

1 were getting those systems.

2 JUDGE SIPPEL: But it wasn't in the
3 schedule.

4 MR. FREDERICK: The schedule,
5 you'll hear testimony is -- contains names
6 that are proprietary to Comcast and that there
7 is not a viable way, productive way to compare
8 the list of systems through publicly available
9 sources. And that the vendors of programming
10 rely on the cable company to tell them when
11 they are not going to launch a system. And
12 they never mentioned Harrisburg. They never
13 mentioned Tri-Cities and so our negotiators
14 following ordinary practice in the industry,
15 expected that those systems would launch.

16 JUDGE SIPPEL: Okay.

17 MR. FREDERICK: And when they were
18 left off the launch, it became clear that
19 there were modus to discriminate because of
20 protecting the programming interests that
21 Comcast owns in those markets.

22 JUDGE SIPPEL: They are

1 comparatively small markets, aren't they?

2 MR. FREDERICK: They are small
3 markets and the testimony will show that there
4 are specific reasons why those markets
5 actually effect programming and that Comcast
6 gives 100 percent of its systems for its own
7 affiliated programming and it substantially
8 less than that for MASN for programming that
9 Comcast itself wanted to have.

10 JUDGE SIPPEL: Okay. Let's see how
11 this develops? Does the Bureau have anything
12 you want to make at all, commenting?

13 MR. SCHONMAN: No, sir, no comment.

14 MR. FREDERICK: So we're ready to
15 call our first witness if the Court is ready.

16 JUDGE SIPPEL: All right, is
17 everybody ready? You're all set? Okay. The
18 most important person, are you ready? Are you
19 okay? Are you comfortable?

20 MR. KIRK: Your Honor, before we
21 move forward, I think there are some fact
22 witnesses in the room.

1 MR. FREDERICK: Your Honor, should
2 we take just a short recess?

3 JUDGE SIPPEL: I think it would
4 make sense. Let's come back in about 10
5 minutes.

6 (Whereupon, a short recess was
7 taken.)

8 JUDGE SIPPEL: We've got a new --
9 we've supplemented our mike system a bit, I
10 guess. It's just going to be --

11 MS. GOSSE: Just here, there are
12 four speakers so people can hear, that are in
13 the back.

14 JUDGE SIPPEL: Four speakers, all
15 right. And hopefully, the Court Reporter,
16 this will make life better for you, I hope.
17 The hearing should be better for you. You
18 should be able to hear better from the witness
19 if this system is what we think it is. All
20 right, okay, and we know the rule about
21 Blackberries, everybody's got their
22 Blackberries off. Witness, do you have a

1 Blackberry?

2 MS. CUDDIHY: It's not on, sir.

3 JUDGE SIPPEL: Okay. Mine is.

4 Okay, here we go. Mr. Frederick, are you
5 ready to proceed, sir?

6 MR. FREDERICK: Yes, we are, your
7 Honor. We'd like to call Mr. James Cuddihy to
8 the stand.

9 JUDGE SIPPEL: Mr. Cuddihy, would
10 you please come forward, sir? Raise your
11 right hand.

12 Whereupon,

13 JAMES CUDDIHY

14 was called as a witness by and on behalf of
15 the MASN and, having been first duly sworn,
16 was examined and testified as follows:

17 MR. FREDERICK: Your Honor, before
18 beginning with Mr. Cuddihy, I'd like to
19 introduce a demonstrative. We've marked this
20 was MASN Exhibit 239. It's a map of MASN
21 television territory.

22 (The document referred to was

1 marked as MASN Exhibit Number 239
2 for identification.)

3 JUDGE SIPPEL: Do you have a couple
4 of copies of it?

5 MR. FREDERICK: We've given -- yes,
6 we've given it to the other side as well. Do
7 you need another one, too?

8 JUDGE SIPPEL: If you have one,
9 sir, yes.

10 MR. FREDERICK: It's 239.

11 JUDGE SIPPEL: Thank you. Thank
12 you very much.

13 MR. FREDERICK: Out intent is to
14 introduce the written direct testimony as
15 Exhibits 235 through 238 for numbering
16 purposes and Mr. Cuddihy, I'll give this to
17 you as well.

18 THE WITNESS: Thank you.

19 JUDGE SIPPEL: Well, based on the
20 ruling earlier this morning, the 239 is in
21 evidence. It's been received in evidence; is
22 that right? It has not?

