

1 which was something Comcast was not willing to  
2 do at the time. And so dropped both channels.

3 Q Returning back to Schedule A to  
4 the agreement, are you aware of MASN's  
5 argument that it was too difficult for it to  
6 figure out that Harrisburg was not on Schedule  
7 A?

8 A I am.

9 Q What is your reaction to that  
10 argument?

11 A Rather surprised.

12 Q Why?

13 A Well, by that point in time MASN  
14 had been around for two years on the streets,  
15 getting to know the operators as best they  
16 could. There were numerous reports available  
17 that they could have subscribed to to review  
18 in general terms where systems were. There  
19 were maps for different services you can  
20 order. So very surprising that it would take  
21 that long to come up with a list.

22 Q In your experience do programmers

1 Comcast subscribers, MASN or CSN Mid-Atlantic?

2 A CSN Mid-Atlantic -- I'm sorry,  
3 more subscribers, Comcast Sports Net and MASN.  
4 MASN has more subscribers because we dropped  
5 Comcast Sports Net Mid-Atlantic from the  
6 system at the time MASN launched. So to be  
7 clear, I'm sorry, MASN has more subscribers in  
8 our footprint than Comcast Sports Net Mid-  
9 Atlantic.

10 Q Okay. As part of your  
11 involvement in the process that led up to the  
12 2006 agreement between Comcast and MASN, were  
13 you trying to protect CSN Mid-Atlantic or CSN  
14 Philly?

15 A No.

16 Q Did anyone at Comcast indicate to  
17 you that you should try and protect CSN Mid-  
18 Atlantic or CSN-Philly?

19 A No.

20 Q What about after the 2060  
21 agreement, in subsequent negotiations? Did  
22 anyone ever instruct you to try and favor CSN

1 Mid-Atlantic or CSN Philly?

2 A No.

3 Q With regard to the subsequent  
4 negotiations, between parties commencing after  
5 January 2007, did you work with MASN to  
6 prepare a list of excluded markets?

7 A I did.

8 Q Can you describe that process?

9 A In early 2007 Jim Cuddihy had  
10 taken over affiliate sales marketing for MASN.  
11 I don't know if Davida Shear was still there  
12 and leaving soon or had already left. But Jim  
13 was a friend from his Comcast Sports Net Mid-  
14 Atlantic days, and was trying to get his arms  
15 around the scope of what was not in the  
16 agreement; and asked if we could discuss it.

17 And we did in my office, and I  
18 showed him a list of systems that I had that  
19 had subscribers on it, so it was a  
20 confidential document. I couldn't give it to  
21 him to take with him, but I wanted to show him  
22 the scope of lineups. It wasn't just a lineup

1 in Harrisburg, and a lineup in Roanoke. It  
2 was dozens of systems in the division.

3 He was clearly surprised, and I  
4 suggested that he get a third party to show  
5 him the tools that he might need to do the job  
6 as well as he could. And that would be, I  
7 could give him the name of a specific Nielsen  
8 report that I had never ordered but I had seen  
9 from other programmers that would give him  
10 some level of detail; not going to be perfect,  
11 but it will give him some level of detail of  
12 where there were additional systems, not only  
13 Comcast systems but other MS sub-cable  
14 systems. I thought that would be a helpful  
15 tool for him.

16 Sometime later, I don't recall if  
17 it was weeks or months later, he came back.  
18 He ordered the report. He showed me the  
19 output. And there were some discrepancies on  
20 it, and we went further through it to say,  
21 okay, this name might be something else, or  
22 this subscriber count looks wrong, and I'll

1 explain why it's a little different.

2 But Nielsen estimates, they are a  
3 pretty reputable company when it comes to  
4 measuring television. They do that with that  
5 granular level of detail.

6 So those reports were there. We  
7 went through it in a few minutes, and I think  
8 he had what he needed at that point.

9 Q And you indicated that you gave  
10 him the name of a Nielsen report that other  
11 programmers had brought in to you when you  
12 were negotiating?

