

1 A That's my understanding.

2 Q Okay. And those Adelphia systems
3 would, in part, be in your eastern division.
4 Correct?

5 A Yes.

6 Q So, you had supervisory
7 responsibility for the acquisition of some of
8 the Adelphia systems?

9 A Well, I had supervisory
10 responsibility for the programming and
11 integrating those lineups into our
12 programming. Yes.

13 Q Were you involved in analyzing the
14 Adelphia systems in Virginia prior to the
15 closing of that deal?

16 A Over the course of the -- yes, to
17 a degree. The course of 2006, the summer of
18 2006, we had to get the existing lineups and
19 load them into our database, and that was the
20 role I played that summer.

21 Q And in that process, did you have
22 the occasion to learn about the bandwidth of

1 the former Adelphia systems?

2 A Some, yes.

3 Q Are you aware that Comcast
4 promised the Federal Communications Commission
5 to expend a large sum of money to upgrade
6 Adelphia systems?

7 A Well, there's a distinction
8 between upgrade and a rebuild. Which are you
9 referring to?

10 Q Well, for the Court, why don't you
11 explain the difference between an upgrade and
12 a rebuild.

13 A Sure. An rebuild is when you
14 increase the capacity, you invest money going
15 from low bandwidth, 450 or 550, or up to
16 something higher, typically 750 or better.
17 That's a rebuild. An upgrade could be a wide
18 array of things, including a rebuild. It
19 could be simply taking a rebuilt system and
20 introducing new products and services, by
21 introducing high definition, or video on
22 demand, or telephone service, or high speed

1 internet, a variety of things to upgrade the
2 customer experience.

3 Q So, just to make sure I have the
4 nomenclature right, because I'm not a cable
5 person. A rebuild is a subset of an upgrade?

6 A Yes.

7 Q Okay.

8 A That's a way to look at it, yes.

9 Q So, an upgrade would encompass
10 more than just rebuilds.

11 A It could.

12 Q Okay.

13 JUDGE SIPPEL: I hope these are
14 going to be showing up in the glossary. This
15 is a work in process.

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

18 JUDGE SIPPEL: Yes. Thank you.

19 THE WITNESS: Are you going to
20 make me read this?

21 JUDGE SIPPEL: In your spare time.

22 THE WITNESS: We're going to need

1 a long recess, Your Honor.

2 BY MR. FREDERICK:

3 Q Mr. Ortman, have you seen this
4 document before?

5 A No.

6 Q Would you accept my representation
7 that this is a submission by Comcast to the
8 Federal Trade Commission dated November 2005
9 in the Adelphia proceeding?

10 A I haven't had enough time to
11 review it to answer your question.

12 MR. SCHONMAN: I think you meant
13 Federal Communications Commission.

14 MR. FREDERICK: I'm sorry. Did I?

15 MR. SCHONMAN: I think you
16 referred to Federal Trade Commission.

17 JUDGE SIPPEL: Them, too.

18 MR. FREDERICK: Thank you, Mr.
19 Schonman. With all apologies to the Federal
20 Communications Commission -

21 JUDGE SIPPEL: To say nothing of
22 the Federal Trade Commission.

1 MR. FREDERICK: To say nothing of
2 the Federal Trade Commission, and all the
3 other commissions in the federal government.

4 (Laughter.)

5 BY MR. FREDERICK:

6 Q Mr. Ortman, this document has been
7 redacted to weed out confidential information,
8 but I'd ask you to turn to page 3, if you
9 will, of this document.

10 A Okay.

11 Q And at the very bottom, the
12 sentences beginning, "Comcast has estimated".

13 A Yes.

14 Q Would you please read that into
15 the record?

16 A "Comcast has estimated that nearly
17 blank dollars must be invested in the current
18 Adelphia systems in order to deliver new and
19 advanced services to subscribers, and to
20 maintain these systems at Comcast standards."

21 Q Okay. And then what follows is a
22 chart on the next page breaking down the

1 estimated investment by Comcast with respect
2 to different kinds of service.

3 A Yes.

4 Q And in the next paragraph, can you
5 read beginning with the line, "Moreover, the
6 vast majority."

7 A "Moreover, the vast majority of
8 Comcast's blank dollars upgrade estimate is
9 for upgrade revisits, or additional work that
10 must be completed on systems that Adelphia
11 already considers to be upgraded, but that do
12 not meet Comcast standards for advanced
13 services delivery. Footnote 7."

