

1 you say the systems were free to add MASN.
2 They couldn't do it without corporate
3 approval. Isn't that correct, sir?

4 A The systems had to ask first. I
5 see what you're saying. Technically, I guess
6 you're right, but the systems had to ask. And
7 I don't recall any system asking, corporate
8 saying no.

9 Q But the system couldn't do it
10 unless corporate approved. Correct?

11 A Ultimately, that's true.

12 JUDGE SIPPEL: That's just --
13 isn't that just -- that's internal, to use my
14 term, a bureaucracy.

15 THE WITNESS: That's correct.

16 JUDGE SIPPEL: It just goes with
17 the territory. I mean, it doesn't mean that
18 they're fudging their commitments. I mean,
19 per se it doesn't mean that. Are you
20 suggesting that it might have been used as a
21 device, or is it some kind of a setup that
22 corporate knew all along that they were not

1 going to approve this stuff?

2 MR. FREDERICK: No. My point,
3 Your Honor, was that regardless of what the
4 system wanted, if corporate disapproved it,
5 the channel would not launch. And I think
6 that the witness has agreed with that.

7 JUDGE SIPPEL: Well, that's true
8 of every corporation. I mean, that's just the
9 way it goes.

10 BY MR. FREDERICK:

11 Q So, the hunting license is invalid
12 unless corporate approves the killing of the
13 game. Would you agree with that, Mr. Ortman?

14 A The killing of the game?

15 Q Yes.

16 (Laughter.)

17 MR. KIRK: I'll object to
18 characterization.

19 JUDGE SIPPEL: I hate to sustain
20 that one. I'll sustain it, though.

21 (Laughter.)

22 MR. FREDERICK: I think I made my

1 point.

2 BY MR. FREDERICK:

3 Q You also have testified about the
4 reasons for CSNMA getting dropped in
5 Harrisburg. Do you recall that testimony?

6 A Yes.

7 Q And you submitted a declaration in
8 July of 2008 stating that Comcast dropped
9 CSNMA from Harrisburg in February of '05. Do
10 you recall that declaration?

11 A Yes.

12 Q Okay. And you were asked about
13 that -

14 A I'm sorry. CSN -- yes, that's
15 correct, CSNMA.

16 Q Okay. We're talking about, just
17 so the record is clear, we're talking about
18 CSNMA.

19 A Yes.

20 Q Being dropped in Harrisburg.

21 A Yes.

22 Q In February 2005.

1 A Yes.

2 Q Okay. And you repeated that
3 assertion in your direct testimony, did you
4 not?

5 A Yes.

6 Q You were asked about that
7 assertion in your deposition, were you not?

8 A Yes.

9 Q And at your deposition, you said
10 that you had no first-hand knowledge about
11 this decision in 2005 itself. Correct?

12 A Correct, because that was not in
13 my jurisdiction in 2005.

14 Q And the basis of the information
15 you put in your declaration in July 2008 was
16 what someone else, Greg Wells, told you in the
17 summer of 2008. Correct?

18 A That's correct.

19 Q So, in your declaration in 2008
20 that you swore to, you were basing that on
21 information from somebody else, but not your
22 own first-hand personal knowledge. Correct?

1 A Correct.

2 Q Would you agree with me that
3 Comcast attempts to be accurate in its
4 representations to the Federal Communications
5 Commission?

6 A I would hope so.

7 Q Comcast tries to tell the FCC the
8 truth -

9 A Absolutely.

10 Q -- about what's going on with its
11 systems.

12 A Yes.

13 Q Your testimony is that Comcast
14 dropped CSNMA in Harrisburg in February 2005.
15 Correct?

16 A Yes.

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

19 JUDGE SIPPEL: Yes, you may.

20 Thank you.

21 MR. FREDERICK: Your Honor, I've
22 handed the witness MASN Exhibit 376.

1 JUDGE SIPPEL: That's in evidence?

2 MR. FREDERICK: No, I'm -

3 JUDGE SIPPEL: But it's marked
4 MASN exhibit.

5 MR. FREDERICK: It has not yet
6 been admitted into evidence, Your Honor.

7 JUDGE SIPPEL: Okay. All right.
8 So be it. Then it's marked as an exhibit.

9 (WHEREUPON, THE DOCUMENT REFERRED
10 TO WAS MARKED AS MASN EXHIBIT 376
11 FOR IDENTIFICATION.)

