

1 use the words "PSPPE." I'm sorry. Not the
2 words, but the acronym PSPPE.

3 THE WITNESS: I did not use those
4 words right here. That is correct, sir.

5 JUDGE SIPPEL: Do you feel bad
6 about that?

7 THE WITNESS: In retrospect, I
8 wished I had dropped a footnote in and said,
9 "This analysis also relates to his second
10 analysis, the PSPPE analysis."

11 JUDGE SIPPEL: I'm going to
12 overrule the objection. Go ahead. Answer the
13 question.

14 MR. BURKE: I think we're done.

15 JUDGE SIPPEL: He answered it.
16 You're done?

17 MR. BURKE: Yes. PSPPE.

18 BY MR. BURKE:

19 Q So let's get to the third
20 methodology which is the regression analysis.
21 Is that right?

22 A Yes, it is.

1 Q Can you provide your analysis of
2 Dr. Singer's regression analysis?

3 A I provide three critiques of his
4 regression analysis and what Dr. Singer does
5 is he uses the contracts that Comcast has
6 entered into to try to estimate
7 econometrically the price that Comcast should
8 pay for the MASN programming. And he states
9 that his confidence interval around his price
10 is plus or minus I believe it was [REDACTED].

11 Q Let me stop you right there just
12 to make sure we're all on the same page. What
13 is confidence interval?

14 A Well, any regression has, shall we
15 say, certain infirmities. They can't provide
16 precise point estimates of the predicted
17 price. So what a confidence interval does is
18 it gives you the range where you have
19 statistical confidence that the numbers
20 between the high and the low of the range.
21 Dr. Singer, for example, calculated that the
22 predicted price would be [REDACTED] and if my

1 recollection is correct he stated that the
 2 confidence interval was [REDACTED]
 3 [REDACTED].

4 Q What does that mean to, say, a
 5 confidence interval is [REDACTED]?

6 A He had 95 percent confidence that
 7 the actual or the predicted price for MASN was
 8 [REDACTED], the plus
 9 or minus [REDACTED]. So while his point
 10 [REDACTED], he had 95 percent
 11 statistical confidence that the number was
 12 somewhere between [REDACTED].

13 Q And what was your analysis? What
 14 did you conclude when you reviewed that
 15 analysis?

16 A Dr. Singer made a mistake in
 17 calculating the confidence interval. He used
 18 the wrong measure. He forgot, and this is a
 19 technical term, the error around the error.
 20 And the true confidence interval wasn't plus
 21 or minus [REDACTED]. It was [REDACTED]
 22 and that's why I concluded that his analysis

1 was unreliable because with a range as broad
2 [REDACTED] that is such a big range from a
3 statistical perspective that it suggests that
4 it's not a reliable approach.

5 But I went then a step further.
6 There were two flaws that I saw in the
7 regression and, unlike the NFL case, when one
8 looks at this regression one can't just look
9 at it and say, "It has a structural flaw like
10 the NFL regression did." This one wanted to
11 peel back the onion a little bit.

12 One assumption he makes is that
13 all sporting events have equal value. So what
14 I did was I allowed for the regression to
15 allow each sporting event to have a different
16 value. I also allowed for the fact that MASN
17 requires two programming channels, an
18 overflow, and certain RSNs do as well and I
19 controlled for that fact in the regression as
20 well.

21 I don't think there's any
22 objection to these improvements to the model

1 and when one does that, one comes up with a
2 predicted price that's much lower than Dr.
3 Singer and a range of a confidence interval
4 that's roughly the same as his.

5 MR. BURKE: Now I would like to
6 ask Mr. Orszag some questions about Dr.
7 Singer's testimony and analysis of this. So
8 this is going to be something new that's not
9 in his report and we are fine if Dr. Singer
10 wants to put supplemental on this.

11 MR. KIM: With that, Your Honor, I
12 have no objection.

13 JUDGE SIPPEL: And what is this
14 subject matter now?

15 MR. BURKE: This is the regression
16 analysis.

17 JUDGE SIPPEL: We're still on
18 regression analysis.

19 MR. BURKE: Yes. We're going to
20 try to get right through it. This is not
21 going to a statistics seminar.

22 JUDGE SIPPEL: No, but I want to

1 know what is it that he's going to add to
2 what's already in here.

