

1 wanted to exclude 150,000 expanded basic
2 subscribers associated with former Adelphia
3 systems because the systems had low
4 bandwidth." Is that correct?

5 JUDGE SIPPEL: Let's get to it.

6 MR. TOLLIN: Okay, I'm sorry.

7 JUDGE SIPPEL: We've got papers up
8 here. What page and paragraph?

9 MR. TOLLIN: Paragraph 35.

10 JUDGE SIPPEL: We've got it.

11 THE WITNESS: I read paragraph 35.
12 What's your question, I'm sorry?

13 BY MR. TOLLIN:

14 Q Low bandwidth. That was the
15 reason given for Adelphia?

16 A Yes.

17 Q MASN agreed to exclude those
18 systems from the agreement, correct?

19 A We agreed that they did not have
20 to launch those systems at the time of this
21 agreement because they were low bandwidth,
22 unrebuilt. At that point in time, they didn't

1 have any channel capacity at that point to put
2 us on.

3 Q Was there any time period given in
4 the agreement of when they had to launch those
5 markets?

6 A No, there's not a specific time in
7 the agreement that says that.

8 Q So would it be accurate to state
9 that low bandwidth is a valid business
10 justification for refusing to launch MASN?

11 A I'm sorry, say it one more time?

12 Q Low bandwidth.

13 A Yes.

14 Q Is that a valid reason to not
15 launch MASN?

16 A It depends. It depends on the
17 particular case you're talking about. Every
18 affiliate has various issues with the way
19 their systems are constructed. They may have
20 problems with low bandwidth that are
21 particular to that system. In this case, what
22 Comcast was representing to us that these

1 systems were in such need of rebuilt, they
2 were low bandwidth. They just acquired them.
3 They didn't exactly know where they were
4 except in general areas, that that was the
5 reason and we accepted it.

6 Q In paragraph 40 of your written
7 direct, if you could open that, please. You
8 state that you compared the total number of
9 subscribers on the list to your estimates,
10 correct?

11 JUDGE SIPPEL: The list of
12 systems. Does that refer to what? Schedule
13 A?

14 THE WITNESS: Yes.

15 MR. TOLLIN: Yes.

16 THE WITNESS: Yes, that's what I
17 did. I compared the total number of
18 subscribers contained in the list to my
19 estimate of the total number of Comcast
20 subscribers within MASN's territory.

21 BY MR. TOLLIN:

22 Q And that was the only way you

1 checked schedule A for accuracy, right?

2 A Yes, that is how I did it, yes.

3 Q Just the total number of
4 subscribers. Well, where did you get the
5 total number of subscribers from? It must
6 have been an incredibly accurate source.

7 A Well, we got -- we started with
8 the use of Nielsen information. I've been in
9 this business for over 25 years. I'm very
10 familiar with how the Nielsen information is
11 supplied. It takes a lot of interpretation on
12 our part when we go through and try to make
13 these estimates of market share by MVPD within
14 an RSN's territory.

15 The issues that come up are
16 there's
17 --

18 JUDGE SIPPEL: That's all right.
19 You've answered the question.

20 THE WITNESS: Okay.

21 BY MR. TOLLIN:

22 Q Didn't you earlier say that

1 Nielsen information was a very inexact way of
2 trying to determine systems and subscriber
3 numbers?

4 A No. What I said was it's not an
5 accurate way to confirm system-by-system
6 analysis or audit the systems. What it
7 provides and how we use it is to get a rough
8 estimate on what the number of subscribers are
9 that a particular MVPD could have within the
10 geographic area of a given RSN. And that's
11 how we use it and that's how we -- we don't
12 use it for trying to do a system-by-system
13 analysis. We use it only on an aggregate
14 basis because we understand it would be
15 inaccurate to do it the other way.

16 Q Are subscriber numbers in Nielsen
17 reports more accurate than system lists?

18 A What system lists?

19 Q System lists that Nielsen, that
20 you can order from Nielsen?

21 A I don't understand the question.

22 Sorry, could you say it again?

1 JUDGE SIPPEL: Does he know that
2 there's such a product available?

3 MR. TOLLIN: I believe he does.

4 THE WITNESS: Could you ask the
5 question, I'm sorry.

6 BY MR. TOLLIN:

7 Q Can you order system lists from
8 Nielsen?

9 A As I said, yes. When we ordered
10 the Nielsen information it has -- it comes
11 with a system, it has systems lists, yes.

