

1 evidence to that effect?

2 JUDGE SIPPEL: Do you understand
3 the question?

4 THE WITNESS: Can you ask it
5 again?

6 BY MR. TOLLIN:

7 Q First, do you have first-hand
8 knowledge of Comcast preferring its own
9 affiliates to MASN in the [REDACTED], in the
10 area that's covered by the [REDACTED]?

11 A I would answer it this way.
12 Comcast never gave us any reasons on why they
13 were not going to launch us. They never said
14 they weren't going to launch us in these areas
15 that we now find they haven't launched us in.
16 They didn't say anything on why this was going
17 to happen.

18 Later, and in fact, when they said
19 they weren't going to launch us on the 150,000
20 Adelphia, they said it was only because of
21 bandwidth, low bandwidth constraints. They
22 never mentioned anything that was any low

1 demand for our programming.

2 So being in the industry for as
3 long as I've been in the industry, and looking
4 at what's going on here, it would seem to me,
5 I believe, that one of the reasons why they
6 didn't want to carry us in these areas was to
7 protect their own affiliate. They didn't want
8 MASN to compete against it.

9 Q Okay, but that was your
10 presumption?

11 A Right -- my presumption, it's a
12 belief based on my experience being in the
13 industry for as long as I've been in it.

14 Q But you have no first hand
15 knowledge of any kind of discrimination?

16 A Well, that to me is some pretty
17 strong -- based on the experience that I have
18 had in the business for as long as I've been
19 in it, that's a lot of -- to me, a very strong
20 statement that says, why else weren't they
21 carrying us up there?

22 When I take a look at -- for

1 example there are three areas that I took a
2 look at and tried to assess. There's the
3 demand for our programming throughout the
4 regions. And there are three important
5 factors here.

6 One is that we have several major
7 MVPDs that are affiliates of ours that
8 distribute MASN throughout these territories--

9 JUDGE SIPPEL: When you say, our,
10 you mean MASN?

11 THE WITNESS: Yes, we have
12 affiliates. Like we have DIRECTV, we have
13 Dish, we have Verizon, we have Cox, who
14 distribute MASN, carrying MASN within these
15 areas that Comcast has refused to carry us.
16 That to me shows that there is demand, strong
17 demand, for our programming, because our other
18 affiliates see it and they carry us.

19 Second, there's another important
20 point, is that it's my understanding is that
21 the Orioles used to be carried on CSN MA
22 throughout these areas that they don't want to

1 carry us on anymore. Well, that would suggest
2 to me the reason why they carry the Orioles in
3 these areas is because there was strong demand
4 for the programming.

5 And third, another very important
6 factor, is audience ratings. I've been shown
7 audience ratings that Orioles achieve on CSN
8 MA in the Harrisburg-Lancaster-York DMA of [REDACTED]
9 rating in July of 2004, which is when we had
10 broad distribution in CSN MA throughout the
11 area, and we also achieved about a [REDACTED] rating
12 in Roanoke-Lynchburg area.

13 Those ratings are very competitive
14 for major professional baseball on an RSN, and
15 extended -- in what I call an extended market
16 area.

17 JUDGE SIPPEL: Why do you call it
18 an extended market area?

19 THE WITNESS: It's not the core.
20 It's not the inner, so --

21 JUDGE SIPPEL: What would the
22 core be?

1 THE WITNESS: The core would be
2 Washington, D.C., and Baltimore.

3 JUDGE SIPPEL: So this is kind of
4 on the -- my word, I would say the fringe.
5 You might not want to say it that way.
6 Basically you are talking about something less
7 than the core.

8 THE WITNESS: Yes. But I
9 wouldn't call it the fringe. In the RSN
10 business the extended market area is a very
11 important part of an RSN's makeup. Very
12 important. It accounts for a great deal of
13 its subscribers, and exposure, so forth.

14 So the ratings out there that the
15 Orioles achieved on CSN MA in these areas is
16 compatible. So those -- I give you those
17 three factors with respect to how I believe
18 there is demand out there. And so when you --
19 so I don't -- it would seem to me that with
20 all of these very strong factors showing that
21 there is demand, yet Comcast refused to carry
22 us there, I would then conclude that why else,

1 why aren't they carrying us? Because they
2 haven't said anything to us that there was low
3 demand.