3 MR. BURKE: Sure.

4 JUDGE SIPPEL: And what is it that
5 I'm going to expecting Dr. Singer to be
6 responding to.

7 MR. BURKE: Certainly. I'll make
8 a proffer, Your Honor. During last week's
9 testimony, Dr. Singer critiqued the analysis
10 that Mr. Orszag did of the confidence interval
11 and he said that Mr. Orszag engaged in
12 shannagins and I think he used the word
13 "illegitimate" in driving the analysis that
14 was done.

15 JUDGE SIPPEL: Analysis of what
16 now?

17 MR. BURKE: Mr. Orszag's analysis
18 of Dr. Singer's regression.

19 JUDGE SIPPEL: Right.

20 MR. BURKE: So what we've done is
21 I want to have Mr. Orszag respond to that and
22 as part of that he's done a new regression and

1 he's going to talk about that issue.

2 JUDGE SIPPEL: Okay. That doesn't
3 mean that he has to trump Dr. Singer on
4 adjectives.

5 MR. BURKE: No. I think we're
6 encouraging no adjectives or adverbs.

7 JUDGE SIPPEL: Okay.

8 THE WITNESS: I'll try.

9 BY MR. BURKE:

10 Q Mr. Orszag, if that's all right,
11 then proceed. Mr. Orszag, you were here in
12 court last week when you heard Dr. Singer
13 testify about your regression. Do you recall
14 that?

15 A Yes, I was.

16 Q And do you recall that he accused
17 you of shannagins in your work on that?

18 A Yes, I do.

19 Q What's your response to what Dr.
20 Orszag had to say?

21 A You mean Dr. Singer.

22 Q I'm sorry. Proceed.

1 A I don't know if it's useful to
2 engage in the kind of attacks on personal
3 integrity that occurred last week. I think
4 I'm here as an analyst and let me just provide
5 the facts.

6 As a matter of econometrics what I
7 did was entirely appropriate. But you don't
8 just have to believe me. Let's turn to the
9 facts. Dr. Singer said I included three what
10 are called dummy variables "to artificially
11 inflate the confidence interval." Those were
12 his words last week.

13 So what we've done is we've
14 removed the three dummy variables and examined
15 the confidence interval with and without those
16 three variables. With the variables, the
17 three variables in question, the confidence
18 interval was [REDACTED]. Without the
19 three variables, the confidence interval was
20 [REDACTED].

21 Dr. Singer said I included those
22 three variables to inflate the confidence

1 interval. But those three variables had
2 absolutely no effect whatsoever on the
3 confidence interval. Zero effect.

4 Q And if they had no effect why did
5 you include them in your analysis in the first
6 place?

7 A Because they were entirely
8 appropriate. They better -- They gave a
9 better fit to the data. They did not
10 introduce the word he used was multi-
11 collinearity. They did not introduce multi-
12 collinearity into the regression. And even if
13 they did as a matter of econometric theory,
14 multi-collinearity does not increase the
15 confidence interval.

16 JUDGE SIPPEL: What is that word?
17 Multi-collinearity?

18 THE WITNESS: Collinearity. What
19 it means is there is a relationship between
20 two explanatory variables.

21 JUDGE SIPPEL: A relationship
22 between two --

1 THE WITNESS: Explanatory

2 variables.

3 JUDGE SIPPEL: Two explanatory?

4 THE WITNESS: Explanatory

5 variables. So what he is -- Let me just give

6 an example. If you're trying to predict the

7 price of MASN's programming, you're using the

8 length of the contract, the win-loss

9 percentage of the baseball team, etc. What

10 some people worry about and it just affects

11 what's called the standard errors, I'm sorry

12 to get technical but there's no other way to

13 get around this, around these two variables,

14 is that there's two right-hand side variables,

15 two explanatory variables, that are trying to

16 explain the price of MASN's programming that

17 have some degree of correlation and that's a

18 econometric term. What they call that is

19 multi-collinearity.

20 JUDGE SIPPEL: What did you say?

21 What is right-hand?

22 THE WITNESS: A right-hand

1 variable is one of the explanatory variables.

