

1 BY MR. KIRK:

2 Q You were referring to "we". What
3 steps did you take?

4 A Those were the steps that I took.
5 I took the agreement. I circulated it
6 internally. I looked at the number of
7 subscribers on the list of systems, because I
8 had no knowledge of where Comcast systems
9 were. I looked at the subscriber numbers and
10 that was the universe that we thought that
11 they had. Remember they had said that -- we
12 had told them that we wanted every system and
13 their number on Schedule A that we saw for the
14 first time that afternoon, my recollection is
15 2.2 million subscribers and that along with
16 the 150,000 excluded Adelphia subscribers is
17 exactly or almost exactly the number we
18 assumed they had.

19 So we took that -- I sent that
20 internally and then after some conference
21 calls internally, I made some additional
22 revisions to the term sheet and sent it back

1 to Comcast with an e-mail saying, "We're
2 almost there, here's some clean-up changes".

3 Q Did you make any changes to
4 Schedule A?

5 A No, I did not.

6 Q In transmitting the red line, your
7 changes back to Comcast, did you make any
8 reference to your understanding that striking
9 "all" was related to this former Adelphia
10 carve-out?

11 A No, because I had that
12 conversation with Andrew.

13 Q So you didn't memorialize it in
14 any way?

15 A No, I did not.

16 JUDGE SIPPPEL: So I take it, you
17 took Schedule A at face value.

18 THE WITNESS: Yes, I did, everybody
19 did at MASN.

20 BY MR. KIRK:

21 Q And you indicated you looked at
22 the number of subscribers, correct?

1 A Yes, sir.

2 Q And you indicated that it was
3 consistent with some estimates that you had
4 over the total number of Comcast subscribers,
5 correct?

6 A It was consistent with MASN's
7 internal estimates, that's correct.

8 Q Did you ever ask Comcast whether
9 that subscriber number was all subscribers
10 within MASN's territory?

11 A No.

12 Q If you asked that question --

13 A In retrospect, I wish I had.

14 Q If you had asked that question, do
15 you think we would have been here -- we would
16 be here today?

17 A I'm not sure we would have gotten
18 a deal done.

19 Q Because there would have been no
20 meeting of the minds?

21 A I think Comcast would have said no
22 and we would have said, "You have to have all

1 systems because that's what we've been telling
2 you all along".

3 Q Isn't that what you did with
4 DIRECTV? Did DIRECTV -- in your negotiations
5 with DIRECTV, did DIRECTV want to carry you
6 everywhere?

7 A Yeah, yes, absolutely.

8 Q They didn't express any concern
9 about having to carry you throughout your
10 territory?

11 A They expressed concern about
12 carrying -- remember when we first launched,
13 I'm sure you've heard this testimony, when we
14 first launched, we were games only. It wasn't
15 a 24-hour network. And they were the
16 Washington National games only. No Baltimore
17 Oriole games because Comcast had those rights.
18 They expressed concern about carrying the
19 games only in Zone 6, just in terms of the
20 pricing. So we renegotiated that rate but
21 they never indicated they wouldn't carry them.

22 JUDGE SIPPEL: What is Zone 6?

1 THE WITNESS: North Carolina. It's
2 the eastern two-thirds of North Carolina.

3 BY MR. KIRK:

4 Q How long did you spend reviewing
5 the term sheet in Schedule A?

6 A Are you talking about after Andrew
7 had sent it to me?

8 Q Correct.

9 A It was really a short period of
10 time because my recollection is we didn't have
11 long to get this thing done and in terms of
12 reviewing Schedule A, all I did was look at --
13 I looked at it. I noticed there were systems
14 in every single region except for 6. I don't
15 think there were any in Zone 6 because I don't
16 think Comcast, at the time, had any North
17 Carolina systems. But there were systems in
18 every region and there were 2.2 million
19 subscribers listed at the bottom and that's
20 the level of -- that gave me the level of
21 comfort that I needed.

22 So to answer your question, sorry

1 for the long answer, it was a fairly short
2 review because we were under a time crunch.