4 So it would seem to me, well, they
5 have an affiliate RSN in this area, both these
6 areas. And I would conclude, then, they are
7 trying to protect it.

8 JUDGE SIPPEL: So from your
9 vantage point, I think it's time to talk to a
10 lawyer. There is something going on?

11 THE WITNESS: Yeah.

12 JUDGE SIPPEL: Am I right? I
13 don't want to put words in your mouth.

14 THE WITNESS: Well, what do you
15 mean, talk to a lawyer?

16 JUDGE SIPPEL: Well, I mean it's
17 a serious situation, there's been some
18 violation of some legal rights that we need to
19 get straightened out?

20 THE WITNESS: I agree. We felt
21 that we bargained for all of these
22 subscribers, and that's not right.

1 JUDGE SIPPEL: So at what point
2 did you feel -- when I say you, I'm talking
3 MASN, even though you are not MASN, you are a
4 consultant.

5 THE WITNESS: Right.

6 JUDGE SIPPEL: At what point as
7 far as you being brought into the discussion
8 is that point reached? The reason I'm asking
9 that question is, what -- where was there the
10 breakdown in trying to resolve this thing in
11 a business like manner?

12 THE WITNESS: I was made aware of
13 it in January of '07.

14 JUDGE SIPPEL: Yes.

15 THE WITNESS: And at that point
16 as I stated earlier, we contacted Comcast and
17 we said, we have now been made aware that you
18 are not carrying us on all of your subscribers
19 as we had bargained for --

20 JUDGE SIPPEL: And then you sat
21 together with them, this Exhibit No. 71, how
22 long did that take?

1 THE WITNESS: Like I said I think
2 it was approximately a year before we finally
3 got it completed.

4 JUDGE SIPPEL: And you were
5 participating in that?

6 THE WITNESS: Yes, I was
7 directing it --

8 JUDGE SIPPEL: They were -- if
9 you had a question, they were responding by
10 saying, well, let's go back and get some more
11 information. Let's do this, let's do that.
12 I didn't hear you testify that you thought
13 they were deliberately dragging their feet.

14 THE WITNESS: No, I would say --
15 this is what I'd testify, it was a very long
16 and difficult exercise. And I think what it
17 shows, and I think what it shows is that it's
18 very difficult to use the public -- what's
19 available to the public when you are trying to
20 figure out what systems an MVP has or define
21 geographic -- my experience you can't do it
22 accurately. You have to depend on the MVPD to

1 give you the systems that they have. And they
2 have to tell you the ones they are going to
3 launch, and they need to disclose to you the
4 ones you are not going to launch.

5 We went through this exercise. It
6 definitely illustrates that you depend, you
7 have to depend on the MVP to give you the
8 information. You have to trust them.

9 I guess what I'm saying -- and I'm
10 not guessing, what I'm saying here -- this is
11 not a game. This is not hide and seek. We
12 need to have in my experience, you have to
13 have the MVPD provide to you all the systems
14 that they have in their territory, the number
15 of subscribers, and where they are located.
16 They have the best information.

17 JUDGE SIPPEL: I know, but it
18 seems to me that as difficult as you say that
19 it is to ascertain this information, certainly
20 being a non-Comcast party interested in this
21 makes it more difficult, it seems to me that
22 Comcast also was having difficulty making

1 these determinations. You got to answer yes
2 or no; you can't grunt.

3 THE WITNESS: Well, it took us a
4 long time to get it done. Were they having a
5 difficult time? It appears they were. I'm
6 not quite sure why they were having such a
7 difficult time. I mean they know where their
8 systems are.

9 JUDGE SIPPEL: All right. But
10 you had no reason to expect that they were
11 dragging their feet, or that they were
12 creating fictitious numbers or anything like
13 that, including this Exhibit No. 71?

14 THE WITNESS: I believe that what
15 we have here is the best representation that
16 we've had so far in understanding where we are
17 not launched.

18 JUDGE SIPPEL: Do you think it's
19 reliable enough if there was to be a
20 conclusion reached in this case that there was
21 a certain percentage that was kept by Comcast
22 and was deprived to MASN, do you think this

1 would be reliable evidence to say that okay,
2 here is what the percentage is?

