

1 JUDGE SIPPPEL: NFLN, Versus, Golf,
2 it says at the top.

3 MR. SCHMIDT: Yes. Ratings Data
4 for the NFL Network, Versus --

5 THE WITNESS: I recall seeing --
6 if it wasn't this, it was something very
7 similar, as part of the -- some of the
8 discovery in this case.

9 BY MR. SCHMIDT:

10 Q You understand that this is
11 ratings data for the NFL Network on the first
12 page, on the first half of the page, right?

13 A Yes.

14 Q And then, the Golf Network on the
15 second half of the first page.

16 A Yes.

17 Q And then, if you turn it over, the
18 NFL -- on page 2 there is one of these
19 spreadsheets that kind of carries over,
20 continues with more NFL Network and Golf
21 ratings data, correct?

22 A Yes.

1 Q Go to the third page. It has
2 Versus data, right?

3 A Yes.

4 Q Which continues over to the fourth
5 page, right?

6 A Yes.

7 JUDGE SIPPEL: Well, that is not
8 Golf. That is NHL, National Hockey League.

9 MR. SCHMIDT: That continues on
10 the fourth page of the document. I'm sorry,
11 that is the fifth page of the document.

12 JUDGE SIPPEL: So are you
13 comparing football, golf, and hockey, is that
14 what is going on here?

15 MR. SCHMIDT: First, I am actually
16 going to compare the channels.

17 JUDGE SIPPEL: I see, the
18 channels. Yes, I'm sorry. I'm sorry. I
19 didn't mean to misstate that. Okay.

20 BY MR. SCHMIDT:

21 Q And what I would like to start off
22 with is the first page of the document, Mr.

1 Gerbrant. Tell me when you are there.

2 A I am there.

3 Q Do you see the ratings data for
4 the NFL Network?

5 A I do.

6 Q And you mentioned demographic
7 data. What is the most important age
8 demographic for a sports network?

9 A Males 18 to 49.

10 Q Do you see that data in the final
11 column on the first page, males 18 to 49?

12 A I do.

13 Q Let's look at -- let's compare
14 some of these ratings. Let's start with
15 December 2006. Now, let me just ask you, in
16 December, what kind of football programming is
17 there on the NFL Network?

18 A I believe that is -- well, I would
19 have to go back and look at the schedule, but
20 I believe that includes some of the eight
21 games.

22 Q What kind of programming is there

1 on Versus?

2 A I would have to go back and
3 doublecheck. Versus has a much more diverse
4 program mix. I don't recall what it would
5 have been for a specific month.

6 Q That would have -- is NHL season,
7 hockey season, underway?

8 A Yes, it is.

9 Q Okay. And that is some of Versus'
10 more popular programming, right?

11 A No. I think what -- we said it
12 was the NHL playoffs.

13 Q Not the reason season?

14 A Oh, no. I mean, we -- in response
15 to the last -- when you asked me about the
16 most popular, I think I said the NHL playoffs.
17 But they do carry NHL hockey. I am --

18 Q Mr. Gerbrant, I am respectfully --
19 I am not trying to talk about 10 minutes ago.
20 My question is: is regular season hockey
21 among the more popular programming on Versus?

22 A I believe it is, yes.

1 Q Thank you. What is happening in
2 golf in December 2006, if you know?

3 A I think there may be some
4 tournaments. I am trying to remember if the
5 PGA Tour extends into December. It may be
6 early -- I think it ends some time in early
7 December, but I am not -- I am not even sure
8 about that.

9 Q Is the PGA Tour some of the more
10 popular programming on the Golf Channel?

11 A It all depends on whether Tiger is
12 in contention or not, but yes, I believe that
13 is -- they cover the early rounds of PGA and
14 LPGA and the Senior Tour.

15 Q So let's look at the ratings for
16 the NFL Network, Golf, and Versus, for
17 December 2006. Now, before I ask you the
18 question, let me ask you one more question,
19 which is, at this time, was Comcast carrying
20 the NFL Network with the eight-game package on
21 its D2 tier?

22 A Based on the testimony I think

1 that I heard yesterday, I believe that was the
2 case.

