that advertising document that Mr. -- Cablevision 174 was the  
13 advertising document of Mr. Zaccario that was prepared for  
14 litigation, as was this document with the appropriate number that  
15 Mr. Sperling is going to give us in a moment.

16 But you asked -- Your Honor had asked last week and you  
17 said it would be important to know if the documents were prepared  
18 for litigation.

19 JUDGE SIPPEL: For litigation, yes.

20 MR. COHEN: Yes. This one was as well.

21 MR. SCHMIDT: We wanted the record clear on that. Thank  
22 you, Mr. Cohen.

23 MR. KROUP: And just to make the record clear, the  
24 document which Mr. Cohen just referred to as CV 174 is actually GSN  
25 174. That would be even better.

1 (Laughter.)

2 MR. SPERLING: We're going to check it and I'll ask you  
3 another question in the time being --

4 THE WITNESS: Okay.

5 MR. SPERLING: -- okay, Mr. Blasius?

6 THE WITNESS: Sure.

7 BY MR. SPERLING:

8 Q You know, don't you, that median age of networks can vary  
9 over time; correct?

10 A Yes.

11 Q Let me point you to a different tab in your binder which  
12 is GSN --

13 A Your binder; right?

14 Q My binder. Right.

15 A Okay.

16 Q Now it's yours.

17 A Okay.

18 Q But it's the one I gave you. And it's GSN Exhibit 433.

19 (Whereupon, the above-referred to document was marked for  
20 identification as GSN Exhibit 433.)

21 A Four four three?

22 Q Four three three.

23 A Four three three. Okay, got it.

24 Q And if you turn to the page with the --

25 A Egan Exhibit 16, is that the headline?

1 Q That's the one.

2 A Okay.

3 Q And if you turn to the second page.

4 A Okay.

5 Q Flip side of the first sheet of paper. And to make sure  
6 we're all looking at the same thing it's got a -- what we call a  
7 Bates number or a control number on the bottom right that says GSN  
8 Exhibit 433.002.

9 A Okay.

10 JUDGE SIPPEL: He's telling you this so you won't be  
11 confused.

12 BY MR. SPERLING:

13 Q And you see on the bottom half of the page --

14 A Actually I get confused easily.

15 JUDGE SIPPEL: Say no more. Go ahead, sir.

16 MR. SPERLING: Thank you, Your Honor.

17 BY MR. SPERLING:

18 Q And you see the bottom half of the page there's a ranking  
19 here by WE or WE and key competitors, prime time quarter year to  
20 date versus prior year performance?

21 A Yes.

22 Q You see that?

23 A I do.

24 Q Now, before you were deposed in this case you prepared a  
25 declaration. Do you remember that?

1 A Yes.

2 Q You can actually find it in your binder at GSN Exhibit  
3 444.

4 JUDGE SIPPEL: This is actually Game Show's binder.

5 THE WITNESS: Right.

6 BY MR. SPERLING:

7 Q Now, Mr. Blasius, when Mr. Kroup was asking you questions  
8 before the lunch break he asked you if you thought the difference  
9 between WE and GSN's median ages was significant. Do you remember  
10 that?

11 A Yes.

12 Q And you said it was; correct?

13 A Yes.

14 Q And do you remember saying that GSN's median age was  
15 significant because having a median age above 54 meant that half of  
16 your viewership was outside of the target demographic of 25 to 54?

17 A Even more than 50 -- even more than 50 percent.

18 Q That wasn't what you said this morning though, right?

19 Just I -- you're welcome to elaborate on your answer as much as you  
20 want, I just want to clarify this morning what you said was the  
21 significance was that having a median age above 54 meant that half  
22 your demographic or potentially more than half your demographic was  
23 outside of the 25 to 54 demographic; right?

24 A Correct.

25 Q Okay. Now, in your declaration you also talked about

1 who's in WE's competitive set; right? Do you remember that?

2 A Yes.

3 Q Let me ask you to turn to page -- excuse me, paragraph 38  
4 of your declaration which is on page 19.

5 A Page 19, yes.

6 Q Do you have that in front of you?

7 A Yes.

8 Q And you say there that, in the second sentence which  
9 begins on the third line, "As the various exhibits above should  
10 underscore, in my opinion advertisers would likely view the  
11 competitive sets for WE tv to include networks such as Lifetime,  
12 SOAPnet, Style, TLC or Oxygen, and not to include GSN."

13 A Correct.

14 Q You see that?

15 A I see it.

16 Q If you go back now to the exhibit we were looking at  
17 which was GSN Exhibit 433.

18 A Four thirty-three?

19 Q Four thirty-three. Back to page two of that.

20 A Should I keep my mark on the 444?

21 Q Yeah, that would be great if you could keep that open.

22 A Okay.

23 Q Do you have 433 open to page two?

24 A I have, yeah, I have the page we were on before.

25 Q Okay. On the bottom half of the page there, prime time

1 8:00 p.m. to 11:00 p.m. for the quarter and prime time 8:00 p.m. to  
2 11:00 p.m. for the year, for the year. Do you see that?

3 A Say that one more time?

4 Q There's two sets of listings there. One is prime time  
5 8:00 p.m. to 11:00 p.m. quarter.

6 A Right.

7 Q And the one beneath that is prime time 8:00 p.m. to 11:00  
8 p.m. for the year.

9 A Correct.

10 Q And what was the average -- excuse me, the female median  
11 age of for the year that's identified there?

12 A In the -- looks like in the prime time 8:00 p. to 11:00  
13 p. quarter --

14 Q No, I'm asking about year.

15 A Oh, year. Sorry. would appear to be if  
16 I'm reading this correctly.

17 Q Okay. And I don't want to take away from quarter, so for  
18 quarter that should be right?

19 A Yes.

20 Q And so you stated in your declaration that WE's  
21 competitive set included the network that at least at some points  
22 in time had a median age above 54; right?

23 A Well, in all fairness I looked at the year before this.

24 Because this is, this appears to be based on broadcast year

25 '10-'11, if I'm reading this correctly.

1 Q And the median age in a different year might be  
2 different; right?

3 A Yes.

4 Q Because the median age --

5 A Yes.

6 Q -- can move over time?

7 A Yes. But I will also tell you that was  
8 transitioning to at that point if I remember, so that as --  
9 I think as the arrangements -- and this is anecdotal but --

10 Q It's not answering my question.

11 A Well, it is answering your question actually. As  
12 was transitioning off the air, because they're no longer on the air  
13 --

14 Q What question are you answering, Mr. Blasius?

15 MR. COHEN: Your Honor.

16 JUDGE SIPPEL: What's up?

17 MR. KROUP: We'd just like the witness to be able to  
18 finish his answer.

19 JUDGE SIPPEL: Well --

20 MR. SPERLING: Your Honor, the question was what age it  
21 shows. How is he answering the question?

22 THE WITNESS: Well, I already answered that.

23 JUDGE SIPPEL: Well, one second. I want to be sure the  
24 reporter is getting all of this. Is there an objection?

25 MR. KROUP: The objection was to interrupting the witness

1 while he was testifying.

2 JUDGE SIPPEL: You were doing that. You keep cutting him  
3 off.

4 MR. SPERLING: Your Honor, apologies. It didn't seem at  
5 all responsive to the question. But if you'd like.

6 JUDGE SIPPEL: Well, let me make that determination.

7 MR. SPERLING: Absolutely, Your Honor.

8 JUDGE SIPPEL: That's why they pay me all that money.

9 MR. SPERLING: Can I go on, Your Honor.

10 JUDGE SIPPEL: You certainly may.

11 MR. SPERLING: Thank you.

12 BY MR. SPERLING:

13 Q Mr. Blasius --

14 A Yes.

15 Q -- this document identifies that in 2011 -- in the  
16 2010-2011 season had a median age of right?

17 A That's what it says, yes.

18 Q You looked at median age data from a different year;  
19 correct?

20 A Correct.

21 Q And median age can change from year to year; right?

22 A Correct.

23 Q And you chose to look at only one point in time; right?

24 A I looked at a snapshot of '09 and '10 broadcast year.

25 Q And it turns out if we look at a snapshot of '10 to '11

1 broadcast year , which is a network that you identified in  
2 your declaration as being part of WE's competitive set, had a  
3 median age that was above 54; right?

4 A Based on the analysis that I did for '09-'10, yes.

5 Q Do you remember being asked about this at your  
6 deposition?

7 A I honestly don't. The deposition I believe was, what,  
8 over two years ago?

9 Q It was over two years ago.

10 A Yes.

11 Q And that's why we have documents to refresh recollection.  
12 So if you could just pick it back up again that would be great.

13 A Now this is --

14 MR. KROUP: Has the witness testified inconsistently with  
15 his deposition? I'm not sure this is appropriate impeachment.

16 JUDGE SIPPEL: Well, let's find out where it's going.

17 MR. KROUP: Okay.

18 JUDGE SIPPEL: Let's get something to see before we do  
19 that.

20 MR. SPERLING: Your Honor, the last question was -- I'm  
21 sorry, I didn't mean to cut you off, Your Honor.

22 JUDGE SIPPEL: No, go ahead.

23 MR. SPERLING: The last question was whether he recalled  
24 being asked about it at his deposition and he said he didn't. So  
25 I'd --

1 JUDGE SIPPPEL: That's what I heard.

2 MR. SPERLING: -- just like to refresh his recollection.

3 JUDGE SIPPPEL: Yes, that's what I heard.

4 MR. SPERLING: Great.

5 JUDGE SIPPPEL: Now let's see what's going on here with the  
6 deposition. Turn to the page.

7 BY MR. SPERLING:

8 Q If you could turn please, Mr. Blasius, to page 94 of your  
9 deposition transcript.

10 JUDGE SIPPPEL: Go to the page and see if you've got a  
11 problem.

12 THE WITNESS: Page 94?

13 MR. SPERLING: Page 94.

14 THE WITNESS: Okay. I'm there.

15 BY MR. SPERLING:

16 Q And actually just to orient you, if you turn to the page  
17 before that, 93 at line 7, you can see that the document that  
18 you're about to be asked about is being identified. And it's  
19 identified as Exhibit 16 to the expert report of Michael Egan which  
20 is on the cover page of GSN Exhibit 433.

21 A Yes, I see that.

22 Q Now if you go back to page 94 you see you were asked at  
23 line 3, "At the right-hand side of the table there is a column  
24 called female median age?"