12 JUDGE SIPPEL: Go ahead. You can
13 go forward.

14 BY MR. FREDERICK:

15 Q Mr. Ortman, would you agree that
16 this document represents an application and
17 public interest statement submitted to the FCC
18 by, among others, Comcast Corporation?

19 A I've never seen this document
20 before, but it appears to be what you've
21 described. I see a familiar name in the
22 middle.

1 Q And would you agree with me that
2 the date that it was submitted was May 18th,
3 2005?

4 A That's the date at the bottom
5 left-hand corner of the page.

6 Q And the docket that is reflected
7 is MB Docket number 05-192.

8 A That is what it says.

9 Q And if I can refer you to the last
10 page of the exhibit.

11 A Okay.

12 Q It consists of a chart with
13 Regional Sports Networks owned by Comcast
14 Corporation.

15 A Yes.

16 Q And the left-hand column is an
17 identification of different networks.
18 Correct?

19 A Yes.

20 Q The second network is Comcast
21 Sports Net Mid-Atlantic?

22 A Yes.

1 Q In the middle column is the
2 service area for Comcast Sports Net Mid-
3 Atlantic.

4 A Yes.

5 Q And the places denominated as the
6 service area are Maryland, Virginia, Delaware,
7 the District of Columbia, parts of
8 Pennsylvania (Harrisburg, and York), and West
9 Virginia (Beckley and Bluefield). Do you see
10 that, sir?

11 A I do.

12 Q So, in May of 2005, Comcast is
13 representing to the FCC that CSNMA is in the
14 Harrisburg service area.

15 A No, that's not what I read here.
16 I read the names of the television markets
17 where -- for example, it wouldn't say all of
18 Pennsylvania, because CSNMA was not in all of
19 Pennsylvania. So as to clarify what portion
20 of Pennsylvania it was in part of it known as
21 the Harrisburg and York DMA, or more fully,
22 the Harrisburg-Lebanon-Lancaster-York DMA.

1 Q Is Beckley and Bluefield a DMA in
2 West Virginia, sir?

3 A Yes, it is.

4 Q Is it a DMA that -- there is a DMA
5 that's called Beckley and Bluefield. Correct?

6 A Yes, there is. It straddles the
7 Virginia-West Virginia line just west of
8 Roanoke.

9 Q The name of the DMA is Beckley and
10 Bluefield.

11 A Yes, it is.

12 Q And is there -- so your testimony
13 is that when Comcast made this representation
14 and it said Harrisburg and York, it was
15 talking about a DMA. Is that your testimony?

16 A That portion of Pennsylvania, yes.

17 Q But why didn't it say the
18 Harrisburg-Lebanon-Lancaster?

19 MR. KIRK: Objection, Your Honor.
20 He hasn't laid a foundation that he prepared
21 any of this. How can he testify as to what
22 was meant?

1 JUDGE SIPPPEL: Well, I'll sustain
2 the objection. I think you could ask the
3 question another way.

4 BY MR. FREDERICK:

5 Q What is the name -

6 JUDGE SIPPPEL: Is this document
7 accurate in terms of what it reflects, in your
8 knowledge? Not that you prepared it.

9 THE WITNESS: Thank you.

10 JUDGE SIPPPEL: Looking at this,
11 does this tell the story the right way?

12 THE WITNESS: Well, clearly, in
13 this three lines of copy, it's not a system
14 list of the hundreds of lineups that carry the
15 channel. So, I would interpret it to be a
16 general description of where each of these six
17 networks is carried.

18 JUDGE SIPPPEL: It says the service
19 area.

20 THE WITNESS: Correct.

21 JUDGE SIPPPEL: So, somebody
22 reading it at the Commission would say okay,

1 this is the service areas. Now, how do you
2 make -- how do you draw -- how do you cut that
3 one up a little bit? How do you qualify that,
4 these are the service areas. Right?

