

1 put together a bid by giving us a wide variety  
2 of opinions on the way we were presenting  
3 things and what we were presenting. And so he  
4 talked to a lot of people, so presumably that  
5 involves people from the NFL, but I don't know  
6 specifically, no.

7 Q Including giving you confidential  
8 information from the NFL, right?

9 A I am not aware of that at all, no.

10 Q You are not aware of that?

11 A No. No, sir.

12 JUDGE SIPPEL: And Allan Gold was  
13 a prior employee of the NFL, is that what you  
14 are saying?

15 MR. SCHMIDT: Yes.

16 JUDGE SIPPEL: What was his  
17 position there?

18 MR. SCHMIDT: He was a lawyer,  
19 Your Honor.

20 MR. PHILLIPS: He is an attorney,  
21 in-house counsel, in the Media Group.

22 MR. PEREZ-MARQUES: Per the

1 testimony of the Covington lawyers here, Your  
2 Honor.

3           JUDGE SIPPEL: Well, you just  
4 identified who Mr. Gold is. Is there any  
5 question about that? I mean, is that --

6           MR. PEREZ-MARQUES: I don't know  
7 one way or the other whether this is accurate.

8           MR. CARROLL: Actually, Your  
9 Honor, I have not heard this name before. I  
10 don't know who he is.

11           MR. PINSKY: We have asked -- we  
12 have noticed his deposition. We have served  
13 a document request to him.

14           MR. CARROLL: That may be. I am  
15 just saying, Your Honor, I am sitting here  
16 learning about this, too.

17           JUDGE SIPPEL: All right. You  
18 know he was in-house, but Mr. Phillips told  
19 you he was in-house for the Media Group at NFL  
20 before he went to Comcast. That is all I am  
21 saying.

22           MR. CARROLL: And I will accept

1 that.

2 JUDGE SIPPEL: Okay. That is all  
3 we are talking about.

4 MR. CARROLL: That is fine.

5 MR. SCHMIDT: May I approach, Your  
6 Honor?

7 JUDGE SIPPEL: Yes, please do.

8 MR. SCHMIDT: I would like to show  
9 you three documents, if I may. In an effort  
10 to streamline things, I will give them all  
11 together.

12 JUDGE SIPPEL: Yes, that will be  
13 fine.

14 BY MR. SCHMIDT:

15 Q The first is marked for  
16 identification as Exhibit 201.

17 JUDGE SIPPEL: So this is not in  
18 evidence yet.

19 MR. SCHMIDT: Not in evidence yet.

20 Thank you.

21 JUDGE SIPPEL: Thank you.

22 BY MR. SCHMIDT:

1           Q       Now, to be fair, this does not  
2 have your name on it. I believe this has the  
3 name of your predecessor, Amy Vanse, is that  
4 right, Mr. Shell?

5           A       I see her name on this document,  
6 yes.

7           JUDGE SIPPEL: V-A-N-S-E, Amy  
8 Vanse?

9           MR. SCHMIDT: Yes.

10          BY MR. SCHMIDT:

11          Q       And do you see Mr. Gold forwarding  
12 information, forwarding first a newspaper  
13 article, right?

14          MR. CARROLL: Your Honor, I  
15 object. This e-mail predates this gentleman's  
16 employment by Comcast. He wasn't even  
17 employed at Comcast at the date of this e-  
18 mail, and the NFL counsel who is asking this  
19 question knows that when they are doing this.

20          MR. SCHMIDT: Your Honor, we have  
21 had this with other witnesses. We have had  
22 witnesses shown documents from other people.

1 I am going to ask one or two questions on this  
2 and move in.

3 MR. CARROLL: He is not even a  
4 Comcast employee when this e-mail is  
5 occurring.

6 JUDGE SIPPEL: We have an  
7 objection based on relevance. What relevance  
8 is to this --

9 MR. SCHMIDT: Because I am then  
10 going to show Mr. Shell other documents  
11 relating to Mr. Gold that involve him.

12 JUDGE SIPPEL: All right. Subject  
13 to you tying it up, I am reserving the ruling  
14 on the motion.

15 BY MR. SCHMIDT:

16 Q Do you see in the first sentence  
17 where it reports what the NFL wants from  
18 Disney, do you see that?

19 A I see the sentence, yes.

20 Q Do you see he then ends that  
21 paragraph by saying, "I will have an update  
22 from an insider tomorrow"?

1           A        I see where the e-mail says that,  
2 yes.

3           Q        Is that the kind of information  
4 that Mr. Gold provided to you while you were  
5 at Comcast negotiating for the eight-game  
6 package?

