

1 JUDGE SIPPEL: You're welcome.

2 MR. KIM: Never invite a trial
3 attorney to the podium, Your Honor. But I'll
4 take you up.

5 JUDGE SIPPEL: Sometimes you want
6 to say no.

7 (Laughter.)

8 MR. KIM: Touche, Your Honor.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. KIM:

11 Q Dr. Singer, one last question.

12 A Okay.

13 Q I don't think you know the
14 chronology, so let me ask you as an expert
15 hypothetical, okay? Suppose that MASN
16 launched in 2005 with only one network, I'm
17 sorry, with only one pro product, the
18 Nationals.

19 A Yes.

20 Q Suppose that in 2007, it was the
21 first year it was able to add the Orioles, as
22 opposed to in 2008, they were able to refine

1 their distribution network and now finally
2 promote the product after a year of having it.
3 With full Comcast penetration the second year
4 which they didn't have in earlier years.

5 What would you suppose would
6 happen, in general, with advertising revenues
7 in 2007 to 2008?

8 A It would go up.

9 Q No more questions.

10 MR. BURKE: Objection, leading
11 question.

12 JUDGE SIPPEL: No, it wasn't
13 leading. Not at all. I'll overrule that
14 objection.

15 Okay, that's it. That's it, Dr.
16 Singer. But yes, you are excused as a
17 witness.

18 (The witness was excused.)

19 One instruction I want to give is
20 with respect to the use of this deposition
21 testimony. I think we did this in the NFL or
22 maybe the Wealth TV case. I'd like to see it

1 admitted as an exhibit or received as an
 2 exhibit, would be the precise pages that he
 3 was asked questions on in his deposition. You
 4 know the deposition is this big. We don't
 5 need all of that. He was only asked questions
 6 on about three or four or five pages. Those
 7 should be put in the record and I would -- I
 8 think it's true, I think it should be put in
 9 kind of like a part of his -- his exhibit is
 10 what 238, his testimony?

11 MR. BURKE: That's correct.

12 JUDGE SIPPEL: This could be 238A
 13 or something would be excerpts of the
 14 deposition that he was examined on.

15 MR. KIM: That he was examined on?

16 JUDGE SIPPEL: That's right.

17 MR. KIM: Just those lines and
 18 portions? I've got no objection to that, Your
 19 Honor.

20 JUDGE SIPPEL: Any problem with
 21 that?

22 Because otherwise it's going to be difficult

1 to follow just the transcript --

2 MR. BURKE: Great.

3 JUDGE SIPPEL: Not that you're not
4 articulate and erudite and all of that, but
5 anyway, that's what I want.

6 I know you're going to start,
7 Comcast is going to start your case this
8 afternoon. We'll take a lunch break before we
9 do that, but I'm hoping that you don't spend
10 too much time on the -- what was it called,
11 the list of the -- in the contract, the list
12 of the --

13 MR. KIM: Schedule A?

14 JUDGE SIPPEL: Schedule A. Thank
15 you. You don't spend too much time on that
16 Schedule A issue. We've been up and down that
17 so many times and from what I'm hearing,
18 economists really don't give a hoot. You
19 know?

20 MR. BURKE: I understand.

21 JUDGE SIPPEL: I think we might
22 have overdone that one. Not that I was

1 interested in it, but I might be the worst
2 offender. Let's just -- that might help you
3 in terms of the amount of time you have to
4 spend with your people on the stand.

5 Okay --

6 MR. TOLLIN: Your Honor, do you
7 want to put in the deposition transcript from
8 Cuddihy.

9 JUDGE SIPPEL: Yes, Cuddihy and
10 also the other one, Mr. -- the one that was
11 here yesterday.

12 MR. KIM: Mr. Gluck, Your Honor.

13 JUDGE SIPPEL: Pardon?

14 MR. KIM: Mr. Gluck.

15 JUDGE SIPPEL: Yes, Mr. Gluck.

16 Same practice. It's going to be a lot easier
17 -- well, it's certainly will be easier for me
18 if I have the right findings instead of trying
19 to hunt around for this.