25 A Yes.

1 Q And you're asked at line 11 whether you see that there's  
2 a median age for

3 A Yes.

4 Q And if you continue to line 22 -- so at line 21 you were  
5 asked, "What's the female median age for

6 "Answer: According to this it says prime time is and  
7 for the year it's set to be

8 A Correct.

9 Q Do you see that?

10 A I see that.

11 Q And then you were asked -- so first of all, does that  
12 refresh your recollection?

13 A It does now, yes.

14 Q Okay, now you remember being asked about it; right?

15 A Yes, I do.

16 Q Do you remember that you expressed a view at your  
17 deposition that seeing that data didn't change your view that  
18 was part of WE's competitive set?

19 A Well again my answer in the initial declaration applied  
20 to a different year.

21 Q Stay with my question please, Mr. Blasius. Do you  
22 remember that at your deposition, which was on January 22, 2013,  
23 you testified that seeing that had a median age of  
24 didn't change your view that was part of WE's competitive  
25 set?

1 A Do you have that as part of my deposition?

2 Q Sure. I'm happy -- first of all, do you remember or not?

3 A No. The answer is no.

4 Q Okay. Now let's go --

5 A Yeah, I didn't memorize my deposition, so.

6 Q Sometimes I don't --

7 JUDGE SIPPEL: Let's not get carried off. Let's not get  
8 carried away rather.

9 BY MR. SPERLING:

10 Q Let me take you to the deposition transcript. If you  
11 look at line 24, right where we left off before, you were asked,  
12 "In your view I take it those higher female median ages don't  
13 affect or ability to be part of WE's competitive  
14 set from the advertising perspective?" Do you see that you were  
15 asked that?

16 A I see that I was asked that, yes.

17 Q And you see that you answer at line 5, "I understand what  
18 you're going after but you know they're still as far as I'm  
19 concerned within the competitive set"?

20 A That's what I said, yes.

21 Q And let me take you finally to the bottom of this page,  
22 line 23. You were asked, "Well, is in your view part of the  
23 WE competitive set from an advertising perspective?"

24 And you answer, "Based on the information I reviewed,  
25 yes."

1           You see that?

2           A     Again, based on the information I reviewed.

3           Q     Well, let me take you back to your testimony on page 95  
4     at line 5, and you said, "I understand what you're going after, but  
5     you know they are still," it says, "they're still," right?  
6     "They're" is a contraction for "they are"?

7           A     Yes.

8           Q     Yeah.

9           A     Yes.

10          Q     And "are" is the present tense of "to be;" right?

11          A     Yes.

12          Q     Okay, so just that we understand the words. "They're  
13     still as far as I'm concerned within the competitive set." That  
14     was your testimony; right?

15          A     Yes, that was my testimony.

16          Q     Now, do you now remember that at your deposition on  
17     January 22, 2013 you took the position that SOAP is part of WE's  
18     competitive set?

19          A     I did.

20          Q     Yes. Let's go back to your written direct testimony  
21     which is at the front of the binder that Mr. Kroup gave you.

22          A     Which one is this? I'm sorry.

23          Q     The softcover one.

24          A     Okay. Got it. Which --- which page?

25          Q     Well, let's go to the signature page actually, which is

1 the second page from the last.

2 A Okay.

3 JUDGE SIPPEL: This is the softcovered one that's not --

4 MR. SPERLING: That's the softcovered one, Your Honor.

5 THE WITNESS: Yes. Got it.

6 JUDGE SIPPEL: The softcovered one that's not his  
7 deposition; right?

8 MR. SPERLING: Correct, Your Honor.

9 JUDGE SIPPEL: Okay. We're going where, to the signature  
10 page?

11 MR. SPERLING: We're going to the signature page. We  
12 won't spend long there but I just wanted to confirm with Mr.  
13 Blasius that he signed his written direct testimony on March 11,  
14 2013.

15 THE WITNESS: I did.

16 BY MR. SPERLING:

17 Q And that was less than two months after your January  
18 deposition where you testified that SOAPnet was part of WE's  
19 competitive set in your view; right?

20 A Yes.

21 Q Let's go to page -- excuse me, paragraph 38 of this  
22 document of your written direct testimony.

23 A Page 38 of my written --

24 Q Paragraph. Paragraph 38.

25 A Yes, paragraph 38. Okay.

1 Q Which is right at the bottom of page 18.

2 A Okay.

3 Q And if you want, you can actually put it side by side  
4 with page 19 of GSN Exhibit 444 which is in the big binder.

5 A Okay.

6 Q Why don't you look at the --

7 JUDGE SIPPEL: Where are we going, what are we doing here  
8 with this?

9 MR. SPERLING: We're going to do a side by side  
10 comparison, Your Honor.

11 JUDGE SIPPEL: Okay.

12 MR. SPERLING: Of a paragraph from his declaration and a  
13 paragraph in his written direct testimony.

14 JUDGE SIPPEL: Declaration? I've got the --

15 THE WITNESS: So that's Exhibit 444?

16 MR. SPERLING: Correct.

17 THE WITNESS: Right. Got it.

18 MR. SPERLING: Thank you, Mr. Blasius.

19 Yes, Your Honor, the declaration is GSN 444. That's in  
20 the big binder.

21 THE WITNESS: It's in the big book.

22 MR. SPERLING: It's in the big book next to the small  
23 book.

24 JUDGE SIPPEL: The declaration, okay. Declaration is  
25 something different obviously.

1 MR. SPERLING: It's the three ring binder, Your Honor.  
2 We've given you too many binders.

3 JUDGE SIPPEL: Is that this one here?

4 MR. SPERLING: That's the one I hope.

5 JUDGE SIPPEL: Well, let's hope. Wait a minute now. No,  
6 that's Michael Egan. You did give me one though. This is not it  
7 here?

8 MR. SPERLING: I think that's it.

9 JUDGE SIPPEL: This is cross-examination, go ahead.

10 MR. SPERLING: Okay, so we're comparing, Your Honor, GSN  
11 444 in that big binder

12 JUDGE SIPPEL: Yes.

13 MR. SPERLING: On page 19.

14 JUDGE SIPPEL: What was the date of that declaration by  
15 the way? I can't find a date on this.

16 MR. SPERLING: Yes, Your Honor, it's from 2011.

17 BY MR. SPERLING:

18 Q Is that correct, Mr. Blasius?

19 A That's, that's, I believe that to be correct, sir.

20 Q Yeah, it's actually from 2012; correct?

21 A This one or this one? Which one are you talking about?

22 Q So one thing I can guarantee you is "this" and "this"  
23 will mean nothing to anybody when they're reading the record.

24 A The one in the big binder or the one in the soft small  
25 binder?

1 Q GSN Exhibit 444.

2 A Right. I believe that, I believe that was my first one  
3 which was before the time of the one in the soft binder.

4 JUDGE SIPPEL: This was your first declaration?

5 THE WITNESS: I believe so, yes. But it's not dated so I,  
6 you know, I don't recall exactly when it was.

7 JUDGE SIPPEL: No, it's not dated. Do you know what year  
8 it was?

9 THE WITNESS: I'm going to guess it was early 2012 maybe.

10 JUDGE SIPPEL: What makes you guess that way?

11 THE WITNESS: Because I, I got the original assignment I  
12 believe in October of 2011.

13 JUDGE SIPPEL: All right. Good enough?

14 MR. SPERLING: Good enough.

15 BY MR. SPERLING:

16 Q From 2012; correct?

17 A Early 2012. You can't tell from the page because it's  
18 not dated.

19 Q Mr. Blasius, if it helps I will represent to you that the  
20 file name of the electronic document seems to suggest it's from  
21 December 2012. I don't know if that refreshes your recollection?

22 A Okay. I mean I, I guess I'll have to take your word for  
23 it because there's no date on the actual declaration.

24 Q Yeah, it's not worth squabbling over. I think --

25 A Yes.

1 Q -- you and I are in agreement that the document's from  
2 2012?

3 A Yes. The one in your binder was my original declaration.

4 Q So that's -- when you say the one in my binder we're  
5 talking about GSN Exhibit 444?

6 A Yes, that's the three ring binder.

7 Q GSN Exhibit 444; right?

8 A Correct.

9 Q That's the one that's from 2012; right?

10 A Correct.

11 Q And we're going to turn to page 19 in that one.

12 A Okay.

13 Q And we're going to keep it open to paragraph 38 there.

14 A Got it.

15 Q And we're going to put side by side with that your  
16 written direct testimony which is in the softcover binder that Mr.  
17 Kroup gave you. It's right at the front, it's Cablevision Exhibit  
18 228.

19 A Yes, I have that page.

20 Q And that document -- again, just so our record is clear,  
21 is something that you signed less than two months after your  
22 deposition; right?

23 A Actually it's -- it was March, was it not?

24 Q March 11, 2013; right?

25 A Right. March -- versus December 2012, so it's two, three

1 months.

2 Q No, no. No, no, stay with me.

3 In 2012 you submitted your declaration; right?

4 A Yes.

5 Q In January, specifically on January --

6 JUDGE SIPPEL: Wait a minute. Wait a minute. You have to  
7 answer the question, you can't mumble it. Yes or no?

8 THE WITNESS: Yes.

9 MR. SPERLING: Thank you, Your Honor. I didn't catch that  
10 one.

11 JUDGE SIPPEL: And keep doing it that way please.

12 THE WITNESS: My apologies.

13 JUDGE SIPPEL: It's all right.

14 BY MR. SPERLING:

15 Q I'm going to try and give us a clear chronological line  
16 here. In 2012 you submitted a written declaration that's marked as  
17 GSN Exhibit 444; right?

18 A Correct.

19 Q On January 22, 2013 you were deposed in this case; right?

20 A Correct. Yes, correct.

21 Q And that's the deposition that you were shown the data  
22 showing that SOAPnet had a median age of 2010 to '11 of for  
23 the year?

24 A Correct.

25 Q And that's the deposition at which you testified that it

1 didn't change your view, that data, that SOAPnet was part of WE's  
2 competitive set; right?

3 A Correct.

4 Q Now, less than two months later on March 11, 2013 you  
5 signed your written direct testimony which is in the softcover  
6 binder, and that is Cablevision Exhibit 228; right?

7 A Correct.

8 Q Why don't we compare paragraph 38 in the declaration from  
9 2012 and in the written direct testimony from shortly after your  
10 deposition. Can we do that?

11 A Right.

12 Q If we look at the last sentence of paragraph 38 in these  
13 two documents they're verbatim identical except for one difference;  
14 right?

15 JUDGE SIPPEL: Thirty-eight's going to be the same for  
16 both?

17 MR. SPERLING: The last sentence is going to be exactly  
18 the same in both, your honor, except for one word that's different.  
19 Do you remember that, Mr. Blasius?