3 Q So Comcast is benefitting from
4 whatever ratings the NFL Network is
5 generating, correct, at this time period?

6 A There isn't a cause and effect
7 benefit. Somebody doesn't -- no, I disagree
8 with -- when you say "benefit." There is --
9 if a program rating goes up, somebody doesn't
10 -- or goes down, somebody doesn't say, "Well,
11 the rating of my show went down. I am going
12 to disconnect cable." I mean, I think that is
13 -- when you say "benefit," I am not sure how
14 that translates into a benefit.

15 Q Well, let's try to -- I thought it
16 was a pretty straightforward proposition, but
17 let me ask you that. Do you understand that
18 ratings tend to measure how many people watch
19 television, a particular television channel,
20 in this period?

21 A Yes.

22 Q And is it your testimony that a

1 cable company like Comcast doesn't care how
2 many people watch the television programs?

3 A I think in a conceptual way, in
4 the way I described it earlier, that it is --
5 if you are a cable operator, you need to make
6 sure that the networks you are carrying are
7 economically viable and healthy.

8 JUDGE SIPPEL: Well, can you
9 answer that question straight on?

10 THE WITNESS: Not -- not the way
11 he is -- he is asking me if they benefit from
12 a rating going up and down, and, you know --

13 JUDGE SIPPEL: He didn't ask that
14 question.

15 THE WITNESS: Okay. I need to --
16 maybe I misunderstood the --

17 BY MR. SCHMIDT:

18 Q My question was: do they care?
19 Do they care if their channels have higher
20 ratings as opposed to lower ratings?

21 A Yes, they do care.

22 Q Okay. Thank you.

1 JUDGE SIPPEL: Thank you. It gets
2 easier as we go along. Go ahead.

3 (Laughter.)

4 BY MR. SCHMIDT:

5 Q Do they care in a second way,
6 which is they get to run blocks of advertising
7 on the channels they carry?

8 A Yes, they do have -- they do have
9 the ability to sell what are called "local
10 avails." That is correct.

11 Q And if ratings are higher, the
12 value of their advertising goes up, doesn't
13 it?

14 A Over time they do.

15 Q And you know, don't you, that
16 Comcast had that same right with respect to
17 the NFL Network?

18 A Yes.

19 Q So let's look at what the ratings
20 show for December 2006. What is the rating --
21 now, I am going to ask you for what is called
22 "household coverage rating." And my

1 understanding -- tell me if I am right -- is
2 that household coverage rating looks at the
3 number of households who are actually viewing
4 the game on the top of the fraction, and on
5 the bottom of the fraction the number of
6 households who have access to that channel, is
7 that right?

8 A Correct. The networks universe,
9 yes.

10 Q Okay. So let's look at that
11 rating, and we can pick -- let's look at the
12 second column, okay? Which I understand to be
13 live, plus same-day viewing, people who view
14 it that day on Tivo or whatever the technology
15 is, is that right?

16 A I believe that is what that
17 designation stands for.

18 Q What is the rating under that
19 measure, that household measure, for the NFL
20 Network in December 2006?

21 A .32.

22 Q What is the rating for Golf in

1 December 2006?

2 A It is a .05.

3 Q About a sixth of what the NFL

4 Network is, right?

5 A I am hitting in my own ballpark

6 now on the math, yes, I agree.

7 Q Actually, less than a sixth,

8 right?

9 A I will grant you that, yes.

10 Q And what is the rating in December

11 2006 in the middle of hockey season for

12 Versus?

13 A It is a .08.

14 Q A quarter, right?

15 A Yes.

16 Q Let's go to the important rating

17 you talk about, males 18 to 49, which is the

18 last column on this chart, correct?

19 A Yes. I said it is important to

20 advertisers, but yes.

21 Q What is the rating in that measure

22 for the NFL Network?

1 JUDGE SIPPEL: December 2006?

2 MR. SCHMIDT: Yes, sir. December

3 2006. Thank you.