20 MR. TOLLIN: Okay.

21 JUDGE SIPPEL: Okay? So we're

22 back

1 -- let me see what time is it. I have to
2 start doing the math again.

3 MR. TOLLIN: Quarter of one.

4 JUDGE SIPPEL: Quarter of one.

5 Let's be back at 2:15. Does that do it right?

6 MR. KIM: Yes, sir.

7 JUDGE SIPPEL: Two fifteen then.

8 Thank you.

9 MR. KIM: Thank you, Your Honor.

10 JUDGE SIPPEL: Off the record.

11 We're in recess.

12 (Whereupon, at 12:46 p.m., the
13 hearing was recessed, to reconvene at 2:15
14 p.m.)

15 JUDGE SIPPEL: Do we have another
16 witness, Mr. Frederick?

17 MR. FREDERICK: No, Your Honor.

18 JUDGE SIPPEL: No, no witness?

19 The other side?

20 MR. KIRK: Comcast is ready to
21 present Michael Ortman.

22 JUDGE SIPPEL: Please come

1 forward.

2 Whereupon,

3 MICHAEL ORTMAN

4 was called as a witness by counsel for Comcast

5 and, after having been first duly sworn, was

6 examined and testified as follows:

7 JUDGE SIPPEL: Be seated.

8 DIRECT EXAMINATION BY COUNSEL FOR COMCAST

9 BY MR. KIRK

10 Q Good afternoon, Mr. Ortman.

11 A Good afternoon.

12 Q Can you state your name for the
13 record?

14 A Michael Ortman.

15 Q And can you spell your last name
16 please.

17 A O-r-t-m-a-n.

18 Q Your Honor, may I approach the
19 witness?

20 JUDGE SIPPEL: Please do.

21 MR. KIRK: I'll be presenting the
22 witness with Exhibit No. 2, Comcast Exhibit

1 No. 2, which has already been entered into
2 evidence.

3 (Document handed to witness)

4 JUDGE SIPPEL: Written testimony
5 of Michael Ortman, Comcast No. 2.

6 BY MR. KIRK

7 Q Mr. Ortman, is this your written
8 direct testimony?

9 A Yes, it is.

10 Q And is that your signature on page
11 17?

12 A It is.

13 Q Have you had an opportunity to
14 review your testimony since it was submitted?

15 A I have.

16 Q Is there anything in there that
17 you would like to change?

18 A Yes, there is.

19 Q Can you tell me what that is?

20 A On page seven in paragraph 18, in
21 the end I made the statement that I was never
22 able to convince a broadcast television

1 station in Harrisburg to carry the Orioles
 2 games. On further review I realized that I
 3 had cleared a limited number of Sunday games
 4 only on a Fox station in the Harrisburg DMA
 5 back in the 1993-94 time.

6 Q And how did you discover that
 7 inaccuracy in your testimony?

8 A What was weighing most heavily was
 9 the fact that in that market I cleared a lot
 10 of games on cable TV, the York Cable System,
 11 and that was the dominant thought in my memory
 12 as I was preparing this. But as I was
 13 preparing for today that came back and we
 14 cleared those few games on broadcast on the
 15 Fox station.

16 MR. KIRK: Your Honor, we'd move
 17 to strike voluntarily the sentence beginning
 18 "further" in paragraph 18, and ends with 1996.

19 JUDGE SIPPEL: That will be
 20 stricken, and you can substitute a copy,
 21 stricken copy, for what's been received in the
 22 record.

1 MR. KIRK: Thank you, Your Honor.

2 BY MR. KIRK

3 Q With the exception of that one
4 sentence, Mr. Ortman, is your testimony true
5 and correct?

6 A Yes, it is.

7 Q I'd like to ask you a few
8 questions to summarize your testimony.

9 What is your current position at
10 Comcast?

11 A I'm a vice president of
12 programming for Comcast's Eastern Division.

13 Q And what are your
14 responsibilities?

15 A I help our cable systems manage
16 their channel lineups in a territory that
17 includes New Jersey, Pennsylvania, D.C.,
18 Maryland, Western Virginia, a little bit of
19 West Virginia, and Ohio.

