

1 subject to redaction. We'll both be very  
2 mindful of that as we go through and do our  
3 redactions in a prompt manner.

4 But we do submit the right way to  
5 balance those concerns that we're talking  
6 about here is exactly the way that the  
7 gentleman from Bloomberg suggested which is  
8 they can come out. We think it's actually  
9 come out in a pretty open way in the written  
10 submissions and we'll follow the same  
11 philosophy if that's acceptable to Your Honor  
12 in the actual transcripts.

13 JUDGE SIPPEL: Well, I'm not  
14 totally -- I could ask some more questions on  
15 these arguments. But for purposes of moving  
16 this case along, I think we're where we  
17 clearly need to be. But I am not going to --  
18 I am not going to remove the reporters from  
19 this case on Mr. Furman. Now it's different  
20 with Mr. Singer. I think he's got numbers  
21 that nobody understands and so there might be  
22 some very important numbers.

1 (Laughter.)

2 But I'm just obviously  
3 exaggerating. But he does have loads of  
4 numbers, statistics, projections, rejections,  
5 everything. So we're going to continue with  
6 him in camera. But Mr. Furman is going to  
7 come into court and he's going to start with  
8 his direct testimony and his direct testimony  
9 at least in the redacted copies or the  
10 redacted versions should be available to the  
11 press when they come in. And I'm going to  
12 permit them to stay until Mr. Carroll or  
13 whoever is on your side reaches a point in  
14 your cross examination where you say, "Okay.  
15 They have to go." And I want to see why it is  
16 that they have to go and I'm going to make a  
17 ruling on that.

18 Now once they're out, I'm not  
19 going to open the door and let them back in  
20 again unless you can convince me, unless you  
21 can assure me, that I only have these one or  
22 two emails and when we finish that I'm back in

1 open court so to speak. But I know you're not  
2 going to do that. So I'm not going to --

3 But I do want to test it to see  
4 how far you can go on cross examination before  
5 we have to exclude somebody. I didn't do that  
6 yesterday and I think that was a mistake.  
7 It's not going to slow things down.

8 MR. CARROLL: No, I have only two  
9 reactions. One for purposes of press access,  
10 I'd like there to be an even ruling throughout  
11 the whole proceeding and so if that's the  
12 rule, I'm unhappy that my cross of Hawkins was  
13 not available to the press yesterday because -  
14 -

15 JUDGE SIPPEL: I made a mistake.

16 MR. CARROLL: No, no. I'm --

17 JUDGE SIPPEL: It's error on my  
18 part. I will admit it.

19 MR. CARROLL: I'm not -- I don't  
20 think it was, Your Honor.

21 JUDGE SIPPEL: It was. I'm the  
22 one that made the ruling.

1                   MR. CARROLL: I think it compounds  
2 things to start changing to a different system  
3 in the middle of the proceedings when the  
4 press itself has proposed something to Your  
5 Honor that the lawyers are in agreement with.  
6 You basically now have in front of you the  
7 press and both parties proposing the solution  
8 and I don't know why. You are the judge to be  
9 sure and I'm not presuming to suggest that you  
10 would be bound to do what everybody has  
11 stipulated would be agreeable. But I would  
12 have thought that at least at this stage it  
13 would be an option to just try that process  
14 and you might decide, yes, this works very  
15 well and that's why the parties and Bloomberg  
16 have all proposed it and have agreed to it.

17                   I would have thought as a next  
18 step that's a better step than just reversing  
19 course entirely and starting to put burdens on  
20 the side that's crossing. Right now, we're  
21 crossing and then the other side would be  
22 crossing with our witnesses shortly of trying

1 to think how do I organize my materials now so  
2 I've got a clear -- I'm highly confidential of  
3 that and where I'm not. I guarantee you if we  
4 go down that road highly confidential  
5 information will start to appear in newspapers  
6 within this. I guarantee you. Reporters will  
7 be leaving and they'll have numbers out there  
8 and everybody will know financial information  
9 because you can't impose the burden on my side  
10 or their side to edit themselves in the middle  
11 of a live cross examination and you remember  
12 yesterday with Hawkins. It was very live,  
13 very fast moving and there's a lot of  
14 information coming out on a very quick basis.

15 So I would just again as your  
16 humble servant on this side of the table  
17 because this is your courtroom to be sure I  
18 would propose that Your Honor reconsider and  
19 seriously consider just going with the  
20 proposed compromise at the moment and seeing  
21 if that addresses this situation adequately.

