

1 topic came up with MASN -

2 A Right.

3 Q -- you then knew that you had to  
4 check.

5 A I had the agreement to look at.

6 Q Why did you have that particular  
7 agreement?

8 A I'm sorry. Finish your question.

9 Q I'll stop there. Why did you have  
10 that particular one?

11 A Because all of it was new, and  
12 compliance fell to me and members of my team,  
13 and other regions within our division. Almost  
14 all of the compliance with the agreement fell  
15 to us, so corporate wanted us to have that  
16 particular agreement so we could make sure we  
17 were fulfilling all of its terms and  
18 conditions. So, I was just more keenly aware  
19 of that provision in this one agreement. I  
20 generally don't see programming contracts. I  
21 could probably count on one hand the number  
22 I've seen.

1           Q       Any idea of why you only get  
2 particular agreements?

3           A       If the burden of fulfilling its  
4 obligations generally falls with me, I would  
5 see those. But networks, like Comcast Sports  
6 Mid-Atlantic, Philadelphia that have a legacy  
7 of carriage that predates Comcast's ownership  
8 of the network, and even Comcast's ownership  
9 of the cable systems, there's been a mode of  
10 operation for 10, 20 years, so there wouldn't  
11 be an infusion of newness, and contractual  
12 obligation kind of elements that require me to  
13 look at them.

14          Q       Okay. Now, I'm going to move on  
15 and ask about overflow. Can you explain the  
16 difference in the volume of overflow between  
17 Comcast and MASN?

18          A       Yes. Prior to 2007, the volume of  
19 overflow from Comcast Sports Net, and before  
20 them Home Team Sports was very small. It was  
21 generally confined to April and May when all  
22 three teams, Orioles, Wizards, and Caps were

1 playing at the same time. Very limited amount  
 2 of overflow. And maybe even during the winter  
 3 months, if there were Wizards and Caps at the  
 4 same time, those games might have gone over to  
 5 News Channel 8 in Washington, or on TC in  
 6 Baltimore. And outside that area, the  
 7 overflow might not have been picked up,  
 8 depending on capacity and switching  
 9 capabilities, and so forth.

10 Come 2007, the volume of overflow  
 11 of extra games that was going to be coming  
 12 from MASN was so significant, we really needed  
 13 to create a quasi-permanent solution, at least  
 14 one that would last for six months, because  
 15 we're talking about 130 or more overflow of  
 16 MASN two games. So, beginning in April of  
 17 '07, brought for the first time a real unique  
 18 and extensive challenge. In fact, the  
 19 agreement even gave us the right to put those  
 20 games on CN8, the Comcast Network. But even  
 21 the management of CN8, the Comcast Network,  
 22 said the volume is just too much. We can't

1 preempt this network that many times. Five,  
 2 ten, twenty, fine, but 130 is a lot. So when  
 3 the first MASN season was over, now MASN had  
 4 established over the course of that summer a  
 5 shared presence with CSPAN II, and throughout  
 6 most of the division that became the turnkey  
 7 simple solution from a programming standpoint  
 8 that seemed to make the most sense, because  
 9 the Senate was generally done in the evening,  
 10 and MASN needs were generally in the evening,  
 11 so we felt that those two pieces of content,  
 12 while obviously very different, could share a  
 13 channel without completely irritating some  
 14 significant group of constituents, and, at the  
 15 same time, put CSPAN II on digital so that it  
 16 would be uninterrupted there. If you really  
 17 wanted CSPAN II 24X7 without those baseball  
 18 games, you still could get that, so that was  
 19 the solution we worked out for that.

20 By the fall, now the channel is  
 21 established, CSN came forward and said we've  
 22 got some extra college stuff that generally we

1 wouldn't have carried, but can you do an  
2 overflow for us, too. And we said well, if  
3 it's valuable content, we already have the  
4 pre-existing mechanism set up that we spent  
5 the summer developing, could you carry it?

