

1 instances, but we do think it's something that
2 we can put before the Court, and the Court can
3 fairly take notice to the extent the Court
4 deems it at all relevant of another order on
5 that very same issue from this Commission.

6 They're entitled to say if they
7 want that has nothing to do with this case.
8 We discriminate one conduct; we don't
9 discriminate in another.

10 We think we're entitled to say
11 it's the same type of conduct.

12 JUDGE SIPPEL: Okay. I hear you.
13 Now, let me ask this. These aside, what's the
14 status of that order? Is it on appeal?

15 MR. TOSCANO: It is, Your Honor.

16 JUDGE SIPPEL: Well, then what
17 weight can I give something that's on appeal?

18 MR. SCHMIDT: As much weight as
19 Your Honor deems suitable.

20 JUDGE SIPPEL: In the interest of
21 the appearance of fairness, I'm going to allow
22 it to say the way it is. Now, I'll rule on it

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1 again when it's offered as an exhibit, and you
2 know, if it's going to be attempted to be used
3 in cross examination and I've let it in the
4 record that long, you know, I'll consider it
5 again.

6 MR. SCHMIDT: Thank you, Your
7 Honor.

8 JUDGE SIPPEL: And I'll consider
9 it in findings if I have left it in for cross-
10 examination purposes. All right?

11 Okay. Anything else?

12 MS. MALASPINA: We do, Your Honor.

13 MR. SCHMIDT: It's the one
14 exhibit.

15 JUDGE SIPPEL: Yes, please.

16 MS. MALASPINA: We have one issue.

17 MR. SCHMIDT: What is the number?

18 I'm sorry.

19 MS. MALASPINA: Exhibit No. 97.

20 JUDGE SIPPEL: Ninety-seven? This
21 is Comcast? Enterprises 97?

22 MS. MALASPINA: Enterprises 97.

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1 JUDGE SIPPET: Thank you.

2 MS. MALASPINA: And the issue is
3 simply that the apparent E-mail -- I'm sorry.
4 I'll let you find a copy.

5 MR. SCHMIDT: I appreciate it.
6 I'm with you.

7 MS. MALASPINA: The apparent E-
8 mail of that exhibit is part of the production
9 we did in New York, which we both know, I
10 think, is something that we've agreed to allow
11 those documents to be used in this proceeding.

12 However, the attachment document
13 that immediately follows the parent document,
14 Your Honor, is a document produced in this
15 proceeding. So to simplify it a little bit
16 here, the E-mail that was sent that's part of
17 this exhibit, did not attach the attachment
18 that follows is.

19 JUDGE SIPPET: This is the first
20 time you've seen the attachment, in other
21 words, in connection with that E-mail?

22 MS. MALASPINA: We've actually

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1 seen both of these documents. They are both
2 Comcast documents that we've produced.
3 However, the E-mail when we produced it did
4 not have this particular document following
5 it.

6 When we marked our documents for
7 production, Your Honor, we put Bates numbers
8 on the bottom of them, and they, you know, go
9 in order, one, two, three, four, five, and as
10 you can even just see from the face of these
11 documents, the numbers don't follow each
12 other.

13 JUDGE SIPPEL: Well, let me see
14 what I've got.

15 MS. MALASPINA: So it may be
16 simply a mistake. If it's not, then we can
17 resolve it.

18 JUDGE SIPPEL: Let me look at the
19 exhibit. I've got it right here.

20 MS. MALASPINA: Sure.

21 JUDGE SIPPEL: The proposed
22 exhibit.

1 MS. MALASPINA: Number 97.

2 JUDGE SIPPEL: I have it. The E-
3 mail is from Mr. Doty?

4 MS. MALASPINA: Yes.

5 JUDGE SIPPEL: December 16th,
6 2005?

7 MS. MALASPINA: Yes.

8 JUDGE SIPPEL: And what is this
9 attached to it?

10 MS. MALASPINA: Well, I could only
11 speculate, Your Honor. What the issue here
12 for us is is that you look at the number at
13 the bottom right-hand corner of the actual
14 exhibit you see, that the number on the E-mail
15 that is the exhibit is 13424.

