

1 BY MR. KIRK:

2 Q Is bandwidth a valid business
3 reason for not carrying MASN?

4 JUDGE SIPPEL: Why is that -- is
5 that okay the way he rephrased it?

6 MR. FREDERICK: We don't have an
7 objection to calling it business reason. I
8 think he was asking for a legal conclusion
9 with the way he had earlier phrased the
10 question.

11 JUDGE SIPPEL: All right. Okay.
12 Well, it's been re-asked, rephrased, and now
13 there's no objection. Can you answer that
14 question?

15 THE WITNESS: Could you repeat it,
16 please?

17 BY MR. KIRK:

18 Q Is bandwidth a valid business
19 reason for refusing to carry MASN?

20 A In my view, bandwidth is not a
21 valid reason. I give as an example, Comcast
22 systems that carry MASN, that have low

1 bandwidth. Comcast has carried MASN on
2 systems with low bandwidth, so how could I
3 give that as a reason? I wouldn't.

4 Q Is lack of demand a valid business
5 reason for not carrying MASN?

6 A Well, I don't perceive there being
7 a lack of demand, so I wouldn't agree with
8 that statement. I think there's demand in our
9 seven-state territory for Orioles and
10 Nationals baseball.

11 Q So nowhere within the seven state
12 territory could someone claim that there's a
13 lack of demand for MASN programming.

14 A Based on the fact that over-the-
15 air television, radio stations, and three
16 regional sports networks over the last two
17 decades have carried baseball to these seven
18 states. I don't see there being a lack of
19 demand. There's some places where interest is
20 strong, and very strong, and some places where
21 it's less strong. That's the way I view it.

22 Q Prior to the August 2006 carriage

1 agreement between MASN and Comcast, did
2 Comcast provide any reasons to MASN why it may
3 not want to carry MASN's programming?

4 A Sir, prior to 2006, I wasn't
5 involved in those negotiations or talks.

6 Q Did you consult with MASN?

7 A I consulted with Peter Angelos on
8 his new Regional Sports Network. I was not
9 involved in affiliate relations, or those
10 negotiations.

11 Q Did you have any discussions with
12 Comcast about carriage of MASN during that
13 period of time?

14 A Not in an official capacity for
15 MASN. I don't believe I did.

16 MR. KIRK: Okay. Your Honor, may
17 I approach the witness and present him Comcast
18 Exhibit 21?

19 JUDGE SIPPEL: Yes, sir.

20 BY MR. KIRK:

21 Q Can you identify this document,
22 Mr. Cuddihy?

1 A I can identify this document.
2 Just, I think, last time we spoke I think the
3 date on the top was wrong. I think we talked
4 about that being `04 instead of `05, just for
5 the record, at the deposition that we talked
6 about.

7 Q Was it `06, I think you said it
8 was. I think it was for a Christmas party in
9 `05. If you look at page Com 21-3, there are
10 a number of references to carrying MASN in
11 `06.

12 A Yes.

13 Q I think in your deposition you
14 testified that it was 1/8/06.

15 A Right. I'm sorry, so the year was
16 wrong.

17 Q Right.

18 A Yes, I can identify the document.
19 I'm glad you cleared that up, sir.

20 Q And what is this document?

21 A This document is a note from
22 myself to John Angelos talking about a

1 discussion I had at a party with a member of
2 Comcast.

3 Q And who was that member?

4 A That member was Mike Ortman.

5 Q He's the VP that you refer to in
6 here?

7 A He is.

8 Q And in the second paragraph, you
9 indicate, [REDACTED]
10 [REDACTED] Correct?

11 A [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Q [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 JUDGE SIPPEL: We've got a -- I
21 just point out to you, this says "Highly
22 Confidential". Do we need that designation

1 still?

2 MR. KIRK: Again, this is a MASN
3 document. My apologies for not picking that
4 up. I will defer to MASN.

5 MR. FREDERICK: Your Honor, it is
6 a sensitive document, because it is the kind
7 of advice that is being given by a consultant.
8 And we certainly want it to be kept
9 confidential. There are references to very
10 sensitive matters throughout the document. We
11 think it is appropriately highly confidential
12 document, but we certainly would like to have
13 it designated as confidential for public
14 purposes.