13 A Yes.

14 Q And how long did it take for you  
15 to work out with Mr. Cuddihy --

16 MR. FREDERICK: Your Honor, none  
17 of this is in his testimony, his written  
18 testimony.

19 MR. KIRK: Your Honor, if you go  
20 to page 10 and 11 on paragraph 24.

21 JUDGE SIPPEL: Paragraph 24.

22 MR. KIRK: Based on my

1 experience, programmers generally compile a  
2 list of systems, where he is talking about  
3 what list of systems were presented.

4 MR. FREDERICK: Your Honor, there  
5 is no reference to Mr. Cuddihy in paragraph  
6 24.

7 MR. KIRK: He also indicates  
8 Nielsen Media Research. Mr. Cuddihy has also  
9 indicated in his testimony that you are well  
10 aware that this process took 1-1/2 years to  
11 try to figure out.

12 MR. FREDERICK: Your Honor, there  
13 is no reference to a discussion between Mr.  
14 Ortman and Mr. Cuddihy in the 2007 time period  
15 regarding any list of systems in paragraph 24.

16 I move to strike this whole  
17 testimony.

18 JUDGE SIPPEL: Might spend more  
19 time on this if we had some time, but we have  
20 to move this along, and I want to be sure the  
21 record is complete.

22 Well, I am saying it that way,

1 number one. This is an unusual, this is an  
2 out of the ordinary case, with specific  
3 direction by the Commission to get it  
4 expedited. So I don't want to have to come  
5 back again.

6 Number two, I don't see how you  
7 could be surprised or in the common parlance  
8 sandbagged in anyway by this. You know what  
9 Mr. Ortman is about, and it's no surprise to  
10 hear this come up.

11 Perhaps there is a deficiency in  
12 the paragraph, but I don't think it is worth  
13 spending a lot of time on. So for those  
14 reasons I am going to overrule the objection  
15 and let you go forward, Mr. Kirk.

16 MR. KIRK: Thank you, Your Honor.

17 Mr. Ortman is now available for  
18 cross-examination.

19 CROSS-EXAMINATION BY COUNSEL FOR MASN

20 BY MR. FREDERICK:

21 Q Good afternoon, Mr. Ortman.

22 A Good afternoon, Mr. Frederick.

1 Q You and I met at your deposition a  
2 few weeks ago.

3 A We did.

4 Q You are in charge of the eastern  
5 division of Comcast Cable Systems; correct?

6 A I am in charge of programming for  
7 the division.

8 Q And one of your responsibilities  
9 is managing bandwidth for Comcast; correct?

10 A That is correct.

11 Q And you are responsible for the  
12 systems in the Harrisburg DMA; correct?

13 A That is correct.

14 Q And you are responsible for  
15 Comcast systems in the Roanoke-Lynchburg DMA,  
16 correct?

17 A Programming, that's correct.

18 Q And bandwidth, too?

19 A Yes, correct.

20 Q But you are not responsible for  
21 the Comcast systems in the Tri-Cities DMA,  
22 correct?

1 A That is correct.

2 Q Okay. So you've been in charge of  
3 the eastern division as it is presently  
4 constructed since about early 2006; correct?

5 A That's correct.

6 Q And at that time there was a  
7 merger between the Atlantic division and the  
8 eastern division, correct?

9 A That is correct.

10 Q And at that time you picked up  
11 parts of Pennsylvania and parts of New Jersey;  
12 is that correct?

13 A All of New Jersey and parts of  
14 Pennsylvania, that's correct.

15 Q Okay. Before that time you did  
16 not have responsibility for Pennsylvania; is  
17 that correct?

18 A That is correct.

19 Q Now you have to get approval to  
20 add new programming channels; is that correct?

21 A That's correct.

22 Q And that process of obtaining

1 approval goes to Philadelphia corporate  
2 headquarters for Comcast; correct?

3 A Ultimately that is correct.

4 Q And that group that is responsible  
5 for that addition of new programming channel  
6 is Matt Bond's group; correct?

7 A They are one of the entities that  
8 signs off on the approval; that's correct.

9 Q But you don't have the ability to  
10 sign off on the addition of a new channel  
11 yourself, is that correct?

12 A I am one of the approvers in the  
13 process. No channel change is done by one  
14 person. It is a group process from field to  
15 region, division, and corporate.