16 JUDGE SIPPEL: Yes, I see that.

17 MS. MALASPINA: And then 13425 is
18 the back page, but then the attachment is from
19 a different production entirely because it has
20 a different prefix, and then it starts with
21 number 2326.

22 JUDGE SIPPEL: I see that.

1 There's no heading on this document, but it is
2 obvious the attachment is a financial
3 statement of some kind.

4 MS. MALASPINA: Yes, Your Honor.

5 JUDGE SIPPEL: Anyway, it has got
6 numbers, valuations, summaries, and that type
7 of thing. Anything on the rest of the
8 numbers, two, three -- they seem to follow.

9 All right. Let's see if Mr.
10 Schmidt has any explanation of this.

11 MR. SCHMIDT: I would like to ask
12 my colleague, Mr. Sherman, to address this
13 because he's been involved, I think, in some
14 back-and-forth with Comcast.

15 MR. SHERMAN: Your Honor, Comcast
16 has produced this first document, the cover E-
17 mail in the production in the New York case,
18 and as you will see on the last page, there's
19 a notation that there's an attachment called
20 OLN Six Year Plan.

21 JUDGE SIPPEL: It's an attachment
22 called what?

1 MR. SHERMAN: On the last line of
2 the E-mail, so page 2 of the exhibit --

3 JUDGE SIPPEL: Hopefully this will
4 be helpful?

5 MR. SHERMAN: No. After it says
6 "best" and then you'll see there's a notation
7 that there's an attachment called OLN Six Year
8 Plan.

9 JUDGE SIPPEL: Six Year Plan,
10 right, 120105.

11 MR. SHERMAN: Yes. Now, when this
12 cover E-mail was produced to us, it was
13 produced on paper. So that document was not
14 attached. When we got the second piece of the
15 exhibit, the spreadsheet, in Comcast's
16 production in this case, we determined to the
17 best of our ability we understood that the
18 two, the E-mail and the attachment, the Excel
19 spreadsheet, went together.

20 We've asked Comcast on a number of
21 occasions to produce the full document to us
22 so that we can confirm whether the attachment

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1 that's referred to in the E-mail is, in fact,
2 the spreadsheet, and as of yet we haven't
3 gotten a response, and so we've just done the
4 best we can at this point --

5 JUDGE SIPPEL: Well --

6 MR. SHERMAN: -- and that's the
7 reason for the different --

8 JUDGE SIPPEL: All right. Let me
9 back up then a little bit. The spreadsheet is
10 the Comcast document.

11 MR. SHERMAN: Yes.

12 JUDGE SIPPEL: And, Mr. Doty, is a
13 Comcast person.

14 MR. SHERMAN: To the best of my
15 knowledge.

16 JUDGE SIPPEL: To the best of your
17 knowledge. Well, it certainly sounds like
18 you're speculating that they go together.

19 MR. SHERMAN: That's correct, Your
20 Honor. I think the best way to resolve this
21 is for Comcast to produce to us the full E-
22 mail, and if, in fact, Comcast is correct,

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1 these two documents aren't related. We'd like
2 to see any cover E-mail that is associated
3 with the spreadsheet.

4 We have asked for that on at least
5 two occasions that I can remember and have not
6 received a response at this time.

7 JUDGE SIPPEL: No response at all?

8 MR. SHERMAN: They've told us that
9 they're going to look, and we've asked them to
10 do so in advance of today. They have not done
11 that.

12 JUDGE SIPPEL: Okay.

13 MS. MALASPINA: Your Honor.

14 JUDGE SIPPEL: Ma'am, please.

15 MS. MALASPINA: First off, I think
16 that one important point here is while it does
17 appear that the original E-mail that you're
18 citing here, the end of which is on the second
19 page, may have included an attachment, I think
20 that's what that indicates here. There's no
21 suggestion whatsoever that the second E-mail,
22 the E-mail that follows this one, which is at

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1 the top of the first page of the exhibit,
2 forwarded on that attachment.

3 So there's absolutely no
4 indication from anything we've been able to
5 find that this particular document had an
6 attachment in the form that it's in right
7 here.