15 JUDGE SIPPEL: All right. Is
16 there anybody in the courtroom that shouldn't
17 have access to this?

18 MR. FREDERICK: No.

19 JUDGE SIPPEL: All right. Well,
20 we'll treat as confidential for the time
21 being, at least, as of this point. I may make
22 ultimate rulings when proposed findings come

1 in on some of these things, but I understand
2 why. No, I certainly understand having heard
3 this much, that this is a serious question
4 here. Okay.

5 BY MR. KIRK:

6 Q [REDACTED]
7 [REDACTED]

8 [REDACTED] Correct?

9 A Yes. [REDACTED]
10 [REDACTED] [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Q And what reasons did he give to
14 you as part of your conversation that Comcast,
15 a conversation in January '06, would not want
16 to carry MASN?

17 A How do you want me to read this,
18 you want me to just give you highlights, or do
19 you want me to read the whole thing?

20 Q Just based on your recollection of
21 what's in here. I think there was number one,
22 two, and three, if you want to refer to those.

1 A [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Q Can you read number three for the
5 record?

6 A [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Q So, prior to entering into
11 negotiations in August 2006, did MASN know
12 that Comcast did not want to carry it [REDACTED]

13 [REDACTED]

14 A John Angelos did, and he was not
15 at MASN at that point, so this letter was
16 directed to John Angelos.

17 Q And where was John Angelos at that
18 point?

19 A John wasn't working for MASN, or
20 the Orioles at that point.

21 Q Then why was he seeking this
22 information for you?

1 A Well, because John was the son of
2 Peter, and I felt like it was important for
3 John to know this information in case he ever
4 became an employee of MASN, or back with the
5 Orioles. I wrote this to John. And where it
6 went from there, I can't tell you.

7 Q But this did go to John.

8 A Yes, it did go to John.

9 Q And did John participate in the
10 August '06 negotiations?

11 A Not as far as I know, he did not.
12 As far as I know, he did not.

13 JUDGE SIPPEL: Excuse me. Did you
14 expect this to get up to Mr. Peter Angelos?

15 THE WITNESS: Sure. I was hoping.

16 JUDGE SIPPEL: There's no doubt in
17 your mind that it did, is there?

18 THE WITNESS: Well -

19 JUDGE SIPPEL: I mean, I don't
20 mean absolute doubt, but, I mean, as the night
21 follows the day -

22 THE WITNESS: Yes. I would hope

1 it did, but it would have to get passed John
2 to get to Mr. Angelos. I can't say for
3 certain it did.

4 JUDGE SIPPEL: Well, did you get
5 any kind of feedback from Mr. John Angelos,
6 saying oh, thank you. This is important
7 stuff, or did he just poof, you know. What
8 was his reaction to it?

9 THE WITNESS: Judge, if I could
10 recall, I would tell you. I just don't
11 remember. This was January 2006, so, I mean,
12 I -- he didn't jump up and down and say this
13 is -

14 JUDGE SIPPEL: I understand that.
15 But, I mean, did you get -- I mean, you put --
16 it looks to me like you put something into
17 this product, this document.

18 THE WITNESS: Yes. And, Judge,
19 you also see the next couple of paragraphs,
20 where I'm describing basic cable information
21 to him, because he was new at this, so
22 insuring factor, and just other stuff that

1 came out of the conversation. If you keep
2 ready, it's actually pretty good stuff. It
3 talks about -

4 (Laughter.)

5 THE WITNESS: -- Mr. Burke, where
6 Mr. Burke wanted the Nats rights. I mean, it
7 gets -

8 JUDGE SIPPEL: Sometimes it pays
9 to read the stuff before you take the stand.

10 THE WITNESS: I have read it, and
11 I do remember it, but John was new at this.
12 This is -- I don't think bandwidth issue would
13 have surprised him, because I was educating
14 him on the business.