16 Q Okay, but the buck doesn't stop  
17 with you so to speak?

18 A No.

19 Q You have to get the approval of  
20 people above you in the food chain, so to  
21 speak?

22 A I can stop it, but I can't approve

1 it; that's correct.

2 Q That's correct? Okay. So one of  
3 your contacts for that purpose is Jen Gaiski,  
4 is that correct?

5 A That's correct.

6 Q And Jen Gaiski works for Matt  
7 Bond?

8 A She does.

9 Q And Jen Gaiski's last name for the  
10 record is G-a-I-s-k-I, did I get that correct,  
11 sir?

12 A You did.

13 Q Okay. And she reports to Matt  
14 Bond; is that true?

15 A That's my understanding.

16 Q Now I believe that you've  
17 testified, your testimony is that competitors  
18 of Comcast include the satellite operators;  
19 correct?

20 A DIRECTV and Dish Network.

21 Q And another competitor for Comcast  
22 is Verizon FiOS, correct?

1           A       In some areas, yes.

2           Q       But most of the cable operators in  
3 the MASN footprint are not competitors with  
4 Comcast; is that correct?

5           A       Most are neighbors; some are  
6 overbuilders.

7           Q       And if they are neighbors Comcast  
8 does not compete with those cable operators,  
9 correct?

10          A       Correct.

11          Q       So it's only the overbuilders that  
12 Comcast is competing with for subscribers to  
13 pay television, correct?

14          A       That's correct.

15          Q       And the overbuilders represent a  
16 relatively small percentage of cable operators  
17 in Comcast's footprint; is that correct?

18          A       It depends on how you treat  
19 Verizon FiOS. If you consider them an  
20 overbuilder, they are a very substantial and  
21 significant overbuilder.

22          Q       Okay, I used the word, cable

1 provider. You don't consider Verizon FiOS a  
2 cable provider, do you?

3 A They have wires, we have wires. I  
4 mean Verizon FiOS is an overbuilder.

5 Q Fine. Leaving aside Verizon FiOS,  
6 would you agree with me that other cable  
7 providers represent a relatively small  
8 percentage of overbuilders within Comcast's  
9 foot print?

10 A Yes.

11 Q Now I'd like to ask you a few  
12 questions about double standards that Comcast  
13 engages in with respect to its affiliated  
14 programming and MASN.

15 Do you know what a double standard  
16 is, sir?

17 A I believe I do.

18 Q What would you define a double  
19 standard to be?

20 A You would have one standard for  
21 dealing with one party and a different  
22 standard for dealing with another.

1 Q Okay. I'll accept that  
2 definition. You take one standard for one  
3 person, and you use a different standard for  
4 treating somebody else. Am I with you so far?

5 A Yes.

6 Q Okay, now isn't it true that  
7 Comcast uses a double standard in dealing with  
8 its affiliated RSNs versus what it does with  
9 an unaffiliated RSN like MASN?

10 A No, that's not true.

11 Q You disagree with that  
12 proposition?

13 A I certainly do.

14 Q Okay. Now I'd like the Court to -  
15 -

16 MR. FREDERICK: May I approach  
17 the witness, Your Honor?

18 JUDGE SIPPEL: Sure.

19 MR. FREDERICK: Your Honor, I've  
20 given the witness MASN Exhibit No. 70.

21 JUDGE SIPPEL: All right. Is  
22 that in or out?

1                   MR. FREDERICK:    This has been  
2 admitted into evidence, Your Honor, in our  
3 document session on Monday.

4                   BY MR. FREDERICK:

5           Q        Mr. Orszag -- Mr. Ortman, can I  
6 ask you to identify this exhibit? I believe  
7 you have seen it before at your deposition?

8           A        I believe I did, yes. It appears  
9 to be a list of Comcast cable systems in  
10 mostly the eastern division; there are a few  
11 at the end in the north central and southern  
12 division with columns indicating what state,  
13 MASN subs, CSN-Philadelphia subs and CSN Mid-  
14 Atlantic subs.