20 Q How long have you held that
21 position?

22 A The geography has changed

1 periodically over the last many years. But
2 about nine years I've been head of programming
3 at Comcast.

4 Q Have you had other jobs that
5 involved the regional sports industry?

6 A Yes, I have, in various capacities
7 over the last 25 years.

8 Q Can you briefly describe those
9 jobs and your responsibilities?

10 A Yes, I was one of the original
11 employees at Home Team Sports back when we
12 started the network in 1984. That was the
13 regional sports network that eventually became
14 Comcast Sports Net Mid-Atlantic.

15 I was a consultant for several
16 years distributing the Orioles games on
17 broadcast TV stations in the mid-'90s. And
18 I've been at Comcast Cable now for 12-1/2
19 years.

20 Q In your experience is it common
21 for startup RSNs to initially launch to all
22 systems within their territory?

1 A It'd be very uncommon. In the
2 early days of Home Team Sports it took us
3 many, many years to get clearance on a lot of
4 systems.

5 Q What factors do you typically use
6 in helping Comcast decide what types of
7 programming to carry?

8 A First and foremost you look at
9 consumer interest in the product, how much
10 demand there is, what our competitors are
11 doing with it, are they using it to get
12 customers to leave us and go to them. We look
13 at the bandwidth requirements that would be
14 required to carry the channel or channels.

15 We certainly look at the cost and
16 evaluate the value proposition for our
17 customers.

18 Q During the summer of 2006, were
19 you asked to provide input regarding Comcast
20 systems for the MASN territory that should
21 launch MASN?

22 A I was.

1 Q Did this relate eventually to what
2 became Schedule A?

3 A Yes, it did.

4 Q What were you requested to do?

5 A I was asked to define where we
6 could be obligated to carry MASN, the balance
7 of the territory being a hunting license where
8 we had discretion launch if and when we wanted
9 to; but what the obligation looked like was
10 what I was asked to look at.

11 Q And what markets did you first
12 suggest the carry should be limited to?

13 A Well, I asked that it be limited
14 to the Baltimore-Washington DMAs only with the
15 flexibility to consider launching everywhere
16 else.

17 Q Did you ultimately broaden the
18 list beyond Baltimore-Washington?

19 A Yes, I was asked to expand what we
20 could live with beyond the Baltimore-
21 Washington area. So I laid out a few criteria
22 that I asked them to consider, the corporate

1 deal team.

2 First and foremost, was there a
3 recent history of the Orioles being on those
4 cable systems?

5 Secondly please do not include any
6 systems that have less than 550 megahertz of
7 bandwidth because that would create
8 significant operational burdens, because MASN
9 is two channels, not one.

10 And then if you had to expand
11 beyond Baltimore-Washington and allow the
12 obligation to be as close to those two markets
13 as possible.

14 Q Why is closeness to the Baltimore-
15 Washington DMAs relevant?

16 A Well, in general, one could argue
17 that the closer you are to the core markets
18 the greater the interest in the teams might
19 be; at least we could make that argument.

20 Q And you indicated your first
21 criteria was whether the Orioles were carried
22 there the prior season. Why was that

1 important?

2 A Well, the Orioles were
3 transitioning from Comcast Sports Net Mid-
4 Atlantic over to MASN, and I needed to know
5 whether the consumer had some preexisting
6 demand or interest in the Orioles games. I
7 knew the Nationals had been offered previously
8 because they were new to the area, and MASN
9 had not been on our cable systems at that
10 point. So I was trying to evaluate
11 preexisting demand by virtue of their carriage
12 on cable.

13 Q And you indicated you did not want
14 to carry on systems below 550 megahertz. Why
15 was that important?

16 A It was just because the thing with
17 capacity MASN was two channels. There were
18 very very few systems that we had that were
19 under 550. We were going to have significant
20 difficulty making the switch for the MASN II
21 games, and also might not necessarily have
22 been willing to drop or move two channels to

1 make room for MASN.

2 Q For systems that weren't listed on
3 Schedule A, what was your view as to how those
4 would be carried from a carriage perspective?