8 Secondly --

9 JUDGE SIPPEL: Okay. In other
10 words, does this look like a six year plan to
11 you?

12 MS. MALASPINA: Your Honor, I'd be
13 speculating. I don't know the answer to that.
14 It wasn't my document. We produced this
15 document in the New York action in its
16 entirety.

17 JUDGE SIPPEL: Well, this document
18 is the one page, the one page E-mail with a
19 little something on the back.

20 MS. MALASPINA: Right, and the
21 little something on the back, I think,
22 indicates that at one time with this original

1 E-mail there may have been an attachment to
2 it, but what we produced is the E-mail chain
3 with the original E-mail and a follow-up E-
4 mail, and there is no indication from this
5 document that we believe we've produced in its
6 entirety, that this document had an attachment
7 to it.

8 JUDGE SIPPEL: As far as your
9 knowledge, as far as your records reflect and
10 as far as you know in terms of the
11 production --

12 MS. MALASPINA: Yes.

13 JUDGE SIPPEL: -- you produced the
14 E-mail and there was no attachment to it.

15 MS. MALASPINA: That is correct,
16 Your Honor.

17 JUDGE SIPPEL: And there never was
18 an attachment to the E-mail as far as you
19 know.

20 MS. MALASPINA: To this E-mail
21 chain, that is correct, Your Honor.

22 JUDGE SIPPEL: Then what is the

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1 reference do -- we don't really know. Has
2 anybody talked to Mr. Doty about this what's
3 the referenced to the six year plan?

4 MS. MALASPINA: Your Honor, my
5 understanding purely based on the face of this
6 document is that there may have been an
7 attachment to this original E-mail, not the
8 chain that we have here in front of us.

9 JUDGE SIPPEL: Well, did anybody -
10 - yeah, but I mean, that's an obligation that
11 you have in discovery, you know. I mean, if
12 there is a six year plan attached to the E-
13 mail, somebody at Mr. Doty's operation must
14 know about that.

15 MS. MALASPINA: Your Honor, my
16 understanding is that we did look for this
17 original E-mail, the first E-mail with the
18 attachment, and we did not have an electronic
19 copy of that document.

20 JUDGE SIPPEL: What's the "that
21 document"?

22 MS. MALASPINA: The document --

1 JUDGE SIPPEL: The six year plan?

2 MS. MALASPINA: -- the original
3 document that may or may not have had the
4 attachment as noted on the --

5 JUDGE SIPPEL: I mean, there's no
6 six year plan that you've been able to come up
7 with?

8 MS. MALASPINA: Not in connection
9 with this document, no.

10 MR. CARROLL: Your Honor, may I?

11 JUDGE SIPPEL: Mr. Carroll,
12 please, yes.

13 MR. CARROLL: The six year plan is
14 our document, and we're not objecting over the
15 six year plan. The E-mail that's attached to
16 it is our document. We're not objecting to
17 that.

18 But the E-mail is a chain, and you
19 know how when people forward E-mails it goes
20 up the line? The attachments don't go when
21 they forward it up the line. The NFL wants to
22 use the six year plan and charge the senior

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1 people with knowledge of that's in that six
2 year plan. Our position is, and they've
3 deposed these people and they've said they
4 don't know this six year plan; our position is
5 they can bring the six year plan in. If
6 somebody in the bowels of the organization
7 drafted it, fine. It is what it is, and they
8 can bring in the E-mail and ask the person
9 about it.

10 But they can't make them go
11 together if, in fact, they didn't go together
12 originally.

13 JUDGE SIPPEL: I mean, that's a
14 truism as far as it goes, Mr. Schmidt.

15 MR. LEVY: That's fine. Why don't
16 we call it 97(a) and 97(b) and we're done with
17 it.

18 JUDGE SIPPEL: There you go.
19 Let's do that. Ninety-seven (a) and (b) for
20 identification when we get there.

21 I'm still perplexed a little bit
22 in terms of how does a six year plan get

1 referenced in the E-mail but nobody knows
2 where the six year plan is. I mean, I know
3 I've already got an answer for this, but does
4 anybody have an idea of what this NFL summary
5 document is, the spreadsheet or whatever you
6 want to call it?