15           Q        Have you seen this document  
16 before?

17           A        During my deposition. This  
18 appears to be the same document.

19           Q        And I can represent to you there  
20 is an exact copy of the document that you saw  
21 in your deposition. This is a document, is it  
22 not, sir, purporting to represent all of the

1 Comcast systems within MASN's footprint that  
2 carry MASN, CSN-Philly and CSN MA, is that  
3 correct?

4 A This is bigger than that. This is  
5 bigger than MASN's footprint.

6 Q Okay, please correct me then.

7 A For example MASN is not available  
8 in New Jersey.

9 Q Okay. Am I correct that this  
10 represents all of the Comcast systems carrying  
11 CSN Philly?

12 A I'm looking for ones beyond the  
13 Harrisburg, Lebanon, Lancaster, York area.

14 Q Take your time, sir.

15 (Pause)

16 A Yes, this appears to be a complete  
17 list of CSN Philadelphia and CSN MA and MASN  
18 systems.

19 Q Okay, so just so the record is  
20 clear, you agree that this represents a list  
21 of all Comcast systems that carry and  
22 distribute CSN Philadelphia; correct?

1           A       That is my understanding; yes.

2           Q       Is it also a list of all Comcast  
3 systems that distribute CSN MA?

4           A       It would appear to be, yes.

5           Q       Is it also a list of systems by  
6 Comcast that carry or do not carry MASN?

7           A       It's the "or do not carry" part  
8 that I'm struggling. Because I don't know  
9 that it's a complete list of all systems.  
10 There are some on here that don't carry either  
11 or any. Yes, it would appear to be.

12          Q       Okay. Now I'd like to ask you to  
13 identify for the court the three right most  
14 columns and what those numbers represent. So  
15 let's start with the MASN subs. Can you  
16 identify for the court what that column  
17 purports to represent?

18          A       At some point in time this was a  
19 snapshot of how many MASN subscribers there  
20 were on that particular lineup.

21          Q       And when you say that particular  
22 lineup, you mean that system name and the

1 number of subscribers attached to that system  
2 name?

3 A Yes.

4 Q And then the division, eastern  
5 division, represents what you had supervision  
6 over, correct?

7 A Correct.

8 Q And the state represents the state  
9 of the union, or the republic, in which that  
10 system happens to be?

11 A That's correct.

12 Q So if we list for opening purposes  
13 let's take the second column, the CSN Philly  
14 subs, CSN PA, and you understand that to be  
15 CSN Philadelphia?

16 A Yes.

17 Q And you are okay if I call that  
18 CSN Philly?

19 A No problem.

20 Q So the third column would be CSN  
21 MA, or CSN Mid-Atlantic, and subs mean  
22 subscribers. Are you with me?

1           A        I'm with me.

2                    JUDGE SIPPEL:    Has this got to be  
3 retained? This is confidential, more  
4 confidential. Is it necessary to retain it?

5                    MR. KIRK:     Yes, Your Honor. It  
6 is a subscriber nondisclosure.

7                    JUDGE SIPPEL:    And did you  
8 determine who prepared this list for what  
9 purpose?

10                   MR. FREDERICK:   Your Honor, let's  
11 ask the witness.

12                   BY MR. FREDERICK:

13           Q        Mr. Ortman, do you know who  
14 prepared this list?

15           A        No, I do not.

16           Q        But it was represented to you as  
17 part of Mr. Orszag's attached economic expert  
18 report; is that correct?

19                   MR. KIRK:     Objection, Your Honor.  
20 Represented by who.

21                   MR. FREDERICK:    I will rephrase  
22 the question.

1 JUDGE SIPPEL: Thank you, sir.

2 BY MR. FREDERICK:

3 Q Did we discuss at your deposition  
4 or did you discuss with my partner, Mr. Kim,  
5 that this was a list attached to Comcast's  
6 expert report prepared by Mr. Orszag.

7 A I don't recall the Mr. Orszag  
8 part. But I recall you representing that this  
9 was provided to you by Comcast.

10 Q So this contains Comcast  
11 information we all think?

12 A Yes.

13 JUDGE SIPPEL: Well, he's  
14 confirmed the accuracy of this information?

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

17 JUDGE SIPPEL: But you don't know  
18 for what purpose this was prepared, or do you?

19 THE WITNESS: No, I don't.

20 BY MR. FREDERICK:

21 Q Now, going through this list, Mr.  
22 Ortman, just so the court is clear on what

1 these different pieces of information contain,  
2 can you take just skipping down the list a  
3 little bit to Rehoboth, Delaware. And what do  
4 the numbers in the three columns represent?