22 JUDGE SIPPEL: Well, I'm impressed

1 by the argument I must say. It's not often  
2 that a trial lawyer cries wolf in the middle  
3 of a trial. But you've got a point and it's  
4 a good point and I'm not making light of it.

5 Let me ask Mr. Schonman one more  
6 time. What's your judgment? They're  
7 proposing both sides that we go forward on  
8 basically the outline that Bloomberg made, the  
9 proposal that Bloomberg made.

10 MR. SCHONMAN: I think trying the  
11 least restrictive method is probably the most  
12 appropriate.

13 JUDGE SIPPEL: Well, my way would  
14 be the least restrictive.

15 MR. SCHONMAN: Well, the gentleman  
16 from Bloomberg has suggested a solution which  
17 the named parties are in agreement on. It  
18 would seem to me that that at least is a good  
19 starting point and see how that works out. I  
20 think it would also be a good idea if the  
21 parties would agree to it to provide the  
22 redacted versions of the direct written

1 testimony. That can be made available  
2 immediately. It's already redacted. It's  
3 already done.

4 JUDGE SIPPEL: Well, they're going  
5 to do that.

6 MR. SCHONMAN: So what we're  
7 talking about now is how to handle cross  
8 examination and the method that the gentleman  
9 from Bloomberg has suggested providing  
10 transcripts as soon as possible that's  
11 redacted seems an appropriate remedy. That  
12 way at commencement of the cross examination  
13 the present public is removed from the hearing  
14 room. So we don't have to gauge at what point  
15 during cross examination everyone has to  
16 leave. They would leave at the commencement  
17 of the cross and knowing that they will get  
18 hopefully the next day transcripts, redacted  
19 transcripts, of that cross. So they would  
20 have the direct virtually immediately when the  
21 witness takes the stand and then the redacted  
22 cross examination transcripts the next day.

1                   JUDGE SIPPPEL: All right. I'm  
2 convinced. It's not because of votes. This  
3 is not a democratic solution. But I'm  
4 convinced of the reasoning, the rationale and  
5 I think it certainly is a lot -- a much bigger  
6 advance than where we left it off yesterday.  
7 And again I take responsibility for that. I'm  
8 not blaming the parties. So that's what we're  
9 going to do now.

10                   My question now is a practical  
11 matter. If we have testimony let's say today  
12 of Mr. Furman. Okay. And you get overnight  
13 delivery or whatever it, next day delivery.  
14 When's the earliest that you could have the  
15 redact up to the press office? That same day  
16 or you would require the following morning?

17                   MR. CARROLL: I'm anticipating  
18 this. I've already devoted somebody in my  
19 shop to be on standby to process that as soon  
20 as it comes in and I would think within a  
21 couple of hours. My team is groaning  
22 somewhere back in the war room right now.

1 Within a couple of hours we could get through  
2 that because I'll establish what the rules  
3 are. It's dollars and cents figures if it's  
4 truly a sensitive company name information and  
5 otherwise not. The two sides could probably  
6 then exchange that and I would think you're  
7 looking at hours. You're not looking at --  
8 you're looking at hours in a day.

9 JUDGE SIPPEL: Hopefully. Okay. I  
10 will go with that. You're going to do it as  
11 expeditiously as you can.

12 MR. CARROLL: Yes.

13 JUDGE SIPPEL: And I will thus  
14 leave it on that basis and I have full faith  
15 and confidence that that's what will happen.  
16 So now I'm just going to make one last comment  
17 and then we're going to let Mr. Singer  
18 continue and that is I would almost -- Well,  
19 I'm not going to say I would bet. But I would  
20 not be surprised at all if, say, a year from  
21 the Commission's decision, not this decision  
22 here, but a year from the Commission's

1 decision that some professor or professors  
2 somewhere are not going to file a Freedom of  
3 Information Act request to get all this record  
4 in unredacted form because they want to do a  
5 paper on it and you know where do you come out  
6 on that? Obviously, that's a hypothetical  
7 suggestion on my part, but there has to come  
8 a point when commercial data because old  
9 commercial data. Anyway, I'll just leave that  
10 with you.

11 Anything further? Does anybody  
12 have anything more on this point?

13 MR. CARROLL: No. Thank you, Your  
14 Honor.

15 MR. SCHMIDT: Thank you, Your  
16 Honor.

17 JUDGE SIPPEL: Okay. Are we ready  
18 to go, Mr. Burke?

19 MR. BURKE: You bet.

20 JUDGE SIPPEL: Are you ready, sir?  
21 Dr. Singer?

22 THE WITNESS: Yes.

1 MR. BURKE: This is under the high  
2 confidential.

3 JUDGE SIPPEL: Oh, yes. I'm  
4 sorry. Anybody here from the public is going  
5 to have to leave now. Now do we have a copy  
6 of Mr. Singer's redact?

