

1 have programs that may be repeated that do
2 higher ratings than programs that may only be
3 seen one time. It is about the popularity of
4 the program. I don't know about the
5 restaurant slang.

6 Q And this slide is talking about
7 the amount of original programming as "less
8 steak," isn't that right?

9 A It appears to be, yes.

10 Q Now, if you look at the next page,
11 the next page of the presentation ending in
12 7024, the headline of this slide says [REDACTED]
13 New Advertisers Equals [REDACTED] New
14 Business." Did I read that correctly, Mr.
15 Furman?

16 A Yes.

17 Q Now, this is all new business that
18 you gained in 2008, correct?

19 A I don't know the timeline for
20 this. It is not indicated on here.

21 Q How much advertising have you
22 gained in the last year?

1 A I would have to go back and take a
2 look.

3 Q Do you have a number of new
4 advertisers?

5 A We do.

6 Q How many?

7 A I don't know.

8 Q And you don't know how much new
9 value of advertising dollars that represents.

10 A No, I don't.

11 Q Did you consider in preparing your
12 direct testimony whether to be fair you should
13 also include the new business, not just the
14 lost business?

15 A Again, not knowing because there
16 is no context listed here on dates and/or
17 elements, this doesn't tell me if it is the
18 NFL Network or NFL.com. And just by looking
19 at it quickly there appear to be some NFL.com
20 advertisers on here also. So, again, I don't
21 know the differentiation between what [REDACTED]
22 [REDACTED] and [REDACTED] -- what [REDACTED] and [REDACTED]

1 new advertisers really means. So --

2 Q Did you -- I didn't mean to cut

3 you off if you weren't finished.

4 A No. I'm done.

5 Q Did you consider to include new

6 business in your written direct testimony that

7 the NFL Network has gained since Comcast

8 tiered?

9 A We work really hard at developing

10 advertising business, as everyone else in our

11 industry does. And more is better. So what

12 we are looking at always is trying to grow

13 that, but we do have advertisers that choose

14 not to renew with us, and those are many times

15 the most important ones that we have, because,

16 as you know, it is often more difficult to get

17 someone back after they have had an experience

18 than to get them in the first time.

19 Q An experience such as being

20 treated in a rude or arrogant way?

21 A That is your commentary.

22 Q Would that be among the

1 experiences that makes it harder to keep
2 someone's business?

3 A Yes.

4 MR. PEREZ-MARQUES: Your Honor, I
5 would like to move that Exhibit 522 into
6 evidence.

7 JUDGE SIPPEL: Is there any
8 objection to that?

9 MR. SCHMIDT: We don't object to
10 his business strategy. I think it is being
11 introduced for the truth of the matter,
12 though, and the witness said he can't verify
13 it. So we just -- we don't object to it
14 coming into evidence, but we don't think it
15 will have any probative value as brought in.

16 JUDGE SIPPEL: What is your
17 response to that, Mr. Perez?

18 MR. PEREZ-MARQUES: Your Honor,
19 this document shows how either Mr. Furman
20 himself, if he is misremembering, or others
21 within his organization characterized the
22 quality of the content on NFL Network, which

1 is a core issue in this proceeding.

2 MR. SCHMIDT: Your Honor, there is
3 absolutely --

4 MR. PEREZ-MARQUES: They refer to
5 it as having "less steak" than competitive
6 national sports networks, and that is
7 precisely what Comcast's position is in this
8 litigation, that there is not enough steak as
9 part of this network to justify the exorbitant
10 price the NFL is seeking.

11 MR. SCHMIDT: Your Honor, there is
12 absolutely no basis to accuse the witness of
13 misremembering anything. I just want to make
14 that absolutely clear.

15 JUDGE SIPPEL: I'm sorry. Accuse
16 the witness of what?

17 MR. SCHMIDT: Of misremembering
18 anything, which was Mr. Perez's opening
19 comment.

20 JUDGE SIPPEL: Yes. I will
21 disregard that. Strike it. I am just trying
22 to -- well, you've got his testimony. I don't

1 think this is going to add anything, and it is
2 just -- it has got -- there is a lot of pages
3 in here that have numbers all over the place
4 that he hasn't testified to.