12 Q Can you order subscriber numbers
13 from Nielsen?

14 A The subscriber numbers come with
15 the list that we order. These subscriber
16 numbers are basic, called basic subscribers
17 which is different than what we wanted MASN to
18 be launched on, the term would be expanded
19 basic subscribers.

20 JUDGE SIPPEL: Is he going beyond
21 what you're asking?

22 MR. TOLLIN: Yes, he is.

1 JUDGE SIPPEL: Well, stop him.

2 That's it. You got your answer.

3 BY MR. TOLLIN:

4 Q Are subscriber numbers in Nielsen
5 reports more accurate than system lists?

6 Subscriber numbers.

7 A The subscriber numbers in Nielsen
8 can be very different than the numbers that
9 the MVPD provides to you.

10 Q Could you put together a system
11 list from Nielsen for the MASN territory and
12 then check it out with Comcast as to its
13 accuracy?

14 A I've never done that in the past.

15 Q Could you do it?

16 A I would not do that because of the
17 inconsistency.

18 Q That's not what I'm asking you,
19 sir. I asked him if he could do it.

20 JUDGE SIPPEL: That's all right.

21 He said yes, you could.

22 THE WITNESS: I guess you could.

1 BY MR. TOLLIN:

2 Q Thank you. Did you ever ask
3 Comcast whether your subscriber numbers that
4 you used for the overall check were correct?

5 A Well, when they gave us the
6 schedule A it had the total number of
7 subscribers on it which was 2.25 million.

8 JUDGE SIPPEL: What do you want to
9 know?

10 MR. TOLLIN: I just want to know -
11 -

12 JUDGE SIPPEL: We don't want to
13 know numbers.

14 THE WITNESS: I'm sorry.

15 BY MR. TOLLIN:

16 Q Did you ever ask Comcast whether
17 your overall subscriber number that you
18 calculated for Nielsen was in the ballpark or
19 correct, did you check it out with them?

20 A I checked it out by looking at the
21 schedule A that they gave us and I had an
22 estimate of 2.3 to 2.4 million.

1 Q That's not answering my question.

2 Did you take your list and call up Mike Ortman
3 or anyone at Comcast and say we calculated
4 from Nielsen that the subscriber number is X.

5 Is this --

6 A No, I did not call up Comcast.

7 Q Why not?

8 A Because I didn't see the reason
9 to. I saw the number in schedule A. It
10 reported 2.25 million. My estimate internally
11 was 2.3 to 2.4 so it comported with my number,
12 so I felt like we got the bargain we were
13 talking about. It made sense to me.

14 Q Isn't it true that if you had
15 asked for this number, we wouldn't be here
16 today because there would be a meeting of the
17 minds between Comcast and you?

18 A No, I don't think that's true.

19 Q Okay. Did you obtain approval of
20 MASN management to exclude the 150,000
21 subscribers that were from the former Adelphia
22 systems?

1 A Yes, we did.

2 Q Paragraph 46.

3 JUDGE SIPPEL: Before he leaves
4 that, I got the impression from what you
5 testified that you went through the Nielsen
6 materials, systems lists, and company
7 subscriber numbers. And you did yourself,
8 your own benefit, you did a cut on those
9 numbers and that they were in the same
10 ballpark as what's on schedule A?

11 THE WITNESS: The aggregate
12 number, yes.

13 JUDGE SIPPEL: Yes, the aggregate
14 number. That's what I'm talking about.

15 THE WITNESS: Yes, that's correct.

16 JUDGE SIPPEL: Did that make you
17 feel comfortable or uncomfortable?

18 THE WITNESS: It made us feel
19 comfortable.

20 JUDGE SIPPEL: Okay. If you want
21 to go into that, that's fine. That's his
22 testimony.

1 BY MR. TOLLIN:

2 Q Did you tell anyone the exclusion
3 was not in the agreement? The Adelphia
4 exclusion.

5 A Did I tell anyone?

6 Q Yes.

7 A Well, we discussed it with MASN's
8 management that we were going to -- that the
9 150,000 were going to be excluded and they
10 agreed to it.