1 MR. FREDERICK: It has not and
2 we're introducing it simply as a demonstrative
3 for --

4 JUDGE SIPPEL: I gotcha. Is there
5 any objection?

6 MR. TOLLIN: No objection.

7 JUDGE SIPPEL: It's received as
8 MASN Exhibit 239.

9 MR. FREDERICK: Yes, your Honor.

10 JUDGE SIPPEL: Thank you, sir.

11 (The document referred to having
12 been previously marked as MASN
13 Exhibit Number 239 for
14 identification was received in
15 evidence.)

16 DIRECT EXAMINATION

17 BY MR. FREDERICK:

18 Q Mr. Cuddihy, would you please
19 introduce yourself to the Court?

20 A My name is James Cuddihy.

21 Q What is your current position at
22 MASN?

1 A My current position is I'm
2 Executive Vice President of Programming,
3 Marketing and Affiliate Relations for the
4 Middle Atlantic Sports Network, MASN.

5 Q Can you briefly describe your
6 responsibilities for MASN?

7 A Sure. I'd be happy to. On a
8 daily basis, I'm in charge of acquiring
9 programming and content that our viewers
10 consider compelling. In terms of marketing,
11 I'm in charge of the way the networks books
12 the advertising that we do and the kind of
13 spending we do to promote the network and the
14 teams. In terms of affiliate relations, I'm
15 responsible for a lot of the operational
16 aspects that go into working with an affiliate
17 and also negotiate some of the minor
18 contracts.

19 Q What did you do before you came to
20 MASN?

21 A Before I came to MASN, I had a
22 consulting company where I consulted for the

1 likes of the Washington Redskins, Mr. Peter
2 Angelos and a group that was bidding on the
3 Washington Nationals.

4 Q What did you do before that
5 consulting arrangement?

6 A Well, prior to my consulting, I
7 worked for Comcast for eight years. In 1997,
8 I was one of the first junior executives, if
9 not the first, to be hired by Comcast
10 SportsNet Philadelphia to help launch that
11 regional sports network in Pennsylvania. I
12 worked there for four years and the company
13 asked me to transfer to the Bethesda area to
14 help launch Comcast Sportsnet Mid-Atlantic,
15 which was formerly known as HTS.

16 Q And just for the Court, can you
17 say what HTS is?

18 A Home Team Sports was the regional
19 sports network that existed, I believe, in the
20 late '80s and through the '90s until Comcast
21 purchased Home Team Sports in 2001.

22 Q So now you work for MASN but at

1 one time you used to work for Comcast and you
2 were with Comcast SportsNets.

3 A That's correct, as Executive
4 Producer in Philadelphia and as Vice President
5 of Programming, Production and Operations in
6 the DC and Baltimore, Mid-Atlantic Region.

7 Q Do you believe that MASN competes
8 with Comcast's affiliated regional sports
9 networks?

10 A We compete with those networks on
11 a daily basis in a lot of ways in terms of
12 programming and advertising and viewership and
13 ratings. There's no doubt we compete with
14 Comcast SportsNet Mid-Atlantic and Comcast
15 SportsNet Philadelphia.

16 Q Well, let's take each of those
17 individually. Can you describe how you
18 compete with CSNMA for programming rights?

19 A Sure. With programming rights,
20 there are a lot of times when I'm in a room
21 negotiating with potential rights holders. If
22 you look at the Baltimore Ravens, the

1 Washington Redskins, the Colonial Athletic
 2 Association, DC United, I'm in those rooms
 3 negotiating for rights just like Comcast
 4 SportsNet is in those rooms negotiating for
 5 rights.

6 In those areas, we not only
 7 compete for rights, but we compete for
 8 advertising, for ratings, for viewership, and
 9 for team affinity. We're responsible for
 10 getting the message out about what a great
 11 family entertainment value the teams provide
 12 to their fans and our viewers.

13 Q Can you describe how MASN competes
 14 with Comcast SportsNet Philadelphia, or CSN
 15 Philly?

16 A Sure. CSN Philadelphia on some of
 17 the Comcast cable systems in York and
 18 Lancaster and some of the Delaware systems, I
 19 believe it's New County and Kent, we're on the
 20 same system. Okay, so it's one regional
 21 sports network standing right beside the other
 22 on those systems. And again, we compete for

1 programming. Besides Baltimore Orioles and
2 Washington Nationals baseball in that area
3 which is important to those fans, we have
4 Villanova basketball, we have Villanova
5 football. We have Pitt football and we have
6 Pitt basketball, a product that's very
7 important to those areas where we're competing
8 with CSN Philly.