3 Q Okay. During your deposition, I
4 asked you who was responsible for reviewing
5 Schedule A.

6 A You didn't take my deposition.

7 Q During your deposition, you were
8 asked --

9 MR. KIM: That was a trick
10 question.

11 THE WITNESS: I know.

12 BY MR. KIRK:

13 Q You were asked who was responsible
14 for reviewing Schedule A. Do you recall what
15 you said?

16 A I probably said Mark Wyche or
17 Bortz and Associates.

18 Q Was he the one that reviewed
19 Schedule A or did you both review Schedule A?

20 A I'm sure -- we talked about it.
21 I'm sure he probably looked at it more closely
22 than I did. I'm assuming that.

1 Q And you just indicated that
2 consistent with your written testimony, that
3 the analysis and the review was hurried
4 because of time pressure; is that correct?

5 A Well, I mean, look, there weren't
6 a lot of changes that were made to the
7 document because we had red lines all along.
8 So I looked at the red lines to see what they
9 were and I looked at Attachment A, Schedule A.
10 So yeah, the time -- it didn't take hours to
11 do that.

12 Q Why was the review subject to any
13 time pressure and why was it hurried?

14 A Well, as I mentioned before, the -
15 - you know, the FCC had some out with the
16 order giving this 10-day window in which to
17 elect arbitration or to take the matter before
18 the ALJ.

19 Q Didn't Comcast agree to toll any
20 such deadlines to allow the parties to
21 continue negotiating?

22 A My recollection is I think I even

1 asked them if they would consider that and I
 2 think they did but on advice of counsel, this
 3 is a privileged area maybe but there was some
 4 uncertainty and so -- there was some
 5 uncertainty as to what our remedies may or may
 6 not have been if we had waiting past that
 7 deadline and we didn't want to take the chance
 8 having waited since April of 2005 to get
 9 Comcast to the negotiating table. We didn't
 10 want to take that chance.

11 Q Is it fair to say that Comcast
 12 agreed to toll the deadlines but MASN rejected
 13 the idea?

14 A No, I don't think that's fair to
 15 say. They -- I think they were open to the
 16 idea and they would have considered it if we
 17 could have done it but we didn't -- that
 18 wasn't the luxury we had. We couldn't have
 19 done it, so we didn't -- we all knew, Matt
 20 Bond included, Alan Dannenbaum, Andrew
 21 Rosenberg, we all knew that the deadline, I
 22 think it was 4:00 o'clock Eastern or 5:00

1 o'clock Eastern, I can't remember but it was
2 Friday afternoon.

3 Q Say the parties hadn't reached an
4 agreement by that deadline, what prevented the
5 parties from continuing to negotiate and
6 settling the dispute?

7 A I can't speculate to that. I
8 don't know what would happen.

9 Q At 4:00 o'clock, would the parties
10 have had to stop negotiating?

11 A We would have had to have made --
12 MASN would have had to have made a decision as
13 to what to do with respect to the carriage
14 complaint, the Adelpia order and I don't know
15 what could have happened then but I think it
16 was a realistic deadline that we all knew we
17 had and were trying to get to meet. I don't
18 know what would have happened.

19 Q But is there anything that would
20 have precluded the parties from continuing to
21 negotiate?

22 A I don't know. I'm assuming if we

1 had gone forward, that they probably would
2 have walked away -- I don't know. I don't
3 know. I don't know how to answer that.

4 Q If you had more time, what would
5 you have done differently?

6 A Well, hindsight being what it is,
7 I would have made it absolutely clear that
8 they were launching every single system except
9 these 150,000 Adelphia subscriber systems.

10 Q How would you have done that?

11 A I would have made sure that they
12 list every single system in the territory that
13 they had.

14 Q And how would you have insured
15 every single system was listed --

16 A I would have had a rep and
17 warranty from them that they did that. That
18 would be a good way to do it.

19 Q And there's no rep and warranty --

20 A One of many ways.

21 Q There's no rep or warranty then in
22 this agreement to that effect.

1 A No, this is a term sheet, that's
2 correct.

3 Q Okay. In your testimony you state
4 that Mr. Wyche reviewed the actual system
5 names and reported that they did not
6 correspond identically with the information he
7 had. Is that correct?