4 JUDGE SIPPEL: Thank you.

5 THE WITNESS: It is a .27.

6 BY MR. SCHMIDT:

7 Q What is the rating for golf among
8 males 18 to 49 in December 2006?

9 A It is a .03.

10 Q Almost 10 percent, right?

11 A Actually, closer to nine I think.

12 Q It is exactly one-ninth, right?

13 A Yes.

14 Q Okay. I don't want to quibble
15 about how close a ninth is to 10 percent. It
16 is a ninth, correct?

17 A Yes.

18 Q And what is the rating for Versus
19 during that time period?

20 A .05.

21 Q Less than a fifth.

22 A Yes.

1 Q Let's skip ahead to another month.

2 Let's look at April 2007. This is right

3 before Comcast tiered the NFL Network, right?

4 A I believe so.

5 Q And what is happening in April in

6 football? If you know.

7 A I am trying to remember if April

8 is the month where the draft occurs or not.

9 I don't know. I do know that you don't have
10 any games in April.

11 Q Okay. You mentioned seasonality.

12 What is the season for football?

13 A Well, I think the regular season

14 starts -- is it September? Yes, I think

15 September.

16 Q Until when?

17 A Well, they keep extending it, but

18 I think it goes through December, and then

19 there is the playoffs in January. And then,

20 I think we now have the Superbowl bleeding

21 over into February.

22 Q So September to February is the

1 season, as you understand it?

2 A Well, that is not the regular
3 season, but that is the -- and, of course, you
4 have the pre-season, but it is -- the regular
5 season is September -- is, what, 17, 18 weeks,
6 somewhere in the fall.

7 Q We have got four witnesses today,
8 so I am trying to get through you as quickly
9 as I can, Mr. Gerbrant.

10 A Sure.

11 Q What season do you consider --
12 when you talk about seasonality, what is the
13 time period you are looking at for the NFL
14 Network?

15 A Ah. What I am talking about --
16 seasonality -- I am talking about those four
17 to six weeks in the late fall/early winter
18 where they carry the eight games. That is --
19 when I was talking about the high seasonality
20 of it, was it covers -- those eight games only
21 cover that timeframe.

22 Q What months are those?

1 A I believe -- I looked at a couple
2 of different years. It is primarily
3 November/December.

4 Q So December being one of the
5 months we looked at?

6 A Yes.

7 Q Now, that we are in April, we
8 would expect the ratings to fall for the NFL
9 Network, right?

10 A I am not sure there is necessarily
11 a -- yes, I suppose the ratings -- if you
12 didn't have the games, the ratings would be
13 lower, yes.

14 Q But Versus and Golf don't have
15 that problem, because they don't have the
16 seasonality problem, in your view.

17 A No. There are seasonal variations
18 I think on every network.

19 Q So Versus and Golf also have
20 seasonality issues?

21 A The --

22 Q Yes or no.

1 A To a lesser extent.

2 Q Okay. But they do, to some
3 extent?

4 A Well, you don't have the Tour de
5 France all year long, you don't have the NHL
6 games all year long. There are different --
7 you don't have the main PGA tournaments on
8 Golf all year long. So, yes, there are -- the
9 seasons are -- the seasons and the seasonality
10 of those networks are somewhat different.

11 Q So the answer to my question is
12 yes.

13 A Okay. With the stipulation -- you
14 know, with the explanation that I gave.

15 Q So let's look at --

16 JUDGE SIPPEL: You know, I would
17 like to just come at it another way very
18 simply, if I can. Is there such a thing as a
19 golf season?

20 THE WITNESS: Yes, they do take --
21 they do take the -- my recollection is they
22 take a couple of months off, but it is

1 probably the longest season of any sport that
2 I know of.

3 BY MR. SCHMIDT:

4 Q Do you know that April is the end
5 of the hockey season?

6 A Sounds about right.

7 Q And the beginning of the Stanley
8 Cup finals?

9 A I think so.

10 Q I don't want to put words in your
11 mouth.

12 A No, I don't know. I mean, I -- I
13 actually haven't looked at when the Stanley
14 Cups are played, so I -- I actually don't know
15 what month that is.

16 Q Are they going on now or next
17 month or --

18 JUDGE SIPPEL: You know, that
19 really doesn't make any difference. He said
20 he doesn't really know.

21 MR. SCHMIDT: Well, I am just
22 curious. He is offering testimony about the

1 value of this programming, Your Honor.