14 Q Are you aware that Comcast sought
15 to make the Adelphia systems meet Comcast's
16 standards for service to customers?

17 A No, I'm not. Not until -- I just
18 read two sentences out of a document I haven't
19 seen before, so, no, I'm not familiar with
20 that.

21 Q Leaving aside the document.

22 A Right.

1 Q Has anyone at Comcast ever told
2 you that a purpose of Comcast is to insure
3 that all the systems within Comcast meet
4 Comcast's standards for service to customers?

5 A No.

6 Q So, Comcast distinguishes between
7 the poor step children in Adelphia systems and
8 those that are at Comcast systems?

9 A No, you used the word "all", and
10 that was why I said no. Is it for all
11 systems? No. There are some that would not
12 qualify for that process. We talked earlier
13 about Cecilton/Galena, certainly not an
14 Adelphia property. It's been there for a long
15 time.

16 Q Is it a fact that Comcast promised
17 the FCC it would make a substantial investment
18 to upgrade former Adelphia systems?

19 A I don't know. It wouldn't be my
20 role.

21 JUDGE SIPPEL: Let me just follow
22 that up a little bit. You've got on a

1 footnote - well, let's go back to page 4, that
2 paragraph you read from.

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: "Moreover, the vast
5 majority of the money upgrade estimate is for
6 upgrade revisits or additional work", et
7 cetera. "Adelphia considers upgraded but do
8 not meet Comcast standards." Then down in
9 Footnote 7, the first sentence says
10 specifically, "Comcast has estimated it will
11 spend approximately blank dollars in upgrade
12 revisits. In addition, it plans to spend
13 slightly under blank dollars to upgrade
14 certain Adelphia systems to 750 megahertz."
15 I thought that would be a rebuild.

16 THE WITNESS: That's correct.
17 From what I'm reading there, that's what that
18 would be.

19 JUDGE SIPPEL: Oh, that's right.
20 You said -

21 THE WITNESS: They use the -

22 JUDGE SIPPEL: -- they could have

1 an upgrade which is a rebuild.

2 THE WITNESS: Correct. They're
3 using the term "upgrade" here, which would be
4 a rebuild.

5 JUDGE SIPPEL: Right.

6 MR. FREDERICK: Your Honor, I --
7 with all due fairness to Mr. Ortman, because
8 he has not been associated with this document,
9 we wanted to introduce it for the purpose of
10 establishing an answer to your inquiry of
11 yesterday about information publicly available
12 about Comcast's promise to the Commission
13 about upgrading Adelphia systems.

14 JUDGE SIPPEL: I did say that.

15 MR. FREDERICK: And if I could
16 refer -

17 (Off the record comments.)

18 MR. FREDERICK: Your Honor, this
19 is -- Comcast 138 has been admitted into
20 evidence.

21 JUDGE SIPPEL: Yes.

22 MR. FREDERICK: It's the Adelphia

1 Order.

2 JUDGE SIPPEL: Yes.

3 MR. FREDERICK: And if I may
4 approach the witness?

5 JUDGE SIPPEL: That's fine.

6 MR. FREDERICK: Just for
7 efficiency sake, Your Honor, we didn't make an
8 extra copy of this for -

9 JUDGE SIPPEL: I have it. Oh, I'm
10 sorry.

11 MR. FREDERICK: I want to just ask
12 if -

13 JUDGE SIPPEL: You don't have any
14 notes on that, do you? Is it a clean page
15 you're showing him?

16 MR. FREDERICK: I have no notes on
17 this. Would I be permitted simply to ask him
18 to review?

19 JUDGE SIPPEL: Any objection to
20 that?

21 MR. KIRK: No objection.

22 BY MR. FREDERICK:

1 Q Could I ask you to read from the
2 statement of the Chairman, where it says,
3 "Comcast and Time Warner have committed".
4 Could you read that sentence, please, into the
5 record? This is from Chairman Martin's
6 separate statement in the Adelpia Order,
7 Comcast Exhibit 138.