8 A That's what I remember him saying.

9 Q What was he reviewing to compare
10 system names?

11 A You know, I'm trying to remember
12 what it was he had. And I honestly can't
13 recall what he -- there was something that his
14 company had created that had, I think, a list
15 -- I don't remember what it was but it gave
16 the number of subscribers that Comcast had.

17 Q So Mr. Wyche indicated to you that
18 he had reviewed the system list but that the
19 names didn't match.

20 A It's either that or the number of
21 subscribers in the zones didn't match.

22 Q Well, if I can point you to your

1 testimony, paragraph 26 --

2 A That may help me remember.

3 JUDGE SIPPEL: While you're doing
4 that, at what point in time did you learn that
5 from Mr. Wyche? Was that before you executed
6 or --

7 THE WITNESS: This was on Friday
8 afternoon. I think that's what --

9 JUDGE SIPPEL: At the time of the
10 execution.

11 THE WITNESS: Before, just before
12 it.

13 BY MR. KIRK:

14 Q During the negotiations.

15 A Yes, sir, because we only saw the
16 Schedule A an hour and a half or two hours
17 before the signature. Okay, I read that.

18 Q So is Mr. Wyche comparing the
19 system names on the -- based on the
20 information he had against Schedule A?

21 A Apparently.

22 Q And he indicated he was trying to

1 match them up but the names didn't match.

2 A Yeah, Neilsen he was looking at
3 (inaudible) *** 3:44.

4 Q But according to you he was
5 looking at Schedule A comparing the system
6 names, correct?

7 A That's correct.

8 Q Okay.

9 MR. KIRK: I'd like to approach the
10 witness and show him Comcast Exhibit 91.

11 JUDGE SIPPEL: Yes, sir. We've
12 used this before. It says highly confidential
13 but we've been able to work around that
14 before, so let's see what we can do.

15 (Witness proffered document.)

16 BY MR. KIRK:

17 Q Have you ever seen this document?

18 A No, I don't know that I have.

19 Q Does this document contain a list
20 of systems operated by various cable
21 companies?

22 A The first page is not. I don't

1 think I've seen this before. Certainly the
2 second page appears to list -- yeah, it
3 appears to list some systems, Cox, Charter,
4 Adelphia, et cetera, yeah. It looks like it.

5 Q And are Comcast systems listed on
6 page Com 91-3?

7 A That's what it says, it says
8 Comcast basic and digital subs, Mid-Atlanta.

9 Q Do you see Harrisburg listed
10 there?

11 A Harrisburg, Hershey, Carlisle,
12 yes.

13 Q Do you know whether MASN had this
14 information in its possession in August 2006?

15 A I don't know what this is. I have
16 no idea.

17 Q Would it surprise you to learn
18 that Mr. Cuddihy has testified that he
19 prepared this document prior to August 2006?

20 A Prior to when?

21 Q August 2006.

22 A Yeah.

1 Q Did Mr. Cuddihy ever share that
2 document with you?

3 A No, I've not seen it.

4 Q Okay. In paragraph 31 of your
5 testimony it --

6 A Is that a long paragraph or short?
7 Sorry.

8 Q You state, "The publicly available
9 information is insufficient to determine where
10 a cable operator has systems; is that correct?

11 A Yes, something to that effect,
12 yeah.

13 Q And did you previously testify
14 during your deposition that the normal course
15 in negotiations would be for MASN to provide
16 a cable operator with a list of systems?

17 A I don't recall that I testified
18 that way. What we generally do at MASN is ask
19 the operator for a list of their systems,
20 "Tell us where you are", and then we include
21 that list. But, you know, it depends on the
22 size of the operator. You know, somebody like

1 Comcast who has a myriad of systems around a
2 large territory, it's a big difference as
3 opposed to mom and pop operators got two
4 systems, you know, a couple hundred subs each
5 or a couple thousand subs each. It makes a
6 difference.