11 JUDGE SIPPEL: Okay, let's hold it
12 right there. What was the MASN management?

13 THE WITNESS: Mr. Peter Angelos.

14 JUDGE SIPPEL: And who else?

15 THE WITNESS: Well, at that time,
16 Mr. Peter Angelos was the individual that I
17 reported to.

18 JUDGE SIPPEL: No, but you didn't
19 testify that way. You testified to
20 management. You said -- not who you reported
21 to.

22 THE WITNESS: Okay.

1 JUDGE SIPPEL: You said MASN
2 management was given this information. Now
3 who is MASN management?

4 THE WITNESS: At this time --

5 JUDGE SIPPEL: Mr. Peter Angelos.

6 THE WITNESS: Mr. Peter Angelos.

7 JUDGE SIPPEL: He's the president
8 or general partner, something like that.

9 THE WITNESS: That's right. So I
10 had to report to him. I had to report to the
11 other people that were in the negotiations.

12 JUDGE SIPPEL: Who?

13 THE WITNESS: Alan Rifkin, David
14 Gluck, and I'm not sure who else. Those are
15 the three I remember.

16 JUDGE SIPPEL: Mr. Cuddihy, was he
17 at that level?

18 THE WITNESS: I didn't -- I never
19 met Mr. Cuddihy until the summer --

20 JUDGE SIPPEL: No, no, no. I'm
21 not asking you when you met him. I'm saying
22 that he was not part of this group you say.

1 THE WITNESS: No, he wasn't. No,
2 he wasn't.

3 JUDGE SIPPEL: So far you've
4 identified three people. What about John
5 Angelos, was he involved in this at all?

6 THE WITNESS: He was involved in
7 it. I'm not sure exactly at what level at
8 that time.

9 JUDGE SIPPEL: But he was not one
10 of these people that you said you were
11 reporting to.

12 THE WITNESS: During these
13 negotiations, that's who I reported to.

14 JUDGE SIPPEL: That's right.

15 THE WITNESS: During these
16 negotiations, that's who I reported to.

17 JUDGE SIPPEL: Is it laid out
18 someplace as to just who MASN is? Who owns it
19 or runs it? Mr. Angelos is I guess the
20 general partner.

21 MR. FREDERICK: The pre-trial
22 brief does describe that.

1 JUDGE SIPPTEL: That's good enough.

2 BY MR. TOLLIN:

3 Q So did you tell anyone at MASN
4 that the exclusion of 150,000 subs was not
5 reflected in the agreement?

6 A No, I did not.

7 Q Why?

8 A As I testified earlier, it was our
9 understanding that it wasn't -- that they
10 weren't going to do it and what we did was we
11 discussed it orally that the 150,000 was going
12 to be excluded.

13 Q So that decision was made by whom,
14 that it wouldn't be reflected in the
15 agreement?

16 A I'm not exactly sure if it was --
17 who made that exact decision. I don't know.

18 JUDGE SIPPTEL: Can I just try this
19 another way?

20 MR. TOLLIN: Sure.

21 JUDGE SIPPTEL: Did you talk to Mr.
22 Peter Angelos personally about this, directly,

1 I should say?

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: When you and he
4 were in the room?

5 THE WITNESS: Not in the room. We
6 were on phones.

7 JUDGE SIPPEL: Okay. Did he know
8 that there was an exclusion of 150,000
9 subscribers after that conversation that you
10 were a party to?

