

1 at the time there was no injured party. It  
2 was to the benefit of all, so it would have  
3 been consequential to me.

4 That was your answer in your  
5 deposition. Are you changing your testimony  
6 today, sir?

7 A I am adding to that the fact that  
8 the agreement prevented it, and I wanted to be  
9 sure with corporate when I heard they were  
10 doing it and the agreement prevented it, was  
11 this okay.

12 MR. FREDERICK: Your Honor -- I'm  
13 sorry, Mr. Ortman, my question was why you  
14 cared in your testimony was because allowing  
15 MASN to do split fees hurt Comcast affiliated  
16 and Comcast Spotlight; correct?

17 THE WITNESS: Because the  
18 standard --

19 BY MR. FREDERICK:

20 Q Correct?

21 A I'd like to answer your question.

22 Q That was my question, yes or no,

1 it mattered to you because allowing MASN to do  
2 split feeds hurt Comcast Spotlight; correct?

3 A It mattered to me because it was  
4 prohibited by the agreement.

5 Q That was not your testimony in  
6 your deposition. Your testimony in your  
7 deposition was, it mattered because it hurt  
8 Comcast Spotlight. Correct?

9 A Yes, that is what I said in my  
10 deposition.

11 Q Thank you. Now MASN doing split  
12 feeds represented competition with Comcast  
13 Spotlight, correct?

14 A Comcast -- MASN doing split feeds  
15 -- ask the question again, I'm sorry.

16 Q MASN doing split feeds represented  
17 competition with Comcast Spotlight; correct?

18 A It could.

19 Q And if MASN set its feeds for  
20 advertisers that limited Comcast Spotlight's  
21 potential, correct?

22 A It could.

1 Q And Comcast Spotlight represents  
2 CSN MA in making advertising buys, correct?

3 A It does no longer. I'm sorry, you  
4 mean the hyper locals inventory, or the  
5 network inventory?

6 Q When you were asked at your  
7 deposition why was it inconsequential to you  
8 when it was with Comcast Mid-Atlantic, you  
9 answered, because the party that is injured by  
10 split fees is our local sales ad group.

11 A Which is why there is a  
12 prohibition to split feeds and agreements.

13 Q Because that hurts the affiliated  
14 Comcast sales ads, sir, correct?

15 A Okay.

16 Q Is that yes?

17 A Yes.

18 Q Comcast Spotlight also represents  
19 Comcast Cable in making local advertising  
20 buys, correct?

21 A That's why I asked a minute ago.  
22 Do you mean the local or do you mean the

1 network? Because Comcast Spotlight no longer  
2 reps the network, but they do represent cable.  
3 That's why I was asking a clarifying question.

4 Q In 2007 when you answered these  
5 questions -- when you answered these questions  
6 at your deposition, were you confused about  
7 the question?

8 A I don't recall. It's been a  
9 couple of weeks.

10 Q When you were deposed, were you  
11 not asked by Mr. Kim that if you were confused  
12 about a question to seek to clarify the  
13 question?

14 A I was.

15 Q With respect to this question you  
16 now appear to be confused about the question.

17 A No, I understand the question.  
18 I'm just trying to clarify what you -- you are  
19 separating the network inventory from the  
20 local inventory when you are asking the  
21 question. I'm just asking you to clarify.  
22 Because Comcast Spotlight no longer reps the

1 time for Comcast Sports Net. They do  
2 represent the time for Comcast Cable. That's  
3 what I'm trying to get across.

4 Q If MASN split its feeds that hurt  
5 Comcast Spotlight; correct?

6 A It could.

7 Q And that in part is because  
8 Comcast Spotlight also represents Comcast  
9 Cable; correct?

10 A That is correct.

11 Q Now Comcast Cable would be less --  
12 sorry, Comcast Spotlight would be less  
13 successful if MASN was permitted to split its  
14 feed; correct?

15 A Very unlikely, but possible, yes.

16 Q Mr. Ortman, on page 332 of your  
17 deposition you said, so Spotlight was going to  
18 be less successful because MASN was going to  
19 be splitting the feed. It would hurt us  
20 economically. You did not say possibly in  
21 your answer in your deposition, did you, sir?

22 A You are reading a section of it.

1 I assume you are accurately reflecting what I  
2 said at the time.

3 Q Would you like to see your  
4 deposition?

5 A The whole thing?

6 Q Whatever will refresh your  
7 recollection as to the accuracy of your answer  
8 at your deposition, sir.

9 A I believe I said that at the  
10 deposition.

11 Q Okay, and do you stand by that  
12 answer today, sir?

13 A I would like the opportunity to  
14 expand on it, but if you are not going to  
15 afford me that opportunity, then I have to  
16 stick with that.