3 THE WITNESS: As far as I know
4 this is the number. It changes because they
5 might sell systems, they add subscribers, that
6 sort of stuff.

7 JUDGE SIPPEL: Right, that's a
8 lot of footnotes.

9 THE WITNESS: Right. I think
10 that maybe in a contract to settle this, I'm
11 not a lawyer, maybe you need to have something
12 that says, we represent and warrant this is
13 it.

14 JUDGE SIPPEL: No, no, no, I'm
15 just saying from a business standpoint, from
16 your business, this looks pretty reliable to
17 you?

18 THE WITNESS: It's as reliable as
19 I can get. With respect to my -- with my
20 understanding working with Comcast and then
21 telling us that this seems to be
22 representative of what's not watched.

1 JUDGE SIPPEL: All right, well,
2 let me put it this way then. There is nothing
3 based on all these circumstances to how it was
4 created and the length of time it was created
5 and your involvement in the creation of it,
6 there is nothing that you don't -- you don't
7 have any basis to even suspect that there is
8 something phony about this?

9 THE WITNESS: You have to trust
10 them. Yes, you have to trust them. So I
11 believe this is -- they said this is it.

12 JUDGE SIPPEL: All right.

13 BY MR. TOLLIN:

14 Q Okay, if Comcast was going to ast
15 anti-competitively, do you really think that
16 they would deprive you of service in Roanoke?
17 Do you think that would be a way to really
18 advantage their own affiliates?

19 MR. FREDERICK: Objection, calls
20 for speculation, and his comment.

21 JUDGE SIPPEL: Well, I'll sustain
22 the objection, but you can rephrase, Mr.

1 Tollin.

2 MR. TOLLIN: Okay.

3 BY MR. TOLLIN:

4 Q If a company wanted, in this
5 situation, to really protect one of its
6 affiliates, wouldn't it pick the Washington,
7 D.C. area, the Baltimore area? Wouldn't it
8 pick broad swathes of subscribers rather than
9 taking [REDACTED]

10 [REDACTED]?

11 MR. FREDERICK: Same objection.

12 JUDGE SIPPEL: Well, it's
13 hypothetical. He's an expert. I do think it
14 could be asked less -- do you understand the
15 question?

16 THE WITNESS: Kind of.

17 JUDGE SIPPEL: Let's try it
18 again.

19 BY MR. TOLLIN:

20 Q Is Comcast advantaging itself in
21 any major way by depriving MASN of this [REDACTED]

22 [REDACTED]?

1 A Yeah, as I stated before, yes
2 based on my looking at the data, and I stated
3 this before, that I believe that they are
4 advantaging themselves with respect to their
5 affiliate, CSN Philly, and CSN MA. Up in CSN
6 Philly in the Harrisburg area, we would
7 compete directly with CNS Philly for viewers,
8 for baseball viewers. We have 300 baseball
9 games that would compete directly with them.
10 It also impacts advertising.

11 And down in the Roanoke southwest
12 Virginia area where there are several of their
13 systems that are noted on this exhibit, we
14 would be disadvantaged in being able to
15 compete for professional sports programming as
16 I spoke earlier.

17 Q Okay. But no one at Comcast ever
18 told you that MASN was not being carried
19 because of an attempt to favor or protect CSN
20 MA or CNS Philly, right?

21 A Well, they did not specifically
22 say that to us.

1 Q And you have seen no Comcast
2 produced documents to that effect, right?

3 A I have not.

4 Q Okay. Let's go back to the chart
5 that Comcast helped you prepare that covers

6 

7 JUDGE SIPPEL: And that's in 71?

8 MR. TOLLIN: MASN Exhibit No. 71.

9 BY MR. TOLLIN:

10 Q You have been working for MASN and
11 in negotiations with Comcast since 2005?

12 A Yes. Yes, in that time frame.

13 Q And the agreement that is at issue
14 in this case was signed August 4th, 2006,
15 correct?

16 A Yes, that is correct.

17 Q Now you said it took you
18 approximately a year to put this list
19 together.

20 A Uh-huh.

21 Q Why couldn't you have done the
22 same thing --

1 JUDGE SIPPEL: You have to answer
2 yes.

3 THE WITNESS: Oh, yes.

4 BY MR. TOLLIN:

5 Q Why couldn't you have prepared
6 this exact same list before the August 2006
7 signing date so that you could verify what
8 markets would be excluded?

