

1 A Okay. And do you know what date
2 we met with the Committee?

3 Q December 15th.

4 A That was the December 15th?

5 Q That was December 15th, in which
6 you made a presentation.

7 A Okay. And was there another
8 presentation?

9 Q I don't believe so, sir, but I'm
10 not the witness here.

11 JUDGE SIPPEL: Well, it's just a
12 question of dates.

13 THE WITNESS: It's five years ago,
14 whatever. I'm just trying to give you --
15 whatever number of years. My memory was then
16 it was before the December meeting. May have
17 been something in January, too, but it was not
18 very close to that 27th date.

19 BY MR. PHILLIPS:

20 Q You thought it was important for
21 the owners, and the executives to know about
22 the tiering right. Correct?

1 A The owners, yes, and the senior
2 executives.

3 Q You thought that that was a
4 material fact in their decision making
5 process, sir. Correct?

6 A Well, as they had told us that it
7 was down to us and the NFL Network, and at the
8 time of the final presentation, they had Mr.
9 Bornstein in the room when we made our
10 presentation, even though he was the other
11 bidder, as the head of the NFL Network, which
12 we found curious. And, so, we were concerned
13 whether all the information had gone from Mr.
14 Bornstein, who had run ESPN and was an expert
15 in this kind of technicality, if you will, and
16 make sure that the owners who were going to
17 make the ultimate decision understood the pre-
18 existing conditions of our carriage.

19 Q And you thought this was a factor
20 that could help your bid to get that property,
21 sir.

22 A It was a fact that as they

1 evaluated the two alternatives, that they have
2 all the facts.

3 Q And you thought it was a factor
4 that could help your bid, sir. Correct?

5 A Thought it was a factor that they
6 needed to make sure the owners were aware of,
7 yes.

8 Q Now, did there come a time in a
9 meeting in January in which Commissioner
10 Tagliabue told you that you might not get the
11 games, and you looked at him and you said,
12 "Then we will tier you." Do you recall that
13 meeting?

14 A No.

15 Q You don't recall that meeting.
16 Sir, I'd like to turn to that last
17 conversation that you had with Mr. Tagliabue.
18 Did you have any conversation, by the way,
19 after that January 27th phone call with Mr.
20 Tagliabue? Did you and he speak again?

21 A I called his office at your law
22 firm last year when our retired general

1 counsel, who was a classmate of his, was
2 tragically killed in a bike accident, and
3 tried to reach out to him to let him know that
4 it happened. That's the last time.

5 Q So between January 27th and then,
6 you hadn't spoken with Mr. Tagliabue.

7 Correct?

8 A Not subsequently. I can't think of
9 any, no.

10 Q Now, I want to turn to your
11 written -- to that last conversation. And, in
12 particular, the way that you described it in
13 your written testimony, sir. Do you have your
14 written testimony in front of you?

15 A I do.

16 Q Could you turn to Paragraph 14?

17 Well, before you even do that, let me ask you
18 a question.

19 Mr. Roberts, is this your written
20 statement?

21 MR. CARROLL: Why don't you have
22 an exhibit reference, so you have it for the

1 record.

2 MR. PHILLIPS: I don't have the
3 exhibit reference.

4 MR. CARROLL: I think it's Exhibit
5 4.

6 MR. PHILLIPS: Exhibit 4.

7 JUDGE SIPPEL: Hold it.

8 BY MR. PHILLIPS:

9 Q This written testimony, did you
10 write -

11 JUDGE SIPPEL: Comcast Exhibit 4.

12 BY MR. PHILLIPS:

13 Q Did you write this, Mr. Tagliabue?
14 Mr. Roberts, I'm sorry. It's been a long
15 week.

16 A This was written in conjunction
17 with me with counsel.

18 Q Right. Counsel did a draft, and
19 you looked over and approved it. Is that
20 correct, sir? Made some edits, and you
21 approved it?

22 A It's my signature.

1 Q And that's the process that this
2 went through?

3 A Yes.

4 Q Paragraph 14, sir, you say that
5 "you have no recollection of saying to Mr.
6 Tagliabue on January 27th, 2006 when the NFL
7 had informed us that it decided to keep the
8 eight-game package for NFLN, that the NFL's
9 relationship was -- with the cable industry
10 are going to get complicated, or very
11 interesting." And I want to focus on the next
12 sentence, sir. This is -- you say, "I do
13 recall communicating to Mr. Tagliabue that I
14 was disappointed, and as I" -- and we'll stop
15 there for a second. You were disappointed in
16 not being awarded the games. Correct, sir?
17 You put a lot of effort into this.