5 It might be significant for
6 something, but I can't find it. I am going to
7 reject it as an exhibit. You've got his
8 testimony, he has testified to numbers, he has
9 testified to steak sizzles, and, you know, you
10 can make of it what you will. But I don't see
11 how the document really adds to anything.

12 MR. PEREZ-MARQUES: Your Honor,
13 would it simplify matters if we moved only the
14 page as to which he testified into the record?

15 JUDGE SIPPEL: That would help me.

16 MR. PEREZ-MARQUES: Then, we would
17 ask that that be marked.

18 JUDGE SIPPEL: Well, let's take
19 the first one, because that is the one that is
20 identified, the cover sheet that is, which is
21 7018, in conjunction with the one page that he
22 has testified to. And I would -- as I say, I

1 just would refer to that or consider that to
2 be as a supplement to his testimony. I am not
3 saying it has got probative value, certainly
4 not in and of itself.

5 So those two pages are now Comcast
6 Exhibit 522 for identification. Do you want
7 to move them in?

8 MR. PEREZ-MARQUES: Yes, Your
9 Honor.

10 JUDGE SIPPEL: Objection?

11 MR. SCHMIDT: Same statement that
12 I made before, Your Honor.

13 JUDGE SIPPEL: All right. Well, I
14 will take that as an objection. I am
15 overruling it in light of the modification he
16 made, and it is received as modified as
17 Comcast Exhibit 522 as a two-page document.
18 Okay.

19 (Whereupon, the above-referred to
20 document, previously marked as
21 Comcast Exhibit No. 522 for
22 identification, was received into

1 evidence.)

2 JUDGE SIPPEL: Do you have much
3 more, Mr. Perez?

4 MR. PEREZ-MARQUES: No, Your
5 Honor. I am actually wrapping up right this
6 minute. I just need one moment to check my
7 notes.

8 JUDGE SIPPEL: Do you know how
9 often I have heard that comment?

10 (Laughter.)

11 Or that response to my question.

12 (Laughter.)

13 BY MR. PEREZ-MARQUES:

14 Q Now, Mr. Furman, this afternoon we
15 talked about a number of reasons that the NFL
16 Network could lose advertising. Now, have you
17 made any effort to quantify the total effect
18 of all of those reasons put together, all of
19 these reasons that you testified have nothing
20 to do with Comcast on the advertising
21 performance of the NFL Network?

22 A No.

1 MR. PEREZ-MARQUES: No more
2 questions, Your Honor.

3 JUDGE SIPPEL: Any redirect?

4 MR. SCHMIDT: Yes, Your Honor.

5 JUDGE SIPPEL: Okay.

6 MR. SCHMIDT: Could I just have a
7 few seconds?

8 JUDGE SIPPEL: Do you want a few
9 minutes?

10 MR. SCHMIDT: Sure.

11 JUDGE SIPPEL: Let's go off the
12 record.

13 (Whereupon, the proceedings in the
14 foregoing matter went off the
15 record at 4:06 p.m. and went back
16 on the record at 4:16 p.m.)

17 JUDGE SIPPEL: We are on the
18 record.

19 Mr. Schmidt?

20 MR. SCHMIDT: Thank you, Your
21 Honor.

22 REDIRECT EXAMINATION

1 BY MR. SCHMIDT:

2 Q Just a few questions, Mr. Furman,
3 to clear a few things up. Do you have in
4 front of you Comcast Exhibit 506, the one that
5 talks about Digital 2 and --

6 A Yes.

7 Q This is the one, do you recall,
8 where Mr. Perez repeatedly asked you if this
9 came before Comcast actually dropped the NFL,
10 do you remember that?