17 Q We'll get to that.

18 A Is my deposition my testimony, or  
19 are you going to let me give a full answer?

20 Q Mr. Ortman, we will get to that.  
21 If Comcast Spotlight was hurt that would hurt  
22 Comcast economically, correct?

1 A Yes.

2 Q And you objected to MASN splitting  
3 its fee because you did not want to set  
4 precedent, correct?

5 A Yes.

6 Q You wanted to protect the profit  
7 stream of a Comcast affiliated entity;  
8 correct?

9 A Spotlight in that case?

10 Q Yes.

11 A Yes.

12 Q You didn't worry about setting  
13 precedent when it was favorable to CSN MA,  
14 correct?

15 A At that time Comcast Spotlight  
16 repped both, so it did not matter. So there  
17 was no showing favoritism; it did not matter.

18 Q Both Comcast and CSN MA were  
19 benefitted by that arrangement; correct?

20 A Yes.

21 Q So CSN MA and Comcast Cable get  
22 the benefit of the precedent, but an

1 unaffiliated programmer like MASN does not;  
2 correct?

3 A Because it wasn't in the  
4 agreement. Yes.

5 Q I want to ask about overflow  
6 channels. Isn't it true that Comcast has a  
7 double standard with respect to overflow  
8 channels?

9 A No.

10 Q In 2002, 2003, the Professional  
11 Sports Telecast by CSN MA would occasionally  
12 have conflicts, correct?

13 A 2002-2003? Yes, I assume so. I  
14 don't remember specifically.

15 Q In your deposition you answered  
16 yes. Do you recall that testimony?

17 A I probably was given some more  
18 information, but I will accept that that was  
19 true.

20 Q Such conflicts would be when the  
21 Orioles and Wizards would be playing at the  
22 same time?

1 A Yes.

2 Q And also when the Wizards and the  
3 Capitals would be playing at the same time?

4 A That is correct.

5 Q And when that happened Comcast had  
6 to scramble to find another channel to put on  
7 the game, correct?

8 A Yes, we did.

9 Q And you don't know whether Comcast  
10 was required to put by contract -- to put a  
11 conflict game on another channel, correct?

12 A In 2002-2003, it went on the news  
13 channel eight in the Washington area --

14 Q Would you answer my question,  
15 please sir?

16 A I'm not sure I understand the  
17 question.

18 Q The question was, you don't know  
19 whether Comcast was required by contract with  
20 CSN MA --

21 A No, I do not know if we were  
22 required by contract.

1           Q       If I could finish the question the  
2 record will be cleaner. Let me try that  
3 again.

4                    You don't know whether Comcast was  
5 required by contract to put that game, that  
6 conflict game, on another channel?

7           A       That is correct; I do not.

8           Q       And that is because you have never  
9 seen the agreement between Comcast and CSN MA?

10          A       Correct.

11          Q       And in your direct testimony you  
12 said that MASN requires two channels for  
13 carriage; correct?

14          A       That's correct.

15          Q       And you compare MASN with CSN MA  
16 and CSN Philly, correct?

17          A       In what respect?

18          Q       With respect to overflow channels.

19          A       I compared them?

20          Q       Mr. Ortman, I direct you to  
21 paragraph 17 of your written direct testimony  
22 that has been admitted in this case.

1           A       Paragraph 17?

2           Q       Yes.

3           A       Okay.

4           Q       And if I could direct you to the  
5 last two sentences of your written testimony,  
6 could you please read the last two sentences  
7 after the end, confidential notation, at the  
8 top.

9           A       MASN also is more costly than  
10 other networks from a bandwidth perspective  
11 because it requires the use of two analog  
12 channels to televise Orioles and Nationals  
13 games; they're scheduled to be played at the  
14 same time. In comparison, when the agreement  
15 was negotiated and implemented, Comcast  
16 affiliated networks, CSN MA and Comcast Sports  
17 in Philadelphia each required only one channel  
18 for carriage on a cable system.

19          Q       When there was an overflow  
20 situation for CSN MA, there was a functional  
21 equivalent of two channels that were needed at  
22 that time, correct?

1 A For CSN MA?

2 Q Yes.

3 A That was needed?

4 Q When there was a conflict. You  
5 just answered --

6 A Yes, on very rare occasion, yes.  
7 You are comparing apples and oranges. That's  
8 why I'm struggling with the answers.

9 Q Well, Mr. Ortman, you testified  
10 that MASN needs two full-time bandwidth  
11 channels, correct?

12 A Yes.

13 Q And is it not the case that during  
14 the months of November through April, or  
15 through the beginning of April, there are no  
16 professional baseball games being telecast by  
17 MASN, correct?

