

1 Q Okay. So the NFL Network without  
2 games that's how the Network existed back in  
3 2004 when this contract was signed, right?

4 A Correct.

5 Q And the same thing is true.  
6 That's the state of the NFL Network in 2004  
7 when you signed the contract with my client,  
8 right?

9 A Correct.

10 Q It took two years for you to add  
11 games to NFL Network.

12 A Correct.

[REDACTED]

22 Q Okay. Let me show you an email on

1 that. Give me one second and we'll hand you  
2 an email.

3 A That will be fine.

4 JUDGE SIPPEL: If you can just  
5 mark for identification and then you go  
6 through your questioning and move it in. You  
7 don't have to -- If you want to do it that  
8 way.

9 MR. CARROLL: All right. I'm  
10 marking this as Comcast Exhibit 322 for  
11 identification.

12 JUDGE SIPPEL: So identified.  
13 (Whereupon, the document referred  
14 to was marked as Comcast Exhibit  
15 No. 322 for identification.)

16 MR. CARROLL: And this is an email  
17 from Mr. Smith to various individuals  
18 including Mr. Hawkins January 2006. Can I  
19 distribute this, Your Honor?

20 JUDGE SIPPEL: Please do.

21 BY MR. CARROLL:

22 Q Mr. Hawkins, would you like a

1 second to review this email or have you been  
2 able to do so getting ready for your testimony  
3 for today?

4 A I have not seen this email in  
5 getting ready for my testimony.

6 Q All right. Would you like a  
7 second to look at it or?

8 A Are you going to quiz me on all of  
9 it. I've read the Direct TV paragraph.

10 Q No. That's good.

11 JUDGE SIPPEL: You get more than a  
12 second.

13 THE WITNESS: All right.

14 MR. CARROLL: But I am going to  
15 focus on the Direct TV.

16 THE WITNESS: That's fine.

17 MR. CARROLL: So we're on the same  
18 page. Let me do the moving part first.

19 THE WITNESS: Go right ahead.

20 BY MR. CARROLL:

21 Q This is an email that you're a  
22 recipient of that you received in the ordinary

1 course of business as an employee at the NFL  
2 on or about January 19, 2006. Correct?

3 A Yes.

4 MR. CARROLL: Okay. Move this  
5 into evidence, Your Honor, as Exhibit 322.

6 JUDGE SIPPEL: Any objection?

7 MR. LEVY: No objection.

8 JUDGE SIPPEL: It's received in  
9 evidence as Comcast 322.

10 (The document referred to having  
11 been previously marked for  
12 identification as Comcast Exhibit  
13 No. 322, was received in  
14 evidence.)

15 Thank you.

16 BY MR. CARROLL:

17 Q Okay. Now here it's January 2006  
18 and the games, this is still basic NFL Network  
19 carriage we're talking about. You haven't put  
20 the names on the Network yet, correct?

21 A That is correct.

22 Q Okay Under Direct TV let me do

1 another thing first. These are scripts that  
2 you are discussing with your colleagues for  
3 purposes of negotiations with in this instance  
4 Echo Star and Direct TV, correct?

5 A Yes, I'd say that's correct.

6 Q These are kind of your talking  
7 point for when you negotiate with them, right?

8 A Yes.

9 Q And in your Direct TV talking  
10 point, the first item is Select Choice right  
11 away and Select Choice refers to a  
12 distribution level, correct?

13 A That's correct.

14 Q Okay. And is that their most  
15 penetrated distribution level?

16 A Yes. It's a tier that's no longer  
17 sold. It's basically the oldest subscribers.  
18 That's correct.

19 Q Okay. At its time when it was  
20 sold, would it count as basic, expanded basic?  
21 How would you refer to it?

22 A Basic probably.

1 Q Okay. As good as you could get in  
2 distribution, right?

3 A That's correct.

4 Q And you were telling them that you  
5 wanted them to go to that distribution right  
6 away.

7 A Correct.

[REDACTED]

21 Q So even though you're on this  
22 email you don't remember this at all.

1           A        I don't remember that particular  
2    item.  I remember something different  
3    involving Select Choice.  But I don't remember  
4    any of this.  What I remember is that they  
5    would move Select Choice which would pick up  
6    a couple hundred thousand subscribers and we  
7    would not charge them an additional rate for  
8    those couple hundred thousand legacy Select  
9    Choice subscribers.  [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

12           Q        Okay.  So you don't remember  
13    what's reflected on the email, but what you  
14    just volunteered that you remember was a  
15    discussion where they would distribute it to  
16    a couple hundred thousand more.