20 MR. BLASIUS: I can see that.

21 MR. SPERLING: Okay.

22 CROSS EXAMINATION

23 BY MR. SPERLING:

24 Q And the difference is that two months after your  
25 deposition, you removed SOAPnet from your written direct testimony,

1 right?

2 A Correct.

3 Q And that was because you had previously taken the  
4 position that SOAPnet was part of WE's competitive set, but then  
5 you'd learned that you could be part of WE's competitive set and  
6 have a median age above 54.

7 A I don't agree with that comment, no.

8 Q But it is the case that less than two months after  
9 testifying, that a network that you had previously reviewed as  
10 being part of WE's competitive set had a median age above 54, you  
11 dropped it from your list of what's in WE's competitive set.  
12 That's true, right?

13 A But for a reason other than what you're implying.

14 Q Well, first I'd like a yes or no.

15 A Yes. The answer's yes.

16 Q Okay. By the way, with respect to median age, I also  
17 won't find in Cablevision Exhibit 765, which Mr. Kroup showed you,  
18 any data about median age for any networks other than GSN and WE,  
19 will I?

20 A You will not.

21 Q And you don't have any methodology for determining when  
22 the difference between the median age of two different networks is  
23 significant, right?

24 A A specific methodology, no.

25 Q Okay. There's no benchmark I can look at --

1 A No.

2 Q -- to determine when the difference is significant and  
3 when it's not, right?

4 A No.

5 Q Just for the record, sir, by no you mean that you can't  
6 --

7 A That there's not a benchmark I can look up.

8 Q Do you remember testifying at your deposition that in  
9 your view GSN's median age was so old-skewing that it was  
10 essentially disqualifying with respect to competing for advertisers  
11 who were looking to buy a 25 to 54 demographic?

12 A Do I recall that?

13 Q Yes.

14 A No.

15 Q Let me ask you to turn please in the deposition  
16 transcript to Page 85.

17 A Deposition, 85. Okay.

18 JUDGE SIPPEL: That's GSN 447?

19 MR. BLASIUS: Yes.

20 JUDGE SIPPEL: And what page am I going to?

21 MR. SPERLING: We are going to Page 85, your honor.

22 JUDGE SIPPEL: Okay.

23 BY MR. SPERLING:

24 Q And if you look -- are you there Mr. Blasius?

25 A I am.

1 Q And you were asked at the top of the page -- actually the  
2 question begins on the previous page. Why don't we go the page  
3 before, 83? I'm going to try and get you to the narrowest passage  
4 possible. Why don't we stay on Page 85. At Line 13, you're asked  
5 a question. "I heard you say is old. I feel that essentially  
6 that is kind of my gut reaction. It's common sense, is just too  
7 old. What would be a tolerable median age from your point of  
8 view?" You see that?

9 A I do.

10 JUDGE SIPPEL: Do you have a question?

11 MR. SPERLING: I do, your honor. But I'm trying to square  
12 what's in front of me with the deposition. I think I have a wrong  
13 page citation and I do. I meant to ask about Page 84, not Page 85.

14 MR. KROUP: Your honor, I said this earlier. I objected.  
15 The witness isn't being impeached right now. Nothing he said in  
16 his deposition is inconsistent with what he testified to today. So  
17 Mr. Sperling asking him if he remembers that he said something in  
18 his deposition, Mr. Sperling should just ask about his opinions.  
19 If Mr. Blasius has inconsistent testimony, then I think it's  
20 appropriate to go to the deposition. But we're being slowed down  
21 by trying to remind him what he said two years ago or more when  
22 it's not inconsistent with his testimony today.

23 MR. SPERLING: Your honor, I asked if he recalled a fact.  
24 He said he didn't. I think I'm entitled to use something to  
25 refresh the witness's recollection on cross-examination.

1           JUDGE SIPPEL: Well, if he can't remember a fact, yes you  
2 can do that. But, I mean, I'm trying to be patient here. And I  
3 know there's an interest in cutting off a little early today, so  
4 this is going to be a hard way to do it. That's all. Mr. Kroup  
5 has a point.

6           MR. SPERLING: Let me try it a different way then, your  
7 honor.

8           JUDGE SIPPEL: But it's your cross-examination. I'm  
9 trying to give you as much leeway as I can.

10          MR. SPERLING: I appreciate that, your honor.

11          BY MR. SPERLING:

12          Q     Mr. Blasius, is it your view that GSN's median age was so  
13 old-skewing that it essentially was going to be a disqualifying  
14 element with respect to trying to lure advertisers seeking to buy  
15 a 25 to 54 demographic?

16          A     Yes.

17          Q     Let me ask you, if you can go back to our big binder, the  
18 hardcover binder. And just before I point you to the document, let  
19 me make sure I understand. When you say that it's a disqualifying  
20 element, what you mean is that an ad buyer looking at that network  
21 wouldn't choose to buy advertisements seeking a demographic of 25  
22 to 54 on that network, right?

23          A     Correct.

24                    (OPEN SESSION ENDS)

25                    (CLOSED SESSION BEGINS)

1 Q Okay. Let me ask you to turn please in your binder to  
2 GSN Exhibit 174, which is right at the front.

3 A GSN Exhibit 174?

4 Q Yes.

5 A Okay. Got it.

6 Q And I'm going to represent to you that this document is  
7 a summary of GSN's advertising revenue from 2008 to 2012. Your  
8 honor, this is the one we've seen before.

9 JUDGE SIPPEL: I'll take your word for it.

10 MR. SPERLING: I don't think we'll have any dispute from  
11 Mr. Kroup or Mr. Cohen either.

12 JUDGE SIPPEL: All right. Well, don't pick a fight. He's  
13 not saying anything.

14 MR. SPERLING: Oh, no, no, no. We're being friends, your  
15 honor.

16 MR. KROUP: Yes, sir.

17 JUDGE SIPPEL: I was getting the message.

18 BY MR. SPERLING:

19 Q Mr. Blasius, if you look at the third set of tables on  
20 this chart, you see it says Revenue by Demo?

21 A I do.

22 Q All right. And you understand -- I think the judge used  
23 the expression demo earlier. You understand demo is demographic,  
24 right?

25 A Correct.

1 Q Okay. And if you look at the total at the bottom, you  
2 see it's million.

3 A Okay.

4 Q You see that?

5 A I see that.

6 Q And just so we can understand what that's supposed to  
7 match up to, if you look at the second set of tables, which has  
8 sort of four little sets of rows in it, the first set of rows has  
9 a gross total, in the far right, million. Do you see that  
10 as well?

11 A I'm sorry, I don't see that.

12 Q Go to the set of tables with that Quarterly Revenue  
13 Summary.

14 A Okay. Quarterly Revenue Summary, yes.

15 Q And the first --

16 A Got it.

17 Q -- subheading is Upfront and Scatter Net Revenue. Do you  
18 see that?

19 A Okay. Yes.

20 Q And upfront and scatter are the two kinds of television  
21 advertising that are sold on the basis of a guaranteed demographic  
22 delivery, right?

23 A Mm-hm.

24 Q I'm sorry, is that correct?

25 A Yes. So it's the first set of tables. So it's really

1 the one, two, three, four, it's the fourth set of tables down  
2 you're talking about?

3 Q No. I'm saying Upfront and Scatter Net Revenue.

4 A Right.

5 Q And it's got one -- First Quarter, Second Quarter, Third  
6 Quarter, Fourth Quarter, and a fifth is Gross Total. Do you see  
7 that?

8 A Yes. So the first gross total is

9 Q Yes. And that's just for 2008. Do you see that?

10 A Got it.

11 Q And at the far right, you have the total for 2008 through  
12 2012.

13 A Got it.

14 Q You see that?

15 A Got it.

16 Q That's the one.

17 A Got it.

18 Q And you understand that, that represents the total  
19 upfront and scatter ad revenue for GSN over those four years,  
20 correct?

21 A Four or five?

22 Q That that figure that you read, million, is the  
23 total upfront and scatter net revenue for GSN for 2008 through  
24 2012?

25 A Correct.

1 Q Okay. Now let's go --

2 A That's what it says.

3 Q That's what it says.

4 A Yes.

5 Q And if you go to the third of the four sets of tables on  
6 this page, the one we were first looking at says Revenue by  
7 Demographic and you saw the total there was the same.

8 A Right.

9 Q Mr. Blasius, do you see that the demographic against  
10 which GSN sold the greatest amount of ads from 2008 to 2012 is  
11 females 25 to 54?

12 A Based on what it says here, yes.

13 Q All right.

14 A It says that female 25 to 54,  
15 Yes.

16 Q And that that's of ad revenue  
17 sold to ad buyers who were willing to come to GSN to reach that  
18 demographic, right?

19 MR. SCHMIDT: I think we might need to close the courtroom  
20 if we're going to do it.

21 MR. SPERLING: You're right. I think we're done and so --  
22 (Laughter.)

23 MR. SCHMIDT: He has already forgotten the numbers.

24 MR. SPERLING: Good.

25 BY MR. SPERLING:

1 Q Do you see that?

2 A Yes, I do.

3 Q Okay. So it sure looks like a lot of advertisers willing  
4 to buy ads on GSN to reach that demographic of women 25 to 54,  
5 doesn't it?

6 A I don't know that to be the case. I --

7 JUDGE SIPPEL: That's good.

8 MR. BLASIUS: Yes.

9 BY MR. SPERLING:

10 Q Assuming the truthfulness of the numbers, which you're  
11 not in a position to verify, it sure looks like a lot of  
12 advertisers were willing to buy ads on GSN to reach women 25 to 54,  
13 right?

14 A It's less than of the total revenue, isn't it?  
15 Or, no, excuse me, I'm doing the -- that's roughly -- it's less  
16 than of the total revenue figure you quote.

17 Q It's less than of the total upfront and scatter  
18 revenue, right?

19 A Correct.

20 Q It's nearly of the total upfront and scatter  
21 net revenue, right?

22 A Correct.

23 Q All right. And it's , correct?

24 A Correct.

25 (CLOSED SESSION ENDS)

1 (OPEN SESSION BEGINS)

2 Q Let me turn to the first item that Mr. Kroup asked you  
3 about. It was demographic ratings. Do you remember that?

4 A Do I refer to the book or --

5 Q I'm happy to take you to the book. So why don't you go  
6 to Mr. Kroup's softcover one.

7 A Okay. Got it.

8 Q And it's Cablevision Exhibit 762.

9 A Okay.

10 Q Do you remember looking at that?

11 A Yes.

12 Q And this table shows that for primetime, women 25 to 54,  
13 GSN had a rating of That's the first entry in the far right  
14 column, right?