6 The answer is yes.

7 Q I heard in your answer that there  
8 were 130 or more instances of what would need  
9 overflow?

10 A Over a six month period.

11 Q But I didn't hear the number for  
12 Comcast.

13 A About 50 or 60 during the summer,  
14 I'm sorry, during the winter at the most.

15 Q And did Comcast have to air the  
16 overflow for MASN? Could they have just aired  
17 -- could they have chosen?

18 A For MASN?

19 Q Yes.

20 A No, it was a contractual  
21 obligation.

22 Q Okay.

1           A        The design of the MASN network was  
2   to take two baseball teams and split them  
3   across two networks.  It wasn't as if the  
4   Orioles were on one, and the Nationals were on  
5   the other.  It was roughly half the Nationals  
6   games were on one, and half were on the other,  
7   and half the Orioles games were on one, and  
8   half on the other, so it made it impossible to  
9   satisfy the fan to carry all on two channels.

10          Q        I'm going to move on again to  
11   consumer demand.  Are the Nielsen ratings the  
12   only measure of consumer demand?

13          A        No, by -- absolutely not.  In  
14   fact, they're not a very significant measure  
15   of consumer demand, as far as I'm concerned.  
16   Ratings are more of an advertiser-driven  
17   issue.  We're much more interested in consumer  
18   buying behavior.  Does this channel or that  
19   channel make your decision of who your  
20   provider is going to be?  For example, DirectTV  
21   has NFL Sunday Ticket.  That's caused an awful  
22   lot of people to leave cable and go get a

1 satellite dish. That's much more significant  
 2 consumer demand measure to us, than ratings.  
 3 Ratings would get our attention. It's a  
 4 measure. It would cause me to say to a field  
 5 person hey, are you aware, if I knew of those  
 6 ratings, are you aware the ratings are pretty  
 7 serious. You might lose some subs if you  
 8 don't carry MASN, but that never came up. So,  
 9 ratings are pretty insignificant in measure  
 10 for us.

11 Q Then how do you measure consumer  
 12 demand if you're looking for where consumers  
 13 will go?

14 A Subscribers loses. When a  
 15 customer calls in our call center and says I'm  
 16 dropping cable, I'm getting Dish, or I'm going  
 17 to Verizon FiOS because they have this channel  
 18 and you don't, we're able to track those  
 19 losses. We track reason codes in our call  
 20 centers where people disconnect for whatever  
 21 reason it may be.

22 Q So, it's a purely reactive

1 measure.

2 A In this case, yes, it's much more  
3 of a reactive measure. And as long as we had  
4 a hunting license, so I could react quickly,  
5 I felt we'd be okay.

6 Q How would you deal with a new  
7 network then, whether you would want to carry  
8 a new network?

9 A They have a long process of  
10 reviewing the information they present. They  
11 come in and explain, they present information  
12 to us with some surveys, research, ratings,  
13 member lists, a long array of things that a  
14 network would come and present to us as  
15 compelling reasons why we should consider  
16 carrying the network.

17 Q I think this is my last area of  
18 questions. Mr. Frederick asked you about  
19 discussions you had about MASN's carriage  
20 throughout the whole MASN territory. Do you  
21 remember that?

22 A Discussions I had with him? I'm

1 sorry.

2 Q Any discussions that you had with  
3 anyone.

4 A Right.

5 Q About whether MASN would be  
6 carried throughout the territory.

7 A Okay.

8 Q Do you remember that line of  
9 questioning?

10 A Yes.

11 Q Did you have -- so, I want to ask  
12 you then about your understanding of what MASN  
13 was seeking. Did you have an understanding  
14 that MASN desired coverage in all of MASN's  
15 territory?

16 A Did I have an understanding? I  
17 would assume any network wants as much  
18 coverage as they can get, full coverage. But  
19 did I understand them to expect they were  
20 getting it all? No. I wouldn't have been  
21 asked to put together a detailed -- had input  
22 on how to define the obligation, if the

1 expectation was to get everything.

2 Q Did you have reason to believe  
3 that they would be upset by not getting, in  
4 particular, Harrisburg, Tri-Cities, or  
5 Roanoke-Lynchburg?

6 A Immediately? No. I didn't find  
7 out for some time that they were actually  
8 surprised that they weren't there. It was  
9 many months later when I learned that MASN was  
10 shocked that they didn't have those systems,  
11 or they claimed to be shocked.

12 Q But you had no reason to foresee  
13 that.

14 A No. I thought they'd be very  
15 happy with what they got. Not a whole lot of  
16 networks are born with 2 million subscribers  
17 from Comcast on day one. I'm sorry, about a  
18 million and a half on day one, 600,000 or more  
19 a year later, or six months later.