2 I'm sorry.

3 JUDGE SIPPEL: Yes, but --

4 THE WITNESS: You're thinking
5 about a equation. Think about it as an
6 equation and the lefthand side of the
7 regression is the price of MASN's programming
8 and on the right side of the equation are a
9 whole bunch of variables that try to explain
10 the price like Dr. Singer uses the win-loss
11 percentage for the baseball team. The number
12 of games. You could use the length of the
13 contract. You could use a variety of
14 explanatory variables that would help to
15 explain the price.

16 JUDGE SIPPEL: All right.

17 THE WITNESS: So the right-hand
18 side are the ones that help to explain the
19 lefthand side.

20 JUDGE SIPPEL: Now the price
21 being, you mean, the price that's being paid
22 by Comcast to carry --

1 THE WITNESS: That's for MASN,
2 yes.

3 JUDGE SIPPEL: The MASN
4 programming. Okay. Now I have an interesting
5 question. I read that in Delaware now they're
6 going to allow betting on baseball games and
7 football games. Would that be a right-hand
8 variable? Could it be?

9 THE WITNESS: In theory, it may be
10 because it could affect the interest of
11 subscribers to MVPDs in Delaware to the
12 programming. I wouldn't think it would be a
13 very good explanatory variable. Things like
14 the number of games you offer, the number of
15 channels, if you have to use one or two
16 channels for the programming, how long the
17 team has been around, the fan loyalty to the
18 team, I think would be fair more powerful
19 explanation variables than what their bettings
20 allowed.

21 JUDGE SIPPEL: Okay.

22 THE WITNESS: But one would want

1 to test it and one would want to try it and
2 see if it matters.

3 JUDGE SIPPEL: Economists don't
4 let a thing get by them, do they? Okay.

5 MR. BURKE: I think here ended the
6 statistics lesson, Your Honor, unless you have
7 anything further.

8 JUDGE SIPPEL: No, I was not
9 trying to -- Believe me. I was not trying to
10 probe. I was trying to understand. What is
11 the word again? I don't have it. Will you
12 spell that word for me, multi --

13 THE WITNESS: Collinearity. So
14 it's --

15 JUDGE SIPPEL: M-U-L-T-I.

16 THE WITNESS: C-O-L-L-I-N-E-A-R-I-
17 T-Y.

18 JUDGE SIPPEL: All right. Give me
19 that slower. C-O-L-L-O-N --

20 THE WITNESS: No. C-O-L-L

21 JUDGE SIPPEL: Yes.

22 THE WITNESS: I-N-E-A-R

1 JUDGE SIPPEL: E-A-R

2 THE WITNESS: I-T-Y. Why
3 econometricians have come up with the most
4 complex words we do not know.

5 JUDGE SIPPEL: Multi-collinearity.
6 That's very interesting. Well, all right. I'm
7 just trying to help the reporter for that one,
8 but it's --

9 THE WITNESS: And I'm sorry for
10 introducing technical terms.

11 JUDGE SIPPEL: No, you're supposed
12 to do that as long as you explain them.
13 Multi-collinearity. All right. Thank you.
14 We can move on.

15 MR. BURKE: Again, I think we'll
16 move on from the statistics now.

17 BY MR. BURKE:

18 Q Mr. Orszag, I would like to ask
19 you a few questions about Comcast's work in
20 Philadelphia. Have you done previous work be
21 connected to or relating to Comcast Sports Net
22 Philadelphia?

1 A Yes, I have.

2 Q Could you describe that work for
3 us?

4 A Sure. I've done work related to
5 Comcast Sports Net Philadelphia in two
6 context. The first was the FCC about eight
7 years ago had a regulatory proceeding on
8 what's called the exclusive contract
9 prohibition for vertically integrated cable
10 companies. That is there's a rule in the 1992
11 Cable Act that bars vertically integrated
12 cable companies from entering into exclusive
13 contracts if the programming is delivered via
14 satellite and they had a proceeding in late
15 2001/early 2002 of whether to allow that to
16 sunset. And I submitted testimony in that
17 proceeding and some of testimony involved
18 Comcast Sports Net Philadelphia.