18 A I think I said that earlier today,
19 that that was the first thing I said.

20 Q And this was, in fact, following
21 four years worth of efforts to develop a
22 relationship with the NFL. Correct, sir?

1 A You know, yes, but. As you
2 pointed out, the final bid was quite rich, and
3 there was already some nervousness, what if
4 everybody said yes, that we overbid. So,
5 other than the fact that at the end of an
6 auction there's always a little remorse that
7 you got carried away, we were disappointed
8 that it wasn't going to come to fruition.

9 Q Well, now, I want to pause there
10 on that second. You authorized that bid.
11 Correct, sir?

12 A Oh, absolutely.

13 Q And you were behind it, weren't
14 you?

15 A You asked me a question, I was
16 disappointed that it wasn't happening. There
17 were some in the company who were relieved.

18 Q Well, Mr. Burke, I think, has said
19 that.

20 A He's an important person in the
21 company.

22 Q And then you say, "As I had

1 before, that I foresaw that the NFL was going
2 to -- was likely to continue to face
3 difficulties persuading cable operators."

4 Now, let me ask you, Mr. Roberts, are you sure
5 that you used the words "cable operators"?

6 A I think the conversation -

7 Q Sir, just a real yes or no here.

8 A I'm pretty sure I called it cable
9 operators.

10 Q Did you even write those words,
11 sir?

12 A Yes.

13 Q Not your counsel.

14 A Well, as I said, we wrote them
15 together.

16 Q I don't notice any of this is in a
17 quote, so I take it this is not supposed to
18 quote your conversation, sir, is it?

19 A He had quoted in his written
20 statement, and that's what the quotes are
21 referring to.

22 Q Sir, I'm talking about in the

1 second sentence here. That's not in quotes.

2 It's not supposed to verbatim. Is it, sir?

3 A It's not supposed to be verbatim.

4 Q And when you say "cable
5 operators", you might have said cable
6 industry. Is that not possible, sir?

7 A It's possible.

8 Q And you said that you were likely
9 -- that the NFL was likely to continue to face
10 difficulties, sir. Do you see that?

11 A Yes.

12 Q And then you go on to say, "To
13 provide the NFLN with broad distribution,
14 given that the addition of eight live games
15 would add significantly to the price to
16 distributors, but materially improve the
17 overall appeal of its content to consumers."
18 Do you see that?

19 A Yes.

20 Q Now, Mr. Roberts, is it your
21 testimony that you recall specifically saying
22 to Mr. Tagliabue the phrase that begins with

1 the word "given", and ends with the
2 "consumers"?

3 A My test -- I would say he and I
4 had had many conversations about whether it
5 was viable to raise the price based on six
6 weeks of programming and eight games, and what
7 the reaction of various cable operators would
8 be, and whether we had -- he had asked us
9 whether we could be helpful in getting the
10 games distributed, whether it was on what is
11 now Versus or OLN. And, absolutely, that was
12 not a verbatim quote. So, no, I don't say
13 that those were the words, but the
14 conversation was, this is going to be tougher
15 because you're raising rates on the backs of
16 six weeks of programming. No one has ever
17 tried to do that before.

18 Q What you said, Mr. Roberts, with
19 all respect, is that the NFL was going to
20 continue to face difficulties with the cable
21 industry. Isn't that correct, sir?

22 A Well, they didn't have

1 distribution already, and now they were going
2 to raise the price without having the
3 distribution already. That's why they had
4 been talking to us, because we had this
5 channel with distribution already. So, it was
6 consistent with everything we've been talking
7 about for months.

8 Q Yes, sir. I take that as a yes.

9 Now, let me ask you and change the subject for
10 a second, sir, to the time that you let the
11 NFL know that you were going to tier it. You
12 said it was sometime later, sir. Correct?

13 A Correct.

14 Q In fact -

15 JUDGE SIPPEL: Sometime later than
16 what?

17 MR. PHILLIPS: Sometime after the
18 end of January 2006.

19 BY MR. PHILLIPS:

20 Q Correct, sir?

21 A Correct.

22 Q Indeed, the contract did not allow

1 you to place them on a tier before [REDACTED]

2 [REDACTED] Is that correct?