9 Q Now, I've handed you a map of MASN
10 television territory. Could you explain to
11 the Court where on the map competes with
12 CSNMA?

13 A Sure, I'd be happy to.

14 THE WITNESS: Judge, this whole
15 seven-state territory, including the District
16 of Columbia.

17 JUDGE SIPPEL: Yes, yes.

18 THE WITNESS: Okay, MASN is
19 distributed from many parts of Pennsylvania,
20 all of Delaware, all of Maryland, all of
21 Virginia, two-thirds of North Carolina and the
22 District of Columbia and a little piece of

1 West Virginia. Okay, that's our Home Team Tel
2 inventory as described by Major League
3 Baseball.

4 JUDGE SIPPEL: Now, these -- I'm
5 sorry, I don't mean to cut you off there but
6 you start off with a pink up at the top that
7 says Harrisburg, Lancaster, Lebanon and York.

8 THE WITNESS: That's correct.

9 JUDGE SIPPEL: Well, that's -- what
10 would that be called a Region or a sub-region?

11 THE WITNESS: Well, as you can see,
12 the different shades of pink, you have Region
13 3 which is the darker shade of pink, which is
14 closer to the Baltimore DMA.

15 JUDGE SIPPEL: Yes.

16 THE WITNESS: And that's a
17 different rate we charge.

18 JUDGE SIPPEL: Yes,

19 THE WITNESS: Okay, and then in the
20 light pink, in the Harrisburg, Lancaster,
21 that's Region 4. We call that extended inner.
22 That's a different rate that we charge.

1 JUDGE SIPPPEL: And then Baltimore
2 comes in as a blue.

3 THE WITNESS: Baltimore comes in as
4 a blue because the blues and the greens
5 because when this contract in 2006 was first
6 agreed upon, okay, prior to that when we did
7 deals with operators we had Regions 1 and 2
8 and that's where you'll see the blue and the
9 green. Once we did that deal, 1 and 2 have
10 gone away and we really deal with Region 3
11 right now. Okay, so we have Regions 3, 4, 5
12 and 6.

13 BY MR. FREDERICK:

14 Q And maybe, Mr. Cuddihy, you could
15 explain that at that time this map was
16 constructed, the Orioles were being sued by
17 CSNMA over their rights, and so MASN was not
18 telecasting the rights to Baltimore Orioles'
19 games. So these different colors are
20 reflecting what programming interest MASN had
21 in that 2005/2006 --

22 MR. TOLLIN: Objection, your Honor.

1 He's testifying.

2 JUDGE SIPPEL: Yeah, I'll sustain.

3 BY MR. FREDERICK:

4 Q Could you explain the different
5 colors for green and blue for the Court?

6 A Sure. The green and blue where
7 you see the Baltimore and the Washington --
8 and the green in Washington, Region 1 DC
9 inner, Region 2 Baltimore inner, they're
10 different -- the different price points for
11 that were based on where those teams were
12 located.

13 JUDGE SIPPEL: What does that mean
14 by DC -- I'm assuming I know what it means,
15 but DC inner, what does that mean?

16 THE WITNESS: DC inner is just a
17 different -- that's our top rate. DC inner
18 and Baltimore inner, those are the top rates.

19 JUDGE SIPPEL: Baltimore inner?

20 THE WITNESS: That's right,
21 Baltimore inner DMA.

22 JUDGE SIPPEL: Is that like a

1 really, a focused area of Baltimore? It's not
2 all of Baltimore. It's just the inner part of
3 --

4 THE WITNESS: No, it's pretty much
5 the Baltimore DMA. It's the Baltimore DMA and
6 the Washington DMA. Pittsburgh pretty much is
7 and --

8 JUDGE SIPPEL: All right, keep
9 going.

10 BY MR. FREDERICK:

11 Q Now, can you describe where MASN
12 completes with CSN Philly and that map may be
13 helpful as demonstrative.

14 A On the top where the pink is,
15 Harrisburg/Lancaster/Lebanon/York --

16 JUDGE SIPPEL: Yes.

17 THE WITNESS: -- and then to the
18 right, where you see Northern Delaware, right
19 below the Philadelphia side?

20 JUDGE SIPPEL: I see Philadelphia
21 right, but I don't see anything below that.

22 THE WITNESS: That's the state of

1 Delaware, right there.

2 JUDGE SIPPEL: Oh, yes, Salisbury.

3 THE WITNESS: Right, exactly.

4 JUDGE SIPPEL: I didn't know what
5 Delaware looks like.

6 THE WITNESS: If you go north of
7 that in some of those counties, New Castle and
8 Kent, Comcast SportsNet Philadelphia resides
9 on the cable systems there, and so does MASN.
10 MASN does as well, and the same thing with the
11 Harris -- with the Lancaster, Lebanon and
12 York. That's where MASN and Comcast SportsNet
13 reside as well together.