7           A        There is --  
8                    JUDGE SIPPEL: That is too broad.  
9 That is too broad. Don't answer that  
10 question.

11                   MR. SCHMIDT: Let me make it more  
12 tailored, if I may, Your Honor.

13                   BY MR. SCHMIDT:

14           Q        Did Mr. Gold -- this is  
15 information about the NFL and about deals the  
16 NFL was looking at doing, correct? Is that  
17 your understanding?

18                   MR. PEREZ-MARQUES: Objection,  
19 Your Honor.

20                   JUDGE SIPPEL: I will sustain the  
21 objection. Why don't you have him read the  
22 document and ask him what it is about, ask him

1 what he knows about it.

2 BY MR. SCHMIDT:

3 Q Okay. Do you know that this  
4 relates --

5 JUDGE SIPPEL: Ask him -- let him  
6 read it. Did you read it?

7 THE WITNESS: I did, yes.

8 JUDGE SIPPEL: What is it about?

9 THE WITNESS: It seems to be  
10 forwarding an article to a distribution list  
11 on the top, and promising an update later on  
12 about it.

13 JUDGE SIPPEL: Well, what is the  
14 deal they are talking about, the NFL --  
15 possible NFL deal?

16 THE WITNESS: It appears to be the  
17 Monday Night Football deal, but --

18 JUDGE SIPPEL: With who?

19 THE WITNESS: With ESPN -- or  
20 Disney with ESPN.

21 JUDGE SIPPEL: What was that got  
22 to do with this case?

1 MR. SCHMIDT: Because there were  
2 e-mails like this that went on during the  
3 negotiations for the eight-game package.

4 JUDGE SIPPEL: No relevance. I'm  
5 going to sustain the objection. This is out.  
6 You can identify it, but that is as far as it  
7 is going.

8 MR. SCHMIDT: And just so I  
9 understand, Your Honor, does that relate to  
10 the subject matter or to Mr. Gold? Because if  
11 it relates to Mr. Gold, that is the end of my  
12 questions.

13 JUDGE SIPPEL: Relating to the  
14 subject matter.

15 MR. SCHMIDT: I apologize.

16 JUDGE SIPPEL: We have Mr. Gold as  
17 the witness.

18 MR. SCHMIDT: Does it relate --

19 JUDGE SIPPEL: No, I'm sorry. I  
20 beg your pardon. Mr. Shell is the witness.

21 MR. SCHMIDT: Does it relate to  
22 this specific document?

1 JUDGE SIPPPEL: This document only.

2 Let's go.

3 BY MR. SCHMIDT:

4 Q Did you get -- do you recall being  
5 in competition with -- strike that. Did you  
6 know whether you were in competition with the  
7 NFL Network to secure college sports games for  
8 Versus?

9 A No.

10 Q Did you, in fact, secure college  
11 sports games for Versus?

12 A Sure, yes.

13 Q During that time, did you receive  
14 information from Mr. Gold about his  
15 discussions with folks at the NFL about trying  
16 to get those games?

17 A I don't recall whether I did or  
18 not.

19 MR. SCHMIDT: Your Honor, I would  
20 like to mark for identification Exhibit 205.

21 (Whereupon, the above-referred to  
22 document was marked as NFL Exhibit

1           No. 205 for identification.)

2           JUDGE SIPPEL: Just for the  
3 purposes of a clear record on this, I gave --  
4 201 is identified as you have identified it,  
5 but it is -- my ruling is to reject it as a  
6 witness -- I'm sorry, as an exhibit.

7           So that is how it stands on the  
8 record. Thank you.

9           BY MR. SCHMIDT:

10          Q       Have you seen this document  
11 before?

12          A       I don't recall seeing this. I  
13 mean, that doesn't mean that I haven't, but I  
14 don't recall getting this e-mail.

15          Q       Do you see it being sent to you?

16          A       I do, yes.

17          Q       From Mr. Gold on February 2, 2007?

18          A       Yes.

19          Q       And do you see him reporting on  
20 discussions he had with NFL executives?

21          A       I do, yes.

22          Q       Do you see him also reporting to

1 you about the NFL and ESPN continuing their  
2 college football discussions and with that  
3 deal might entail?