5 JUDGE SIPPEL: I'm sorry, what
6 was the third criteria again? It was the
7 distance criteria?

8 THE WITNESS: The bandwidth.

9 JUDGE SIPPEL: No, you did
10 bandwidth. It was the distances --

11 THE WITNESS: Consumer interest
12 in the product.

13 JUDGE SIPPEL: Consumer interest.
14 That is not covered -- okay, consumer interest
15 in product, thank you.

16 THE WITNESS: That's driven by
17 the history of the Orioles having been there
18 or not been there.

19 JUDGE SIPPEL: That's the first
20 one. What is the third one?

21 THE WITNESS: Bandwidth and
22 proximity.

1 JUDGE SIPPEL: Proximity, that
2 was it.

3 THE WITNESS: Okay, sorry.

4 JUDGE SIPPEL: Was there a
5 minimum distance you were looking for?

6 THE WITNESS: No, not in
7 particular. More television market.

8 JUDGE SIPPEL: All right, go
9 ahead.

10 BY MR. KIRK

11 Q In light of where you were going,
12 how did the price of MASN factor into your
13 analysis?

14 A Well, MASN was a very expensive
15 service like any regional sports network.
16 They are generally very expensive. So to add
17 [REDACTED] to our customers is a
18 significant event and we try to avoid doing
19 that if we could save the money. That is a
20 big issue for -- it's my job is to control
21 costs.

22 Q With regard to systems that were

1 not listed on Schedule A, what was your view
 2 as to how carriage was determined for those
 3 systems?

4 A Well, we had the right to launch
 5 at any point in time in the future under
 6 prenegotiated terms and conditions. We call
 7 that a hunting license. That would have been
 8 the tool that we used to add in the future.

9 Q And can you describe how a hunting
 10 license would work?

11 A A hunting license lays out the
 12 terms and conditions of carriage should we
 13 elect to launch in the future -- price,
 14 geography, et cetera. But it makes no
 15 obligation to launch.

16 Q How did your input into Schedule A
 17 and this hunting license get reflected in the
 18 agreement that was signed between the parties?

19 A Well, I wasn't successful in
 20 controlling the commitment to the Baltimore-
 21 Washington market. It was expanded to include
 22 some areas in southern Pennsylvania; some

1 areas in the Salisbury DMA, Charlottesville,
2 Harrisburg, Richmond were also included in the
3 commitment.

4 Q Were Harrisburg, Roanoke and Tri-
5 Cities on Schedule A?

6 A There were some systems in the
7 Harrisburg DMA along the Pennsylvania-Maryland
8 border, but not the Harrisburg, not the city
9 of Harrisburg, the northern part of the DMA.
10 That was -- because there was no recent
11 history of Oriole games on cable there.

12 And then the Roanoke DMA was not,
13 and the Tri-Cities was not.

14 Q And with regard to Roanoke and
15 Tri-Cities, why were those not included?

16 A Again, my feeling was that if we
17 could limit the obligation to areas closer --
18 these were further away; my experience at Home
19 Team Sports was that it certainly was not the
20 Orioles that drove the demand for Home Team
21 Sports down there. I thought we could get a
22 shot; live without it; see what our customers

1 told us; and make an adjustment in the future
2 if necessary.

3 Q If it wasn't the Orioles that was
4 driving consumer demand in those areas, what
5 do you think was driving demand?

6 A Well, over time we eventually got
7 carriage of home team sports there by
8 listening to operators in the area at the time
9 and programming the network that drove their
10 interest, things like ACC sports, college
11 sports in general, some Redskins programming.
12 But ACC programming, Virginia Tech and UVA
13 were the big ones for the Western Virginia
14 cable operator.

15 Q Based on your experience what can
16 you tell us about demand for Orioles in
17 Harrisburg, the city of Harrisburg?

18 A It's very limited. There was some
19 broadcast carriage as I said, but I couldn't
20 even get the whole broadcast package cleared
21 back in the '90s. And I knew that interest
22 was very high in the York area. In fact that

1 was demonstrated by MASN in their rate card.
2 It was a higher rate charge in the York area
3 than there was in the rest of the Harrisburg
4 DMA. Kind of reinforced what my experience
5 had been.