20 Q So, the number that they were  
21 receiving is a number that you thought that  
22 they would -

1           A        It's a lot of subscribers, and a  
2    lot of money.  And it was the agreed upon  
3    number -- it was what was in the agreement, so  
4    I -- and I was not part of the deal team.  I  
5    wasn't in the room, so I don't know how they  
6    reacted to that, or how it came to be exactly.  
7    But, my only input was on formulating the  
8    framework of the obligation.

9                   MR. SCHONMAN:  Your Honor, if we  
10   could just have a moment?

11                   JUDGE SIPPEL:  Certainly.

12                   BY MS. MUMAW:

13           Q        I understand from your testimony  
14    that initially you were trying to limit the  
15    region where they would get coverage to  
16    Washington and Baltimore.

17           A        Limit the obligation.  They had  
18    the opportunity for the whole footprint,  
19    obviously.  The map was attached to the  
20    agreement.

21           Q        Sorry.  Awkwardly worded.  How did  
22    you learn that there was some push-back about

1 that, and that you were then asked to expand  
2 that?

3 A You mean after the agreement was  
4 signed?

5 Q No, in the request for you to help  
6 to create Schedule A.

7 A During the formulation process?

8 Q Yes.

9 A I know this better, because I  
10 reviewed some emails, and I can do this off  
11 the top of my head, but I had communicated  
12 with Jen Gaiski I would like to limit it to  
13 Baltimore and Washington. She conveyed that  
14 back to Matt Bond, from what I read, and now  
15 recall, and he said no, that's going to be too  
16 small. MASN won't accept that. We need  
17 something bigger. And then I -- so, in  
18 keeping with what I'd asked for, going bigger  
19 than Baltimore-Washington, but keeping it as  
20 small as you can, Salisbury-Charlottesville-  
21 Harrisburg-Richmond were added, as well as the  
22 systems along the Pennsylvania state line that

1 had a history of Orioles baseball.

2 Q Was that -- was it incrementally  
3 that you added those pieces, or did you go  
4 from Baltimore-Washington to Schedule A?

5 A I don't recall how exactly it fell  
6 out that way. As long as it met my three  
7 requirements, if financially we had to spend  
8 the money for the whole thing to get the deal  
9 done, then I would have had to accept that.  
10 But I don't recall how we graduated from my  
11 initial ask was Baltimore-Washington. I'm  
12 sure MASN's ask was the whole thing, and we  
13 wound up something slightly smaller than the  
14 whole thing. The graduation over that period  
15 of two weeks I don't recall.

16 Q Do you remember if you came up  
17 with your three criteria all at one time, or  
18 if you did a few, and then added some, or some  
19 were dropped?

20 A I'm pretty sure I laid them all  
21 out at once, because a lot of times corporate  
22 can make a commitment in our behalf without

1 knowing some of the granular detail that I've  
2 had to bore you with today. There were some  
3 issues, especially these more bandwidth  
4 constraints ones, or places where the  
5 perceived demand -- just because it's on a map  
6 doesn't mean there's demand. They aren't as  
7 engaged in it day-to-day as I was, so I felt  
8 from the beginning of being asked to  
9 participate in the process that I had to  
10 advocate aggressively for my systems to  
11 control costs.

12 MS. MUMAW: That's all I have.  
13 Thank you.

14 THE WITNESS: Thank you.

15 JUDGE SIPPEL: Redirect?

16 MR. KIRK: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. KIRK:

19 Q Mr. Ortman, I'd like to bring you  
20 back to the Comcast letter that you were  
21 provided previously regarding the "alleged"  
22 commitment that Comcast made to the Commission

1 in the Adelphia proceeding. Are you familiar  
2 with that?

3 A Exhibit 376?

4 JUDGE SIPPEL: No, I don't think  
5 it's got a number.

6 THE WITNESS: Oh, this. I'm  
7 sorry. Is that 377?

8 MR. KIRK: Yes.

9 THE WITNESS: Yes. Okay.

10 BY MR. KIRK:

11 Q Just a general question. There's  
12 a lot of talk in this document about upgrades.

13 A Yes.

14 Q Are upgrades the same as a  
15 rebuild?

16 A No. A rebuild is increasing the  
17 capacity. It's a construction project that  
18 increases the overall capacity and the  
19 potential of a system.