4       A       I see what it says here. I see  
5 them saying that ESPN and NFL were talking  
6 about more games, yes.

7       Q       And do you see him saying he will  
8 give you more information next week?

9               MR. PEREZ-MARQUES: Objection,  
10 Your Honor. I object to this.

11              JUDGE SIPPEL: Wait, wait, wait.  
12 What is the relevance of this?

13              MR. SCHMIDT: We believe these are  
14 games. One of our allegations, Your Honor, is  
15 that we suffered competitive harm by tiering,  
16 because we weren't able to secure a package of  
17 college sports games based on our distribution  
18 network that instead went to the Versus  
19 channel. We believe this is an instance where  
20 Comcast is getting information from Mr. Gold,  
21 a former NFL employee, about our efforts to  
22 secure those games.

1 JUDGE SIPPEL: But he is already  
2 at Comcast, isn't he, Mr. Gold, at that point?  
3 This is 2007?

4 MR. SCHMIDT: At this point, we  
5 think he has been terminated from Comcast. He  
6 is just continuing to provide information.

7 JUDGE SIPPEL: But he is out of  
8 NFL.

9 MR. SCHMIDT: Yes, he is, Your  
10 Honor.

11 JUDGE SIPPEL: It is too  
12 speculative. I am going to reject this witness  
13 -- this document also. Speculativeness is a  
14 waste of time.

15 MR. SCHMIDT: That concludes my  
16 questions, Your Honor.

17 JUDGE SIPPEL: Okay. Thank you.  
18 It is identified, however.

19 MR. PEREZ-MARQUES: We have no  
20 redirect.

21 JUDGE SIPPEL: Mr. Schonman?

22 MR. SCHONMAN: Nothing, Your

1 Honor.

2 JUDGE SIPPEL: Nothing? Okay.

3 That is good, beautiful. Thank you,  
4 gentlemen.

5 Yes, you are out of here. Don't  
6 talk about your testimony with any other  
7 witnesses that are coming after you. Okay?

8 THE WITNESS: Yes, sir. I am  
9 getting on a train.

10 JUDGE SIPPEL: Getting on a train.

11 Excellent.

12 THE WITNESS: Thank you.

13 (Whereupon, the witness was  
14 excused.)

15 JUDGE SIPPEL: Next witness?

16 MR. CARROLL: Your Honor, do you  
17 want to do a lunch break before the next  
18 witness or --

19 JUDGE SIPPEL: How long is the  
20 witness going to be?

21 MR. CARROLL: We are doing, you  
22 know, short directs. We have two witnesses

1 left. Yesterday we would note that we did two  
2 in the morning, two afternoon, so we are on  
3 track.

4 JUDGE SIPPEL: Well, why don't we  
5 do a short -- well, what would you prefer to  
6 do? I mean, we can put a short -- we can do  
7 a short direct, but I don't know if you want  
8 to do that.

9 MR. CARROLL: Yes. I am -- I was  
10 going to break. The witness won't have one  
11 stretch of testimony. We will be breaking in  
12 the middle of testimony for lunch is my  
13 expectation. So it might be more beneficial  
14 to break for lunch now.

15 JUDGE SIPPEL: Okay. I hear you.  
16 What is it, 10 after? Am I reading that  
17 right, 10 after 12?

18 MR. CARROLL: Yes, Your Honor.

19 JUDGE SIPPEL: Ten after 12 --  
20 1:30. Come back at 1:30. We are in recess.

21 (Whereupon, at 12:12 p.m., the  
22 proceedings in the foregoing

1 matter recessed for lunch.)

2 JUDGE SIPPEL: Okay. Let's go on  
3 the record. And your next witness?

4 MR. PEREZ-MARQUES: Our next  
5 witness, Your Honor, is Madison Bond.

6 JUDGE SIPPEL: Mr. Bond, would you  
7 please stand while I administer the oath.

8 MR. BOND: Yes, sir.

9 JUDGE SIPPEL: Thank you.

10 WHEREUPON,

11 MADISON BOND

12 was called as a witness and, after having been  
13 first duly sworn, was examined and testified  
14 as follows:

15 JUDGE SIPPEL: Thank you. Please  
16 be seated.

17 MR. PEREZ-MARQUES: Thank you,  
18 Your Honor. May I approach to pass out copies  
19 of the direct testimony?

20 JUDGE SIPPEL: Please, do. Thank  
21 you.

22 MR. PEREZ-MARQUES: This is

1 already in evidence as Comcast Exhibit 2.