11 A Yes.

12 Q When was it that Comcast actually
13 announced that it was going to tier the NFL,
14 do you recall?

15 A I believe it was in late 2006.

16 Q Okay. Was it before the date of
17 this document?

18 A I am not aware of that.

19 Q Well, let me show you something
20 that has been marked into evidence. NFL
21 Exhibit 20.

22 And I apologize -- I pulled it out

1 of my binder, I don't have an extra copy, but,
2 Your Honor, I will pass it to you if you want
3 to look at my copy. It is just a newspaper
4 article, and I will pass it to --

5 JUDGE SIPPEL: No. You can
6 identify it and just -- it won't be used as an
7 exhibit. It will be used just to -- but it
8 will be -- it will be on the record. You can
9 explain what it is. I don't have a notation
10 on 506 as having been received, so just in
11 case, it is identified, I am going to receive
12 it into evidence at this time as Comcast 506.

13 (Whereupon, the above-referred to
14 document, previously marked as
15 Comcast Exhibit No. 506 for
16 identification, was received into
17 evidence.)

18 And I want to ask the witness, who
19 is Adam Shaw? Did we talk about him?

20 THE WITNESS: We did, Your Honor.
21 He was the gentleman senior to Mr. Marques
22 responsible for working with our affiliates,

1 the people who carry the NFL Network on their
2 cable tiers.

3 JUDGE SIPPEL: I think I remember
4 that now. Thank you.

5 MR. SCHMIDT: And, Your Honor --

6 JUDGE SIPPEL: And I've got to
7 ask, Mr. Perez, do you have any objection to
8 this procedure? I mean, obviously, you have
9 to show it to Mr. Perez.

10 MR. SCHMIDT: Let me actually
11 state something before.

12 JUDGE SIPPEL: Yes, sir.

13 MR. SCHMIDT: Because I misspoke
14 -- I thought this was one of our exhibits. It
15 turns out it is Exhibit 20 to our complaint,
16 so let me go ahead, if I may, and pass it to
17 Mr. Perez.

18 JUDGE SIPPEL: Exhibit 20 to the
19 complaint?

20 MR. SCHMIDT: Yes. It is a
21 newspaper article or an online article, a fact
22 that I don't think is in dispute.

1 MR. PEREZ-MARQUES: We have no
2 objection to showing this to the witness.

3 MR. SCHMIDT: If I may just pass
4 this to the witness. The only question I am
5 going to ask the witness is if this refreshes
6 your recollection of when --

7 JUDGE SIPPEL: Let me just see it.
8 I haven't seen it at all. Okay. This is
9 entitled "NFL Network Blind-Sided by Comcast."
10 And this is dated, what, September 25, 2006.
11 And it is published by who? Multi-Channel
12 News? You can show it to the witness as you
13 see fit.

14 MR. SCHMIDT: Thank you.

15 BY MR. SCHMIDT:

16 Q Take a look at this, and let me
17 know if that refreshes your recollection as to
18 when news leaked of Comcast's decision to tier
19 the NFL Network.

20 A Yes.

21 Q And that was before the date of
22 Exhibit 506, wasn't it?

1 A Yes.

2 Q Let me ask you to put Exhibit 527
3 in front of you. Let me know when you have
4 it.

5 A I do.

6 Q There was a reference to [REDACTED]
7 commenting on the CPM, correct?

8 A Yes.

9 Q What I would like to refer you to
10 is paragraph 16 of your written direct
11 testimony. Do you have that in front of you,
12 sir?

13 A I do.

14 Q Do you see a reference here to
15 advertisers seeking reductions in the CPM when
16 distribution goes down?

17 A Yes.

18 Q Can you explain to the Court what
19 that means?

20 A Many advertisers will further
21 discount their value for your viewers, which
22 is CPM, which is cost per thousand, for the

1 most part the cost for reaching a thousand
2 viewers. Based upon the distribution or
3 footprint of the network, it is a calculation
4 they do that they often don't share with the
5 seller, because it is part of their internal
6 metrics as to how they value that particular
7 network.

8 Q In your experience, do advertisers
9 sometimes push back on the CPM as distribution
10 goes down?

11 A It is one of the ongoing and
12 present points of any media negotiation. The
13 value of the CPM and the negotiating and push
14 and pull of that is constant.

15 Q Let me ask you one other question.
16 There was a suggestion in one of the questions
17 to you that you hadn't addressed in your
18 written direct testimony that the NFL Network
19 had actually had some success in advertising
20 after the date of Comcast's tiering. And what
21 I would like to ask you to do is look at the
22 second sentence of paragraph 18 and tell me if

1 that addresses precisely that situation.