19 I also prepared a report which is
20 confidential in the News Corp DirectTV
21 proceeding and that report was summarized by
22 counsel for EchoStar and part of that summary

1 includes an analysis of Comcast Sports Net
 2 Philadelphia as well.

3 Q Did you reach any conclusions
 4 about Comcast Sports Net Philadelphia's
 5 conduct for the DBS providers in those
 6 materials?

7 A Well, I reached conclusions with
 8 regard to the fact that Comcast Sports Net
 9 Philadelphia withheld from the DBS providers
 10 in Philadelphia and what we observed is the
 11 market share of DBS providers is lower in
 12 Philadelphia and I had an analysis that showed
 13 that prices were higher in Philadelphia
 14 controlling for the only things that it could
 15 control for in the regression and my colleague
 16 and I who did that analysis concluded that we
 17 couldn't reach a conclusion about the conduct
 18 per se, but we couldn't rule out that there
 19 had been an anti-competitive effect. The
 20 effect that we observed is either due to the
 21 fact that Comcast offers a higher quality
 22 product that we could not explain based on the

1 control variables that we had or it was due to
2 an anti-competitive effect. But we did not
3 reach a conclusion with regard to that.

4 Q And in your submissions did you
5 offer any opinions with respect to the so-
6 called terrestrial exemption?

7 A Yes, I did.

8 Q And, first off, just so that
9 everyone is on the same page, what is the
10 terrestrial exemption as you understand it?

11 A As I understand it and again I'm
12 not a lawyer, so I have to read it as an
13 economist would read it, that cable companies
14 that are vertically integrated can actually
15 have an exclusive relationship with their
16 programming arm if the programming is
17 delivered via a terrestrial means. That is
18 the prohibition on the books only applies to
19 satellite delivered programming.

20 Q And did you offer any views on
21 that terrestrial exemption that you submitted?

22 A Yes, I did. From an economic

1 perspective, the means, the mode of
2 transportation, should not govern whether the
3 regulation is different for one type of
4 programming or not. From an economic
5 perspective, the regulation should be
6 symmetrical.

7 Q Now do you have any understanding
8 as to what Comcast's position is on the so-
9 called terrestrial exemption?

10 A I don't think they agree with me.

11 Q So you took a position as contrary
12 to Comcast's position in connection with these
13 submissions?

14 A I did that and I do today.

15 Q Now you decide to take on a matter
16 for Comcast. Why would you do that?

17 A Because each case that I look at I
18 examine the facts and circumstances and the
19 analytics and the economics of the case and I
20 decide whether to take it based on that. And
21 I've taken cases for a variety of cable
22 companies, a variety of programmers, a variety

1 for EchoStar and DirectTV and for third
 2 parties for entities that are think tanks on
 3 telecommunication issues and I've turned down
 4 cases for cable companies and DBS providers
 5 when I don't agree with them including for
 6 Comcast.

7 MR. BURKE: I'd like to move on
 8 from Comcast Philadelphia now. I'm going to
 9 ask some questions now, Your Honor, that do
 10 ask Mr. Orszag to respond to comments made by
 11 Dr. Singer.

12 Frankly, I don't think that Dr.
 13 Singer's comments on this subject were in his
 14 direct testimony either. So I'm not quite
 15 sure why he should get to reply on this issue.
 16 I'm going to ask some questions about the
 17 relevance of the affiliation agreement and
 18 whether that has any bearing on it. But I
 19 guess the record will reflect whether that was
 20 in Dr. Singer's direct or not.

21 JUDGE SIPPEL: All right.

22 BY MR. BURKE:

1 Q So the question I have, Mr.
2 Orszag, is do you recall Dr. Singer testifying
3 about the relevance of the affiliation
4 agreement to this dispute?

5 A Yes, I do. I recall him saying
6 that he didn't believe that it was relevant at
7 all.

8 Q What's your view on the relevance
9 or irrelevance of the affiliation agreement
10 between Comcast and MASN to this dispute?

11 A I think it's very relevant, but
12 let me be very clear about what's relevant and
13 what's not. I have not analyzed the
14 contractual claims in this case. I am just
15 analyzing the discrimination claims.

16 And it's important, it's relevant,
17 for two reasons, but let me set a little of
18 background here. MASN had submitted a
19 carriage complaint against Comcast in 2005 I
20 believe claiming that it was denied access to
21 2.2 million subscribers. As part of the 2006
22 agreement, they settled that case and MASN

1 obtained access to 2.2 million subscribers.