17           A        Yes.

18           Q        And you wouldn't charge them for  
19    that.

20           A        That's correct.

21           Q        Okay.  This proposal that we're  
22    looking at you agree would mean that what it

1 says is that if they go to basic across the  
2 board you'll give it to them for free at the  
3 basic distribution rate.

4 A [REDACTED]

5 [REDACTED]

6 Q Yes. Now let me ask about that.

7 What was the surcharge in your '04 Comcast  
8 agreement that was in effect at this time,  
9 January of 2006?

10 A [REDACTED]

11 Q [REDACTED]

12 A Yes.

13 Q So the same [REDACTED] surcharge  
14 that's being discussed in this email if this  
15 was your proposal that would have matched the  
16 surcharge that you had in your Comcast  
17 contract, right?

18 A Your using "you" not to refer to  
19 me but to the NFL, yes.

20 Q I am indeed.

21 A Okay.

22 Q And that's important --

1           A       Please. That got us off track  
2 once before. So if it's the NFL proposal I  
3 would appreciate it if you could try and  
4 clarify it.

5           Q       Certainly I can do that.

6           A       Okay.

7           Q       And happy to stay on track.

8           A       Thank you.

9           Q       And it's important to the NFL at  
10 the time that it pay attention to what price  
11 it was offering one operator compared to  
12 another because of MFN provisions, right?

13          A       That is correct.

14          Q       MFN referring to Most Favored  
15 Nations.

16          A       Yes.

17          Q       And it's common in the NFL's  
18 contracts to all distributors to have MFN  
19 provisions that promise those distributors  
20 that they're getting, I'm going to simplify  
21 this, the best price out there, right?

22          A       Yes.

1           Q       Okay. So it would have been a  
2 problem under your Comcast contract if the  
3 rate with Direct TV had stayed [REDACTED]  
4 [REDACTED] because that surcharge would  
5 have been [REDACTED] cents better than the one you had  
6 in your Comcast contract, wouldn't it?

7           A       It would not have been a problem  
8 because of the way the surcharge was  
9 structured. More it's a rate in penetration  
10 time, but it would have been a lower surcharge  
11 that would have potentially been available to  
12 Comcast, yes.

13          Q       You would have had to justify that  
14 price difference by arguing that they were  
15 getting greater distribution, correct?

16          A       We would have had to offer Comcast  
17 the information that if you give more  
18 subscribers you can cut your surcharge, yes.

19          Q       Right. Did you ever make that  
20 offer to my client around this time?

21          A       You me or you NFL.

22          Q       NFL.

1           A        I don't know.  I know that I did  
2 not.

3           Q        But you did make that offer or  
4 talked about making that offer in this email  
5 for Direct TV.

6           A        You NFL?

7           Q        Yes sir.

8           A        NFL talked about making that an  
9 offer, yes.

10          Q        And does it generally follow  
11 economically in the business based on your  
12 experience that if you get greater  
13 distribution from a carrier the per subscriber  
14 price goes down?

15          A        Generally true.  Yes sir.

16          Q        In this case you're asking for the  
17 opposite.  The NFL is asking for the opposite,  
18 isn't it?

19                   MR. LEVY:  Objection.  Vague.  I  
20 don't know that the NFL is asking for  
21 anything.

22                   JUDGE SIPPEL:  I'm going to allow

1 the question. The witness understands it.