2 JUDGE SIPPEL: Well, yes, but, you
3 know, I don't know what this is going to add
4 or subtract. You have gone down enough of
5 these roads. I think you can -- I don't know
6 -- you are not establishing -- look, just move
7 on. Could you move on to something else,
8 please?

9 MR. SCHMIDT: Let me just
10 establish the ratings in April and I will move
11 on.

12 BY MR. SCHMIDT:

13 Q Mr. Gerbrant, what are the ratings
14 for the NFL Network in April, when it is not
15 running its core programming?

16 A It is a .1.

17 Q And what is the rating in the 18
18 to 49 male demographic?

19 A I have got to make sure I go
20 across correctly here.

21 JUDGE SIPPEL: You are in, what,
22 April 2007 now?

1 MR. SCHMIDT: Yes, sir.

2 JUDGE SIPPEL: I have got you.

3 Okay. Yes, .1.

4 THE WITNESS: And 18 to 49 looks

5 .09.

6 BY MR. SCHMIDT:

7 Q What is the rating for Golf, total
8 households, April 2007?

9 A We are talking about live, same
10 day, .09.

11 Q So less than the NFL when it is
12 off-season.

13 A It is a -- what is that, a
14 hundredth of a rating point less?

15 Q What is the rating for the 18 to
16 49 group on Golf?

17 A .05.

18 Q Almost half of the NFL when it is
19 off season.

20 A Well, .05 isn't almost half of
21 .09, but it is probably 40 percent.

22 Q Okay.

1 JUDGE SIPPPEL: Mr. Schmidt, this
2 sounds like a math test. We don't care. We
3 don't care. We look at these numbers. We can
4 see there is a big difference.

5 MR. SCHMIDT: What I am trying to
6 establish, Your Honor, is that Mr. Gerbrant is
7 offering testimony that the NFL Network has
8 lower value because of its seasonality. If
9 you look at the popular hockey season, the NFL
10 Network, and the popular golf season, the NFL
11 Network actually outperforms in some
12 instances, or performs equivalently when it is
13 not running its core programming. That is all
14 I am trying to establish. But I think I have
15 made my point, and I will move on, Your Honor.

16 JUDGE SIPPPEL: Well, if you want
17 to ask him that question, ask him what the
18 significance of that is, ask him how it
19 affects his opinion, that is fine. If we go
20 down these one by one, we can all see these
21 numbers change. And we know that some numbers
22 are higher than other numbers.

1 BY MR. SCHMIDT:

2 Q Did you take these numbers into
3 account in giving your opinion? Yes or no.

4 A Yes.

5 JUDGE SIPPEL: Now, who puts this
6 out anyway? This says report run date -- what
7 is it, May 1, 2008. Who is running this
8 report, and what is it based on?

9 MR. SCHMIDT: This comes from
10 Nielsen data, Your Honor.

11 JUDGE SIPPEL: Well, it doesn't
12 say that on the document.

13 MR. SCHMIDT: No, but that is --

14 JUDGE SIPPEL: Oh, yes, it does,
15 down here. Copyright Nielsen Company. I take
16 that back. Okay. This is Nielsen data.

17 MR. SCHMIDT: Yes.

18 JUDGE SIPPEL: And the report run
19 was -- the report run was made by Nielsen, or
20 did the subscriber to Nielsen get this run, or
21 how --

22 MR. SCHMIDT: The subscriber

1 getting this run. This is the NFL, as a
2 subscriber, getting this run.

3 JUDGE SIPPEL: So they did it in-
4 house on its software, whatever.

5 MR. SCHMIDT: They obtained it
6 from Nielsen.

7 JUDGE SIPPEL: They obtained it
8 from Nielsen, obviously. Obviously. Okay.
9 And was it obtained for purposes of this case?

10 MR. SCHMIDT: No.

11 JUDGE SIPPEL: Or is this just in
12 the normal course of business?

13 MR. SCHMIDT: They get Nielsen
14 data in the normal course of business.

15 JUDGE SIPPEL: Okay.

16 BY MR. SCHMIDT:

17 Q Let's look at your report, which
18 has been marked as Exhibit 40. You said you
19 did a comparison of live programming on the
20 different networks, correct?