14 BY MR. FREDERICK:

15 Q And so throughout the rest of the
16 MASN territory, does MASN compete with CSNMA?

17 A Yeah, that's the big one. I mean,
18 CSNMA, CSNMA is not distributed in North
19 Carolina. It used to be, but it's not and all
20 these other areas, CSNMA, as far as I know, is
21 100 percent or close to 100 percent penetrated
22 on the Comcast systems.

1 JUDGE SIPPEL: CS -- just state for
2 the record what CS -- CSNMA?

3 THE WITNESS: CSNMA is Comcast
4 SportsNet Mid-Atlantic. Okay, they hold the
5 rights to the Washington Capitals and the
6 Washington Wizards and they used to hold the
7 rights to the Baltimore Orioles.

8 BY MR. FREDERICK:

9 Q And you understand that CSNMA is
10 affiliated with Comcast, Mr. Cuddihy?

11 A When I was there, I believe that
12 Comcast owned 100 percent of CSNMA and I was
13 there for four years as Vice President.

14 Q And do you regard MASN's
15 programming as valuable?

16 A MASN's programming is very
17 valuable. It's very valuable across this
18 seven-state region.

19 Q And breaking it down, do you
20 consider the Orioles' programming valuable?

21 A The Orioles' programming is of the
22 highest value, it's of the highest value to

1 MASN and it was of the highest value when
2 Comcast SportsNet Mid-Atlantic owned those
3 rights and when HTS owned those rights. The
4 Orioles have been broadcast for decades in
5 this area.

6 Q And how about the Nationals, do
7 you consider the Nationals' telecast rights to
8 be valuable?

9 A The Nationals' telecast rights are
10 valuable and they're getting more valuable,
11 yes.

12 Q Do you understand that Comcast
13 wanted to get MASN's core programming for its
14 own affiliated RSN?

15 A Yes, I understand that Comcast
16 aggressively bid for the rights to have the
17 Washington Nationals and to put them on
18 through an affiliated RSN and I'm also aware
19 that Comcast SportsNet sued to retain the
20 Orioles rights so that they could put those --
21 keep those Orioles rights on CSNMA and
22 distribute them.

1 Q And what happened when Comcast
2 lost the rights to the Nationals?

3 A Well, when they lost the rights to
4 the Nationals, they neglected to carry CSM --
5 they neglected to carry MASN and they did so
6 for the better part of two baseball seasons.

7 Q And where did they refuse to carry
8 MASN?

9 A All over. Comcast did not carry
10 MASN for almost two full baseball seasons in
11 this entire footprint, in these entire seven
12 states.

13 Q Including in Washington, DC?

14 A Including Washington, DC, yes.

15 Q And including Baltimore?

16 A Including Baltimore, yes.

17 Q And what happened when Comcast did
18 not obtain the renewal of the contract with
19 the Orioles? What happened?

20 A Well, once they didn't obtain --
21 they didn't carry us. They didn't carry MASN.
22 They sent letters out to other MVPDs in effect

1 to say, "Please don't do business with MASN",
2 and then finally, when they did carry us, in
3 September of 2006 they sent letters out to all
4 the subscribers blaming MASN for their \$2.00
5 plus rate hike.

6 Q Do you have a belief as to why
7 Comcast is not carrying MASN in the three
8 disputed regions and the other scattered
9 systems at issue in this litigation?

10 A Well, one, because they're upset
11 that we got the rights, two, because they're
12 trying to protect their own regional sports
13 network and devalue what MASN can do and bring
14 in those areas.

15 Q Now you worked at CSNMA and CSN
16 Philly for eight years. Do you believe that
17 Comcast has a double standard in its dealings
18 with MASN?

19 JUDGE SIPPEL: That's kind of
20 leading. Now, let's -- is this in his written
21 testimony?

22 MR. FREDERICK: Your Honor, I'll

1 rephrase the question.