15 JUDGE SIPPEL: No, that's not my
16 question. My question is, because of what --
17 my question is, did this go up the line from
18 John? Apparently, did you -- one, let me ask
19 you this, did you intend it to go up the line?

20 THE WITNESS: I would hope it
21 would, that Mr. Angelos got this information,
22 so he could understand the industry better.

1 I would hope it would have. But Peter -- I've
2 never had a conversation with Peter about this
3 document that I can remember.

4 JUDGE SIPPEL: Well, do you have -
5 - this is back in January `06. Right?

6 THE WITNESS: January `06, right.

7 JUDGE SIPPEL: Did you have enough
8 rapport with Mr. John Angelos that he probably
9 would have at least acknowledged the fact that
10 he had received it?

11 THE WITNESS: Oh, yes.
12 Absolutely.

13 JUDGE SIPPEL: Something like
14 thanks for giving me this, or something like
15 that?

16 THE WITNESS: Oh, absolutely.
17 John definitely got this. We discussed some
18 of these issues. I mean, some of this is, like
19 I said -- I mean, this is important stuff. I
20 mean, we talk about Steve Burke in here and an
21 offer. We talked about strategy points, about
22 media, and how the media position is. I mean,

1 there's some important stuff in here. So,
 2 yes, we definitely -- John and I definitely
 3 talked. I just -- I don't remember talking
 4 about it with Mr. Angelos. I don't know if
 5 John told me that he spoke to his father about
 6 it. I hope he would have, and I hope it got
 7 up to him, because it was educational for him.

8 BY MR. KIRK:

9 Q If he wasn't working for MASN, why
 10 would you have been giving information about
 11 media strategy, Burke's offer, basic cable
 12 information?

13 A As far as I can recall, John was
 14 not in an official capacity working for MASN
 15 at that point in time. It wasn't, I believe,
 16 until May of `06 that John, and myself, and
 17 two other employees were introduced to the
 18 MASN culture, and introduced as executives of
 19 MASN.

20 Q So you think that was in May `06?

21 A I believe it was in May of `06.

22 Q So, then you think -

1 A I'm sorry. May -- let me sure I
2 get my years right. I'm trying to think when
3 I was hired. Yes, May of `06.

4 Q Which would be before the August
5 `06 negotiations.

6 A Correct.

7 Q So, John Angelos would have been
8 there before negotiations.

9 A That's correct.

10 Q And would have had access to this
11 information that you had provided him.

12 A Yes. I brought to him months
13 before, yes.

14 Q And was this the only time you
15 provided him information like this regarding
16 Comcast's concerns over carriage of MASN?

17 A I can't recall. If you have other
18 documents, I'd be happy to look at them.

19 Q The sentence right above
20 "Conversation Points", can you read that for
21 me?

22 A "John, some of this might be

1 redundant, as I've touched on some of these
2 issues over the last 11 months."

3 Q Does that refresh your
4 recollection at all as to whether or not you
5 had talked about Comcast's concerns with Mr.
6 Angelos previously?

7 JUDGE SIPPEL: Which Mr. Angelos?
8 Do you mean John?

9 BY MR. KIRK:

10 Q John.

11 A I definitely talked with John
12 about bandwidth, and educated him on the cable
13 business. There's no question about that.

14 Q Did you talk to him previously
15 about bandwidth issues, and other concerns
16 Comcast may have had about carrying MASN?

17 A I can't recall that I was specific
18 about Comcast. I can recall that I was
19 educating him on the business. I said
20 bandwidth will be one of the issues that cable
21 operators bring up if they decide not to carry
22 you. It could be one of the issues. It's

1 hard for me to go back over three years and
2 tell you about a specific conversation, so I
3 really can't recall the specifics of those
4 talks we had.

5 MR. KIRK: Your Honor, I have no
6 further questions.

7 JUDGE SIPPEL: Okay. Does the
8 Bureau have any questions?

9 MR. SCHONMAN: Just a few. Mr.
10 Cuddihy, good afternoon. My name is Gary
11 Schonman. I'm co-counsel for the Enforcement
12 Bureau.