15 A Yes.

16 Q And WE tv, same time period, primetime, same demographic  
17 had a rating of

18 A Correct.

19 Q -- correct? And do you remember testifying that, that  
20 difference was in your view absolutely significant?

21 A Yes.

22 Q And you point out it's nearly a two-to-one ratio, right?

23 A Not quite two-to-one, but close.

24 Q Close to two-to-one?

25 A Yes.

1 Q And then for full-day, GSN's rating was That's the  
2 next number that's not a percent in the far right column, right?

3 A Correct.

4 Q And WE's rating, women 25 to 54, full-day, was  
5 right?

6 A Correct.

7 Q And you also expressed the view that, that difference is  
8 significant from the ad buyer's perspective, right?

9 A Correct.

10 Q Okay. Mr. Blasius, if you go to the binder that I gave  
11 you, I'm going to ask you to turn to GSN Exhibit 442. Mr. Cohen,  
12 we're not sure that this is the same document as the one you're  
13 referring to. So we're going to keep this as GSN 442.

14 A And so now I'm going back to the GSN binder?

15 Q That's the one.

16 A Okay.

17 Q And you can keep your binder from Mr. Kroup open in front  
18 of you --

19 A Okay.

20 Q -- to that same page.

21 A Got it.

22 Q So first of all, the very first page of GSN Exhibit 442,  
23 do you see at the bottom right it's got a Bates number, as we call  
24 it? A control number?

25 A 442?

1 Q GSN 442.

2 A Yes, I believe so. Yes.

3 Q And you see that, that Bates number is the same one as  
4 you identify in your chart as the source for your rating the data?

5 A Do I see what? Excuse me.

6 Q Your chart. Your ratings data.

7 A Yes.

8 Q At the bottom, there's a source. Nielsen Company NPOWER  
9 Data C3 '09 to '10 Season. And then it has one of those annoying  
10 alphanumeric codes that we call a Bates number. It says CV GSN  
11 0428145.

12 A I apologize, I don't -- oh on the bottom of the first  
13 page.

14 Q Yes.

15 A I was already on the second page. Sorry.

16 Q So all I want to do is I want to make sure you're  
17 comfortable, Mr. Blasius, with the idea that what I'm showing you  
18 at GSN Exhibit 442 is the data that you cited as the source here in  
19 your table in Cablevision 762?

20 A Yes, I believe it is.

21 Q Okay. Now let's look at the data.

22 A Okay.

23 Q This is the Nielsen C3 data that you looked at, right?

24 A Yes.

25 Q And this table provides data only for WE and GSN,

1 correct?

2 A Correct.

3 Q Not for any other network?

4 A Correct.

5 Q Not for any of the networks that you identified as being  
6 in WE's competitive set?

7 A Correct.

8 Q So if I want to look at this data, I can't tell what the  
9 ratings points would be for any of the members of WE's competitive  
10 set as you identified them, right?

11 A Correct.

12 Q Now, in connection with your declaration and your written  
13 direct testimony, you also provided L3 data from Nielsen. You  
14 remember that?

15 A I honestly don't, but --

16 Q Let me point you to it.

17 MR. SPERLING: Your honor, I'd like to move GSN 442 into  
18 evidence.

19 MR. KROUP: No objection, your honor.

20 JUDGE SIPPEL: No objection. It's received in evidence as  
21 GSN Exhibit 442.

22 (Whereupon, the above-referenced document was received  
23 into evidence as GSN Exhibit No. 442.)

24 MR. SPERLING: Your honor, give me just a moment.

25 JUDGE SIPPEL: I'd like to get things like CPM and

1 demographic ratings, C3 Live Plus 3 and Nielsen -- well, no that's  
2 repetitive. But I'd like to see those in the glossary.

3 MR. SPERLING: I'll take care of that, your honor.

4 JUDGE SIPPEL: Thank you.

5 BY MR. SPERLING:

6 Q Mr. Blasius, can I ask you to turn to Page 30 of your  
7 deposition transcript?

8 A Page 30 of my --

9 Q Page 30.

10 A -- deposition. Okay. Okay.

11 Q And do you see right at Line 14, there's an Exhibit  
12 marked with a Bates number of CV GSN 0428143.

13 A I see that, yes.

14 Q Okay. Now, if you go to GSN Exhibit 430 in the big  
15 binder.

16 A Okay. Hang on. 430 in the GSN binder?

17 Q Yes.

18 A Okay.

19 MR. KROUP: I'm sorry, Mr. Sperling. I may have missed  
20 something. On what page was 143 marked?

21 MR. SPERLING: On Page 30 of the deposition transcript.

22 MR. KROUP: Page 30. Thank you.

23 MR. SPERLING: Yes.

24 MR. KROUP: Sorry.

25 JUDGE SIPPEL: You have 430?

1 MR. SPERLING: Page 30. No. I was just answering Mr.  
2 Kroup about what page of the deposition transcript. Yes, your  
3 honor, I'm sorry. We are in Exhibit 430.

4 JUDGE SIPPEL: That's what I wanted, yes.

5 MR. SPERLING: And Mr. Blasius, you see that this has the  
6 same Bates number on it, right?

7 JUDGE SIPPEL: As what? Same as what?

8 MR. SPERLING: Same as the one that was identified at his  
9 deposition. On Page 30 of his deposition transcript.

10 MR. BLASIUS: 428 -- 0428143?

11 MR. SPERLING: Yes.

12 MR. BLASIUS: Okay.

13 JUDGE SIPPEL: Do you agree with that?

14 MR. BLASIUS: Yes, I do.

15 BY MR. SPERLING:

16 Q And if you turn the page, you see that this is Live Plus  
17 3 Nielsen data for '09 to '10, correct?

18 A Where does it say that? Oh, Live Plus 3, yes.

19 Q That's what we're looking at?

20 A That's the header, yes.

21 Q And I'm going to represent to you that this was produced  
22 to us in connection with your declaration. Do you have a  
23 recollection that you did not provide L3 data as backup for your  
24 written declaration?

25 A So you're asking if I submitted this as part of my

1 declaration?

2 Q Is it your belief that you didn't submit such a thing as  
3 part of your written declaration?

4 A No, I believe it was.

5 Q Okay. Thank you.

6 A Yes.

7 Q Now, earlier we discussed the degree of comparability  
8 between L3 data and C3 data --

9 A Right.

10 Q -- remember? And I don't want to take any chances. So  
11 what I actually want to do is I want to first compare the L3 data  
12 to the C3 data for the networks that we have C3 data for, which are  
13 WE and GSN.

14 A Okay.

15 Q All right. We're going to do a little bit of math. You  
16 have a degree in economics, don't you?

17 A Correct.

18 Q I'm going to give you a calculator anyway.

19 (Laughter.)

20 JUDGE SIPPEL: A degree in economics doesn't mean you can  
21 add numbers.

22 MR. SPERLING: Fair point, your honor. There's one for  
23 you as well.

24 MR. BLASIUS: Okay.

25 JUDGE SIPPEL: They talk about things like, well at the

1 margin. We don't get to keep these, do we?

2 MR. SPERLING: And your honor, may I just retrieve the  
3 flip chart from outside the room?

4 JUDGE SIPPEL: Yes. Go right ahead.

5 MR. SPERLING: Thank you. And I'm going to have to ask  
6 you guys to move a bit. We'll get out faster if you move, Mr.  
7 Cohen.

8 JUDGE SIPPEL: You can't get your comments on the record  
9 from outside the courtroom. You want to go off the record? Why  
10 don't we go off the record for just a minute.

11 (Whereupon, the above-entitled matter went off the record  
12 at 2:19 p.m. and resumed at 2:19 p.m.)

13 JUDGE SIPPEL: We're on the record.

14 BY MR. SPERLING:

15 Q Mr. Blasius, this is going to go most efficiently for  
16 everybody involved if you have two documents in front of you.

17 A Okay. Which ones?

18 Q One of them is from the binder Mr. Kroup gave you.

19 A Okay.

20 Q That's Cablevision Exhibit 762. That's the one with the  
21 demographic ratings.

22 A Okay. Got that.

23 Q And the other is the document that we were looking at,  
24 which you have open in front of you --

25 A Here?

1 Q -- in the binder I gave you.

2 A Okay.

3 Q That's GSN Exhibit 430.

4 A Okay.

5 JUDGE SIPPEL: And the other one is 762?

6 MR. SPERLING: That's right.

7 JUDGE SIPPEL: Okay.

8 BY MR. SPERLING:

9 Q And Mr. Blasius, I'm going to have you cheat for five  
10 seconds, I'm going to have you look at the next document in Mr.  
11 Kroup's binder. Because I want one number off of that one. That's  
12 Cablevision Exhibit --

13 A 763?

14 Q You got it.

15 A Okay.

16 Q And Mr. Blasius, can you tell me from Cablevision Exhibit  
17 763, for broadcasting in 2009, 2010, what was the total viewing  
18 audience in the United States women 25 to 54?

19 A Based on this?

20 Q Yes.

21 A Well, the population was 62,850,000.

22 Q That's the -- that's what I'm asking.

23 A Yes.

24 JUDGE SIPPEL: Based on 763?

25 MR. BLASIUS: Correct.

1 JUDGE SIPPPEL: That's the Exhibit --

2 MR. BLASIUS: Yes. It's across the top line here.

3 JUDGE SIPPPEL: I see it. Okay. I see it. Yes.

4 BY MR. SPERLING:

5 Q It's 62,850,000?

6 A Yes.

7 Q And you'll have to forgive my handwriting. Now, if I  
8 wanted to use the L3 data to calculate ratings points, what I would  
9 do is I would take the viewers on a network as measured by the L3  
10 data and I would divide it into that figure, right? And multiple  
11 it by 100 to get a percent?

12 A Explain that again? I'm kind of confused. Yes.

13 Q Sure. If I wanted to calculate the ratings point for a  
14 network --

15 A Right.

16 Q -- in terms of a particular demographic --

17 A Right.

18 Q -- women 25 to 54 based on the L3 data, then what I would  
19 do is, I would look at the number of viewers --

20 A Right.

21 Q -- that, that network had in that demographic as reported  
22 by Nielsen's L3 data. I would divide it over that number.

23 A Yes.

24 Q And I calculate by 100 to get a percent, right?

25 A Actually, the simpler math is dividing it into 62,850

1 without the three zeros, but that's media math.