7 MR. SCHMIDT: We're getting one,  
8 Your Honor.

9 JUDGE SIPPEL: Okay. While don't  
10 you do it when you get it or when your folks  
11 bring it in, why don't you bring it up to the  
12 press office?

13 MR. SCHMIDT: Okay.

14 JUDGE SIPPEL: And tell Mr. Fiske  
15 or his associate what it is that you're  
16 bringing and that's available for the press.

17 MR. SCHMIDT: Okay.

18 JUDGE SIPPEL: And I would bring  
19 in a dozen copies.

20 MR. SCHMIDT: Okay.

21 JUDGE SIPPEL: Okay.

22 (Off the record discussion.)

1 JUDGE SIPPEL: Are we all set?

2 WHEREUPON,

3 HAL SINGER

4 was recalled as a witness and, having been  
5 previously duly sworn, resumed the witness  
6 stand, was further examined and testified as  
7 follows:

8 CROSS EXAMINATION (Cont'd.)

9 BY MR. BURKE:

10 Q Good morning, Dr. Singer. Dr.  
11 Singer, I wanted to actually go into any  
12 questions that are actually directly pertinent  
13 to what we've been talking about pricing and  
14 financial information. I think your Exhibit  
15 192 you make a projection as to what Comcast  
16 should pay for the NFL Network over the next  
17 five years. Do you have that in front of you?

18 A I believe so. My exhibits are not  
19 marked, but if you wouldn't mind reading the  
20 top.

21 Q "Projected Comcast NERs 2008 to  
22 2012."

1 A I have it.

2 Q And are we in agreement that's  
3 Exhibit 192 of Enterprise's?

4 A Yes.

5 Q I just wanted to confirm that.  
6 Okay. What does NERs stand for, Dr. Singer?

7 A NER stands for the net effective  
8 rate.

9 Q And this is basically a rate  
10 that's calculated based upon the per  
11 subscriber rate. So when you say it says [REDACTED]  
12 [REDACTED] here that means [REDACTED] per subscriber.  
13 Is that right?

14 A Per subscriber per month, correct.

15 Q Right, and the relief that your  
16 client, the NFL Network, is seeking is to have  
17 the NFL Network distributed on the analog  
18 tier. Is that right?

19 A Well, I think I refer to it as the  
20 extended basic tier. It's the same tier in  
21 which Comcast carries its affiliated national  
22 sport center.

1 Q It's the most widely distributed  
2 tier that Comcast has, right?

3 A Correct.

4 Q And they're about [REDACTED]  
5 subscribers in that tier. Is that right?

6 A Correct.

7 Q Okay. So I'm just trying to get a  
8 sense of I mean [REDACTED] by itself may not  
9 sound like that much, but we're saying [REDACTED]  
10 [REDACTED] times [REDACTED] subscribers times  
11 12 months to know what the total amount is a  
12 given year. Is that right?

13 A I would say that's right with one  
14 important assumption which is that Comcast  
15 decides to leave Golf and Versus on its  
16 expanded basic tier. If Comcast were to put  
17 Golf and Versus on its, say, D2 tier which I  
18 understand is [REDACTED] and if this judge  
19 were to order equal treatment for NFL, then it  
20 would be [REDACTED] times [REDACTED] So  
21 that's just a -- it's an important assumption.

22 Q Sure. But again, so the

1 mathematics here just to figure out what the  
2 total economic impact is or to take per  
3 subscriber rate which is the rates in this  
4 Exhibit 192, multiply that by the number of  
5 the subscribers that received the programming  
6 and then that gets you a per month rate and  
7 then to know what someone pays for a year, you  
8 multiply that by 12. Is that right?

9 A Exactly.

10 JUDGE SIPPEL: Now the [REDACTED]  
11 is the basic tier and the D2 is what? [REDACTED]  
12 [REDACTED]

13 MR. BURKE: I think it's actually  
14 higher than that now, Your Honor.

15 JUDGE SIPPEL: Well, [REDACTED]

16 MR. BURKE: Something like that.

17 JUDGE SIPPEL: Roughly. I'm just  
18 ball park.

19 THE WITNESS: It was [REDACTED]  
20 at the time the NFL was carried.

21 JUDGE SIPPEL: So we'll say [REDACTED]  
22 [REDACTED]

1 MR. BURKE: And we will have some  
2 -- If that's relevant we can certainly get  
3 Your Honor the specific figure.

4 JUDGE SIPPEL: Well, yes, it might  
5 -- Never mind. But I'm going to ask him one  
6 more question. What is the [REDACTED] -- You had a  
7 term for this, net something or other, the [REDACTED]  
8 [REDACTED]

9 THE WITNESS: The net effective  
10 rate it is the rate net of marketing  
11 subsidies. It's inclusive of the surcharge.  
12 It's inclusive of the base rate. It is on  
13 that what Comcast would pay NFL on a per  
14 subscriber per month basis.