2 JUDGE SIPPEL: Thank you.

3 BY MR. FREDERICK:

4 Q How would you describe your
5 relationship with Comcast when you worked at
6 CSNMA?

7 A My relationship with Comcast was
8 great. I was there for eight years. I was
9 treated great. Whenever we needed something
10 at CSNMA or CSN Philly, we were able to get
11 it, whether it was overflow channels, conflict
12 channels or split-feed advertising issues, we
13 were taken care of. We had no issues.

14 Q Sorry, let me just for the Court,
15 can you explain what an overflow channel is so
16 that he understands?

17 A Sure. Because we have the Orioles
18 and Nationals, we telecast every game
19 possible. That's probably 160 a year per
20 team, and on those nights because we have one
21 dedicated expanded basic channel, if the team
22 plays at the same time, we have to tape that

1 game and put it somewhere else so viewers can
2 see that game, okay?

3 JUDGE SIPPEL: Where would be the
4 somewhere else?

5 THE WITNESS: Well, in our
6 contracts, it provides for operators to
7 provide us a part time expanded basic channel.
8 I'll give you an example. When Comcast,
9 Comcast opens up C-SPAN 2, of the Orioles and
10 Nationals are playing at the same time and
11 they interrupt C-SPAN 2 at 6:30 at night. So
12 at 6:25 you could be sitting at home watching
13 C-SPAN 2. At 6:30, the Orioles pre-game show
14 will come on and we brand that MASN-2. The
15 pre-game show happens, the game happens, and
16 then the post-game happens.

17 JUDGE SIPPEL: Now, wait a minute,
18 C-SPAN is that station that you see
19 congressional arguments going on?

20 THE WITNESS: That's right. That's
21 exactly right. That's exactly right. So they
22 take that --

1 JUDGE SIPPPEL: I thought that was -
2 - by the way, I don't use technical terms but
3 I thought that was reserved for Congress. No?

4 THE WITNESS: Maybe at 6:30 at
5 night it's okay to take it off. Comcast would
6 have to tell you that. They have provisions
7 in the contract with C-SPAN 2 that allow pre-
8 emptions of their program for the program.

9 BY MR. FREDERICK:

10 Q Well, what is your understanding
11 of what overflow happens for CSNMA when
12 there's a conflict for CSNMA's programming?

13 A Well, we -- about 125 nights a
14 year out of 162 games that they play, we need
15 that overflow channel. So we asked Comcast
16 and other operators to open up that channel
17 and provide us opportunities to air the pre-
18 game, game and post-game, so everybody in this
19 territory has a chance to see either Orioles
20 or Nationals baseball or both.

21 Q And when CSNMA telecasts in the
22 wintertime, what happens when there's a

1 conflict for its games?

2 A Well, it's a little easier for
3 CSNMA because Comcast, their parent company,
4 has a couple different outlets where they
5 could put those games on. They have a channel
6 called Comcast Network 8 and they can put the
7 games on there and market, promote and brand
8 those games. When I was at Comcast SportsNet,
9 the early part of this decade, some nights
10 there were three conflicts. You had the
11 Wizards, the Capitals and the Orioles play on
12 a given night, usually in April with the
13 playoffs were happening.

14 Comcast made it real easy for me
15 when I was doing that. They would open up a
16 second channel on one of the networks they
17 owned, either CNA or if they had to deal with
18 news channeling, or they would pre-empt
19 programming on another channel to make sure
20 all three games got on. It was very
21 beneficial.

22 Q So the CSNMA in your experience,

1 regarded telecasting those games as a very
2 important and valuable thing to do.

3 A Mike Ortman at Comcast, the person
4 I dealt with, would go out of his way to make
5 sure we got coverage on all three channels and
6 we made sure we promoted it the right way, on
7 websites and on tickers so people knew where
8 to go to find those games, because it does get
9 --

10 Q Now, since you've been working at
11 MASN, have you had the same treatment with
12 Comcast cable?

13 A Well, I mean, it's -- no, we
14 haven't had the same treatment. We've had a
15 number of issues and technical problems with
16 the second channel, games being cut off, post-
17 games shows being cut off, pre-game shows not
18 airing. So we've had those problems. That's
19 -- you know, it's a little disappointing.

20 Q Now, I believe you used the word
21 split-feed advertising. Can you explain to
22 the Court what split-feed advertising is?