2 Q I'm going to allow you to do it either way. And what I'd  
3 like to do is I'd like to calculate the ratings points for WE and  
4 GSN for women 25 to 54 for the L3 data.

5 A Okay.

6 Q And just see if it matches up to the C3 data you used.

7 A Okay.

8 Q Okay?

9 JUDGE SIPPPEL: So this women 25 to 54.

10 MR. SPERLING: Mr. Cohen, be patient. I'll get you to it.

11 MR. COHEN: I'm allowed to confirm the fact that you've  
12 actually taken my place.

13 MR. SPERLING: I meant it fondly.

14 BY MR. SPERLING:

15 Q Mr. Blasius, let's navigate to where we can find the  
16 information --

17 A Okay.

18 Q -- for women 25 to 54. Let's start with WE. If you turn  
19 please to the page that has the Bates number 430.034.

20 A I'm missing that one, it seems. Is it in the same  
21 section?

22 Q You'll get there --

23 A Okay.

24 Q -- eventually.

25 A Yes. I got it. Yes. It has also -- it also has Page

1 Number 33 at the bottom?

2 Q Yes, it does.

3 A Okay.

4 JUDGE SIPPEL: Thirty-three?

5 MR. BLASIUS: Yes.

6 JUDGE SIPPEL: Thank you.

7 BY MR. SPERLING:

8 Q So what I'd like to do, Mr. Blasius, is I'd like to start  
9 with WE and the primetime number, the primetime audience number for  
10 women 25 to 54 for WE is right?

11 A I'm not seeing that on this page.

12 Q If you -- the first set of numbers --

13 A It is --

14 Q -- is for AMC. Do you see that?

15 A Yes, I see that.

16 Q The second set is --

17 A Oh, I'm sorry. Now I see it. Yes.

18 Q Okay.

19 A I was thinking it was alphabetical.

20 JUDGE SIPPEL: So where are you going to?

21 MR. SPERLING: We're going to the fourth set of --

22 JUDGE SIPPEL: WE?

23 MR. SPERLING: -- rows here, your honor. WE.

24 JUDGE SIPPEL: Yes. Okay.

25 BY MR. SPERLING:

1 Q And, Mr. Blasius, what's the primetime audience for WE,  
2 women 25 to 54?

3 A

4 Q Is that the primetime or the full day?

5 A That's -- sorry, the 6:00 to 6:00 a is -- 6:00 to 1:00 is

6

7 Q So if I want to calculate the ratings point for primetime

8 --

9 A Right.

10 Q -- I'm going to divide into 62,850, right?

11 A Correct.

12 Q Can you do that and tell me what you get?

13 A Sure. There it is. So it is -- what is it?

14 divided by 862850 equals? So it's a

15 Q It's a

16 A Oh, excuse me,

17 Q Thank you. Now let's do the same thing for total day.

18 That number you said was right?

19 A

20 JUDGE SIPPEL: Was that

21 MR. SPERLING: your honor.

22 MR. BLASIOUS: Yes,

23 JUDGE SIPPEL: And what's the next line you're --

24 MR. SPERLING: If you look at the row immediately above

25 that, your honor.

1 JUDGE SIPPEL: Yes. Which is Fuse?

2 MR. SPERLING: No, no.

3 MR. BLASIOUS: No, it's --

4 MR. SPERLING: WE set. There's two rows for WE.

5 JUDGE SIPPEL: Yes.

6 MR. SPERLING: First set is full day, 6:00 a.m. to 6:00

7 a.m.

8 JUDGE SIPPEL: Yes.

9 MR. SPERLING: Second row is primetime, 6:00 p.m. to 1:00

10 a.m. Is that your understanding Mr. Blasius?

11 MR. BLASIOUS: Correct.

12 BY MR. SPERLING:

13 Q Okay. And you gave me the primetime number. Now I'd

14 like to do the same calculation --

15 A Yes.

16 Q -- for the first of those rows, which is full day.

17 A It's a Or excuse me, it's a So it's a

18 you can round it up to a

19 Q

20 A Yes.

21 Q I'm only going to make you do two more.

22 A Okay.

23 Q Let's do this --

24 A It's hard work.

25 Q Let's do the same thing for GSN. You only have to go a

1 couple of pages later. Turn the page once. It's on the page with  
2 the Bates number GSN 430.037.

3 A Okay.

4 Q And do you see the second set of rows towards the top?  
5 We have full day and primetime data for GSN. Why don't we go in  
6 order? So why don't we do full day first.

7 A Full day is

8 Q That's what I see.

9 A Yes. So it's

10 JUDGE SIPPEL:

11 MR. BLASIUS: Right.

12 BY MR. SPERLING:

13 Q Okay. And how about primetime? For that we're going to  
14 use women 25 to 54, is that right?

15 A Say -- yes. on that one. So it's --

16 Q Would you mind doing that calculation?

17 A It's a It rounds up. It's actually

18 Q I'm going to go even-odd, if that's okay with you.

19 A Yes, that's fine. Actually that was the convention I  
20 learned --

21 Q Great.

22 A -- when I was a kid.

23 Q So we're in agreement, So this is the L3 data. If  
24 you look at Footnote 5 in your written direct testimony.

25 A Where am I looking at that?

1 Q Actually, you don't need to do that. Why don't we just  
2 go back to your table, which is Cablevision Exhibit 762.

3 A Okay.

4 Q For GSN primetime, how does the L3 ratings fall in  
5 compare to what you have for the C3?

6 A The -- let's see the primetime?

7 Q GSN primetime.

8 A So it's the same number.

9 Q It's the same number?

10 A

11 Q And for WE primetime?

12 A WE primetime,

13 Q Is that also the same?

14 A Yes.

15 Q How about GSN total day?

16 A GSN total day is a

17 Q Is that the same in both of them?

18 A Yes.

19 Q And how about what's left? WE total day?

20 A It's

21 Q Is that the same as you had under the C3 data?

22 A Yes.

23 Q So would you agree with me that the L3 data and C3 data  
24 track each other with respect to WE and GSN calculation of ratings  
25 points for women 25 to 54 --

1 A In this particular instance, yes.

2 JUDGE SIPPEL: Well, let him finish the questions. Is  
3 this going to get reduced to an exhibit?

4 MR. SPERLING: We have it for you momentarily, your honor.  
5 Rather than having the witness accept a set of assumptions from us  
6 about how the math works out, I thought it would actually be more  
7 reliable for him to do it himself.

8 BY MR. SPERLING:

9 Q Now, again, the C3 data that we looked at had information  
10 only for GSN and WE, right?

11 A Correct.

12 Q But the L3 data here is for a bunch of other networks as  
13 well, right?

14 A Yes.

15 Q Just one more time. Actually, I can shorten this for  
16 you. You testified in your written direct testimony that Style's  
17 one of the networks in WE's competitive set, right?

18 A Correct, I believe. I'd want to check to make sure, but  
19 yes. It sounds right.

20 Q It was Paragraph 38 of your written direct testimony.  
21 Feel free to go back --

22 A Okay.

23 Q -- take a look, and let me know.

24 A In your book or in our book?

25 Q Your written direct testimony is the first exhibit in the

1 book from Mr. Kroup.

2 A Oh, okay. Yes, I'm including Style in that. Yes.

3 Q Okay. What I'd like to do, we're going to do four more  
4 calculations and put the calculator away after that. I'd like to  
5 do the same thing we just did, but I'd like to do it for Style and  
6 then for another network.

7 A Okay.

8 Q So for Style, you will find the women 25 to 54 data on  
9 GSN Exhibit 430.039. Same exhibit we were looking at with all the  
10 L3 data. It's got the stamp ending in 039.

11 JUDGE SIPPEL: What's the tab again?

12 MR. SPERLING: It is tab 430, your honor.

13 JUDGE SIPPEL: Got you.

14 MR. BLASIUS: Style, yes. Okay.

15 JUDGE SIPPEL: And what is the Bates?

16 MR. SPERLING: 430.039.

17 JUDGE SIPPEL: Okay.

18 BY MR. SPERLING:

19 Q Do you have it, Mr. Blasius?

20 A I have it.

21 Q And do you see just over halfway down the page, there are  
22 the two rows for Style? The first one's total day and the second  
23 one is primetime, is that right?

24 A Yes.

25 Q Do you mind doing the math for me again? Let's do --

1 A Yes. No problem.

2 Q -- the total day first.

3 A No problem.

4 Q Okay. And do I have it correct that the total day  
5 viewership women 25 to 54 for Style was

6 A Yes, it is.

7 Q And we're dividing into the same denominator as before?

8 A Yes. Okay. So that would be a Actually  
9 it's got additional digits, so I'd actually say it's a

10 Q for Style. That's for total day, correct?

11 A Correct.

12 Q Okay. And now how about we do the same thing for Style  
13 for primetime?

14 A actually rounds up.

15 Q That's Style for primetime?

16 A Yes.

17 Q Okay. Last one. In Paragraph 38 of your written direct  
18 testimony, do you also say that Lifetime is part of WE's  
19 competitive set?

20 A Yes.

21 Q I got to find the page. Okay. If you go to the page --  
22 same Exhibit 430, the page ending in .037.

23 A 037?

24 Q Yes.

25 A Okay.

1 Q And you see the second set of rows from the bottom is  
2 Lifetime?

3 A Yes.

4 Q And the women 25 to 54 adults total day is  
5 right?

6 A Correct.

7 JUDGE SIPPEL: I'm seeing two sets of Lifetime. Which one  
8 do I want?

9 MR. SPERLING: Your honor, I believe the second one you  
10 can see the beginning of another letter at the end, is that an M?

11 JUDGE SIPPEL: I can.

12 MR. SPERLING: That's a different Lifetime. I believe  
13 it's Lifetime Movie Channel, although I don't know for certain.

14 MR. BLASIUS: That's what it is. Lifetime Movie Channel.

15 JUDGE SIPPEL: Thank you.

16 MR. SPERLING: Thank you, Mr. Blasius.

17 BY MR. SPERLING:

18 Q So we're focused on Lifetime. So what's the rating point  
19 total day women 25 to 54?

20 A Hang on, let me do that again. That's a

21 Q Is it a or a

22 A Sorry, yes. It's a

23 Q total day?

24 A Yes.

25 Q And you know what I'm going to ask you to do next, don't

1 you?