21 A No. I said I -- show me what
22 paragraph you are referring to here.

1 Q Did you do that?

2 A I didn't do a comparison of live
3 programming. Well, I guess I did. I did look
4 at -- I did look at -- you are right. I did
5 look at live programming, yes.

6 Q Okay. And did you do a table on
7 it, specifically Table 3?

8 A Yes.

9 JUDGE SIPPEL: What page is that?

10 MR. SCHMIDT: It is page 26, Your
11 Honor.

12 THE WITNESS: Actually, that is
13 not correct.

14 BY MR. SCHMIDT:

15 Q Are you with me on page 26?

16 A Oh, page 26. Table 4, yes.

17 Q Yes. What is the percentage -- am
18 I correct that the percentage of live
19 programming at Versus is less than five
20 percent?

21 A Yes.

22 Q Look ahead with me, if you would

1 -- so less than one in 20 hours on Versus were
2 live?

3 A Okay.

4 Q Look ahead with me, if you would,
5 to Table 1. Do you see that you list the
6 different types of programming on Versus and
7 the Golf Channel and the NFL Network?

8 A Correct.

9 Q What is paid programming?

10 A Paid programming is -- generally,
11 those are infomercials.

12 Q And how many infomercials run on
13 the NFL Network?

14 A It does not appear to be -- there
15 were no -- nothing that was categorized as
16 paid programming.

17 Q Now, again, I don't want to get
18 into the math, but my calculation is more than
19 15 percent of Versus and the Golf Channel are
20 infomercials. Does that seem right to you?

21 A I haven't done the math, but you
22 have been pretty good on your math so far, so

1 --

2 Q Thank you for granting me that.
3 So more than three times -- Versus and Golf
4 have three times more infomercials than they
5 do live programming, correct?

6 A Okay.

7 Q Is that something you considered
8 in giving your opinion?

9 A Yes.

10 MR. SCHMIDT: Your Honor, at this
11 point we might need to close the courtroom,
12 because I am going to ask Mr. Gerbrant about
13 some highly confidential information.

14 JUDGE SIPPEL: All right. I mean,
15 I -- we will do that, but I am saying, you
16 know, how much longer do we have with this
17 witness?

18 MR. SCHMIDT: Well, we have really
19 tried to streamline.

20 JUDGE SIPPEL: No, no. How much
21 longer do we have?

22 MR. SCHMIDT: I think I have got

1 about a half an hour, Your Honor.

2 JUDGE SIPPPEL: All right. Well,

3 let's -- we might as well take --

4 MR. SCHMIDT: I am trying to go as

5 fast as I can, Your Honor.

6 JUDGE SIPPPEL: We might as well

7 take 10 minutes, then, and let people do

8 whatever they need to do and come back. But

9 let's keep it going, please. I mean, really,

10 keep this going. You are not -- you are

11 spending a lot of time, but there is not a lot

12 of wheels being spun, and you can't blame it

13 all on the witness. It is your responsibility

14 to move this thing along.

15 MR. SCHMIDT: Understood, Your

16 Honor.

17 JUDGE SIPPPEL: Okay.

18 MR. SCHMIDT: We are going as fast

19 as we can.

20 JUDGE SIPPPEL: All right. We are

21 going off the record. And I'm sorry, the

22 press will have to -- the public will have to

1 leave until you see the door open again.

2 Thank you. We are off the record.

3 Ten minutes.

4 (Whereupon, the proceedings in the
5 foregoing matter went off the
6 record at 10:43 a.m. and went back
7 on the record at 11:03 a.m.)

8 JUDGE SIPPEL: Back on the record.

9 Mr. Schmidt?

10 MR. SCHMIDT: May I continue, Your
11 Honor?

12 JUDGE SIPPEL: You may. I hope --
13 let's move it. Go ahead. I'm sorry, I don't
14 mean to press, but let's go.

15 MR. SCHMIDT: I have one more
16 topic I want to cover before I get to --

17 BY MR. SCHMIDT:

18 Q You haven't done any valuation of
19 the value of the Golf Channel, have you, of
20 the correct license fee?

21 A I have not.

22 Q And you haven't done that