2 You seem to know what's going on.

3 THE WITNESS: My understanding of  
4 what the NFL was asking for is equivalent  
5 eyeballs (phonetic). That is distribution as  
6 broadly as Versus and Golf are distributed at  
7 a value that is rationally related, sort of  
8 economically the same as Versus and Golf, that  
9 it's sort of the market clearing rate.

10 BY MR. CARROLL:

11 Q I don't know if that answers my  
12 question. So let me try it again.

13 A All right.

14 Q More specific. The '04 contract  
15 that you agreed to calls for carriage with my  
16 client, UNFL, calls for a carriage at what  
17 level?

18 A D2, sir.

19 Q D2 and you were happy with that  
20 carriage D2. You being the NFL.

21 A The NFL, yes, they were satisfied  
22 with that carriage level and believed that it

1 would expand over time.

2 Q Okay. And in this case, the NFL  
3 in a lawsuit that you were associated with  
4 when it was filed is asking for analog  
5 distribution, right?

6 A The NFL is as I understand it  
7 asking for and this is going back to the  
8 complaint that was filed last May. I don't  
9 know since I'm no longer at the NFL exactly  
10 what remedy is being proposed or anything of  
11 that nature. Is asking for equivalent  
12 carriage to Versus and Golf.

13 Q What carriage do you understand --

14 A Right now.

15 Q -- Versus and Golf to provide?

16 A Right now, they're analog.

17 Q They're analog.

18 A But that's entirely within Comcast  
19 discretions.

20 Q And you verified the complaint  
21 that was filed in this case personally,  
22 correct?

1           A       Correct.

2           Q       Is there any doubt in your mind  
3 that you are asking, you being the NFL, His  
4 Honor in this case to order my client to go  
5 from D2 distribution to analog? Is there any  
6 doubt in your mind about that?

7           A       Absolutely there is because you're  
8 assuming that analog is an immutable written  
9 in stone fact for Versus and Golf to the  
10 extent that that's Comcast's position in terms  
11 of where they want to carry those two  
12 channels. Then, yes, the logical conclusion  
13 is analog. To the extent they're prepared to  
14 move those to D2, hey, we're more than happy  
15 with D2 I believe at least based on my  
16 understanding of the complaint thus far.

17          Q       So your understanding of the  
18 position is that Comcast would either have to  
19 move to a lower distribution of Versus and  
20 Golf, D2, and if they did that you would be  
21 happy with D2, you the NFL.

22          A       You the NFL. The NFL would no

1 longer have any claim that we are being  
2 treated differently and discriminatorily under  
3 Federal law in those circumstances. So I'm  
4 not --

5 Q Are you still saying --

6 A I'm not saying that they're going  
7 to be happy with it. But I think they would.

8 Q Let me ask it this way. First,  
9 you're a paid consultant for the NFL still,  
10 aren't you?

11 A Yes.

12 Q Are you being consulted being paid  
13 for the NFL for your time in connection with  
14 this case?

15 A For my time testifying here today,  
16 no.

17 Q Well for any --

18 JUDGE SIPPEL: He didn't ask that  
19 question.

20 BY MR. CARROLL:

21 Q Are you being paid by the NFL for  
22 time and work by you in connection with this

1 case?

2 A Preparing to testify I'm intending  
3 to bill them for the opportunity and so it's  
4 not being with other kinds of matters.

5 Q And are you also providing advice  
6 to them as part of your preparing for this  
7 case here?

8 A Advice in what sense?

9 Q With respect to the case. Are you  
10 consulting with your former colleagues about  
11 this case as a consultant?

12 A I'm providing advice to the extent  
13 that I edit my own testimony.

14 Q Have you already sent them bills  
15 for services since you've left the NFL in  
16 connection with this litigation?

17 A Yes.

18 Q How much have you billed them?

19 A I'm not sure that that's germane,  
20 sir. I bill them at \$650 an hour for whatever  
21 it is that I provide them.

22 JUDGE SIPPEL: For preparing your

1 testimony you're billing them \$650 an hour?