2 JUDGE SIPPEL: Paragraph 18 of

3 what? Of the --

4 MR. SCHMIDT: Written direct.

5 JUDGE SIPPEL: -- written direct?

6 MR. SCHMIDT: Yes, sir.

7 JUDGE SIPPEL: Thank you.

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: Let me see. Wait a

10 minute, wait a minute. I'm trying to find it

11 now. Okay. Do you want to clarify that?

12 Now, how does your question tie in with this

13 paragraph? Why don't --

14 BY MR. SCHMIDT:

15 Q Do you mind reading the second

16 sentence of the paragraph?

17 JUDGE SIPPEL: Thank you.

18 THE WITNESS: "Through our

19 efforts, we have been able to grow our overall

20 advertising revenues, but our ability to do

21 this has been impaired by Comcast's reduction

22 of our subscriber base."

1 BY MR. SCHMIDT:

2 Q Am I right in understanding that
3 that sentence refers to success the NFL
4 Network has had through your efforts and
5 through your teammates' efforts,
6 notwithstanding Comcast's tiering decision?

7 A Yes.

8 Q Am I also right in understanding
9 that you believe the success would be even
10 greater absent the tiering?

11 A Yes, it would.

12 Q Do you see a reference --

13 JUDGE SIPPEL: Be careful now.

14 You are leading this witness something fierce.

15 (Laughter.)

16 MR. CARROLL: Your Honor, I was

17 really stifling that.

18 BY MR. SCHMIDT:

19 Q Let me ask you to read the last
20 sentence or the full sentence of paragraph 17.

21 A "After Comcast dropped the NFL
22 Network from its second most widely-penetrated

1 level of digital service known as D2, and
2 instead placed it on a premium sports tier,
3 the NFL Network very conspicuously experienced
4 a significant reduction in its Comcast
5 subscribership of above [REDACTED]."

6 Q Do you believe that reduction
7 impacted the NFL Network's ability to secure
8 advertising?

9 A It did. There were -- the Comcast
10 decision and its relationship with the NFL
11 Network was widely known and very public. And
12 at the time, approximately at the end of this
13 season, or I should say the beginning of the
14 football season, and in through our
15 programming in 2008, that was a constant
16 discussion point with many advertisers,
17 because it -- Comcast being the largest cable
18 distributor helps set marketplace perceptions.
19 I mean, they have that ability, so people will
20 focus on that.

21 And many advertisers talked about
22 distribution in general for the NFL Network,

1 because for us the trend lines had been going
2 up. We had had positive trend from the 2006
3 season when I joined the NFL.

4 Q Are any of the views you just
5 expressed in that answer affected by any of
6 the documents you have been shown today?

7 A No.

8 MR. SCHMIDT: Thank you. Nothing
9 further.

10 JUDGE SIPPEL: Now, this is the --
11 okay. This is -- in paragraph 17, you are
12 talking about the period, okay, known as D2,
13 that means that is the end of 2006, is that
14 right, going forward? Is that the timeframe
15 that this relates to?

16 THE WITNESS: I believe it's the
17 end of 2006 into 2007.

18 JUDGE SIPPEL: Correct. Okay.
19 Just for my understanding. I appreciate that.

20 All right. Is there any -- is
21 that it, Mr. Schmidt?

22 MR. SCHMIDT: Yes, sir.

1 JUDGE SIPPEL: Is that it?

2 MR. SCHMIDT: That's it for me,

3 Your Honor.

4 JUDGE SIPPEL: Any recross on

5 that?

6 MR. PEREZ-MARQUES: Just a couple

7 of questions, Your Honor, if I may.

8 JUDGE SIPPEL: Go ahead.

9 RECROSS EXAMINATION

10 BY MR. PEREZ-MARQUES:

11 Q Now, looking at Exhibit 506, Mr.

12 Schmidt was just asking you whether Comcast

13 had already – news of Comcast's intention to

14 tier had already been made public. Do you

15 recall that testimony?

16 A Yes.

17 Q Now, in fact, Comcast was not able

18 to tier the NFL Network because before it

19 could the NFL sued Comcast, isn't that right?