8 JUDGE SIPPEL: All right. What
9 page are you on?

10 MR. FREDERICK: Well, they are not
11 numbered sequentially, Your Honor.

12 JUDGE SIPPEL: Oh, okay. This is
13 a concurring statement of the Chairman. Is
14 that right?

15 MR. KIRK: Objection. I can't
16 find it in the exhibit.

17 JUDGE SIPPEL: All right. Let's
18 go off the record and get us all on the board
19 here.

20 (Whereupon, the proceedings went
21 off the record at 5:07:30 p.m., and went back
22 on the record at 5:08:34 p.m.)

1 MR. KIRK: Your Honor, I'm going
2 to object to reading it into the record. I
3 have no objection to showing it to him, but
4 I'm trying to figure out the relevance. You
5 said yesterday, it was a 3-2 decision, and I'm
6 not sure why -

7 JUDGE SIPPEL: Well, that goes to
8 the weight.

9 MR. KIRK: But why is Mr. -- what
10 is he going to be testifying to with regard to
11 what the Chairman thought?

12 JUDGE SIPPEL: Well, we don't
13 know. Let him get it in. I mean, this --
14 that one little paragraph?

15 MR. FREDERICK: It's just one
16 sentence, Your Honor. Yes. There's another
17 one -

18 JUDGE SIPPEL: Let him lay the
19 foundation. We'll see where it goes. Go
20 ahead.

21 BY MR. FREDERICK:

22 Q Could you read that sentence into

1 the record, please?

2 A This sentence says, "Comcast and
3 Time Warner have committed to make long needed
4 upgrades to those systems to enable the rapid,
5 and widespread deployment of advanced services
6 to Adelphia subscribers."

7 Q And that's the statement of
8 Chairman Martin.

9 A That's what it says at the top of
10 this page.

11 Q Okay. And if I could ask you to -
12 - one more statement, and we'll get off the
13 Adelphia Order. This is the statement of
14 Commissioner Jonathan Adelstein, approving in
15 part, and dissenting in part. Could you
16 please read that sentence into the record?

17 MR. KIRK: I'm going to object
18 again, Your Honor. He hasn't established
19 relevance for the first statement yet.

20 JUDGE SIPPEL: Well, let's -- you
21 know, it's cross examination. He can put it
22 in, and then if he can't make any use of it,

1 then it's not going to get -- it's not going
2 to be used in findings. Let's see where he
3 goes with it. Where are you with Adelstein?

4 MR. FREDERICK: "Notably", it's
5 the paragraph beginning, "Notably".

6 JUDGE SIPPEL: I have it.

7 MR. FREDERICK: Okay.

8 THE WITNESS: Just that sentence?

9 BY MR. FREDERICK:

10 Q Yes.

11 A It says, "Notably, in seeking
12 approval for this transaction, Comcast and TWC
13 have pledged to invest over \$1.6 billion to
14 upgrade Adelphia's network, which should bring
15 improved broadband services, access to voice-
16 over internet protocol, telephone service,
17 video on demand, and other innovations that
18 are currently enjoyed by many customers of
19 other cable and telephone companies."

20 JUDGE SIPPEL: Is that the
21 sentence you want?

22 MR. FREDERICK: Yes, Your Honor.

1 JUDGE SIPPEL: Now, where do we go
2 with that?

3 MR. FREDERICK: May I approach
4 with another exhibit, Your Honor?

5 JUDGE SIPPEL: Certainly. Yes,
6 sir. Thank you. This is MASN Exhibit 132.
7 Is this in the record?

8 MR. FREDERICK: Yes, Your Honor.

9 JUDGE SIPPEL: All right.

10 BY MR. FREDERICK:

11 Q Have you seen this document, Mr.
12 Ortman?

13 A Yes, during my deposition.

14 Q And can I direct you to the middle
15 of the email chain, a message from you to
16 Jennifer Gaiski, to others?

17 A Yes.

18 Q Would you please read your email
19 into the record?

20 A "Just received work below", I
21 believe it's supposed to be "word" - "just
22 received word below attached that the company

1 would like to divest certain non-strategic
2 assets, two of which were included in that
3 MASN proposal." And this is from February
4 `08, to give it context, we're going to settle
5 at the -- "in that MASN proposal. Goshen and
6 Brookneal, in the proposal these showed zero
7 subscribers. These would fall under the
8 categories of those "we're never going to
9 rebuild."