7 It's not a six year plan you don't
8 think. So what is it, or is it a six year
9 plan? Does anybody know?

10 MR. SHERMAN: Just I think we'd
11 have to ask Comcast's witnesses about it.
12 Just looking at the face of the document, it
13 looks like modeling for Comcast's carriage on
14 its channel called Versus, which previously
15 was called OLN and the Outdoor Life Network.
16 It looks to us to be modeling of what Comcast
17 would charge, what its revenues would be if it
18 were able to add eight NFL games to that
19 channel.

20 JUDGE SIPPEL: Well, it looks like
21 it -- if I count the years, one, two, three,
22 four, five, six, seven years if you count

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1 2005, but I don't have any idea when --
2 there's not really a showing on this, I don't
3 think, as to what year this document was
4 prepared.

5 MR. CARROLL: Your Honor, we've
6 produced this. They've had an opportunity to
7 question people in depositions, and again, we
8 have no objection to them trying to ask
9 anybody they want in this proceeding about it.
10 I think as my colleague on the other side was
11 indicating, each side has models the various
12 accounting people are generating with a new
13 organization, and they are models that each
14 side is generating.

15 Which ones then get adopted and
16 which ones go up the chain is an issue that we
17 just want to make sure is pretty clear because
18 there can't be an assumption of this
19 particular --

20 JUDGE SIPPEL: Well, obviously.
21 As the record stands now, these are going to
22 be treated as separate documents, and you

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1 know, you can proceed from there. Obviously,
2 they're going to be used, attempted to be used
3 anyway, as a cross-examination document. So
4 you're on notice, Mr. Carroll.

5 MR. CARROLL: And we have no
6 objection to that.

7 JUDGE SIPPEL: That's a plus. I'm
8 not concerned about this. I'm quizzical about
9 this, is that nobody really knows whether or
10 not this is a six year plan or a what kind of
11 plan. There's no heading on the document, and
12 you don't have any idea as to whether or not
13 there's some Bob Cratchit down in the bowels
14 someplace that crafted this thing together and
15 it never left his cubby.

16 How does this thing get a
17 confidential, highly confidential designation?

18 MR. CARROLL: Well, each side has
19 treated their financial information the same
20 way, that is, to the extent each side has
21 schedules that people are preparing that are
22 incorporating financial assumptions in models,

1 in my view -- and if the other side agrees, I
2 would agree with this -- that tends to be the
3 stuff that could be the most highly
4 confidential because it has pricing
5 information in it, arguably.

6 Now, whether it ever turned into
7 decision maker pricing information is a
8 different issue, but the fact that each side
9 has a lot of that, and I think the lawyers, to
10 be careful, don't want to make a mistake with
11 client sensitive pricing information. So when
12 we see sheets like that, everybody on both
13 side designated them highly confidential. The
14 last thing we want to do is, you know, omit
15 something and then all of a sudden some
16 pricing information is out there.

17 JUDGE SIPPEL: I see your point.

18 MR. SCHMIDT: We have no objection
19 to what Mr. Carroll just said.

20 JUDGE SIPPEL: I see your point.
21 Okay, and thank you very much, ma'am. Your
22 name again?

1 MS. MALASPINA: Elizabeth
2 Malaspina.

3 JUDGE SIPPEL: Thank you very
4 much, Elizabeth. Thank you, ma'am.

5 Can we go forward now with the
6 order of the day, i.e., NFL or Enterprises
7 Exhibit No. 1.

8 MR. SCHMIDT: Do we intended to go
9 through each exhibit one by one, Your Honor?

10 JUDGE SIPPEL: Well, we'll go
11 through them as rapidly as we can, but the
12 court reporter is going to have to stamp each
13 one of these.

14 MR. SCHMIDT: Okay.

15 JUDGE SIPPEL: Not today. The
16 logistics in general, and Ms. Gosse is here.
17 She has a system with these reporters, and
18 what's going to happen is that we're going to
19 identify them for the record. We can maybe do
20 them in groupings. Maybe there's a quick way
21 to do it to get them on the record, but each
22 one of them has to be identified as having

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1 been either received or not received in
2 evidence today, and they can be stamped later,
3 you know. They can be done independently by
4 the court reporter.