20 MR. SCHMIDT: Objection, Your

21 Honor. Outside the scope of my cross or the

22 direct.

1 JUDGE SIPPEL: Well, you opened
2 the door. I'm going to let him go on cross.

3 Go ahead. I'll overrule the objection.

4 THE WITNESS: I don't recall the
5 date that the NFL may have sued Comcast.

6 BY MR. PEREZ-MARQUES:

7 Q You do recall that the NFL sued
8 Comcast, correct?

9 A I do, yes.

10 Q To prevent it from exercising its
11 hearing right.

12 A Yes.

13 Q And, in fact, because of that
14 lawsuit, Comcast continued carrying the NFL
15 Network on D2, isn't that right?

16 A Yes.

17 Q Exhibit 506 says nothing about
18 Comcast tiering, does it?

19 A Example – sorry, the document
20 506, which is what you are asking me to,
21 doesn't say anything about tiering. It asks
22 the question of the differences between D2 and

1 D1 relative to that.

2 Q Relative to the sports here?

3 Where do you see that, Mr. Furman?

4 A No, no, no. It asks -- it asks

5 the question of the difference between D1 and

6 D2.

7 Q It says nothing about sports here.

8 A No, it does not.

9 Q Now, you just testified on

10 redirect by Mr. Schmidt that the -- you

11 believe that Comcast's distribution decision

12 impacted the NFL's ad revenue, isn't that what

13 you just testified?

14 A Yes.

15 Q But it wasn't only Comcast's

16 distribution decision that impacted the NFL's

17 ad revenue.

18 A No.

19 Q And you made no effort to quantify

20 the impact of any other effects.

21 A No.

22 MR. PEREZ-MARQUES: No more

1 questions.

2 MR. SCHMIDT: Nothing, Your Honor.

3 Thank you.

4 JUDGE SIPPEL: Mr. Schonman, you

5 wanted to ask a question?

6 MR. SCHONMAN: Thank you, Your

7 Honor.

8 BY MR. SCHONMAN:

9 Q Just a few questions, Mr. Furman.

10 My name is Gary Schonman, and I am co-counsel

11 for the Enforcement Bureau. I would like to

12 direct your attention to your direct written

13 testimony, which is Enterprise Exhibit 194,

14 specifically paragraph 17. You were just

15 looking at that a moment ago.

16 A Yes.

17 Q And you said in your direct

18 written testimony here that after the NFL

19 Network was moved to -- moved from its D2 tier

20 it experienced a significant reduction in its

21 Comcast subscribership of about [REDACTED].

22 Do you have any knowledge as to what extent

1 advertising revenues dropped as a result --
2 direct result of that change?

3 A Not specifically.

4 Q Generally?

5 A Generally, in that period of time,
6 our advertising revenues increased.

7 Q During what period of time are we
8 talking about here?

9 A The period of time from the change
10 from D1 and D2 to the tiering. We were able
11 to bring in new advertisers throughout the
12 entire year.

13 Q So although subscribership
14 suffered as a result of the move to a premium
15 tier, advertising revenues did not?

16 A They did not in this particular
17 case.

18 Q What do you mean "in this
19 particular case"?

20 A In the period of this period of
21 time, we were able to bring in new
22 advertisers, so at that -- and I am looking at

1 what I assume to be a full year in that period
2 of time. We were able to bring in new
3 advertisers, which increased our revenue.

4 Q Is it fair to say that advertising
5 revenues did not suffer, that is did not go
6 down, following the move to the premium tier?

7 A I general, they did not suffer.

8 Q And, in fact, they went up?

9 A Yes.

10 Q Okay. Let me direct your
11 attention to the next paragraph, paragraph 18
12 of your direct written testimony.

13 A Yes.

14 Q And you have -- about halfway
15 through that you say, "To provide a specific
16 example, ██████████ notified the
17 NFL Network that it would not renew its long-
18 term contract because of the decline in the
19 NFL Network subscribership." What is your
20 basis for attributing ██████████ notification to
21 the NFL -- strike that. What is your basis
22 for believing that ██████████ notification was