2 DIRECT EXAMINATION

3 BY MR. PEREZ-MARQUES:

4 Q Mr. Bond, do you recognize the  
5 document I've handed you?

6 A Yes.

7 Q Is it your written direct  
8 testimony in this case?

9 A It is.

10 Q And you signed it and stand by its  
11 contents?

12 A I do.

13 Q What is your position at Comcast?

14 A I'm the Executive Vice President  
15 of Comcast for Content Acquisition.

16 Q And who is your employer?

17 A Steve Burke. You mean to whom do  
18 I report?

19 Q What entity do you work for?

20 A I work for Comcast Cable.

21 Q And what are your responsibilities  
22 as a Content Acquisition person?

1           A        I'm responsible for negotiating  
2 carriage agreements with various content  
3 providers for the Comcast Cable platform,  
4 whether they're cable networks, movie studios,  
5 broadcast stations.

6           Q        And what are your objectives in  
7 those negotiations?

8           A        My objectives in those  
9 negotiations are to secure content for the  
10 cable platform on the best terms possible, low  
11 price, long-term carriage, certainty as to  
12 future costs.

13          Q        Were you involved in the 2004  
14 agreement for Comcast Cable Systems to carry  
15 the NFL Network?

16          A        I was.

17          Q        What was your role in that  
18 negotiation?

19          A        I negotiated the agreement with  
20 representatives of the NFL.

21          Q        At the time -- do you recall when  
22 that agreement was executed?

1 A It was executed in 2004.

2 Q At the time Comcast agreed to  
3 carry the NFL Network, were other large cable  
4 companies carrying the network?

5 A No. I think there's one other  
6 cable operator that was carrying, a smaller  
7 operator.

8 Q And what about the others?

9 A No.

10 Q At what level of service did  
11 Comcast carry the NFL Network under that  
12 original deal?

13 A On D2.

14 Q And does D2 mean?

15 A D2 is a digital level of service.

16 Q What is the -- is that what the D  
17 reflects?

18 A Yes.

19 Q What about the 2?

20 A The 2 reflects that it was the  
21 second tier of service, of digital service.  
22 There was also a B1 level of service.

1 Q So D2 was the second most  
2 penetrated.

3 A Yes, correct.

4 Q Okay. And in 2004 when you signed  
5 the agreement, how many subscribers did -- to  
6 how many subscribers did Comcast distribute  
7 the NFL Network on D2?

8 A Approximately six million.

9 Q And we've heard some testimony in  
10 this courtroom that at later times, the number  
11 was up to eight million, or thereabouts. Is  
12 that correct?

13 A Yes, it grew over time.

14 Q Now, during the time that Comcast  
15 was carrying the NFL Network pursuant to that  
16 agreement to six to eight million subscribers,  
17 did the NFL ever complain about that level of  
18 distribution to you?

19 A No.

20 Q Did they ever complain that that  
21 level of distribution was unfair, or illegal  
22 because it was different than Golf or Versus?

1 A No.

2 Q Now, at some point, Comcast made  
3 the decision to reposition the NFL Network. Is  
4 that correct?

5 A Yes.

6 Q When was that -- what was your  
7 role in that decision?

8 A Along with Cable Management, we  
9 were presented with a surcharge offer by the  
10 NFL which triggered our consideration of it.  
11 So, along with Cable Management, I was  
12 involved in the decision to tier the network.

13 Q What do you mean that the  
14 surcharge triggered your consideration of it?

15 A Well, the NFL, we had been  
16 carrying it on the D2 level of service, and  
17 the NFL in 2006 presented us with a very  
18 substantial rate increase.

19 Q Approximately what percentage  
20 increase was that, do you recall?

21 A Over [REDACTED] percent.

22 Q And that was when the NFL Network

1 required eight games?

2           A       Correct.

3           Q       So, why did Comcast decide to tier  
4 the NFL Network?

5           A       Well, as I said, they presented us  
6 with a very significant rate increase. It was  
7 tied to the eight-game package. The eight-  
8 game package, itself, was just that, eight  
9 games. They were out-of-market games. They  
10 weren't being cable cast in the local team  
11 markets. It was confined to a certain period  
12 of time. We had the right to tier it. And,  
13 based on all of those circumstances, along  
14 with the fact that we had very limited -- very  
15 few years left on the contract, so we didn't  
16 have really price protection over the long  
17 term, really drove the decision to put it on  
18 the sports tier.