10 Q And, can you describe for the
11 Court what that marking is after the
12 quotation?

13 A That's a smile winky face.

14 Q Okay. It's an emoticon.

15 A Is that what it's called?

16 Q I think that's what it's called.

17 A An emoticon.

18 Q An emoticon.

19 A I learned something new today.

20 Thank you, Mr. Frederick.

21 JUDGE SIPPEL: Well, I almost got
22 it out. Really? An emoticon?

1 MR. FREDERICK: An emoticon.

2 BY MR. FREDERICK:

3 Q And, your emoticon - just to lay
4 the foundation, Mr. Ortman, the Goshen and
5 Brookneal systems were former Adelphia
6 systems, were they not?

7 A Yes, I believe they were.

8 Q Okay. And in this email, you are
9 saying that Comcast did not intend to spend
10 money to upgrade those systems. Correct?

11 A No. I was reminding Jen of the
12 conversation we had had a day or two
13 previously, in which I made that statement,
14 and was quickly corrected. I had made the
15 statement, "We're never going to rebuild", and
16 I was told never say never. We might rebuild
17 them eventually. Right now, there are no
18 immediate plans to rebuild.

19 Q So, at that time, there were no
20 immediate plans to rebuild the Goshen and
21 Brookneal former Adelphia systems.

22 A To my knowledge at that time,

1 correct.

2 Q Is it a fact that Comcast does not
3 intend to rebuild some former Adelphia
4 systems?

5 A We have no immediate plans to
6 rebuild some systems.

7 Q Okay. Is it a fact that some
8 former Adelphia systems in MASN's television
9 territory, Comcast does not intend to rebuild?

10 A We have no immediate plans to
11 rebuild. I don't know when, but that's
12 correct.

13 Q Can I ask you about Schedule A?

14 A Sure.

15 Q You're sure that you saw Schedule
16 A before it was sent to MASN.

17 MR. KIRK: Your Honor, I'm going
18 to renew my objection again to introducing all
19 of these statements. It's not his direct
20 testimony, and I'm not sure he's demonstrated
21 the relevance of having him reading those
22 statements in the record.

1 JUDGE SIPPPEL: Why don't we let
2 the witness leave the room. Can you excuse us
3 for just a second?

4 THE WITNESS: Sure.

5 (Off the record comments.)

6 JUDGE SIPPPEL: Let's be candid
7 about this. We've got -- we have had
8 testimony that part of the -- of Comcast's
9 promise to the Commission with respect to
10 getting the approval for the Adelphia Order
11 was that they were going to do all this
12 building -- I mean, whatever they said, they
13 said. And I think that is relevant, because
14 we were getting testimony here that they
15 carved out 150,000 subscribers because of --
16 you know the story, the Adelphia rebuild,
17 which now we're getting a little conflicting
18 story on that. Now, what's the basis for your
19 objection to this?

20 MR. KIRK: The objection is, he
21 had the witness read for the first time
22 Comcast's commitment to the FCC, and the

1 footnote that was read. And you may have
2 actually focused him on this. Footnote Seven
3 says, "Additionally, plans to spend slightly
4 under blank to upgrade certain Adelphia
5 systems."

6 JUDGE SIPPEL: All right. Well, I
7 wasn't focusing on the word "certain", but,
8 yes, you're right.

9 MR. KIRK: And it's only certain -
10 - I'm not sure where they're going, but
11 introducing the Commissioner statements that
12 don't talk about sort of any commitment for
13 every system. I'm not sure he's laid the
14 foundation or the relevance.