5 MR. CARROLL: I guess, Your Honor,
6 I think Mr. Schmidt was asking and I have the
7 same question do you wish to have them called
8 out proudly one by one or if, based on the
9 rulings that we've had in generic categories,
10 can we have an agreement that all of them, one
11 through whatever the number is, subject to
12 Your Honor's rulings in advance, are admitted;
13 the same thing on our list, and you would save
14 yourself a fair amount of time, if that
15 suffices for your record keeping. I think
16 that was the question.

17 MR. LEVY: I'll accept that
18 statement.

19 JUDGE SIPPEL: All right. Let me
20 go off the record for just a minute on that.

21 (Whereupon, the foregoing matter
22 went off the record at 11:24 a.m.)

1 and went back on the record at
2 11:24 a.m.)

3 JUDGE SIPPEL: Ms. Gosse is all
4 set to go on this. I just want to confirm to
5 be sure that I'm not overstepping my bounds or
6 the court reporter's bounds, but, yes, the
7 answer to your question is yes. We'll take
8 each volume as a grouping, Volume 1, 2 and 3,
9 and we'll just state the number of -- I'll do
10 this myself -- state the number of exhibits in
11 the document, and subject to any rulings I
12 have made prior to this, they're going to come
13 in as whatever the numbers are, and certainly
14 there is an index with them, and all of that
15 goes to the reporter.

16 You have to have two copies go to
17 the reporter. I guess you all know that.

18 PARTICIPANT: An original and one
19 copy.

20 JUDGE SIPPEL: Well, it's called
21 an original and one, but --

22 MR. CARROLL: If we didn't, we

1 know it now.

2 JUDGE SIPPEL: All right. Well,
3 they have to end up because that's how they
4 get filed -- I hate to say this -- but in the
5 filing system. That's how they do it, right?
6 Is that right?

7 All right. So let's move this. I
8 think we can move this rapidly at this point.
9 I have a binder that shows -- my first binder
10 shows with the index of hearing exhibits,
11 which has been carefully done by the most
12 important person on Comcast's team -- oh, this
13 is NFL -- on NFL's team. I take that -- I'm
14 sorry. I'm sorry, but equally with yourself.
15 Exhibits 1 through 185 are described in the
16 first volume, and these will be marked by the
17 court reporter as Enterprise -- can we use E-
18 N-T? Do we have to spell out? -- ENT Nos. 1
19 through 185. Each document will be so marked
20 and will be received in evidence as ENT Nos.
21 1 through 185.

22 (Whereupon, the documents referred

1 to were marked as Enterprises
2 Exhibit Nos. ENT-1 through ENT-185
3 for identification.)

4 MR. SCHMIDT: Just for the record,
5 Your Honor, that actually covers all three of
6 our binders.

7 JUDGE SIPPEL: Oh, then fine.
8 That's it. You have 185 exhibits?

9 MR. SCHMIDT: Yes, sir.

10 JUDGE SIPPEL: One hundred and
11 eighty-five, and again, all of this is subject
12 to whatever rulings I have made previously.

13 MR. SCHMIDT: Thank you, Your
14 Honor.

15 And these numbering systems, by
16 the way, will go on both the non-public and on
17 the redacted public version. The public
18 version goes on the public record. The non-
19 public version stays non-public. All right?
20 And it will get today's date as being
21 identified and received in evidence.

22 So that finishes Enterprises'

1 presentation of its documentary evidence.

2 Let's go back off the record
3 again.

4 (Whereupon, the foregoing matter
5 went off the record at 11:28 a.m.
6 and went back on the record at
7 11:34 a.m.)

8 JUDGE SIPPEL: Can we go back on
9 the record now? We're back on the record.

10 It is 11:30 back there; is that
11 right?

12 PARTICIPANT: Yes, sir.

13 JUDGE SIPPEL: Why don't we come
14 back at quarter of one and finish this up?
15 Does that makes sense? Is everybody for that?

16 All right. We're off the record
17 until quarter of one.

18 (Whereupon, at 11:34 a.m., the
19 hearing was recessed for lunch, to reconvene
20 at 12:45 p.m., the same day.)

21

22