19          Q       Now, you said you had limited term  
20 on the contract. When did the original deal  
21 expire? When does the original deal expire?

22          A       The end of April 2009.

1 Q So, in two weeks?

2 A Yes.

3 Q At the time they presented the  
4 surcharge offer, did you make any effort to  
5 extend the term of the deal?

6 A Yes. I spoke -- really  
7 immediately after getting the surcharge offer,  
8 I spoke with the representatives of the NFL  
9 about the possibility of extending the deal,  
10 entering into a long-term deal, to give us  
11 long-term protection.

12 Q I'm sorry. I didn't mean to cut  
13 you off. How long a term were you discussing  
14 with the NFL?

15 A I was seeking a long term,  
16 approximately 10 years.

17 Q So, you were seeking negotiations  
18 with the NFL for -- okay. I think I  
19 understand. Was there a level of distribution  
20 that you were discussing with them as part of  
21 that long-term deal?

22 A We didn't specifically discuss

1 levels of distribution, but we were willing to  
2 consider increasing their distribution if the  
3 other terms, or the length of term price made  
4 sense to us.

5 Q Did you communicate to the NFL  
6 that you were willing to broaden their  
7 distribution for 10 years as part of a new  
8 deal at the time the surcharge was offered?

9 A Yes.

10 Q And what was the NFL's response?

11 A They weren't interested in doing a  
12 long-term deal.

13 Q Now, you've already testified that  
14 the 2004 carriage agreement expires in just  
15 two weeks. Have you made any effort to extend  
16 the deal now?

17 A Yes. We offered to extend the  
18 existing agreement.

19 Q On what terms did you offer to do  
20 that?

21 A Same terms.

22 Q The same terms as -

1           A        The same terms as the present  
2 agreement.

3           Q        So, to extend the deal on its  
4 current terms, until when?

5           A        We would really be open.

6           Q        And what was the NFL's response?

7           A        They said no.

8           Q        Now, I won't get into specifics  
9 because the courtroom is open right now, but  
10 if the NFL lowered its price, would Comcast  
11 even today be willing to distribute the NFL  
12 Network broadly?

13          A        Yes.

14                   MR. PEREZ-MARQUES:  No more  
15 questions, Your Honor, at this time.

16                   JUDGE SIPPEL:  Are you still in  
17 negotiations on that?  You've got until May  
18 1st, isn't it?

19                   THE WITNESS:  Yes, that's correct.

20                   JUDGE SIPPEL:  You don't have to  
21 tell me what it is, but, I mean, is it still  
22 active?

1 THE WITNESS: We have been in  
2 discussions with the NFL.

3 JUDGE SIPPEL: Thank you.

4 JUDGE SIPPEL: Are you ready for  
5 cross?

6 MR. PHILLIPS: Yes, Your Honor.

7 JUDGE SIPPEL: Mr. Phillips,  
8 you're back.

9 MR. PHILLIPS: I'm back. Thank  
10 you.

11 JUDGE SIPPEL: Surprised me there.

12 MR. PHILLIPS: Oh, that's all  
13 right. We switch back and forth, Mr. Schmidt  
14 and I.

15 JUDGE SIPPEL: Okay.

16 MR. PHILLIPS: I'm the older one.  
17 I am mindful of Your Honor's desire to keep  
18 this moving along. I have just a few  
19 questions for Mr. Bond. Hello, Mr. Bond.

20 JUDGE SIPPEL: Well, you know,  
21 it's not to accommodate me. I mean, people  
22 are coming from Philadelphia and all over the

1 world, and I want to be sure that they get  
2 back to their families.

3 MR. PHILLIPS: And, I, myself want  
4 to get back to New York City.

5 JUDGE SIPPEL: There you go. So  
6 I'm with you.

7 MR. PHILLIPS: Okay.

8 CROSS EXAMINATION

9 BY MR. PHILLIPS:

10 Q Mr. Bond, a few questions on the  
11 testimony you just gave. You say you could  
12 have -- I'm sorry. You say that in that 10-  
13 year extension that you offered at the time  
14 that you got the surcharge notice in 2006, the  
15 surcharge notice for putting live games on the  
16 network. That's what we're talking about.  
17 Correct?

18 A Yes.

19 Q And the NFL sent you a surcharge  
20 notice asking you whether or not you would  
21 agree to accept live games on the network for  
22 an additional charge, or whether you would not