5 THE WITNESS: Well, this doesn't
6 appear to be a list of all the service areas.
7 That would be 10 pages long, or two pages
8 long, or whatever we looked at earlier today.
9 I just look at it as a general description of
10 the territory served by each of these
11 networks. For example, Comcast Sports Net
12 Chicago, Iowa, most of Illinois and Indiana,
13 and parts of Southern Wisconsin.

14 JUDGE SIPPEL: That's true as far
15 as it goes, is that right? Or is it?

16 THE WITNESS: I don't know. I'm
17 not familiar. I'm just looking at this
18 document. I'm not familiar with Comcast
19 Sports Net Chicago. Go on to reach Comcast
20 Sports Net West, California, Fresno, Monterey-
21 Salinas, which is a DMA, San Francisco,
22 Sacramento, Chico-Redding is a DMA. So,

1 again, it appears these are, in general terms,
2 DMA names, when clarification is needed beyond
3 referring to it as a state.

4 BY MR. FREDERICK:

5 Q So the testimony, Mr. Ortman, just
6 to be clear -- the name of the Harrisburg DMA
7 is the Harrisburg-Lancaster-Lebanon-York DMA.
8 Correct?

9 A It is, yes.

10 Q So, when Comcast wants to specify
11 a DMA, it uses the correct name of the DMA,
12 does it not?

13 A It could.

14 Q Okay. And parts of the service
15 areas identified on this list do not encompass
16 DMAs. Correct?

17 A Part of them do, part of them
18 don't, but I don't know what the DMA names
19 were at that time. I believe you said this
20 was from `05?

21 Q May of `05.

22 A Today, it's called the Harrisburg-

1 Lebanon-Lancaster-York DMA. Twenty years ago,
2 it was called the Harrisburg DMA. But these
3 other towns became more populated, more
4 prevalent -- DMA names change over time, and
5 become more thorough, more detailed to reflect
6 some additional communities in the DMA.

7 Q So, if one is just looking at some
8 of these names in the public, it's easy to get
9 confused about whether or not this is the DMA,
10 or just a city. Correct?

11 JUDGE SIPPEL: No, no, no. You
12 can't -- ask him what the document represents
13 as far as he knows, and he's already -- he's
14 explained that. He's not going to
15 characterize it as confusing.

16 BY MR. FREDERICK:

17 Q Just to be clear, is the DMA
18 reflected on West Virginia, can you identify
19 the name of that DMA?

20 A There is a DMA called Beckley-
21 Bluefield.

22 Q It's a hyphen, Beckley-Bluefield

1 DMA?

2 A Beckley and Bluefield, Beckley-
3 Bluefield.

4 Q Okay. So, like Chico-Redding
5 below was Comcast Sports Net West where
6 there's a hyphen?

7 A That's a way to express it, yes.

8 Q Okay.

9 JUDGE SIPPEL: I don't know --
10 could you give a proffer or something? What
11 are you trying to establish with this line of
12 questioning?

13 MR. FREDERICK: Well, we're trying
14 to establish that in May 2006, Comcast
15 appeared to be representing to the FCC that it
16 was carrying CSNMA in Harrisburg city, and it
17 did not identify the name of DMA accurately.
18 And, so, one reasonably might infer that it
19 was for the cities of Harrisburg and York, and
20 not for throughout the DMA.

21 MR. KIRK: Your Honor, can I
22 object again? This is an 86-page document. We

1 don't know whether it was described anywhere
2 in the document. The witness has said he
3 didn't prepare the table. I mean -

4 JUDGE SIPPEL: Yes, I will sustain
5 the objection. It's interesting, but it
6 really isn't -- it doesn't establish -

7 THE WITNESS: It says Harrisburg.
8 It also doesn't say -

9 JUDGE SIPPEL: No, you don't have
10 to say anything more.

11 MR. FREDERICK: I think I'm almost
12 done, Mr. Ortman.

13 BY MR. FREDERICK:

14 Q You were surprised in your
15 deposition to learn that Comcast has written
16 letters warning other distributors not to
17 carry MASN in 2005. Correct?