3 A I don't know the exact specifics
4 of the contract, but they needed to tell us
5 what the price was before you -- and whether
6 there was even going to be a surcharge. It's
7 not clear they had the surcharge for the
8 games. That was up to them.

9 Q That's true, but the contract did
10 not allow you to put them on a sports tier
11 until after [REDACTED] Is that
12 correct, sir?

13 A I believe something like that. I
14 think it's a matter of a lot of litigation
15 over exactly what that contract said, so I'm
16 going to defer to Mr. Bond, or the lawyers.

17 Q I can show you the contract, sir,
18 if you'd like, if you deny that.

19 JUDGE SIPPEL: Do we have a
20 contract?

21 MR. PHILLIPS: We do, sir.

22 JUDGE SIPPEL: Is it in? Did you

1 put it in as an exhibit?

2 MR. PHILLIPS: I think so, sir.

3 JUDGE SIPPEL: What number is it?

4 MR. SCHMIDT: It might be Exhibit

5 1.

6 JUDGE SIPPEL: Might be Exhibit 1?

7 That would be a good number.

8 MR. PHILLIPS: I think it's like

9 Exhibit 4, or Exhibit 5. I think it's Exhibit

10 4, Your Honor.

11 MR. CARROLL: It was Exhibit 1,

12 Your Honor.

13 JUDGE SIPPEL: Exhibit 1.

14 MR. CARROLL: We've made a lot of

15 progress. Friday afternoon, we're at Exhibit

16 1.

17 JUDGE SIPPEL: We've gone all the

18 way from Exhibit 530 back to Exhibit 1. This

19 is December 18th, 2003. Is that it?

20 MR. PHILLIPS: No, Your Honor.

21 (Simultaneous speech.)

22 MR. PHILLIPS: It's not Exhibit 1.

1 I believe it's Exhibit 4, or 5.

2 MR. CARROLL: Wait, wait, wait.

3 It's Exhibit 4, Your Honor.

4 JUDGE SIPPEL: Exhibit 4. August
5 11, 2004.

6 MR. CARROLL: That's the one.

7 JUDGE SIPPEL: All right. Would
8 you give a copy to the witness, please?

9 MR. PHILLIPS: I'm going to, Your
10 Honor, right now.

11 JUDGE SIPPEL: Anybody. I don't
12 care, whoever is closest to him. I've got
13 mine.

14 MR. PHILLIPS: Do you have one,
15 Your Honor?

16 JUDGE SIPPEL: Well, I do, but if
17 you're giving them out, I'll take one.

18 MR. PHILLIPS: I've just got one.
19 I was going to -

20 JUDGE SIPPEL: No, no, no. Then
21 I've got mine here. Forget about me, for
22 purposes of this.

1 MR. PHILLIPS: You know, Your
2 Honor, I'm going to give my only copy to the
3 witness, because I've read this before.

4 JUDGE SIPPEL: Please. You might
5 want to follow.

6 MR. PHILLIPS: I can follow it.
7 Thank you, though.

8 JUDGE SIPPEL: All right. You
9 said something about Mr. Bond -- well, I know
10 what you said about -- you used Mr. Bond as a
11 reference when you answered the last question,
12 or maybe the one before that. Is Mr. Bond an
13 attorney?

14 THE WITNESS: I think he's an
15 attorney by background. He is Executive Vice
16 president, Senior Vice President of
17 Programming Contracts.

18 JUDGE SIPPEL: Right. I know what
19 his title is -

20 THE WITNESS: He has -- there are
21 lawyers that work for Mr. Bond now, who
22 specialize in programming contracts, as well.

1 He does all the contracts, and he is a lawyer
2 by background.

3 JUDGE SIPPEL: Okay. Because
4 there's a lot of people from the organization
5 that put a lot of stock in Mr. Bond, at least
6 in terms of -

7 THE WITNESS: Yes. He is the
8 point person that would understand the details
9 of this contract better than I would.

10 JUDGE SIPPEL: So, he's the guy on
11 NFL -- okay. He's the guy on the August 11
12 contract. He's the go-to guy.

13 MR. CARROLL: He signed it.

14 JUDGE SIPPEL: He signed it. Now,
15 you've got -

16 MR. PHILLIPS: I'm sorry. Just a
17 real quick question.

18 BY MR. PHILLIPS:

19 Q If you could turn to page 17 of
20 this contract. You recognize this as your
21 affiliation agreement with the NFL Network,
22 sir, don't you?