2 A I'm already going there. Actually

3 Q And that that's Lifetime's primetime rating point.

4 A 6:00 p to 1:00 a, correct.

5 Q That's primetime women 25 to 54, correct?

6 A Correct.

7 MR. SPERLING: Can I have GSN Exhibit 443 marked?

8 (Whereupon, the above-referred to document was marked as  
9 GSN Exhibit No. 443 for identification.)

10 MR. SPERLING: Your honor, may I approach the witness?

11 JUDGE SIPPEL: You may.

12 MR. SPERLING: Here you go, your honor.

13 JUDGE SIPPEL: Thank you.

14 MS. KANE: Can the Bureau get one?

15 MR. SPERLING: Here you go. Your honor, before we talk  
16 about 443, I'd like to move into evidence Exhibit 430. The one  
17 we've been going through.

18 JUDGE SIPPEL: Any objections?

19 MR. KROUP: No objection, your honor.

20 JUDGE SIPPEL: 430 comes in as whose -- who's sponsoring  
21 it?

22 MR. SPERLING: That's GSN 430, your honor.

23 JUDGE SIPPEL: GSN 430 is in evidence now.

24 (Whereupon, the above-referred to document was received  
25 into evidence as GSN Exhibit No. 430.)

1 BY MR. SPERLING:

2 Q Mr. Blasius, thanks for doing the math.

3 A No problem.

4 Q I just want to make sure that on the two rows here that  
5 say women 25 to 54 for the primetime and total day, the ratings  
6 points that I show here are the same as the ones that you  
7 calculated?

8 A WE GSN Style and Lifetime Yes.

9 Q That's the correct for primetime?

10 A That's correct for primetime.

11 Q And can you make sure that I have it right for total day  
12 in Exhibit 443 as well?

13 A for WE, for GSN, for Style, and for  
14 Lifetime. Correct.

15 Q Okay. And I don't think we need any calculators for you  
16 to make sure that I've calculated the difference in the bottom row  
17 of each set correctly, right?

18 A Do I need to do the math or no?

19 Q Why don't you? You don't need to do it out loud unless  
20 you want to. Can you just confirm for me, Mr. Blasius?

21 A Oh, this is compared to WE. So I'm -- okay.

22 Q That the compared to WE numbers here are an accurate  
23 exercise in subtraction.

24 A Yes, yes, and yes.

25 Q They're all correct, right?

1 A All correct.

2 Q So, Mr. Blasius, what Exhibit 443 does is it compares WE  
3 not to just to GSN, but to two networks that you say are in WE's  
4 competitor set, right?

5 A Correct.

6 Q And we won't find any calculation like that in your  
7 direct report, will we?

8 A In the declaration?

9 Q In the declaration or your written direct testimony,  
10 there's no such calculation, is there?

11 A For Style and Lifetime?

12 Q Correct.

13 A No.

14 Q Now, you testified before the lunch break that the  
15 difference between WE and GSN in primetime of ratings points  
16 was absolutely substantial. You remember that?

17 A I did.

18 Q And you pointed out that the difference was nearly  
19 two-to-one. And you repeated that this afternoon. Do you remember  
20 that?

21 A I do.

22 Q The difference between WE and GSN and -- on the one hand  
23 and WE and Style on the other is almost identical, isn't it, when  
24 we're looking at primetime?

25 A On this single metric, yes.

1 Q Okay. And in fact, when we compare WE to Lifetime, the  
2 difference between WE and Lifetime is more than five times the  
3 difference between WE and GSN. Isn't that true?

4 A Based on this, yes.

5 Q Based on this metric where you said that the difference  
6 between WE and GSN was absolutely significant, right?

7 A Yes.

8 Q Okay. Let's talk about total day. You testified this  
9 morning that the difference between WE and GSN of ratings  
10 points was also significant, right?

11 A Mm-hm.

12 Q And the difference between WE and Style, which you say is  
13 in WE's competitive set, is exactly the same, right?

14 A Mm-hm.

15 Q And the difference between WE and --

16 MR. SCHMIDT: Your honor, could the witness just answer  
17 verbally? I don't --

18 MR. BLASIUS: Oh, sorry, yes.

19 MR. SCHMIDT: -- want to have a hard time with the  
20 transcript.

21 MR. BLASIUS: Yes.

22 JUDGE SIPPEL: Thank you.

23 MR. SPERLING: Thank you, Mr. Schmidt.

24 JUDGE SIPPEL: Thank you, Mr. Schmidt. Thank you.

25 MR. BLASIUS: My apologies.

1 BY MR. SPERLING:

2 Q And the difference between WE and Lifetime is nine times  
3 the difference between WE and GSN in terms of ratings points,  
4 correct?

5 A On ratings points, yes.

6 Q And somehow, despite that significant difference, Style  
7 and Lifetime are both within WE's competitive set according to you,  
8 right?

9 A Yes.

10 Q And, by the way, this L3 data, you had available to you  
11 at the time that you prepared your declaration, at the time you  
12 prepared your written direct testimony, right?

13 A I assume so, yes.

14 Q And you could have done these calculations and included  
15 them in your written direct, in your declaration, right?

16 A I guess the answer's Yes.

17 Q But you didn't?

18 A I did not.

19 MR. SPERLING: Nothing further.

20 MR. COHEN: Your honor, could you give us five minutes so  
21 we can --

22 JUDGE SIPPEL: Yes, certainly.

23 MR. SPERLING: Actually and, your honor, before we're off  
24 the record, I'd just like to move 443 into evidence.

25 JUDGE SIPPEL: Any objections?

1 MR. KROUP: Maybe over our ten minute break, we'll just  
2 make sure. I don't think we'll have an objection, but if we can  
3 come back on the record and move it in then, that would be better.

4 JUDGE SIPPEL: All right. We'll do it when we get back.  
5 What time -- 20 of?

6 MR. KROUP: Could we do ten minutes, your honor?

7 JUDGE SIPPEL: We are, we're going to come back at ten of.

8 MR. KROUP: Okay, great.

9 MR. COHEN: Ten minutes is enough, your honor.

10 JUDGE SIPPEL: Yes.

11 (Whereupon, the above-entitled matter went off the record  
12 at 2:39 p.m. and resumed at 2:51 p.m.)

13 JUDGE SIPPEL: Let's go back on the record. Mr.  
14 Sperling?

15 MR. SPERLING: Your Honor, we move for admission GSN  
16 Exhibit 430 and 443. Your Honor, I misspoke -- 433 and 443.

17 MR. KROUP: Just for clarification, 433 is -- okay, 433  
18 no objection and 443 no objection.

19 MR. SPERLING: Thank you

20 JUDGE SIPPEL: Well, then they are in evidence now, then.  
21 They are received.

22 (Whereupon, the above-referred to documents were received  
23 into evidence as GSN Exhibit Nos. 433 and 443.)

24 MR. KROUP: Are we on the record, Your Honor?

25 JUDGE SIPPEL: We're on the record.

1 THE WITNESS: Can I get my glasses? They are back in the  
2 break room.

3 JUDGE SIPPEL: Do you want to get them?

4 MR. KROUP: We will bring Mr. Mr. Blasius's glasses. In  
5 the meantime, I have one question before we get into some other  
6 median age.

7 REDIRECT EXAMINATION

8 BY MR. KROUP:

9 Q The first question I have for you, Mr. Blasius, at a  
10 couple of times during, or maybe once during your testimony when  
11 Mr. Sperling was asking you questions, you responded that the  
12 analysis that you came to was based on your impression. You said  
13 he was asking about a methodology and then he said was that based  
14 only on your impression, and you said yes.

15 Just for clarification, is your impression as a  
16 testifying advertising expert in this case, based on your  
17 experience in the advertising industry?

18 A Yes, 28 years as a network, you know a national  
19 television buyer.

20 Q All right. I will now provide you with your glasses  
21 because we are going to look at a couple of documents or just one  
22 document.

23 A All right.

24 JUDGE SIPPEL: I am wondering if you will be able to see  
25 where you are.

1 THE WITNESS: Well, it's to read all these small numbers.

2 BY MR. KROUP:

3 Q So, Mr. Blasius, before I hand this document out, do you  
4 recall just before we broke Mr. Sperling had you run through a  
5 number of calculations of various ratings of a few different  
6 networks?

7 A Yes.

8 Q Okay. And during that Q and A, did he ask you any  
9 questions about the comparative viewer concentration among women 25  
10 to 54 that those various networks had?

11 A Not that I recall, no.

12 Q Okay. But that was something you did look at as part of  
13 your opinion in this case. Is that correct?

14 A Correct.

15 MR. KROUP: Okay, I am going to pass out a document we  
16 have marked as CV Exhibit 753, Your Honor.

17 (Whereupon, the above-referred to document was marked as  
18 CV Exhibit No. 753 for identification.)

19 BY MR. KROUP:

20 Q And while I am passing this out, Mr. Blasius, if you  
21 could, for the record, remind the Court why audience concentration  
22 or the percentage of total audience that is made up of the target  
23 demographic is important to someone making an advertising buy?

24 A Well, as I think I explained this morning, when you are  
25 buying a spot at a cable network or a spot in general on a

1 television network, what you want to do is minimize the impressions  
2 that fall outside of your target demographic. And the higher the  
3 concentration of your target demographic delivered by a specific  
4 vehicle, be it a program, be it a network, whatever, the better.

5 Q And so would measures of audience concentration be the  
6 kind of thing you would look at as an advertising buyer when  
7 determining which networks were part of, let's say, WE tv's  
8 competitive set?

9 A Yes, I would.

10 Q Okay. Now, Mr. Blasius, I have put in front of you a  
11 document we have marked CV Exhibit 753 and which also has a stamp  
12 on the cover that says Blasius 12. Do you recognize this document?

13 A Yes, I do.

14 Q And if you could describe for the Court, at a high level,  
15 what this document is.

16 A Well, essentially, that informed the chart in my  
17 declaration about where the network stood, relatively speaking, in  
18 terms of audience concentration. So, again, looking at the 77  
19 networks, seeing how they fell out, one versus the other, that kind  
20 of thing.

21 Q And just looking at the second page of this document, so  
22 page 2 of 13, it has a handwritten note at the top that says W 25  
23 to 54. Do you see that?

24 A Correct.

25 Q So, among the rankers that you did of audience

1 concentration for various networks, is this the chart that reflects  
2 the rank of various networks in the women 25 to 54 demographic?

3 A Yes, it does, based on audience concentration.

4 Q Okay. And just to tie this out to the document we looked  
5 at before, which is CV Exhibit 764, if we see -- well, no need to  
6 look at it but if you look at this document, here, WE is ranked  
7 number four. Is that correct?