18 A I didn't know it to be the case,
19 so I can't say I was surprised. I didn't know
20 if it was true or not. I would have been
21 surprised, had it been true.

22 Q And you were surprised because it

1 wasn't Comcast's place to talk to other
2 operators. Correct?

3 A Correct.

4 Q You also are aware that Comcast
5 sent letters to its subscribers blaming MASN
6 for a mid-season price hike.

7 A Blaming is a strong word. I
8 believe I said explaining the reason for the
9 hike was because of this additional channel
10 that had a lot of costs associated with it,
11 yes.

12 Q And you can't think of another
13 instance in which Comcast sent out a letter to
14 subscribers singling out a particular network
15 for a rate increase. Correct?

16 A Not correct. Our annual increase
17 generally reflects back on channel changes
18 that were made over the course of the prior
19 year, so it's very common that we would
20 mention networks that had been added to the
21 lineup over the course of the prior year.

22 Q In your deposition, you testified

1 under oath to the question, "Are you aware of
 2 any other matter where -- letter or matter
 3 where a specific channel was cited for a non-
 4 annual rate increase?" And you answered,
 5 "No."

6 A I am not. I believe we also in the
 7 deposition went into a lengthy conversation
 8 about the extraordinary nature of this sudden
 9 and significant channel change and cost
 10 change.

11 Q Comcast has not sent out letters
 12 to subscribers blaming CSNMA for a rate
 13 increase, has it?

14 A I don't understand why that's
 15 relevant. We never added CSNMA out of the
 16 blue -- you're comparing apples and oranges
 17 here.

18 Q And when CSNMA increases its
 19 rates, Comcast does not send out letters to
 20 subscribers blaming CSNMA for a rate increase,
 21 does it?

22 A When we added CSNPA, York, we made

1 mention of it in the following year's rate
2 increase.

3 Q In the following years. You did
4 not engage in a mid-season rate increase when
5 you added CSN Philly at that time, did you,
6 sir?

7 A Because we waited a year and a
8 half to launch it so we could roll it into the
9 business plan and communicate it more clearly
10 to our customers, and not have to take a
11 special isolated rate event.

12 Q It's a fact, isn't it, that CSN
13 Philly is more expensive. Isn't it?

14 A More expensive than what?

15 Q MASN.

16 A In some parts of the territory,
17 yes.

18 Q You've never read the Adelphia
19 Order, have you, sir?

20 A No, I have not.

21 Q And you don't know specifically
22 what carriage obligations Comcast has pursuant

1 to the Adelpia Order, do you?

2 A I don't.

3 Q You understand the phrase,
4 "Discrimination on the basis of affiliation"
5 to mean treating all programmers fairly.
6 Correct?

7 A I understand that.

8 Q Regardless of who owns them.

9 A I understand that concept.

10 Q Or manages them.

11 A I understand that.

12 Q Or controls them.

13 A Yes.

14 Q So, regardless of whether it's
15 affiliated or not, you understand the phrase
16 "discrimination on the basis of affiliation"
17 to mean fair treatment to unaffiliated
18 programmers. Correct, sir?

19 A I don't under -- read that first
20 part of what you just said again. I'm sorry.

21 Q You understand the phrase,
22 "Discrimination on the basis of affiliation"

1 to mean fair treatment of a programmer not
2 affiliated with Comcast. Correct?

3 A Yes.

4 Q You've never received any training
5 on Comcast's obligations under the Adelphia
6 Order. Correct?

7 A No formal training, no.

8 Q Okay. No one from the Comcast
9 legal staff has ever told you what to be
10 concerned about with respect to the Adelphia
11 Order. Correct?

12 A No.

13 Q You've had training on sexual
14 harassment. Correct?

15 A I have.

16 Q You've had training on workplace
17 safety. Correct?

18 A I have.

19 Q But you never had training on
20 discrimination based on affiliation. Correct?

21 A No formal training, that's
22 correct.

1 Q And you rely on Comcast corporate
2 headquarters to guide you on discrimination on
3 the basis of affiliation. Correct?