2 THE WITNESS: For reviewing  
3 documents and other stuff that I would not  
4 other -- Yes, I am.

5 JUDGE SIPPEL: Okay. All right.  
6 So \$650 an hour just to get ready to testify  
7 and that's -- I don't see this as a small  
8 thing.

9 THE WITNESS: yes.

10 JUDGE SIPPEL: But you're also  
11 reviewing documents and I take it you're  
12 giving them advice or consulting advice on the  
13 documents or?

14 THE WITNESS: I wouldn't say that,  
15 sir.

16 JUDGE SIPPEL: But you do go  
17 beyond just looking at the documents to  
18 prepare yourself. Am I correct?

19 THE WITNESS: I look at the  
20 documents that I need to look at in connection  
21 with this testimony.

22 JUDGE SIPPEL: Okay. I had the

1 impression you went beyond that.

2 THE WITNESS: And by the way I  
3 also edit up my own testimony and that sort of  
4 thing.

5 JUDGE SIPPEL: Who do you edit it  
6 with? Well, you edit it. Who prepares it for  
7 -- If you have to edit it, then who prepares  
8 it?

9 THE WITNESS: A draft is prepared  
10 by counsel. I send them my comments and then  
11 I sign off on it.

12 BY MR. CARROLL:

13 Q Did you look at any of the briefs  
14 that were filed by the NFL, the pre-trial memo  
15 in this case?

16 A I don't believe it did.

17 Q You weren't involved in putting  
18 together any of those materials.

19 A No.

20 Q And you're not conferring with  
21 counsel as part of your consulting on  
22 strategies connected with this case any more.

1           A        Just I am conferring sometimes  
2 with NFL personnel on distribution strategies  
3 related to the NFL Network but not on  
4 litigation strategy.

5           Q        But those distribution strategies  
6 on NFL Network include the strategies with  
7 respect to my client, Comcast, correct?

8           A        They would include that. I'm not  
9 that there are any active negotiations on  
10 discussions underway, sir. At least I haven't  
11 been consulted on any.

12          Q        Now when you were at the NFL back  
13 in 2004, 2005, 2006 the distribution strategy  
14 that you had for NFL Network on Comcast was  
15 D2, Digital 2, correct?

16          A        That was the contract. I don't  
17 know whether that was the strategy.

18          Q        Would you like to see documents to  
19 refresh yourself? Are you disputing that or  
20 are you just saying you don't remember?

21          A        No, I'm just saying I don't  
22 remember.

1           Q       I see. Okay. It was never a time  
2 in negotiations with my client in 2004 when  
3 you said, "You know what? We don't just want  
4 D2. We want you to give us the same  
5 distribution that you're giving to Versus and  
6 Golf." That's not a demand you made back  
7 then, is it?

8           A       I don't believe so. We had sort  
9 of a digital drive business proposition that  
10 we were offering to cable as an incentive that  
11 we would put the NFL Network -- we would agree  
12 to be placed on a digital tier which cable  
13 companies wanted their subscribers to upgrade  
14 to to help them drive upgrades. D2 is  
15 consistent with that. I don't know whether we  
16 asked for D2 or what. But we had a digital  
17 driver strategy. So we would have been asking  
18 for digital.

19          Q       Okay. Exactly. And the digital  
20 driver strategy that you had including with my  
21 client was the pitch that said "Carry us on  
22 your digital level and it will encourage

1 subscribers to change from analog into  
2 digital." Right? They'll upgrade.