2 There are two relevant parts. The
 3 contract factors in two relevant ways. First,
 4 the means of which Mr. Ortman developed
 5 Schedule A is relevant. The fact that he was
 6 using his experience to determine where there
 7 was viewer interest and where the cost of
 8 carriage made sense is highly relevant to the
 9 analysis here.

10 And, second, the contract provides
 11 the bounds of the analysis. It's that there
 12 are certain contractual obligations and there
 13 are certain obligations that aren't included
 14 in the contract. So it's highly relevant to
 15 consider the bounds of the analysis that one
 16 has to undertake.

17 Q Turning to my final set of
 18 questions now, Mr. Orszag, first from an
 19 economic perspective, is vertical integration
 20 a bad thing?

21 A No. Generally, vertical
 22 integration is a good thing. Generally,

1 vertical integration is good and we see
 2 vertical integration in all kinds of different
 3 places including with MASN itself. MASN has
 4 decided to vertically integrate. The owners
 5 of the Orioles and Nationals are vertically
 6 integrated with its programming.

7 So vertical integration in and of
 8 itself is not a bad thing. There are certain
 9 conditions that one has to be concerned about
 10 where vertical integration can or various
 11 vertical behavior can harm competition and
 12 there's models and highly stylized examples to
 13 apply to those certain circumstances.

14 Q And have you attempted to apply
 15 those kinds of models in this case?

16 A Yes, I have.

17 Q And what was your conclusion?

18 A That they're not applicable here.

19 The evidence put forward by MASN does not
 20 support the relevance of those models to this
 21 case.

22 Q And the models you're referring to

1 are for example?

2 A The raising rivals' cost models
 3 are what they're generally termed. There are
 4 papers by folks like Steve Salop, my partner,
 5 Dennis Carleton, a professor at Northwestern,
 6 Mike Winston, etc. There are a variety of
 7 papers out there on these topics.

8 Q What are the likely consequences
 9 if Comcast is ordered to carry MASN in the
 10 disputed areas?

11 A Well, one, we know that they will
 12 pass on some of the costs in whole or in part
 13 to consumers. The price of programming will
 14 go up. The net effect on consumer welfare is
 15 a more difficult thing to measure. We also
 16 know that there are opportunity cost of
 17 carriage. So there will be other types of
 18 services or programming that may be denied to
 19 consumers.

20 We also, if we adopt the standard
 21 put forward by Dr. Singer, it will weaken the
 22 ability of vertically integrated cable

1 companies to defend themselves against
2 carriage demands in the future. And that
3 would accrue to the detriment of consumer
4 welfare and that's very concerning to me.

5 Q Why do you think that consumer
6 prices will go up as a consequence of an order
7 requiring Comcast to carry MASN?

8 A Well, there's literature, some of
9 it actually conducted here at the FCC, on the
10 effect of increased cost of programming on
11 carriage prices, on subscriber prices, I mean.
12 Sorry. And the FCC in one recent study found
13 that about 60 to 66 percent of the increase in
14 cable prices in recent years was due to
15 increases in programming costs.

16 MR. BURKE: I have nothing
17 further.

18 JUDGE SIPPEL: Cross examination.

19 MR. KIM: May I proceed, Your
20 Honor?

21 JUDGE SIPPEL: Please.

22 CROSS EXAMINATION

1 BY MR. KIM:

2 Q Good morning, Mr. Orszag.

3 A Good morning, Mr. Kim.

4 Q Again, you're looking quite dapper
5 today.

6 A Thank you. My mom will be very
7 excited that you said that.

8 JUDGE SIPPEL: Do we now have to
9 get the other side to respond to that?

10 (Laughter.)

11 MR. KIM: I think that goes
12 without objection.

13 THE WITNESS: I think my mom may
14 want to come.

15 BY MR. KIM:

16 Q Is Comcast a publicly traded
17 company?

18 A I believe so. Yes.

19 Q Is MASN a publicly traded company?

20 A I do not believe so.

21 Q Even in today's market, Comcast is
22 worth north of \$40 billion in market