5 A It would suggest that MASN has  
6 [REDACTED] subscribers on that system; CSN  
7 Philadelphia has [REDACTED]; and CSN MA has the  
8 same number as MASN.

9 Q So that system carries all three  
10 regional sports networks?

11 A Actually, no. In that particular  
12 case, Rehoboth was cherry picking  
13 Philadelphia, Philly's games, because they  
14 were not allowed to carry -- allowed to carry  
15 the Sixers and the Flyers. On that one system  
16 games were inserted on a limited basic channel  
17 as opposed to carrying it full-time as an  
18 expanded basic channel. That's why you see a  
19 modest sub discrepancy.

20 Q I see. So Comcast made available  
21 one of its channels so that CSN Philly could  
22 air the games in that particular community?

1           A       No, it's a resort community, so we  
2     have an awful lot of fans from Philadelphia  
3     who go to Rehoboth Beach in the summers. And  
4     we wanted to keep them in touch with the  
5     Phillies, which was of great interest to the  
6     people who rent homes and condos and such at  
7     the beach. So we could not carry the channel  
8     full time. So we allowed them to carry the  
9     games and pay for the games. That's why the  
10    subscriber differentials there.

11           Q       I see. So Comcast made available  
12    at least a channel for the games only  
13    purposes?

14           A       Yes, we had a network there called  
15    the Comcast Network. The Comcast Delmarva  
16    Network, the very very local channel.

17           Q       I see. And that is a channel that  
18    is owned by Comcast?

19           A       Managed by Comcast locally.

20           Q       Okay. So that may have been the  
21    wrong example to take. Just for illustrative  
22    purposes, let's just move down one to

1 Annapolis, Maryland.

2 A Okay.

3 Q The number of subscribers in the  
4 left hand column shows the number that carry  
5 MASN; is that correct?

6 A Yes.

7 Q And the number on the middle shows  
8 a zero indicating that none of those  
9 subscribers gets CSN in Philly; is that right?

10 A Correct.

11 Q And the number on the right shows  
12 the number of CSN MA subscribers in that  
13 particular system?

14 A yes.

15 Q Now if I look all the way down  
16 this list on the first page, let's just take  
17 this page and Your Honor this is the page  
18 marked two on the bottom of the page. Is  
19 there any system on this list that does not  
20 get either a CSN Philly distribution or CSN MA  
21 distribution?

22 A There appears to be one called

1 Ocean County Brick MOU, because zeroes all the  
2 way across.

3 Q And where is that located?

4 A In New Jersey.

5 Q Okay, so that would be outside the  
6 coverage area of CSN MA, correct?

7 A Yes.

8 Q And that would be outside the  
9 television territory of MASN, correct?

10 A Yes.

11 Q And do you know why CSN  
12 Philadelphia is not distributed in that one  
13 community?

14 A I don't.

15 Q Okay, do you know whether that  
16 community has been wrapped up into another  
17 Comcast system?

18 A Could be.

19 Q So it's possible that that zero  
20 doesn't really signify no distribution;  
21 correct?

22 A Could be a comment on the status

1 of the lineup, but it's in a state of being  
2 phased out.

3 Q Okay, so just so the Court  
4 understands, when you say -- I think you say  
5 rolled up, is that the right term?

6 A Rolled in or phased out. It's a  
7 small system, no longer being treated as an  
8 independent system; it's being rolled into a  
9 neighbor, larger one. It would be a zero for  
10 a period of time, and then it would be retired  
11 from the system altogether.

12 Q Okay, so this one might be rolled  
13 into the one above it, called Ocean County,  
14 correct?

15 A Correct.

16 Q And at that point, at some point  
17 in the system, the Ocean County Brick MOU  
18 would just be zipped off the system?

19 A Yes.

20 Q So for accounting purposes there  
21 is no significance to the Ocean County Brick  
22 MOU for purposes of ascertaining coverage for