15 MR. FREDERICK: Your Honor, there
16 are two points here that are absolutely
17 critical. One is, it undercuts the
18 credibility of Comcast's representations to
19 MASN that the reason they couldn't launch the
20 Roanoke-Lynchburg was because they were former
21 Adelphia systems that needed to be upgraded.
22 And it undercuts that in two ways. One, he's

1 just testified that, in fact, he knew in July
 2 of 2006 that those very same systems had
 3 already been upgraded. And, number two, the
 4 Comcast negotiators had to have known about
 5 the representations Comcast was making to the
 6 Commission about spending lots of money. He
 7 was the person who was going to implement the
 8 upgrading of the former Adelphia systems to do
 9 whatever upgrades Comcast was going to do.
 10 So, I think there's plenty of foundation here
 11 to establish that there is -

12 MR. KIRK: He wasn't one of the
 13 negotiators.

14 MR. FREDERICK: Well, if I could
 15 just finish.

16 JUDGE SIPPEL: Yes.

17 MR. FREDERICK: The negotiators,
 18 and he, who has the role of implementing
 19 bandwidth upgrades, and knowing what channels
 20 are capable of being on the bandwidth, there's
 21 a disconnect between what the negotiators are
 22 saying, and what he, as the person responsible

1 for that, are saying. Completely undercuts
 2 the credibility of Comcast in this case.

3 JUDGE SIPPEL: Yes. Well, I mean,
 4 I see one could make the argument, I guess,
 5 that without properly bringing this witness
 6 into the loop when they were negotiating,
 7 maybe the negotiators really didn't have
 8 enough information to make the representations
 9 that they were making. I don't know, but it's
 10 -- I don't know why you'd be arguing relevance
 11 on this point. There are issues of
 12 reliability, et cetera, et cetera, which would
 13 go to the weight. But this seems to go -- I
 14 mean, we've all sat here and listened to this
 15 testimony hour after hour about what was being
 16 held back. And it always tied in with
 17 Adelphia. So, I mean, how we don't get that -
 18 - try and clarify that better than -- at least
 19 to the satisfaction of the evidence that MASN
 20 can produce, I don't understand. I don't
 21 understand why you're reluctant to have that
 22 come out.

1 MR. KIRK: I'll clean it up on
2 redirect, Your Honor, assuming you'll give me
3 redirect.

4 JUDGE SIPPEL: You? Certainly,
5 you'll get redirect, yes. Nothing like a
6 clean up. I mean, I'm for that.

7 MR. KIRK: Thank you.

8 JUDGE SIPPEL: Let me -- I guess
9 that's about -- all right. Oh, I know what I
10 wanted to ask you to do, since he was the one
11 -- you're saying that he was the one that was
12 going to implement all of these commitments
13 for Adelphia rebuilds, et cetera.

14 MR. FREDERICK: That's what I
15 understand his role was in the company.

16 JUDGE SIPPEL: Well, would you
17 please ask him. Lay a little foundation, and
18 ask him. Don't lead him, but ask him.

19 MR. FREDERICK: Yes.

20 JUDGE SIPPEL: Well, you're on
21 cross.

22 MR. KIRK: Your Honor?

1 JUDGE SIPPEL: Yes, sir.

2 MR. KIRK: One other point.

3 What's the purpose of putting in Commissioner
4 statements? Will they be put in for the truth
5 of the matter? It's not decisionally
6 significant. It wasn't part of the decision.

7 MR. FREDERICK: It was their
8 exhibit. They moved it into evidence.

9 JUDGE SIPPEL: Well, that's part -
10 - I just don't see any problem with it. I
11 mean, it neither adds or abstracts. I mean,
12 you're absolutely right, but I don't think --
13 well, I guess the question is, do you really
14 feel prejudiced by that? How are you going to
15 be hurt by that?

16 MR. FREDERICK: It shows the
17 Chairman's understanding -

18 JUDGE SIPPEL: No, we don't need
19 any more.

20 MR. KIRK: Withdrawn.

21 JUDGE SIPPEL: Mr. Kirk, you --
22 let's get the witness back in. But do try and

1 lay -- did you find everything you needed,
2 sir?

3 THE WITNESS: I did. Thank you
4 very much.

5 JUDGE SIPPEL: Terrific. Sir, Mr.
6 Frederick.

7 BY MR. FREDERICK:

8 Q Mr. Ortman, in your role with
9 Comcast, are you responsible for, among other
10 things, bandwidth within the Eastern Division
11 systems?

12 A Yes, I help manage bandwidth.

13 Q So, if Comcast was investing money
14 to upgrade systems, that would be part of your
15 management responsibilities?

16 A No. I'm not part of the
17 engineering group. They do that.

18 Q Okay. But do you interface with
19 the engineering group to understand what
20 capacity needs each system has, or needs?

21 A No, that's not the way it works.
22 There are business decisions made by the