3 A That is correct.

4 Q Okay, and that was the marketing  
5 strategy that you employed at the time.

6 A Marketing to cable carriers, yes,  
7 as distinct from the public. That is correct.

8 Q Yes. Including Comcast.

9 A Yes.

10 JUDGE SIPPEL: What was that  
11 called again? Digital drive.

12 THE WITNESS: Digital driver.

13 MR. CARROLL: Digital driver  
14 strategy.

15 JUDGE SIPPEL: Digital driver  
16 strategy. That's not in your list of --

17 MR. CARROLL: It's not in our  
18 glossary.

19 JUDGE SIPPEL: I'm asking that.  
20 I'm looking to see.

21 MR. LEVY: I don't believe it is,  
22 Your Honor.

1 JUDGE SIPPEL: You do not believe  
2 it is.

3 MR. LEVY: I don't believe it's in  
4 the glossary.

5 MR. CARROLL: We'll have to add  
6 that one.

7 JUDGE SIPPEL: That's a good one.

8 MR. CARROLL: That is. DDS.

9 JUDGE SIPPEL: That's okay. I got  
10 it.

11 BY MR. CARROLL:

12 Q Do you still have Exhibit 322 in  
13 front of you?

14 A Yes, sir.

15 Q Above Direct TV there's a  
16 reference to Echo Star. Do you see that?

17 A Yes, sir.

18 Q Echo is Echo Star.

19 A Correct.

20 Q Okay. Echo Star is the other  
21 satellite carrier.

22 A Correct, sir.

1 Q And NFL had a distribution  
2 arrangement with Echo Star at the time, early  
3 '06.

4 A Correct.

5 Q And the talking point here for  
6 Echo Star, I'll let you read it to yourself,  
7 and my first question is going to be do you  
8 remember this as a message point for Echo  
9 Start at the time.

10 A I remember pieces of it. I don't  
11 remember the details in the second and third  
12 lines. But I do remember the immediate  
13 meltdown and I do remember the joint marketing  
14 campaign.

15 Q Okay. Let's take those in pieces.  
16 The immediate meltdown, meltdown is a term of  
17 art you're using here to refer to taking it to  
18 basic. Is that right?

19 A Yes. Moving it to a more widely  
20 distributed tier.

21 Q Okay.

22 A And hope that's in somebody's

1 glossary.

2 Q And the meltdown you're referring  
3 to here is taking distribution to AT60 from  
4 AT120. Have I done it correctly?

5 A That is correct, sir.

6 Q AT60 being the lingo that Echo  
7 uses for its basic distribution level.

8 A That's correct, sir.

9 Q AT120 being a less penetrated  
10 distribution level.

11 A That's correct.

12 Q And do you remember that the  
13 talking point proposal here was that you would  
14 actually make that free to Echo Star for the  
15 first two years?

16 A That's how I also would interpret  
17 the second line. But as I said, I don't  
18 remember any of those details.

19 Q Okay. Did you ever make that  
20 offer, you being the NFL, to my client to give  
21 them the first two years free if they gave you  
22 some greater distribution level?

1           A        I don't know.

2           Q        And you're certainly not making  
3 that offer, you the NFL, in this carriage  
4 complaint here in front of FCC. You're not  
5 proposing that you give us the first two years  
6 free if we took you to a greater distribution,  
7 right?

8           A        No. At least it's not my  
9 understanding of the complaint.

10          Q        Okay. You can put that exhibit to  
11 the side.

12          A        Yes, sir.

13          Q        Let me just fish out your direct  
14 statement for a moment here.

15          A        Okay.

16          Q        Before we take our lunch break,  
17 let me see if I can cover a few other items  
18 quickly that will not require any or many  
19 exhibits and then we can wrap this up  
20 hopefully pretty quickly after lunch.

21                    You have some testimony you offer  
22 in your direct statement about advertising

1 impact of the Comcast tiering decision. Do  
2 you remember that?

3 A Are you referring to the last  
4 paragraph?

5 JUDGE SIPPEL: Of which exhibit  
6 now?

7 MR. CARROLL: This is the --

8 JUDGE SIPPEL: The testimony.

9 MR. CARROLL: This is the offered  
10 testimony. The written testimony of Mr.  
11 Hawkins, what is the exhibit number for this?  
12 I believe it would be an NFL exhibit number.  
13 It's not been introduced.

14 JUDGE SIPPEL: It has been  
15 introduced? I thought these all came in  
16 yesterday.

17 MR. LEVY: Your Honor, we did not  
18 separately number the --

19 JUDGE SIPPEL: The testimony.

20 MR. LEVY: -- written testimony.  
21 That's why at the outset of the direct I  
22 offered Mr. Hawkins' direct testimony and we