7 Q Do you remember during your
8 deposition being presented with a document
9 from Davida Shear going to MediaCom containing
10 a list of systems?

11 A Yes, it sounds familiar.

12 Q And do you recall a question from
13 Andy Tollin as to whether or not that was the
14 common practice from MASN to send a list of
15 systems to a cable operator to begin
16 negotiations?

17 A I don't remember the specific
18 question but I guess we asked --

19 Q Do you recall answering the line
20 of questions regarding that document that that
21 is the normal practice?

22 MR. KIM: What page are we on?

1 (Inaudible) *** 3:49.

2 THE WITNESS: Yeah, because, you
3 know, in all candor, sometimes the questions
4 are a little difficult to ask or to answer.

5 MR. KIRK: Give me one minute.

6 (Pause)

7 BY MR. KIRK:

8 Q If you could turn to -- it's in
9 the deposition excerpts that I previously
10 presented you. If you could look at Com 110-
11 10.

12 A Okay.

13 Q Actually, if I could move you to
14 page 52, 110 is where the discussion starts.

15 A 110-12?

16 Q If you go to 110-12, starting on
17 line 16, do you see where it says, "You notice
18 in this e-mail she asks Italia, (phonetic) the
19 cable operator, "If our list is not correct,
20 please make the necessary changes"?

21 A Okay, yes. And the question is?

22 Q And then if you go to the

1 following -- to the end of that page --

2 A I'm looking at line 6, which is
3 the key to me, line 6 and line 8.

4 Q On which page?

5 A On 53. "Is this accurate, is this
6 roughly the way it gets done"? And I said, "I
7 think it's a reasonable characterization of
8 it".

9 Q So it's reasonable that the
10 question was starting on line 22, page 52, "So
11 the normal course is to make some sort of
12 calculation based on research in the field and
13 then go back and ask the cable company"?

14 A If you can do it, absolutely.

15 Q And based on the documents we have
16 showed you, had you don't that for MediaCom?

17 A Apparently, apparently, Davida had
18 done that with MediaCom and then went to
19 MediaCom and said, "Is this correct"?

20 Q Why did you not do that for
21 Comcast?

22 A I was not aware that we had a list

1 of systems from Comcast.

2 Q According to this line of
3 questioning, and what we just talked about,
4 Davida was asking MediaCom to verify her list.

5 A Right, and you asked why I didn't
6 do that with Comcast. We didn't have a list
7 of systems when we were negotiating with
8 Comcast until the very end of the
9 negotiations. This is the beginning of the
10 negotiations with MediaCom when Davida sent
11 this e-mail to Italia, which is --

12 Q She sent them a list at the
13 beginning to verify, correct?

14 A Yes.

15 Q Did you send Comcast a list to
16 verify --

17 A I did not have -- that's what I
18 just said, I'm sorry. I didn't have one to
19 send them. MediaCom had like six systems in
20 the territory or some number. It's a very
21 small number relative to Comcast. Comcast is
22 the biggest MSO in the market. They had

1 multiple systems, multiple, in five states.

2 Q Do you know how Davida compiled
3 her list for MediaCom?

4 A I don't recall.

5 Q Could you have compiled a list for
6 verification with Comcast some time between
7 commencing negotiations in '05 and entering
8 into an agreement in '06?

9 A Could it have been done? I'm sure
10 it could have been done.

11 Q Why was it not done?

12 A Well, as you recall, we were
13 involved in litigation with Comcast at that
14 point in time. So I don't know -- I can't say
15 exactly why it wasn't done. I did not do one.
16 Could it have been done accurately? I doubt
17 it. But a list could have been created.

18 Q What does litigation have to do
19 with whether or not you could have completed
20 a list?

21 A We weren't negotiating with them.
22 There was no negotiations whatsoever with

1 Comcast until July of 2008 or 2006, excuse me.

2 Q But you were seeking a deal with
3 Comcast, correct?

4 A Yes, in early 2005 and then they
5 sued us and then there was the carriage
6 complaint and so there were no substantive
7 discussions whatsoever with Comcast until July
8 28th, 2006. None.