8 A Correct.

9 Q And that is in terms of audience concentration among  
10 women 25 to 54. Right?

11 A That is correct. And the corresponding index, again, is  
12 and depending on which date bar you are looking at.

13 Q And if we turn a few pages onto page 10 of 13, you will  
14 see that GSN is ranked 54th. Do you see that?

15 A I'm getting there. Yes, number 54 is GSN.

16 JUDGE SIPPPEL: Who prepared this document here?

17 THE WITNESS: I did.

18 JUDGE SIPPPEL: Was it prepared for purposes of this case?

19 THE WITNESS: Yes, it was.

20 BY MR. KROUP:

21 Q Okay, Mr. Blasius, not to flip around too much, but let's  
22 turn back to the second page of this document, where we see WE tv.

23 A Okay.

24 Q So, that is page 2 of 13.

25 A Uh-huh.

1 Q Now, if I understand this document, it has got a few  
2 different demographics on it but one of them is women 25 to 54.  
3 Right?

4 A Say that again? Across the top, you mean?

5 Q Yes.

6 A Yes.

7 Q So, focusing on those columns under the W 25 to 54  
8 columns, we see about halfway down the page WE tv. Right?

9 A Yes, they are ranked number four.

10 Q Okay. Now, maybe you could explain. Based on this  
11 chart, it appears that WE tv had viewers in total during the  
12 relevant time period. Is that right?

13 A Correct.

14 Q And if we move one column to the right, we can see that  
15 during that same time period, WE tv's audience concentration, as a  
16 percentage of all viewers was Is that right?

17 A That's correct.

18 Q And that was a concentration of women 25 to 54 audience  
19 that was the fourth highest of all the 77 cable networks you looked  
20 at. Right?

21 A That is correct.

22 MR. SPERLING: Your Honor, I am going to object to this  
23 line of questioning. There was nothing on cross about audience  
24 concentration, not one thing. So, it is not at all clear to me how  
25 this is redirect testimony that responds to something that was

1 raised on cross-examination.

2 MR. KROUP: Your Honor, if I could make a quick proffer,  
3 I think you will see on this ranker chart, the network that appears  
4 directly above WE is a network called Style. And the network that  
5 appears directly below WE is a network called Lifetime.

6 And there was an extensive amount of questioning about  
7 Style and Lifetime and their placement in WE's competitive set on  
8 cross-examination. So, in our view, this is fair game.

9 MR. SPERLING: Your Honor, with all due respect, we  
10 talked about Style and Lifetime in terms of their demographic  
11 ratings. And we certainly don't object to any cross -- to any  
12 redirect on that subject. But to suggest that because we asked  
13 about the competitive set, redirect can cover anything in the world  
14 the witness now wants to say for the first time about that line  
15 having the competitive set, that is well beyond the scope of  
16 cross-examination.

17 JUDGE SIPPEL: What is your purpose for asking him these  
18 questions?

19 MR. KROUP: Your Honor, the chart is a little  
20 complicated, which is why I was walking through WE tv.

21 JUDGE SIPPEL: Just explain what you are trying to  
22 accomplish here.

23 MR. KROUP: So, Mr. Sperling's cross-examination was  
24 suggesting that there wasn't any discipline to Mr. Blasius's  
25 identification of programs in WE's competitive set. Because one

1 network that Mr. Sperling discussed was a network called Lifetime,  
2 which delivered far more women 25 to 54 than WE. And another  
3 network was a network called Style, which delivered fewer women 25  
4 to 54.

5 What Mr. Blasius's analysis shows, which he was not shown  
6 on cross-examination is that those networks are properly in WE's  
7 competitive set, in Mr. Blasius's opinion, because of the  
8 concentration of women 25 to 54 among the total audience.

9 JUDGE SIPPEL: Well isn't that really apples and oranges?

10 MR. SPERLING: That is exactly our point, Your Honor.

11 JUDGE SIPPEL: He listed -- I mean he started out in his  
12 testimony listed about five or seven things that -- let me go back  
13 to those. Yes, I see Nielsen, viewer concentration, indexing,  
14 ranking by audience concentration, median age.

15 And now you are focusing on what -- of that you are  
16 focusing on what?

17 MR. KROUP: These charts or this chart that we are  
18 looking at, Your Honor, reflects the audience concentration and  
19 indexing portions of his opinion.

20 JUDGE SIPPEL: And was that covered on cross-examination?  
21 I think he said it was no.

22 MR. KROUP: Mr. Sperling did ask a few questions about  
23 what metric or what I think benchmark was the word he used, Mr.  
24 Blasius would apply to determine whether two networks had similar  
25 audience concentrations.

1           He also, if I am recollecting, asked Mr. Blasius  
2 extensively about the networks that were in WE tv's competitive  
3 set, in Mr. Blasius's opinion. And Mr. Blasius's opinion, Your  
4 Honor, is not based solely on the Nielsen ratings that Mr. Sperling  
5 walked you through on cross-examination. They are based on  
6 documents like this and other work he did.

7           JUDGE SIPPEL: No, no, no. That is outside the scope of  
8 cross-examination. He picked out selective things to ask him that  
9 were within the framework of how Mr. Blasius was approaching his  
10 study, starting off with the proposition that there really is no  
11 base number, no base reference.

12           And so all he was doing was pivoting off on that to talk  
13 about a couple of programs. He wasn't trying to reestablish the  
14 credibility of the witness. He was trying to cross-examine him.

15           MR. KROUP: Your Honor, I am just pivoting back. Okay?  
16 Mr. Sperling --

17           JUDGE SIPPEL: Well, you might be pivoting back but once  
18 he does the pivot, you have got to go with his pivot.

19           MR. KROUP: Your Honor, we had testimony on direct  
20 testimony from Mr. Blasius that he considered a number of different  
21 factors in reaching conclusions about WE tv and GSN in this  
22 particular case. And he also included a line in his report about  
23 WE tv's competitive set, based on that analysis.

24           Mr. Sperling gave you a cross-examination concerning only  
25 one of those factors and Mr. Blasius is going to testify about what

1 the other factors were that made him decide in his report to put  
2 them in his competitive set.

3 JUDGE SIPPEL: The other factors that Mr. Sperling  
4 elected not to cross-examine about.

5 MR. KROUP: Correct.

6 JUDGE SIPPEL: No way.

7 MR. COHEN: Your Honor, can I be heard?

8 JUDGE SIPPEL: Well, how many people are going to argue  
9 the issue?

10 MR. COHEN: Never mind, Your Honor. I think there is a  
11 perspective for those of us who have been in every day trial, Your  
12 Honor. I think this will be the first time Your Honor has  
13 sustained an objection on redirect being beyond the scope of  
14 cross-examination.

15 The fact of the matter is, this analysis can be put up,  
16 when it was put up, and it is going to suggest to Your Honor that  
17 Mr. Blasius is wrong about competitive sets because look, these  
18 numbers are all over the lot. I think it is quite fair on  
19 redirect, in the scope of what has gone on every day in this trial,  
20 with due respect, Mr. Kroup has been back at the ranch, doing an  
21 incredible amount of hard work so some of us in the courtroom can  
22 ask some questions.

23 And the fact of the matter is, this is going to show that  
24 this is a cropped cross-examination. They are going to argue from  
25 this document that he was wrong.

1 JUDGE SIPPPEL: We should have the witness out of the room  
2 for this.

3 MR. COHEN: Sure, Your Honor.

4 JUDGE SIPPPEL: It's too late now.

5 MR. COHEN: But I don't think, Your Honor, in the scope  
6 -- given what has been going on, it is really late in the day to  
7 have, I would suggest respectfully, have such a narrow frame.

8 This will be over in less time than this argument. Your  
9 Honor can give it any weight that you want.

10 JUDGE SIPPPEL: Well --

11 MR. COHEN: And I won't say another word. I will leave  
12 it at that.

13 JUDGE SIPPPEL: Mr. Sperling has got a very good point but  
14 I certainly don't want to walk out of here not seeming to be fair  
15 to both sides on how things are allocated. I'm going to go along  
16 with this but you are right, my weight determination is going to be  
17 given some serious consideration because you know how I am viewing  
18 this. But I am going to let them go right ahead.

19 MR. SCHMIDT: But while we have the witness here, Your  
20 Honor, the fairness point is he didn't cover this in his written  
21 direct. He chose not to do the comparison in his written direct.  
22 And Mr. Sperling cross-examined him on that on one dimension. Now,  
23 they want to introduce something new that was not in his written  
24 direct.

25 MR. SPERLING: I apologize for the tag teaming, Your

1 Honor, I appreciate, as always, my partners' support.

2 It wasn't in his written direct. This is not something  
3 he covered in his oral direct. And essentially, Mr. Kroup's and  
4 Mr. Cohen's argument is that what I did cover on cross could lead  
5 to conclusions, legal conclusions that they don't like and so they  
6 want to introduce a new fact concerning a subject I didn't address  
7 on cross, which they think will prevent somebody from reaching that  
8 conclusion. That is an admission that it is totally beyond the  
9 scope of the cross-examination.

10 I'm not going to say another word on it, Your Honor. We  
11 will respect your ruling, obviously.

12 MR. KROUP: Your Honor, may I proceed?

13 JUDGE SIPPEL: No. I'm going to -- give me ten minutes  
14 to think about this. Will you? This has got me very disturbed.

15 MR. KROUP: Your Honor, if I may be heard before you --

16 JUDGE SIPPEL: I know. He is absolutely right.

17 MR. KROUP: But Your Honor --

18 JUDGE SIPPEL: Mr. Cohen is suggesting that I haven't --  
19 that there has not been a fair balance to the allocation of  
20 rulings. And that upsets me very much.

21 MR. KROUP: Your Honor, if I just may add, CV Exhibit  
22 764, which we did discuss with the witness on direct examination  
23 involves -- it is essentially the top line conclusions that come  
24 from the work that Mr. Blasius did.

25 You asked him earlier what work he had put in to go into

1 this and this is what I am just about to talk him through right  
2 now. He is prepared to testify that this was the work that went  
3 into choosing the competitive set and we would like to get that  
4 testimony from him and elicit that. We will do it as quickly as  
5 possible.

6 JUDGE SIPPEL: You know there has got to be an end to  
7 everything. I am going to stick with what I had. When I asked him  
8 up front what he considered, it was his responsibility and your  
9 responsibility for him to tell me the whole story or at least hit  
10 the highlights, not to go back and do it after everything was  
11 finished. And you see where he missed and so then you want to just  
12 retrench things with additional testimony. I mean this can just go  
13 on and on and I just don't think it is right. I just don't think  
14 it would be right for me to do that.