1 A You know, it says the words. I'm
2 not sure, other than maybe in preparation for
3 this case, that I've seen it in person. But,
4 yes.

5 Q Well, let me -

6 A I'm not going to dispute that,
7 that it looks like the letter agreement.

8 Q Paragraph 3 of Exhibit A on page
9 17, are you there?

10 A I'm there.

11 MR. PHILLIPS: I'm going to let
12 the Judge get the stapler first here.

13 JUDGE SIPPEL: No, we're all set.
14 You're watching me closely, aren't you?

15 (Laughter.)

16 MR. PHILLIPS: You know, Your
17 Honor, you never leave my sight.

18 JUDGE SIPPEL: Focus on the
19 witness. Let's go.

20 MR. PHILLIPS: You know, I've been
21 told that, and I'm sorry.

22 BY MR. PHILLIPS:

1 Q Paragraph 3, Mr. Roberts, says [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] - and I'm going

5 to skip the first little bullet and go to the

6 second little bullet here - [REDACTED]

7 [REDACTED]

8 [REDACTED] and the

9 next part is what I wanted to focus on. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] Do you see that, sir?

14 A I do.

15 Q Does that remind you that before

16 [REDACTED] you could not put the network

17 on a sports tier?

18 A You know, with all the appropriate

19 caveats that I'm not a lawyer, that sounds

20 good to me.

21 Q And immediately after putting --

22 that deadline passed, Comcast decided that it

1 was going to exercise that right, and put it
2 on a sports tier. Isn't that correct, sir?

3 A That process sometime thereafter
4 happened, yes.

5 Q And, in fact, Comcast leaked it to
6 the press a month later in September of 2006,
7 sir. Is that correct?

8 A I don't know that chronology.

9 MR. PHILLIPS: May I approach,
10 Your Honor?

11 JUDGE SIPPEL: Please. And while
12 you're doing that, what paragraph did you
13 refer to in finding that date?

14 MR. PHILLIPS: It's page 17.

15 JUDGE SIPPEL: Page 17.

16 MR. PHILLIPS: Page 17 at the
17 bottom of the page.

18 JUDGE SIPPEL: We're there.

19 MR. PHILLIPS: Okay. And it's
20 Paragraph 3, Your Honor.

21 JUDGE SIPPEL: Okay.

22 MR. PHILLIPS: And if you look at

1 Paragraph 3, at the very end of that
2 paragraph, before you get to the little I,
3 there's that date.

4 JUDGE SIPPEL: Before you get to
5 the little I. Well, you've got three -

6 MR. PHILLIPS: Okay. Three, and
7 you see -- I'm sorry, before you get -- you
8 see, it goes -

9 JUDGE SIPPEL: On or before [REDACTED]
10 [REDACTED]

11 MR. PHILLIPS: That's it.

12 JUDGE SIPPEL: That would be the
13 date. Okay.

14 MR. PHILLIPS: That's the date,
15 sir.

16 JUDGE SIPPEL: Thank you.

17 MR. PHILLIPS: Now, I'd like to
18 show the witness what's been marked, and I
19 believe is into evidence as NFL Enterprises
20 Exhibit 223, Your Honor.

21 JUDGE SIPPEL: 223.

22 MR. PHILLIPS: Yes.

1 JUDGE SIPPEL: It's already in?

2 MR. PHILLIPS: I believe so. Mr.
3 Roberts.

4 JUDGE SIPPEL: All right. We've
5 got 223, NFL Enterprises Exhibit 223 before
6 the witness. Did you get a copy, Mr. Carroll?

7 MR. CARROLL: I have one. Thank
8 you, Your Honor.

9 JUDGE SIPPEL: Okay.

10 BY MR. PHILLIPS:

11 Q Now, Mr. Roberts, this is an
12 email, the topic of which you're -- it's a
13 series of emails. And I believe your in the
14 address on all of them. Correct?