20 Q Can you upgrade without  
21 rebuilding?

22 A Yes.

1 Q Okay. Now, does coverage of an  
2 RSN generally expand over time?

3 A Yes.

4 Q What's older, CSN Mid-Atlantic, or  
5 MASN?

6 A CSN Mid-Atlantic.

7 Q And what's older, CSN Philly or  
8 MASN?

9 A CSN Philly.

10 Q Do you remember Mr. Frederick was  
11 having your compare subs for CSN Philadelphia  
12 with subs for MASN?

13 A Yes.

14 Q Do you think that was a fair  
15 comparison?

16 A NO.

17 Q Why?

18 A It's comparing two networks to  
19 one, two networks serving two distinctly  
20 different -- slightly overlapping geographies  
21 with one.

22 Q And focusing solely on CSN

1 Philadelphia, and comparing all the subs under  
2 that column with the subs for CS -- for MASN,  
3 is that a fair comparison?

4 A No. CSN Philadelphia is in  
5 Wilkes-Barre-Scranton, Pennsylvania, New  
6 Jersey, and places that are outside the MASN  
7 territory.

8 Q And I want to take you to MASN  
9 Exhibit 108. This is the email from Alan  
10 Dannenbaum.

11 A Yes.

12 Q Did CSN Mid-Atlantic -- were CSN  
13 Mid-Atlantic and MASN involved in a lawsuit in  
14 '05 over the Orioles?

15 A That's my understanding, yes, they  
16 were.

17 Q [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 A [REDACTED]

21 Q And did the August 2006 agreement  
22 settle that lawsuit with the Orioles, to your

1 recollection?

2 A I believe it did. I'd have to go  
3 back and refresh to be sure, but I believe it  
4 did.

5 Q [REDACTED]  
6 [REDACTED]  
7 [REDACTED]?

8 MR. FREDERICK: Objection; calls  
9 for speculation.

10 JUDGE SIPPEL: I'm going to permit  
11 -- I'm going to overrule the objection.

12 THE WITNESS: Would you like to  
13 restate the question? I'm sorry.

14 MR. KIRK: Certainly.

15 BY MR. KIRK:

16 Q You were presented with this  
17 email, and my question is, and you indicated  
18 it settled -- the August `06 agreement settled  
19 the `05 -

20 A That was my understanding, yes.

21 Q Okay.

22 MR. FREDERICK: Your Honor, I want

1 to object to this line, because the term sheet  
2 that's attached to this email contains nothing  
3 about the CSNMA lawsuit against MASN. That  
4 material came into the agreement two days  
5 later. This was the standard affiliate term  
6 sheet that MASN sent to all cable and other  
7 satellite providers. There is nothing in this  
8 email attachment that has anything to do with  
9 the CSNMA lawsuit.

10 JUDGE SIPPEL: Well, let me just  
11 ask. Mr. Kirk?

12 MR. KIRK: We don't know what the  
13 parties were discussing. This was all part,  
14 my understanding, a global settlement was  
15 eventually effectuated and releases. And I'm  
16 asking the witness [REDACTED]

17 [REDACTED]

18 [REDACTED].

19 MR. FREDERICK: And because Mr.  
20 Ortman is not copied on any of these emails,  
21 his question goes entirely to speculating  
22 about Mr. Ortman's view about matters which

1 he's testified he had no knowledge.

2 MR. KIRK: Your Honor, I'll  
3 withdraw the question.

4 JUDGE SIPPEL: Thank you. Sustain  
5 the objection.

6 MR. KIRK: No further questions  
7 for the witness, or no redirect.

8 MR. FREDERICK: Your Honor, I have  
9 one question that was raised out of the  
10 Enforcement Bureau's questioning, and it has  
11 to do with the customer switches. May I be  
12 permitted to ask Mr. Ortman about that,  
13 please? Just one or two questions.

14 JUDGE SIPPEL: Is that the  
15 overflow, or the -

16 MR. FREDERICK: No, this is when  
17 customers switch television providers, they  
18 drop Comcast to go to DirectTV I think was the  
19 example that you gave.