11 THE WITNESS: Yes, he did.

12 JUDGE SIPPEL: How do you know
13 that?

14 THE WITNESS: How do I know that?

15 JUDGE SIPPEL: Yes.

16 THE WITNESS: Because we discussed
17 it with him on the phone.

18 JUDGE SIPPEL: What do you mean
19 discussed it? Did he get told that?

20 THE WITNESS: Yes, he was told
21 that.

22 JUDGE SIPPEL: By whom?

1 THE WITNESS: The people I
2 mentioned, Alan Rifkin, David Gluck and
3 myself.

4 JUDGE SIPPEL: So one of the
5 three.

6 THE WITNESS: All three of us were
7 on the phone. That's how I remember it.

8 JUDGE SIPPEL: But which of the
9 three told him. Did you tell him?

10 THE WITNESS: I can't specifically
11 tell you which one of us told him.

12 JUDGE SIPPEL: Did he ask any
13 questions about that? Why?

14 THE WITNESS: Yes, he asked why.
15 We told him about the low bandwidth constraint
16 issue.

17 JUDGE SIPPEL: That was the end of
18 the discussion or did it go beyond that?

19 THE WITNESS: What I remember from
20 that, we explained that to him and he said
21 okay, but eventually they're going to have to
22 reveal those and that's the extent of my

1 understanding of what Mr. Angelos' thinking.
2 He knew that they weren't going to launch the
3 150. He understood it was low bandwidth and
4 I can't remember exactly what he said after
5 that. I just can't.

6 JUDGE SIPPEL: But from what you
7 just now testify, you certainly had a belief,
8 if not an understanding that he expected a
9 rebuilding to be done down the road and that
10 MASN was going to get the 150,000. I heard
11 you say that.

12 THE WITNESS: Yes, I would say
13 that that's the way I remember it, yes.
14 That's how we believed it to be.

15 JUDGE SIPPEL: So somebody had to
16 break the news to him that that wasn't going
17 to happen because the agreement didn't cover
18 it. At least that's what Comcast's position
19 is.

20 THE WITNESS: Yes.

21 JUDGE SIPPEL: Were you there when
22 he told him that? That's another thing. Were

1 you part of -- did he want to know? Look, you
2 people told me this was going to be done this
3 way and now I'm being told that the agreement
4 didn't have that.

5 Does he ask for an accounting of
6 that? Do you understand what I'm saying, an
7 accounting of the fact that his understanding
8 was that he was going to get the 150,000
9 subscribers down the road. And now his
10 understanding has to be just to the contrary,
11 that Comcast does not intend to give him
12 150,000 down the road, and so therefore we got
13 a lawsuit.

14 THE WITNESS: Well, my
15 understanding is that he believed that the
16 150,000 would eventually --

17 JUDGE SIPPEL: What is your
18 knowledge? Did you hear my question? We
19 already established your conversation with Mr.
20 Peter Angelos and the other two gentlemen
21 leading up to the signing of the agreement.
22 Now the agreement has been signed. His

1 assumption was and he's the managing partner
2 of MASN. He's basically the management of
3 MASN if I'm reading the documents right.
4 Somebody has to go back to him and say Mr.
5 Angelos, it didn't happen that way, the way
6 the three of us told you on the phone that
7 day. Now were you a party to any such
8 conversation as that?

9 THE WITNESS: No, I was not.

10 JUDGE SIPPEL: Who brought the
11 news to Mr. Peter Angelos that this is a
12 different deal than he thought he was
13 approving?

14 THE WITNESS: In January '07.

15 JUDGE SIPPEL: Yes.

16 THE WITNESS: When we found out.

17 JUDGE SIPPEL: Okay, that was the
18 Toyota deal, not getting the advertising?

19 THE WITNESS: Well, I don't know
20 exactly what -- but I was contacted in January
21 '07 that there was broadcast systems that
22 weren't --

1 JUDGE SIPPEL: Okay, but that's
2 not my -- I'm not trying to look at the
3 history. You were close enough that you knew
4 -- somebody had to go back to Mr. Angelos and
5 tell him this.

6 THE WITNESS: In January '07, when
7 we found that out, that's when Mr. Angelos was
8 informed.

9 JUDGE SIPPEL: By who?

10 THE WITNESS: I'm not sure who
11 exactly informed him of that.

12 JUDGE SIPPEL: Did he want to talk
13 to the people who had told him to go ahead
14 with the deal? Did he want to get a
15 debriefing?

16 THE WITNESS: Yes, we had a
17 meeting.

18 JUDGE SIPPEL: With who?

19 THE WITNESS: We had meetings with
20 him.

21 JUDGE SIPPEL: With who?

22 THE WITNESS: I think David Gluck

1 was there. And I'm not sure, Alan Rifkin, but
2 we had a meeting.