9 JUDGE SIPPEL: That wasn't his
10 testimony. His testimony was that in working
11 with Comcast, and it was Comcast that was
12 doing the heavy laboring on this, he was able
13 to -- he and I guess and other people he was
14 working with was able to get this list
15 compiled, but it was a list compiled by
16 Comcast; is that correct?

17 THE WITNESS: Working with
18 Comcast we put the list together with -- we
19 had several telephone conference calls in
20 developing the list.

21 BY MR. TOLLIN:

22 Q Comcast put together Schedule A.

1 Why couldn't you have afterwards asked for
2 this list?

3 A Comcast did put together Schedule
4 --

5 JUDGE SIPPEL: That's Schedule A
6 for the affiliation agreement?

7 THE WITNESS: That's correct.

8 I don't have access to public data
9 that I'm familiar with that would allow for us
10 to put together an accurate list of Comcast's
11 systems within our territory. The information
12 available out there in my experience has a lot
13 of inconsistencies with what the MVPD will
14 eventually provide you which is the actual
15 system names, the actual number of
16 subscribers, where they are located, the
17 information that I am familiar with. There is
18 in my experience lots of inconsistencies with
19 that. But the subscriber counts can be very
20 different than what the MVPD is going to
21 provide you.

22 JUDGE SIPPEL: Isn't this

1 industry wide? I mean is this an industry
2 wide problem?

3 THE WITNESS: Yes, it is. When
4 you are launching a new network you are at the
5 behest of the affiliate of your MVPD affiliate
6 to provide you the information on where they
7 are located, accurate information, the names
8 of the systems, and the number of subscribers
9 on it.

10 JUDGE SIPPEL: But there must be
11 a way that the programming masters of this
12 world are generally able to live with that,
13 because there are very few of these complaints
14 like this filed in court or brought to the
15 commission. I mean if this problem permeates
16 the industry it still, there is a way to
17 grapple with it and work it out and move on.

18 MR. TOLLIN: Well, the way to
19 grapple with it obviously is to go to Comcast
20 and ask them where you are being excluded.

21 THE WITNESS: We did. When we
22 were in negotiations, in 2006, Comcast told us

1 that they were going to launch 1.6 million
 2 subscribers in our core market, and then they
 3 had 750,000 remaining in our territory. And
 4 that they were going to launch approximately
 5 600,000 of those, and that they would not
 6 launch 150,000, the remaining 150- because
 7 they were on Adelphia systems with low
 8 bandwidth.

9 And they didn't -- they said that
 10 that was it. They didn't say there were any
 11 other systems they weren't going to launch.
 12 So they provided us Schedule A, and we
 13 believed that it was accurate. We believed
 14 and trusted this was correct. You have to do
 15 that with respect -- in my experience when you
 16 are negotiating a deal like this, because they
 17 have the most accurate information regarding
 18 where their systems are, what the names of
 19 them are, how many subscribers they have.

20 BY MR. TOLLIN:

21 Q Did Comcast strike out the words,
 22 all, from MASN's own draft agreement? All

1 systems?

2 A In what -- is there a time you are
3 talking about here?

4 Q August, we are talking about
5 August 4th, 2006, didn't you receive a draft
6 back of the terms sheet from Comcast that
7 struck out the word, all?