20 JUDGE SIPPEL: All right.

21 RECROSS EXAMINATION

22 BY MR. FREDERICK:

1           Q       My question is, does Comcast  
2       create documents to reflect customer switches  
3       when a customer drops Comcast in favor of  
4       another pay television provider?

5           A       We track what are called reason  
6       codes in the billing system for all  
7       disconnects. So, every disconnect would show  
8       a reason code price value, reason code  
9       service, reason code non-pay, reason code  
10      competition. So, we would know how many  
11      people left us to go to Verizon FiOS, or how  
12      many just go to satellite.

13          Q       And in those custom codes, did you  
14      call them?

15          A       Reason codes, yes.

16          Q       Would a reason be NFL Sunday  
17      Ticket?

18          A       It could get that granular,  
19      depending on the call center, and what state  
20      of the business we were in.

21          Q       Could it say want MASN?

22          A       It could.

1           Q       Okay. Are you aware that MASN  
2 requested documents from Comcast that would be  
3 sufficient to show the number of subscribers  
4 that have switched from Comcast to other MVPDs  
5 in the past three years -

6           MR. KIRK: Objection, Your Honor.  
7 He's not established if there are any  
8 documents.

9           MR. FREDERICK: I'm asking him.

10          JUDGE SIPPEL: I understand that,  
11 but he's gone far enough. I'll let him ask  
12 the question, anyway.

13          BY MR. FREDERICK:

14          Q       Were you asked, Mr. Ortman, for  
15 any documents within your possession that were  
16 sufficient to show that number of subscribers  
17 that switched from Comcast to other MVPDs in  
18 the past three years?

19          A       Was I asked for the documents, or  
20 I've seen them?

21          Q       Yes. Were you asked for the  
22 documents?

1 A No, I have not. No, I was not.

2 MR. FREDERICK: Your Honor, we  
3 asked for these documents -

4 JUDGE SIPPEL: Go ahead.

5 MR. FREDERICK: -- from Comcast,  
6 and are these documents -- would these  
7 documents be within your possession and  
8 control, Mr. Ortman?

9 THE WITNESS: No, because I've  
10 never seen such documents.

11 BY MR. FREDERICK:

12 Q Okay. Within whose custody and  
13 control would those documents be?

14 A If they exist, they would be in  
15 call centers, in our regional working teams.

16 Q Okay. But are those documents  
17 then committed to paper?

18 MR. KIRK: Objection, Your Honor.

19 JUDGE SIPPEL: Well, he -- you've  
20 got the wrong witness for this.

21 MR. FREDERICK: But, Your Honor,  
22 we've only got two Comcast witnesses. I mean,

1 with all due respect, we've got to figure out  
2 -- there are a lot of things where Comcast did  
3 not produce documents, and their witnesses are  
4 now testifying about matters that they are --  
5 Mr. Ortman has said it's committed to some  
6 kind of document.

7 JUDGE SIPPEL: Yes, but you can't  
8 pin it on this witness.

9 MR. FREDERICK: No, no. I'm not -

10 THE WITNESS: Excuse me. I did  
11 not say it was committed to some kind of  
12 document.

13 BY MR. FREDERICK:

14 Q Is it an electronic database, sir?

15 A I said we track the reason codes  
16 in the billing system, but it may or may not  
17 include the level of detail you're asking  
18 about. I don't know, because I've never seen  
19 it.

20 Q Okay. Who would know that, sir?

21 A The people who run the marketing,  
22 or call center operations in the regions.

1 Q Okay.

2 JUDGE SIPPEL: There's nothing  
3 more this witness can do for you.

4 MR. FREDERICK: I understand.  
5 Thank you.

6 JUDGE SIPPEL: All right. Is  
7 there any - you don't want -- any follow-up  
8 on that? No. Sir, you're excused.

9 THE WITNESS: Done?

10 JUDGE SIPPEL: Yes, sir.

11 THE WITNESS: Thank you, Your  
12 Honor.

13 JUDGE SIPPEL: You go back to  
14 Pennsylvania now, to Philadelphia?

15 THE WITNESS: Baltimore.

16 JUDGE SIPPEL: Baltimore.

17 THE WITNESS: I live there.

18 JUDGE SIPPEL: All right. Have a  
19 good trip. Thank you very much.

20 Oh, we have some business to do.

21 Well, the first thing is, we don't have his  
22 testimony -- it has not been accepted into the