15 JUDGE SIPPEL: Okay. The covering  
16 charges or whatever you want. The carrying  
17 charges are reduced from that. So it's  
18 actually [REDACTED] per subscriber, the net  
19 effective rate. So NFL or whoever the user is  
20 is going to have to absorb those marketing  
21 charges. Right? And the marketing expenses?

22 THE WITNESS: Let me just try to

1 say it back. This is the rate that Comcast  
2 would pay NFL on a per subscriber per month  
3 basis.

4 JUDGE SIPPEL: Yes, [REDACTED]

5 THE WITNESS: And that rate is net  
6 of, that is it includes three components if I  
7 could. It's the base rate. It's the sum of  
8 the base rate.

9 JUDGE SIPPEL: Yes.

10 THE WITNESS: The surcharge and  
11 any marketing subsidies. Sometimes the  
12 marketing subsidies are positive. Sometimes  
13 they're negative. So it's the sum of those  
14 three based on my best estimate of fair market  
15 value of [REDACTED] in 2008.

16 BY MR. BURKE:

17 Q And so this is something that you  
18 generated using your regression model. Is  
19 that right, Dr. Singer?

20 A Correct.

21 Q Now you actually didn't use your  
22 regression model to create the price increase.

1 That's right.

2 A Correct.

3 Q You used a different model to  
4 create those, the price increases that are  
5 listed in Exhibit 191.

6 A That's correct.

7 Q Why didn't you use your regression  
8 model to create those price increases?

9 A I think for basically two reasons.  
10 One is that I had a complete dataset from 2005  
11 to 2008 and that was the most robust dataset  
12 over which the regression could be estimated.  
13 So if I were to try to expand and predict for  
14 '09 through '12 in the context of the  
15 regression I'd be missing too many  
16 observations.

17 The second reason is that when you  
18 look at any given contract there's a pretty  
19 even rate of growth, rate of inflation if you  
20 will, for a given MVPD. Now what I've tried  
21 to do here is take the average of the rates of  
22 inflation if you will that you find in the

1 contracts.

2 Just to restate. Now everyone's  
3 contract [REDACTED] although  
4 that's the average. Some people's grow --  
5 Some MVPD's contract grows faster. Some grows  
6 slower. I think the best estimate is to take  
7 the average.

8 Q And this was just the -- You gave  
9 equal weighting to all the different MVPDs or  
10 was it weighted based upon the size of the  
11 MVPD?

12 A It was weighted based upon the  
13 size of the MVPD. I'm happy to explain why  
14 too if you're interested.

15 Q No.

16 A Okay.

17 Q So just to try to get a sense of  
18 what we're talking about here, if you take --  
19 We had to ask our accountants to do this to  
20 look at what the total dollar figures we're  
21 talking about here, a ball park, and they came  
22 up with something in the order of the total

1 amount of payments from Comcast to the NFL  
2 Network over this five year period using these  
3 numbers was in the order of [REDACTED]

4 [REDACTED] Does that sound ball park right to  
5 you, Dr. Singer?

6 A I would just be ball-parking it  
7 because I can't do that math in my head. But  
8 I'm happy to look over the figures.

9 Q Let me ask it this way. Did you  
10 look at what the actual dollar impact of the  
11 relief you're seeking would be?

12 A I don't -- I can't recall if I did  
13 that.

14 Q So sitting here today, you don't  
15 know what the total amount of payments you're  
16 seeking from Comcast to go to the NFL Network?

17 A Well, I know that it's [REDACTED]  
18 times [REDACTED] times 12.

19 Q Times five as well.

20 A Well, that's per year.

21 Q Right.

22 A And then [REDACTED] per

1 month assuming that you guys keep Golf and  
2 Versus on the expanded basic tier.

3 JUDGE SIPPEL: Wait a minute.

4 It's [REDACTED] 12.

5 MR. BURKE: And that gives you  
6 each year. That's for one year.

7 BY MR. BURKE:

8 Q [REDACTED]

9 [REDACTED] Isn't that right, Dr. Singer?

10 A [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q So, for example, [REDACTED]

15 [REDACTED]

16 [REDACTED] right?