18 A That's correct.

19 Q So during those six months of the  
20 year there is no need for a second bandwidth  
21 channel for MASN; correct?

22 A That is correct.

1 Q And during those months CSN MA  
2 uses the very same channel when there are  
3 overflow games for CSN MA, correct?

4 A They do now.

5 Q So the very same bandwidth --

6 A Excuse me, but --

7 Q Mr. Ortman, the very same  
8 bandwidth that you assert to be needed for  
9 MASN is being used by CSN MA for exactly the  
10 same purpose in a different time of year,  
11 correct?

12 A The original question was about  
13 2002-2003, and now you are asking about now.  
14 I'm asking you to clarify which timeframe are  
15 you talking about, now or then?

16 Q In 2002-2003 Mid-Atlantic Sports  
17 Network was not telecasting Orioles and  
18 Nationals games, was it?

19 A Correct.

20 Q And as we look in the current time  
21 period is it your testimony that Comcast and  
22 CSN MA used the same bandwidth for overflow

1 purposes when there are conflict games?

2 A The answer is yes.

3 Q And is it not that case that for  
4 CSN Philly, Comcast uses a Comcast network  
5 channel for overflow games?

6 A Yes, they do.

7 Q And that is because there are  
8 conflicts between the games of the  
9 Philadelphia Phillies, the games of the  
10 Philadelphia Flyers, and the games of the  
11 Philadelphia 76ers on occasion?

12 A That is correct.

13 Q But your testimony is that in  
14 comparing the overflow games for MASN, MASN  
15 needs a second bandwidth channel, correct?

16 A That's correct.

17 Q But for the CSN RSNs, there is not  
18 a need for a second overflow channel; that is  
19 your testimony, correct?

20 A No, there is a need for a second  
21 overflow channel for Comcast Sports Nets  
22 overflow at this time.

1 Q Okay, so both CSNs and MASN need  
2 an overflow channel; correct?

3 A Yes.

4 Q So your testimony that there is a  
5 difference between MASN and the CSNs is just  
6 wrong?

7 A No, not true at all. The volume  
8 of overflow is the distinction, sir.

9 Q Okay, I'd like to ask you about  
10 your Comcast treatment of the proprietary  
11 information for unaffiliated networks.

12 Is it a fact, sir, that Comcast  
13 has a double standard in the treatment of an  
14 unaffiliated RSN's proprietary information?

15 A I do not believe so.

16 Q Now would you agree that a  
17 programmer's rate card is confidential?

18 A Yes.

19 Q And when you were with HTS as a  
20 programmer, you wanted to keep that information  
21 confidential, correct?

22 A Yes.

1 Q In your deposition you said it  
2 would be troubling if a programmer's rate card  
3 were shared with a competitor; do you recall  
4 that testimony?

5 A Yes.

6 Q And do you stand by it today?

7 A Yes.

8 Q You still agree that it would be  
9 troubling if a programmer's rate card were  
10 shared with a competitor?

11 A Yes.

12 Q And you wouldn't give a CSN  
13 affiliate agreement to MASN, would you?

14 A No.

15 Q Because it would be confidential?

16 A Correct. I don't have it, but  
17 also because it's confidential; that's  
18 correct.

19 Q All right. And you wouldn't give  
20 a Fox affiliated sports agreement to MASN  
21 either, would you?

22 A No.

1 Q And that's because that's  
2 confidential information, correct?

3 A Yes.

4 MR. FREDERICK: May I approach,  
5 Your Honor?

6 JUDGE SIPPEL: Please do.

7 (Pause)

8 JUDGE SIPPEL: Is this in  
9 evidence, MASN 108?

10 MR. FREDERICK: Yes, sir.

11 JUDGE SIPPEL: Highly  
12 confidential material here.

13 MR. FREDERICK: Your Honor, we  
14 won't be going into the highly confidential  
15 details.

16 JUDGE SIPPEL: Okay.

17 BY MR. FREDERICK:

18 Q Mr. Ortman, I just want to ask you  
19 about this document with respect to the names  
20 of the people identified in the email chain.

21 A Okay.

22 Q I'd just like to state for the

1 record that on the first page of MASN Exhibit  
2 No. 108 I do not believe that you were a  
3 recipient of this email.

4 A Correct.

5 Q Unless you were blind copied and  
6 for some reason that's not reflected on this  
7 document; is that fair?

8 A That's fair.

9 Q And if we could turn to the second  
10 page of this document. Are you with me? This  
11 is an email from Mr. David Gluck to Mr. Matt  
12 Bond and Mr. Alan Tannenbaum, with a copy to  
13 Ms. Kelly O'Connell?