15 I apologize to Mr. Cohen because I have got a lot of  
16 respect for him. I have got a lot respect for your side of the  
17 table but I have got to stick with my ruling.

18 MR. COHEN: Your Honor, let me just be clear. I was not  
19 suggesting overall Your Honor has been unbalanced in any way. So,  
20 I appreciate you. You don't need to apologize to me. And I am not  
21 suggesting you haven't conducted a fair and balanced trial. I am  
22 making one observation about the scope of redirect and don't want  
23 anything that I said to be a suggestion that I think Your Honor has  
24 not conducted a fair and impartial hearing. Of course you have.

25 JUDGE SIPPEL: Well, it wasn't that my feelings were hurt

1 but I do want to -- I always want people walking out of here  
2 thinking that they have gotten a fair shot.

3 I am going to stick with my ruling. I already thought.  
4 I went down it, I thought about it, and you made a very moving  
5 plea, Mr. Cohen. I don't mean to be sarcastic about that at all.  
6 But I am going to stick with my ruling. I am not going to allow  
7 that.

8 MR. KROUP: Okay, we will do this another way, Your  
9 Honor.

10 JUDGE SIPPEL: Thank you.

11 BY MR. KROUP:

12 Q Mr. Blasius, do you recall on cross-examination you were  
13 asked a number of questions about a sentence in your report that  
14 identified networks that may be within WE's competitive set?

15 A Yes, I do.

16 Q Was that sentence in your report intended to be a  
17 conclusion with respect to every single network that could be in  
18 WE's competitive set?

19 A Not at all.

20 Q Okay. And was that conclusion that those few networks  
21 that you mentioned that you believe are in WE's competitive set,  
22 was it based solely on Nielsen ratings and how those networks  
23 compared?

24 A The ratings? No, it was based as much on audience  
25 concentration as it was on ratings.

1 Q Was it also based on median age?

2 A Yes, it was.

3 Q Was it also based on the indexing and ranking conclusions  
4 that you came to with respect to audience concentration?

5 A Yes, it was.

6 Q And is that the way an advertising buyer who was seeking  
7 to determine whether an appropriate vehicle for women from 25 to 54  
8 advertising would come to the conclusion that you reached?

9 A Absolutely.

10 Q Okay, can we go back to CV Exhibit 764, Mr. Blasius,  
11 which is in your soft cover book?

12 A Got it.

13 Q Looking at this table, does this reflect the conclusions  
14 that you reached concerning how GSN and WE tv stacked up with  
15 respect to the concentration of women in the target demographics?

16 A Yes.

17 Q Okay, let's look at two of these metrics, Mr. Blasius.  
18 Let's look at women 18 to 49 first.

19 A Okay.

20 Q Does this table reflect that GSN, out of 77 networks,  
21 ranked 61st in the concentration of women 18 to 49 viewers?

22 A Yes, this reflects that.

23 Q And does it reflect that WE tv ranked ninth out of 77  
24 networks?

25 A Yes.

1 Q So, there were 60 networks that ranked higher than GSN  
2 with respect to that measure of volumes concentration.

3 A Yes.

4 Q And would this difference between GSN's rank and WE tv's  
5 rank be something that an advertiser would consider meaningful and  
6 significant, in your opinion?

7 A Quite meaningful.

8 Q Let's move down to women 25 to 54, Mr. Blasius.

9 JUDGE SIPPEL: Let's keep away from the word significant.  
10 That has a technical meaning.

11 MR. KROUP: Fair enough.

12 JUDGE SIPPEL: Actually, Mr. Blasius answered the  
13 question the way it should have been asked. Go ahead.

14 MR. KROUP: Understood.

15 BY MR. KROUP:

16 Q So, moving now to women 25 to 54, Mr. Blasius, does this  
17 reflect that out of 77 networks that you looked at, GSN had only  
18 the 54th highest rank of women 25 to 54 as a percentage of total  
19 audience?

20 A That is correct.

21 Q And does this reflect that WE tv had the fourth highest  
22 concentration of women 25 to 54 as a percentage of total audience?

23 A Yes, it does.

24 Q And would that difference between GSN and WE tv, that we  
25 have just discussed, be meaningful from the perspective of a buyer

1 of advertising?

2 A Again, quite meaningful.

3 Q And one final question, Mr. Blasius, or maybe it will be  
4 two. Do you remember some testimony that you gave to Mr. Sperling  
5 concerning SOAPnet being in what you had identified as WE tv's  
6 competitive set in your initial declaration and then it had been  
7 removed from your written testimony in this case?

8 A Yes, I do.

9 Q Okay. Could you explain why you removed SOAPnet from  
10 your written direct testimony?

11 A Because between the initial declaration which I wrote and  
12 the one that followed it up, which was dated March 2013, I learned  
13 that in fact SOAPnet was transitioning to Disney TV. So, it no  
14 longer seemed to be relevant in the sense of it was no longer in  
15 business as an advertising vehicle. Therefore, why include it as  
16 part of the declaration.

17 Q Could you explain what you mean by it no longer being  
18 included as an advertising vehicle when it was transitioning to  
19 Disney TV?

20 A My understanding of what happened with SOAPnet, and  
21 SOAPnet has been around for quite a while and has done plenty of  
22 advertising, as agreements with various MSOs expired, they were no  
23 longer carrying SOAPnet and were in fact moving to Disney TV.

24 Q Okay and is there something significant about Disney TV  
25 that makes it not part of the advertising space or did you mean

1 part of the advertising women 25 to 54 space?

2 A No, the advertising space, in general.

3 Q Okay and why is that? What is it about Disney TV?

4 A Oh, sorry, I misinterpreted your question. SOAPnet and  
5 Disney TV would not be similar in terms of what they are. I mean  
6 Disney is oriented towards a family kids' kind of thing and SOAPnet  
7 in fact runs daytime dramas or they did.

8 MR. KROUP: That's all we have, Your Honor.

9 MR. SPERLING: Your Honor, I have two questions on  
10 recross.

11 JUDGE SIPPEL: Go ahead.

12 RECROSS-EXAMINATION

13 BY MR. SPERLING:

14 Q Mr. Blasius, you testified a minute ago in response to  
15 Mr. Kroup's question that your determination about whether a  
16 network was similarly situated to WE or not when an ad buyer  
17 perspective involved an aggregation of the factors. Did I  
18 understand that correctly?

19 A I think you did, yes.

20 Q There is no methodology that tells me how to rank or  
21 weight the factors that go into that consideration, is there?

22 A No.

23 Q And if another experienced ad buyer were to reach a  
24 different conclusion than you as to who is or is not similarly  
25 situated from an ad buyer's perspective, the Court would have no

1 way of measuring who is correct and who is not. Right?

2 A I would be surprised if there was a different opinion  
3 than mine.

4 Q But if there was, the Court would have no way to  
5 determine whose conclusions were more reliable than the other's  
6 would it?

7 A I guess not.

8 MR. SPERLING: Nothing further, Your Honor.

9 MS. KANE: Your Honor, the Bureau has just a very few  
10 questions.

11 JUDGE SIPPEL: Go ahead.

12 RE-CROSS-EXAMINATION

13 BY MS. KANE:

14 Q Following up on some of these questions we have had about  
15 competitive set.

16 A Sure.

17 Q Actually, Mr. Blasius, my name is Pamela Kane. We are  
18 all trying to jump the gun here today.

19 A Nice to meet you.

20 Q My name is Pamela Kane. I represent the Enforcement  
21 Bureau and with me is my colleague, Bill Knowles-Kellett.

22 JUDGE SIPPEL: You know it is like having a dishwasher  
23 installed on a Friday afternoon. I made that mistake once in my  
24 life and I am never going to do it again. So, this is a Friday  
25 Kane that you are getting today.

1           Go ahead, Ms. Kane. I'm sorry. You are doing well, Ms.  
2 Kane.

3           MS. KANE: Thank you.

4           BY MS. KANE:

5       Q     All right, I will start with my question. We have been  
6 having a lot of discussion about competitive set information.  
7 Correct?

8       A     Yes.

9       Q     I just wanted to ask you are networks in the same  
10 competitive set similar from an advertising perspective, in your  
11 experience?

12       A     Networks in the same competitive set similar -- how do  
13 you mean? I am somewhat confused by the question, I hate to say.  
14            Could you sort of expand on what you mean by that?

15       Q     Well, I believe your written testimony makes a conclusion  
16 that from an advertising perspective, GSN and WE tv are not similar  
17 from an advertising perspective. Correct?

18       A     Correct.

19       Q     If there were networks that were in the same competitive  
20 set as GSN and WE tv, would you consider those to be similar from  
21 an advertising perspective?

22       A     I guess I would, from the standpoint of looking at the  
23 various key things that I did in my analysis of the two different  
24 networks.

25       Q     So, if you compared all of those analyses and they were

1 considered to be a competitive set, part of the competitive set,  
2 you would consider them to be similar, from an advertising  
3 perspective?

4 A If I understand your question, and I'm not positive I do,  
5 but I think I would.

6 Q And I just wanted to ask you, just so we can confirm, the  
7 data that you looked at in order to prepare your written direct  
8 testimony in your earlier declaration, that was all national  
9 Nielsen ratings. Correct?

10 A Correct.

11 Q You didn't use any local data or confine yourself to a  
12 particular cable provider. Correct?

13 A No, it was certainly national.

14 MS. KANE: That is all the Bureau has, Your Honor.

15 JUDGE SIPPPEL: Anything on that?

16 MR. SPERLING: Nothing.

17 MR. KROUP: Nothing from us, Your Honor.

18 JUDGE SIPPPEL: Don't feel bad that you are excused as a  
19 witness.

20 THE WITNESS: Thank you, Your Honor.

21 JUDGE SIPPPEL: Have a good trip back to wherever you are  
22 going.

23 THE WITNESS: I'm going to Augusta, Georgia.

24 JUDGE SIPPPEL: Have a good trip.

25 THE WITNESS: Thanks.

1 MR. SPERLING: Your Honor, first of all, thank you very  
2 much, again, for the accommodation in terms of the order of start  
3 today. And I think the next witness will probably start first  
4 thing Monday morning.

5 MR. COHEN: Yes, Mr. Orszag will be our last witness on  
6 Monday.

7 JUDGE SIPPEL: Let's go off the record.

8 (Whereupon, the above-entitled matter went off the record  
9 at 3:17 p.m.)

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