13 THE WITNESS: Hi, Mr. Schonman.

14 CROSS EXAMINATION

15 BY MR. SCHONMAN:

16 Q I want to go back to December
17 2006, January 2007, in that time frame, when
18 it came to MASN's attention that MASN was not
19 getting carried on the three disputed
20 communities. And you indicated that you had
21 a conversation with Mr. Ortman. You called
22 him right away. Is that correct?

1 A I don't think -- I'm not sure if I
 2 called him right away, or Davida Shear called
 3 him right away. But after I became involved
 4 with Affiliate Relations, I definitely had
 5 conversations with him about that area.
 6 Probably in January, if I remember correctly.

7 Q January of 2007.

8 A I don't know if I would have been
 9 the one to call him right away. That would
 10 have been a person named Davida's job to get
 11 on the phone with him right away.

12 Q Is that your predecessor?

13 A It was, yes. She was in charge of
 14 Affiliate Relations.

15 Q All right. And you were not party
 16 to any conversations that that individual had
 17 with Mr. Ortman?

18 A No, when that issued happened, she
 19 told me about it.

20 Q What did she tell you?

21 A She told me she found out from one
 22 of our sales reps, Mike Cobb, that we were not

1 being carried in Roanoke, and Lynchburg, and
2 that one of our advertisers had triggered that
3 wheel to get in motion, that led us to
4 discover we weren't carried.

5 Q What did you do when she told you?

6 A Well, I remember checking an IRD
7 list to see if we were in that area, where we
8 sent receivers. I probably forwarded her
9 email to John, and then we got -

10 JUDGE SIPPEL: John who?

11 THE WITNESS: I'm sorry. John
12 Angelos. I apologize. John Angelos. And I
13 probably got on the phone with Davida and the
14 consultants at some period after that to see
15 what their recollection was.

16 BY MR. SCHONMAN:

17 Q When you say you probably did
18 these things, do you have a recollection that
19 you did those things?

20 A Yes, but not -- I can't say it was
21 right away. I know I talked to the
22 consultants about this issue sometime

1 afterwards. I know I forwarded the email to
2 John Angelos once I found out from Davida.

3 Q Well, let's take those in order.

4 A Sure.

5 Q You said that you checked the list
6 of IRDs?

7 A Yes.

8 Q And that's the equipment that you
9 sent to the head-ins. Is that correct?

10 A That's correct.

11 Q And what did you find when you
12 checked the list?

13 A I couldn't line up the list that I
14 had -- the list that Davida had put together,
15 at that point, to say really with any
16 certainty whether we were carried in those
17 areas or not, because, as I testified before,
18 I can't tell you based on that list where the
19 line, that system will distribute you.
20 There's really no way for me to tell if a
21 system in Newark distributes to the Harrisburg
22 area, or a system in Richmond distributes to

1 the Roanoke-Lynchburg, or parts of that area.

2 Q So, the information that you
3 checked on the list was, you couldn't
4 determine one way or the other, you couldn't
5 confirm?

6 A No, I couldn't. But when I talked
7 with Mr. Ortman, and Davida, and our
8 consultants, that was confirmation enough when
9 I heard from Mr. Ortman that we weren't
10 carried in Harrisburg, or Roanoke-Lynchburg.
11 I think he called it Blue Ridge Systems.

12 Q Well, let's talk about that
13 conversation with Mr. Ortman. That was on the
14 phone?

15 A I believe so, yes.

16 Q You called him?

17 A I definitely reached out to him.
18 Yes, I don't remember if he called me, or I
19 called him after an email, or something like
20 that, but we spoke on the phone.