14 A That's what it says, yes.

15 Q And the subject line says, new  
16 term sheet, does it not?

17 A Yes.

18 Q And do you know who Mr. David  
19 Gluck is?

20 A I do.

21 Q Can you identify for the Court who  
22 he is?

1           A       He is a consultant that was  
2 working with MASN on the deal.

3           Q       Okay. And can you identify for  
4 the Court who Mr. Matt Bond is?

5           A       Matt Bond is the head of  
6 programming for Comcast Cable.

7           Q       And who is Mr. Alan Dannenbaum?

8           A       He worked for Matt at that time.

9           Q       And who is Mr. Kelly O'Connell?

10          A       She I believe is Matt's assistant.

11          Q       And just looking at this, this  
12 appears to be a transmittal on August 2nd,  
13 2006, from Mr. David Gluck to Mr. Alan  
14 Tannenbaum and Mr. Matt Bond of the MASN term  
15 sheet for an affiliate agreement.

16          A       That is what it appears to be,  
17 yes.

18          Q       And attached to that is a highly  
19 confidential affiliate term sheet with terms  
20 that have been redlined, correct?

21          A       Yes, appears to be.

22          Q       Now if you turn to the first page,

1 the center of the email is Mr. Alan  
2 Tannenbaum. And Mr. Alan Tannenbaum works for  
3 Mr. Bond?

4 A At that time, yes.

5 Q Okay, and the recipients of this  
6 email are several persons who I will represent  
7 to the record, they are lawyers that I am  
8 familiar with, Mr. Casserly, Mr. Friedman, Mr.  
9 Schmidtlein. Do you know any of those  
10 individuals, sir?

11 A I talk with Jonathan Friedman a  
12 couple of times, but I don't know him at all,  
13 and the other two I'm not familiar with at  
14 all.

15 Q Okay, I don't want to get into any  
16 attorney-client privileged information. My  
17 question really concerns the cc line. Mr. Art  
18 Block is an employee of Comcast?

19 A Yes.

20 Q Mr. Art Burke is -- you don't know  
21 who he is?

22 A No.

1 Q And Mr. Joe Waz?

2 A I know of him.

3 Q And what is his role with Comcast?

4 A I'm not 100 percent sure.

5 Q And Mr. David Cohen, do you know

6 who he is?

7 A Senior executive with the company.

8 Q Okay. Do you know what his title

9 is?

10 A I don't.

11 Q Do you know who he reports to?

12 A I don't.

13 Q And Matt Bond is copied, [REDACTED]

14 [REDACTED].

15 A Yes.

16 Q [REDACTED]

17 [REDACTED]?

18 A [REDACTED]

19 [REDACTED]

20 [REDACTED].

21 Q [REDACTED]

22 [REDACTED]?

1 A [REDACTED]

2 Q [REDACTED]

3 [REDACTED]?

4 A [REDACTED]

5 Q [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED]?

9 A In some ways, yes; not many.

10 Q [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]?

14 A [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED]

17 Q Okay. Now you testified earlier  
18 that you would be troubled if the confidential  
19 terms of a programmer were sent to one of that  
20 programmer's competitor; wasn't that your  
21 testimony?

22 A Yes.

1 Q [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] [REDACTED]?

5 A [REDACTED]

6 [REDACTED] [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED].

11 Q [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 A [REDACTED]

15 [REDACTED]

16 [REDACTED].

17 Q Okay. I'd like to ask you a few  
18 questions about demand for MASN.

19 There is no formal process for  
20 determining demand within Comcast; correct?

21 A Correct.

22 Q And you don't have -- you don't

1 commission studies to determine demand within  
2 Comcast, correct?

3 A That's generally correct.

4 Q Okay. And you don't ask for types  
5 of demand studies on your own in your  
6 supervisory capacity?

7 A Generally no.

8 Q Okay, and when you worked for Home  
9 Team Sports in the 1989 to 1993 time period,  
10 HTS was telecasting approximately 85 to 90  
11 Orioles games per year; correct?

12 A Yes.

13 Q And by comparison HTS was  
14 telecasting approximately 40 to 50 Washington  
15 Capitals hockey games per year in that time  
16 frame?

17 A That sounds about right.

18 Q And HTS telecast approximately 40  
19 to 50 Washington Bullets games per year in  
20 that time period?

21 A Sounds right.

22 Q Home Team Sports television

1 territory tracked the Orioles television  
2 territory; correct?

3 A For most of the product, yes.

4 Q And it's the same television  
5 territory that MASN has today?

6 A Roughly, yes.

7 Q So throughout that territory  
8 consumers have been able to watch Orioles game  
9 on pay television for approximately two  
10 decades, correct?

11 A Some areas, no, not two decades.  
12 But approximately, I get your point, yes. The  
13 networks have been around 25 years, and it  
14 took at least five, in some cases 10 or 15, to  
15 get distribution.

16 Q You regard consumers as expressing  
17 loyalty to programming, correct?

18 A Yes.

19 Q And putting programming in a  
20 certain region creates a desire for that  
21 programming down the road, correct?

22 A It can.