17 A Correct.

18 Q [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 A Yes.

22 Q In your model.

1           A       In my model and in every network  
2 that I've ever studied [REDACTED]

3 [REDACTED]

4           Q       If you could try to answer my  
5 questions, Dr. Singer, it will help us get  
6 through this more promptly.

7           A       Okay.

8           Q       In your model it [REDACTED]

9 [REDACTED] Is that correct?

10          A       Yes, that is correct.

11          Q       Okay. Now it was your testimony  
12 that you thought that none of this [REDACTED]  
13 [REDACTED] would be passed on to Comcast  
14 customers. Is that right?

15          A       I don't think that that is the  
16 only scenario. I think that it's the most  
17 likely scenario. I think that based on what  
18 happened, what the experience was when you  
19 guys took it off D2 as I've said in my  
20 deposition, you didn't give a rebate to  
21 customers when you took it off D2. So that  
22 suggests that your rate wasn't strictly tied

1 to it.

2 But I am cognizant of what the  
3 economic literature says on average happens  
4 with passed on rates. So I can't rule out the  
5 possibility that you would pass on a portion  
6 of the [REDACTED] to your customers.

7 Q I'm not an economist, Dr. Singer,  
8 but it seems kind of hard to image that  
9 Comcast would have a hit of [REDACTED] and  
10 none of that would get passed onto its  
11 consumers. Is that credible?

12 A Well, when you think about it in a  
13 slightly different context which is the [REDACTED]  
14 [REDACTED] relative to the price that they're  
15 getting per month on average from a customer,  
16 so if they're getting [REDACTED] on average,  
17 the [REDACTED] is small in that context. And  
18 when you say the number [REDACTED] that  
19 sounds like it's large.

20 Now just to be very clear, I can't  
21 rule the possibility as a matter of economic  
22 logic and based on the average pass on rate in

1 the cable industry that some portion of the [REDACTED]  
2 [REDACTED] would not be passed onto Comcast  
3 customers.

4 Q Isn't it in fact the more likely  
5 outcome that a significant portion of that  
6 would be passed onto Comcast customers?

7 A What we have to weigh is the  
8 actual experience of what Comcast did when it  
9 took off D2 which it didn't give a rebate back  
10 to its customers, okay, against the industry  
11 average pass on weight. So you're asking me  
12 to assign weight to those two and I think my  
13 most comfortable place is that it could be  
14 anywhere in between the two. It could be a  
15 [REDACTED] per month pass on rate or if they  
16 embrace the industry average pass on rate  
17 which I think your expert testified to is [REDACTED]  
18 [REDACTED] then we would be looking a [REDACTED]  
19 [REDACTED] per subscriber per month. So I'm  
20 going to take the position that it's hard to  
21 predict with certainty what Comcast would do,  
22 but I'm very comfortable saying that it would

1 be somewhere between [REDACTED] and [REDACTED] per  
2 month.

3 JUDGE SIPPEL: I must say that if  
4 you decide that you're not going to pass any  
5 of the [REDACTED] cost onto customers you  
6 might want to put this testimony right out in  
7 the public record. I mean that's a pretty  
8 good advertisement I would think. Go ahead.

9 MR. BURKE: We'll take that under  
10 advertisement.

11 JUDGE SIPPEL: Yes. I don't  
12 charge much for that advice.

13 (Laughter.)

14 BY MR. BURKE:

15 Q Okay. Now, Dr. Singer, in  
16 preparation for your putting your testimony  
17 together you looked at obviously documents and  
18 other materials from the NFL Network as well  
19 as documents that were produced by Comcast in  
20 this matter, right?

21 A Yes, I did.

22 Q And in your review of those

1 materials, did you come to be aware that there  
2 was widespread objection among MVPDs to the  
3 pricing of the NFL Network?

4 A No, I did not.

5 Q So you didn't see any evidence in  
6 the materials that you were shown of  
7 widespread dissatisfaction with the pricing of  
8 the NFL Network by MVPDs.

9 A Well, I observed yesterday during  
10 the cross I believe of Mr. Furman some  
11 anecdotes suggesting that Cablevision thought  
12 it was too expensive and I've also seen  
13 through the testimony of Mr. Orszag a blog  
14 that was posted on Bright House's website. So  
15 I have seen -- I'm aware of certain anecdotes  
16 that NFL's price is high.

17 MR. BURKE: I'd like to mark an  
18 exhibit for identification, Your Honor.

19 JUDGE SIPPEL: Please. We have a  
20 number.

21 MR. BURKE: Comcast 417.

22 (Whereupon, the document referred