8 A Yes, I was working with David
9 Gluck, who was drafting, the head drafter on
10 the agreement, who was working with Comcast's
11 attorneys. He had called me, and he had said
12 that Comcast is requesting to strike the word,
13 all, and replace it with the language,
14 discretionary. He told me that the reason
15 they were doing this is because they wanted to
16 reflect the fact, specifically the fact, that
17 they were not going to launch these other
18 Adelphia systems with 150,000 subscribers.
19 All along --

20 MR. TOLLIN: I've been asking yes
21 and no questions, and I'm not getting yes or
22 no answers.

1 JUDGE SIPPEL: Well, you have to
2 tell him, you've got to follow up with that.
3 Go ahead.

4 MR. TOLLIN: Well, I asked him
5 yes or no questions. Did they strike out the
6 word, all?

7 JUDGE SIPPEL: You've already
8 answered that, yes.

9 THE WITNESS: I answered that
10 yes.

11 MR. TOLLIN: Yes. So I don't
12 know where we are going from there, so I would
13 appreciate it --

14 THE WITNESS: I'm sorry, the
15 reason I went --

16 JUDGE SIPPEL: Just answer the
17 question as they are asked you.

18 THE WITNESS: Okay.

19 BY MR. TOLLIN:

20 Q Okay, when you -- I would like to
21 approach the witness.

22 JUDGE SIPPEL: Yes, you may, sir.

1 The attorney gets to set the tone of cross-
2 examination. As long as you are not being
3 harassed or misled. I guess I can harass him.
4 Okay, here we are with the -- this is already
5 in evidence as Comcast No. 51.

6 BY MR. TOLLIN:

7 Q Okay, do you recognize this
8 document?

9 A Yeah, this is the term sheet, the
10 term sheet that was signed between Comcast and
11 MASN. And I believe this is on -- the date is
12 -- it says August 4th, 2006.

13 Q Okay. As a threshold matter did
14 Peter Angelos initial each page of the
15 agreement and execute it?

16 A I see initials down here. I am
17 not sure that p-g-a -- I'm not sure that p-g-a
18 initialed it, but I see initials down here
19 that says p-g-a.

20 JUDGE SIPPEL: Well, what does it
21 say on page 511. Accepted and agreed to as of
22 August 4. Comcast Corporation is the name of

1 the title there. And then you got MASN, TCR
2 Sports Broadcasting Holding LLP, five
3 Baltimore Orioles limited partnership, magic
4 partner. Then by who?

5 THE WITNESS: I see Peter
6 Angelos' name on the -- on page 11.

7 JUDGE SIPPEL: On page 11.

8 THE WITNESS: I see he signed it,
9 yes.

10 JUDGE SIPPEL: Peter G. Angelos.
11 So the initials, p-g-a, most likely refer to
12 Peter Angelos, Mr. Angelos.

13 BY MR. TOLLIN:

14 Q Okay, let's turn to the first page
15 of the agreement. And it says -- can you read
16 the second paragraph, MASN program in carriage
17 of MASN.

18 A Yes. Comcast will launch the
19 service on Comcast's systems within the MASN
20 territory as defined below and identified on
21 the attached Schedule A list of systems no
22 later than the date specified in Schedule A.

1 Q Okay, now would you stop right
2 there.

3 So there were a list of systems on
4 Schedule A, is that correct, where there was
5 an obligation to launch?

6 A Yes, there is a list of systems
7 there, yes.

8 Q Okay, and were those systems in
9 order of launch date? There were two launch
10 dates?

11 A Yes, I recollect that there were
12 two launch dates. There were -- was it
13 September, '06, and then launching April 1st,
14 2007, and then there is also a foot note there
15 that says notwithstanding the foregoing
16 Comcast may delay the launch of the service on
17 systems comprising 150,000 --

18 JUDGE SIPPEL: What page are you
19 on?

20 THE WITNESS: That was on page
21 13.

22 BY MR. TOLLIN:

1 Q I have to go back to the yes or no
2 answers, and not the full blown --

3 JUDGE SIPPEL: You are
4 volunteering information. You are not being
5 asked what -- only answer what you are asked.
6 Don't volunteer anything. That's -- on
7 redirect you will get an opportunity to do
8 that.

9 THE WITNESS: Okay.

10 BY MR. TOLLIN:

11 Q So the 60 systems in Schedule A
12 had to be launched by no later than what date?

13 A That's why I was --

14 JUDGE SIPPEL: Don't talk to
15 yourself; that doesn't help.

16 THE WITNESS: It had to be
17 launched no later than April 1st, 2008. All
18 of them, all 60.

19 BY MR. TOLLIN:

20 Q And then there was a 150,000
21 subscriber carve out; right? Can you explain
22 that?