4 A In part, yes.

5 Q And Comcast in this litigation is
6 relying on you to justify non-discrimination
7 against MASN. Are you aware of that, sir?

8 A Never thought of it that way.

9 Q Thank you.

10 JUDGE SIPPEL: To justify what?

11 MR. FREDERICK: Its claims of non-
12 discrimination against MASN.

13 JUDGE SIPPEL: Well, I think the
14 burden of proof is with MASN to prove
15 discrimination. I don't know if there's a
16 burden of proof to prove the negative.

17 MR. FREDERICK: Comcast is relying
18 on Mr. Ortman for its arguments that it has
19 not discriminated against MASN.

20 JUDGE SIPPEL: They've put Mr.
21 Ortman as a witness, and they're, obviously,
22 endorsing the truth of the matter there, or

1 they're perfectly confident that he's going to
2 get up here and he's going to testify to
3 truth, and what he knows. That's the only --
4 putting that much of a burden on this witness,
5 that he's going to disprove your case, good
6 God almighty.

7 (Laughter.)

8 JUDGE SIPPEL: Okay.

9 MR. FREDERICK: We all have our
10 burdens to bear, Your Honor, and I don't mean
11 to add to Mr. Ortman's burden. That's all I
12 have, sir.

13 JUDGE SIPPEL: Thank you very
14 much.

15 THE WITNESS: Thank you.

16 JUDGE SIPPEL: Redirect? No, I'm
17 sorry. Cross examination. Ma'am, you're on.

18 MS. MUMAW: Mr. Ortman, I'm
19 Elizabeth Mumaw. I'm co-counsel for the
20 Enforcement Bureau.

21 THE WITNESS: Nice to meet you.

22 MS. MUMAW: Nice to meet you. I

1 have a few questions for you, and I will try
2 to be quick. I want to talk about split feeds
3 for a little while.

4 THE WITNESS: Yes.

5 CROSS EXAMINATION

6 BY MS. MUMAW:

7 Q Comcast allowed split feeds for
8 CSN. Correct?

9 A Yes.

10 Q But you did not allow split feeds
11 for MASN. Correct?

12 A The agreement prohibited it, so we
13 enforced the agreement.

14 Q [REDACTED]
15 [REDACTED] ?

16 A I personally did not.

17 Q So, how did you know that you
18 could do, or you could allow splits feeds for
19 CSN?

20 A There was a pre-existing fiber
21 arrangement, the method by which the network
22 was delivered to the cable systems dating back

1 to the home team sports days, because it was
2 cleaner for home team sports to get its
3 signals to Comcast Cable in the Baltimore-
4 Washington area via fiber. And to get, for
5 some example, some extra Orioles broadcast
6 games - I'm sorry - Capitols and Wizards
7 broadcast games in D.C. DMA to Baltimore so we
8 can insert them on a channel there, where they
9 could not get broadcast distribution at that
10 time. So, we were able to capitalize on that
11 fiber to get more content from home team
12 sports, which later became Comcast Sports Net,
13 so it was pre-existing fiber arrangement that
14 allowed -- and then the other piece of the
15 fiber arrangement was Comcast Sports Net HD
16 was only available via fiber. It was not on
17 satellite, so the only way we could get that
18 was via fiber. So, when I came into the
19 equation, there was a pre-existing fiber
20 arrangement between the parties that I wasn't
21 familiar with. So, adding another component
22 to it, such as split signal, I took for

1 granted was already in place per some pre-
2 existing agreement that I didn't know about.
3 I'm sorry for the long answer, but does that
4 answer your question?

5 Q That's fine.

6 A Okay.

7 Q But, it sounded to me like that
8 was an explanation how it was technologically
9 possible. I guess I'm wondering how you knew
10 that it was permissible, based on company
11 policy.

12 A Because there were pre-existing
13 pieces that led me to believe it was okay.

14 Q So, you didn't feel the need to
15 check with anyone.

16 A I didn't at that -- well, it
17 wasn't my domain to really check that kind of
18 thing. That would be an engineering
19 conversation, that fiber one. And, again, I
20 didn't have a copy of the agreement to look
21 at.

22 Q But then when MASN -- when the