9 Q You consulted for a number of
10 RSNs, correct?

11 A That's correct. I've been
12 employed by a number of RSNs.

13 Q Based on your experience with
14 those RSNs, do they generally keep a list of
15 cable systems within their territory for which
16 they don't currently have carriage?

17 A They generally know -- the more
18 mature an RSN is, in other words, the longer
19 it's been in business, the more they know
20 where they're not carried, absolutely, yes.

21 Q So is your answer they do have
22 those lists in your experience?

1 A Oh, yeah, you would have an idea
2 of where you're not carried. I'm not sure
3 I've ever seen a list that says, "Here's where
4 we're not carried". I don't recall ever
5 seeing that specifically.

6 Q Did MASN have that information in
7 August 2006?

8 A My recollection is there was some
9 -- we had a notion of who wasn't -- I know we
10 knew who wasn't carrying us and I'm sure there
11 were a number of mom and pops that we weren't
12 aware of at the time but, yeah, somewhere
13 there was a list, I'm sure what operators were
14 not carrying MASN.

15 Q But my prior question about your
16 work with other RSNs was not just about
17 operators, but whether they had specific
18 systems where they weren't being carried.

19 A Okay.

20 Q Did MASN have that list?

21 A With respect to every operator?

22 Q With respect to the largest

1 operator in their territory?

2 A Well, Comcast, we did not have a
3 specific list that I recall or that I ever
4 saw of the systems in the territory. I'm not
5 sure where your -- I'm not trying to be
6 difficult. I'm pausing. I'm just trying to
7 figure out what you're asking.

8 Q Okay. Well, based on your
9 experience with prior RSNs, why do they keep
10 those lists --

11 A Well, obviously, the RSN's goal is
12 to get as much exposure and as much
13 distribution as possible. So with respect to
14 each MSO, they know that the affiliate sales
15 folks know generally where they're not
16 distributed by a specific MSO, if that MSO is
17 not distributing them 100 percent.

18 Q Can you explain for the record
19 what an MSO is?

20 A Multiple System Operator. It's a
21 cable operator that has a number of systems.

22 JUDGE SIPPEL: I'm studying these

1 glossaries.

2 THE WITNESS: There's not one in
3 the back?

4 JUDGE SIPPEL: Which version would
5 you like?

6 THE WITNESS: Yeah, really.

7 JUDGE SIPPEL: Go ahead, I'm sorry,
8 Mr. Kirk.

9 MR. KIRK: Okay.

10 BY MR. KIRK:

11 Q So you've indicated that other
12 RSNs comply lists of MSOs and the systems
13 within their territory on which they don't
14 currently have carriage.

15 A You know, okay, I just want to
16 make sure we're clear. Is there somebody that
17 sits down and puts together a list of where
18 they're not distributed, I would assume that
19 the affiliate sales people probably have that
20 on some kind of spreadsheet, yes, with respect
21 to multiple system operators. They don't
22 distribute them throughout their entire list

1 of systems.

2 JUDGE SIPPEL: You're talking now
3 about the cable carriers.

4 THE WITNESS: No, I'm talking about
5 the affiliate sales person at the regional
6 network who's in charge of getting
7 distribution for the Regional Sports Network.
8 My guess is, they keep a list, an Excel
9 spreadsheet which shows where they're not
10 distributed by certain operators within their
11 Regional Sports Network territory.

12 JUDGE SIPPEL: And you'd be
13 thinking of something like Comcast --

14 THE WITNESS: Well, let's talk
15 about Mid-Atlantic Sports.

16 JUDGE SIPPEL: Well, no, I don't
17 want to take it there. I want -- Mr. Kirk's
18 doing his cross examination. I thought this
19 was going to be an easy question.

20 THE WITNESS: Well, let me give you
21 an example.

22 MR. KIRK: I might be able to help.