6 Q Based on your experience what
7 sports teams do viewers in Harrisburg follow?

8 A Clearly the Philadelphia sports
9 teams, the Eagles, the Phillies, the Sixers
10 and Flyers.

11 Q And again what is the basis for
12 your conclusion?

13 A My experience being in the market,
14 the ratings that I've seen on broadcast and
15 cable, that these teams had broadcast
16 distribution on broadcast stations in that
17 market in addition to cable carriage in some
18 places.

19 We acquired some of those systems
20 there. We added some of those teams over
21 time. So certainly there was demand.

22 Q When Comcast acquired the

1 Harrisburg system was the system already
2 carrying CSN Mid-Atlantic?

3 A It was.

4 Q And did CSN Mid-Atlantic have the
5 rights to the Orioles at that time?

6 A They did.

7 Q Was it being carried on expanded
8 basic or on a sports tier?

9 A It was on a sports tier, a two-
10 channel sports tier with Fox Sports
11 Pittsburgh.

12 MR. KIRK: Your Honor, may I
13 approach the witness?

14 JUDGE SIPPEL: You may.

15 MR. KIRK: I am presenting the
16 witness Comcast Exhibit No. 68, which is a
17 line up card that has previously been entered
18 into evidence.

19 (Document handed to witness)

20 BY MR. KIRK

21 Q Mr. Ortman, can you identify this
22 document?

1 A Yes. It is a channel lineup card
2 for the Harrisburg system from December of
3 2004.

4 Q Where on this lineup card would
5 you find CSN Mid-Atlantic?

6 A On page two on channel 48.

7 Q Anywhere else?

8 A It is duplicated on channel 189.

9 Q Now there are numbers, like you
10 said 48 and 189. There are colors associated
11 with those numbers. What do those colors
12 mean?

13 A Well, these appear to be bolded,
14 which if you connect that with the key in the
15 bottom left hand corner, it indicates sports
16 tier.

17 Q Why is Comcast Sports Net Mid-
18 Atlantic listed on two separate channels?

19 A Well, in those earlier days of
20 digital cable it was for the viewership, the
21 convenience of the viewer to sometimes dual
22 illuminate channels in the digital arena. The

1 three digit numbers were digital channels.
2 You had to have a digital box and would watch
3 them there.

4 But once a digital customer had
5 gone there, for example they might have been
6 watching NFL Network, for their convenience we
7 do illuminate these channels right next to NFL
8 Network so they wouldn't have to go from 180
9 back and up, back and forth and back and
10 forth.

11 Q And were the channel 35, could you
12 describe to me what that means?

13 A It says Comcast Sports Net. That
14 is Comcast Sports Net Philadelphia.

15 Q And what is the basis for that
16 statement?

17 A Because I know that Comcast Sports
18 Net Philadelphia was carried on the system at
19 the time and it is nowhere else to be found.
20 And also I've since gone back and looked at a
21 current lineup for Harrisburg, and Comcast
22 Sports Net Philadelphia is still on channel

1 35.

2 Q Okay. Was there substantial
3 demand for the sports tier on which Comcast
4 Sports Net Mid-Atlantic was carried?

5 A No.

6 Q Did there come a time when Comcast
7 decided to drop that sports tier?

8 A Yes, we did.

9 Q And what did they do with Comcast
10 Sports Net Mid-Atlantic at that time?

11 A Comcast Sports Net Mid-Atlantic
12 and Fox Sports Net Pittsburgh were both
13 dropped at the same time, early 2005.

14 Q And when Comcast Sports Net Mid-
15 Atlantic was dropped, did it still have the
16 rights to the Orioles?

17 A Yes, it did. These agreements as
18 I understand it were from the previous cable
19 system owner, Lenfest Communications. The
20 agreements had expired and both Fox Sports
21 Pittsburgh and Comcast Sports Net Mid-Atlantic
22 were insisting on expanded basic coverage,