15 A Yes.

16 Q And you've seen this before.
17 Correct?

18 A Yes.

19 Q And this press release -- and this
20 email shows the story in which it's leaked to
21 the press that Comcast is going to put -- oh,
22 okay. Let me back up.

1 MR. PHILLIPS: Your Honor, can I
2 move this into evidence?

3 JUDGE SIPPEL: This being what?

4 MR. PHILLIPS: Exhibit 223.

5 JUDGE SIPPEL: Well, you can,
6 because we're not finding it otherwise in the
7 record. It's not in yet, so all right. Have
8 it marked.

9 MR. PHILLIPS: It's marked.

10 JUDGE SIPPEL: And is there any
11 objection to it?

12 MR. CARROLL: No, Your Honor.

13 JUDGE SIPPEL: It's in, marked
14 identified and received.

15 (WHEREUPON, THE DOCUMENT REFERRED
16 TO, PREVIOUSLY MARKED NFL
17 ENTERPRISES EXHIBIT 223 FOR
18 IDENTIFICATION, WAS RECEIVED IN
19 EVIDENCE.)

20 BY MR. PHILLIPS:

21 Q Mr. Roberts, now, there's an
22 article at the bottom of this by John Ourand,

1 and the second paragraph it says, "During a
2 conference call with the systems last week,
3 Comcast's programming executives in
4 Philadelphia said the planned sports and
5 entertainment tier would be the only place
6 that subscribers will be able to get the NFL
7 Network at the start of the year." Do you see
8 that?

9 A I see what this article says.

10 Q And this -- but, in fact, this
11 article is right, sir. Isn't it? Comcast
12 told the press that -

13 A I don't know that not to be the
14 case. I see what it says here, is all I'm
15 referring to.

16 Q You don't know either way, sir.

17 A I think -- it says during a
18 conference call with systems, I was not part
19 of that conference call.

20 Q And in the discussion in the
21 emails on top of it are whether or not to
22 actually call the NFL and tell them of your

1 decision. Correct?

2 A That's what it appears, yes.

3 Q And Mr. Burke writes to you and
4 others, hold off. He wouldn't call them to
5 tell them of your decision to take the NFL
6 Network and move it from a broadly distributed
7 tier to the sports tier. Is that correct,
8 sir?

9 A I don't believe the decision, as
10 you call it, that there's ever such a thing as
11 a decision until you actually do it. And we
12 hadn't done it in September. What we were
13 trying to do is launch those Time Warner
14 systems on the sports tier. We may be
15 planning to move, as this article suggests, in
16 January, which is months away. And that could
17 always be stopped, based on circumstances and
18 facts, such as price.

19 Q You could change your mind.

20 A Or you could actually make your
21 mind up. This is an article saying we're
22 thinking about it. We told some of our

1 systems this may be coming. I don't think a
2 decision is actually made until you actually
3 move it.

4 Q Well, so, you think that it's not
5 correct to say, as it does here, that Comcast
6 programming executives in Philadelphia said
7 the planned sports and entertainment tier
8 would be the only place its subscribers will
9 be able to get the NFL.

10 A That may be the beginning.
11 Remember, the NFL, at this point, is going
12 public against the cable industry, Time Warner
13 and Cablevision, \$100 million advertising
14 campaign, so somebody here on a call that I'm
15 not familiar with was saying this may be the
16 plans. Doesn't mean it is final decision, and
17 it actually -- it doesn't mean it isn't.

18 Q And, in fact, you decided not to
19 call NFL executives to tell them about that
20 tiering, didn't you?

21 A I actually did call, as we talked
22 about earlier, when I called Commissioner

1 Goodell to ask -- tell him why we were
2 thinking the sports tier made a lot of sense.

3 Q After they'd read about it in the
4 press two weeks earlier, sir. Correct?

5 A After they had read about the
6 possibility in the press, yes.

7 Q Now, Mr. Carroll asked you some
8 questions about this particular proceeding,
9 Mr. Roberts. Do you remember those? You knew
10 that Comcast was going to get sued for
11 discrimination when you moved this to the
12 sports tier. Is that not right, sir?

13 A I believed it was possible that
14 given what the NFL was doing with the Time
15 Warner, and had already brought an action at
16 the FCC, that it was very possible that they
17 would bring a discrimination action against
18 us.

19 Q In fact, you considered whether or
20 not that would happen when you were making a
21 decision about whether or not to put it on the
22 tier.