21 Q Can you share with me the
22 substance of that conversation?

1 A Yes. He said that we were not
2 carried in the Harrisburg area because there
3 was no interest there. We were not carried in
4 the Roanoke-Lynchburg area. I don't know if
5 Tri-Cities came up. I said -- Davida said we
6 thought we were carried there, and at some
7 time, whether it was right before that
8 conversation, in talking with David Gluck and
9 Mark Wyche, our consultants, I can recall
10 talking on the phone, having them say okay,
11 that means we have a hunting license for those
12 areas. And we should reach out to those
13 systems to explore whether they were carrying
14 us or not.

15 Q I'm sorry. Mr. Ortman said that,
16 you should reach out?

17 A No, no, no. Our consultants said
18 that, David Gluck and Mark Wyche.

19 Q And, if I understand your
20 testimony earlier, you did not reach out to
21 any of those systems in those communities?

22 A I, personally, did not.

1 Q Do you have any knowledge as to
2 anyone -- whether anyone at MASN reached out
3 to those communities, to the cable systems in
4 those communities?

5 A I believe, like I said before,
6 that Davida Shear reached out to some of the
7 people who were in charge of the Blue Ridge
8 systems, which included the Roanoke and
9 Lynchburg area.

10 Q And as to the other communities?

11 A I can't recall any of that.

12 Q Do you know why no one reached
13 out?

14 A At that point, I became the point
15 person, and my bosses directed me to deal with
16 Mr. Ortman, since we had a previous
17 relationship, and a good relationship.

18 Q Do you have knowledge as to
19 whether anyone at MASN looked at the contract,
20 the contract in 2006?

21 A At which point, sir?

22 Q After you learned that there was

1 no carriage in the three disputed communities?

2 A I'm pretty positive we all looked
3 at Schedule A after that.

4 Q And when you looked at Schedule A,
5 what did you determine?

6 A Well, I had conversations with Mr.
7 Gluck, and Mr. Wyche about that. And we
8 looked at areas like Carlisle, and Newark, and
9 maybe Newark County, didn't say Harrisburg,
10 but I could reasonably assume that those areas
11 could have been Harrisburg.

12 Q Well, when you determined that
13 Harrisburg was not on the schedule of
14 communities being served, did you speak with
15 anyone at MASN about this, something to the
16 effect, holy smokes, why is this not on the
17 list?

18 A Oh, yes. I was surprised. I was
19 surprised we weren't distributed there. And
20 did I say why wasn't this on this list? Yes,
21 that question definitely came up.

22 Q Who did you share that question

1 with?

2 A With Mr. Gluck and Mr. Wyche.

3 Q And what did you learn?

4 A I learned that they thought that
5 Harrisburg was on the list, and that Roanoke
6 and Lynchburg - excuse me - that Harrisburg
7 was part of where MASN was distributed, as
8 well as Roanoke, and Lynchburg.

9 Q But they -- was it your
10 understanding that they knew that Harrisburg
11 was not on the list?

12 A No, I don't think they knew that
13 Harrisburg was not on the list. They thought
14 that we were in Harrisburg, as far as I can
15 recall.

16 Q Well, when you consulted with
17 them, and Harrisburg was not on the list, the
18 word "Harrisburg" is not on the list.

19 A Yes.

20 Q How did that conversation go?

21 A Like I said, they were surprised.
22 And then I believe they determined that since

1 we weren't being distributed there, they said
 2 hey, all is not lost. We do have a hunting
 3 license. We can approach these cable systems,
 4 because of this hunting license.

5 Q But no one -- to your knowledge,
 6 no one at MASN contacted two of the three
 7 disputed communities. Is that correct?

8 A Well, I contacted Mr. Ortman,
 9 because I thought he was in charge of the
 10 Harrisburg area. He directed us to go to
 11 Roanoke-Lynchburg. I spoke to him directly
 12 about Harrisburg, because I believe that was
 13 part of his system under his watch. And I
 14 believe he told me that Tri-Cities at some
 15 later point was not part of his division. It
 16 might have been a Comcast Southern Division.
 17 But that was -- that might have been way
 18 afterwards, months afterwards.

19 Q So, he told you that you or
 20 someone else at MASN should contact the cable
 21 operators in those other communities?

22 A Just in -- at that point in time,