3 JUDGE SIPPEL: With Mr. Angelos.

4 THE WITNESS: It could have been
5 on the phone though. I don't remember.

6 JUDGE SIPPEL: Okay, but this was
7 after January 2007.

8 THE WITNESS: Yes, yes.

9 JUDGE SIPPEL: And what transpired
10 in that conversation?

11 THE WITNESS: We learned that they
12 hadn't launched us in all the systems. We
13 were directed by Peter Angelos to go talk to
14 Comcast and find out what's going on and then
15 I told you what we did. We called --

16 JUDGE SIPPEL: Yes, sir. Yes.
17 Okay.

18 THE WITNESS: That's what we did.

19 JUDGE SIPPEL: And did you get
20 back to Mr. Angelos again on that?

21 THE WITNESS: Yes, we told him
22 that we had talked to Comcast and they said

1 they were going to look at it and get back to
2 us and eventually we had a meeting in
3 Philadelphia.

4 JUDGE SIPPEL: Who is we? Comcast
5 and you?

6 THE WITNESS: Yes, Comcast. I
7 don't know everybody that was in the meeting,
8 but there was myself, David Gluck.

9 JUDGE SIPPEL: All right, but this
10 is away from Mr. Angelos. He wasn't involved
11 in that meeting or was he?

12 THE WITNESS: No, he was not in
13 that meeting.

14 JUDGE SIPPEL: I think I've
15 exhausted what was on my mind.

16 THE WITNESS: Okay.

17 JUDGE SIPPEL: Go ahead, Mr.
18 Tollin.

19 BY MR. TOLLIN:

20 Q Did MASN ever tell you that
21 Harrisburg was on schedule A?

22 A No, MASN never told me that.

1 Q In paragraph 39 of your written
2 direct you claim that you had limited time to
3 review schedule A, correct?

4 A That's what it says.

5 Q But you really didn't review
6 schedule A, did you? You just looked at the
7 overall subscriber numbers?

8 A Well, I reviewed schedule A in
9 taking a look at the overall subscriber
10 numbers. That's how I reviewed it. That's
11 what I mean by saying that.

12 Q I don't understand.

13 A I looked at schedule A and I saw
14 how many subs they were going to launch and
15 they were going to launch 2.25 million and
16 then I compared that to my internal estimate.

17 Q So you just were looking at the
18 total number of subs on schedule A, not the
19 individual systems?

20 A That's correct.

21 Q So when you have limited time, the
22 only thing you had to check was the 2.2,

1 right?

2 A That's what we did. We checked
3 the total 2.25 and we compared it to our
4 internal estimates.

5 Q Okay. And so why did you have
6 limited amount of time, given the fact that
7 all you had to do was check the 2.2 number and
8 you didn't check the individual system lists?

9 A Well, I didn't get to see the --
10 as I remember this, I didn't get to see the
11 schedule A until on August 4th which was the
12 day we had to
13 -- I was directed to -- we had to try to close
14 the deal by COB of that day.

15 I received the list somewhere and
16 I don't have the exact timing, but it was in
17 the afternoon, my time. And I'm in the
18 Mountain Standard Time and everybody else is
19 in the Eastern Standard Time, so they're two
20 hours ahead of me.

21 And so I didn't have a whole lot
22 of time to take a look at it. That's --

1 Q How long did it take you to figure
2 out whether 2.2 was the number?

3 A I'm not sure. I think it was
4 probably -- I had like an hour and so I was
5 looking, probably in that hour time frame.

6 Q Was that sufficient time to check
7 that number out?

8 A Only a two-hour time frame?

9 Q Was that sufficient time to check
10 the aggregate number of subs out?

11 A It was with what I had available
12 to me, yes. I was able to take the number and
13 compare it to what I had estimated and it
14 comported to what my internal estimates were.

15 Q And what would you have done if
16 you had additional time?

17 A I don't think I would have done
18 much different than what I did here as I
19 explained. To do it -- we don't do the
20 system-by-system analysis.

21 Q Did you ever check schedule A to
22 make sure that Baltimore was listed?