

1 whether you believe MASN has been
2 discriminated against by Comcast?

3 A It's one component of my analysis,
4 yes.

5 MR. KIM: May I approach, Your
6 Honor?

7 JUDGE SIPPEL: You may.

8 MR. KIM: Dr. Singer, let me show
9 you what's been marked for identification as
10 MASN Exhibit 240.

11 (Whereupon, the document referred
12 to was marked as MASN Exhibit No.
13 240 for identification.)

14 THE WITNESS: Thank you.

15 BY MR. KIM:

16 Q And I'll ask you, sir, whether you
17 recognize that document.

18 A Yes, I do.

19 Q What is it?

20 A It shows how successful MASN is in
21 the contested areas among non Comcast MVPDs.

22 Q How does it show that?

1 THE WITNESS: Sorry. Do you have
2 a question, Your Honor?

3 JUDGE SIPPEL: No. I'm just
4 nodding. I understand that.

5 THE WITNESS: I presented the same
6 data by the way in the prior case.

7 JUDGE SIPPEL: You don't recycle
8 your data.

9 THE WITNESS: Same methodology.

10 JUDGE SIPPEL: Same methodology.

11 All right.

12 (Laughter.)

13 All right. Let's go.

14 THE WITNESS: Different data.

15 JUDGE SIPPEL: Let's go.

16 BY MR. KIM:

17 Q Tell me why you chose that. I
18 mean just look at these numbers. They're
19 numbers. What do they mean?

20 A Well, it gives a gauge. I mean it
21 answers a lot of questions I think in all one
22 nice summary statistic. It tells you (1) that

1 MASN is doing very well among non Comcast
2 MVPDs in the contested area.

3 THE WITNESS: One way to read
4 this, Your Honor, is that approximately, in
5 the final column, 80 percent of non Comcast
6 MVPDs when weighted by the number of
7 subscribers they have, that's an important
8 point we're going to get back to, choose,
9 elect, MASN. That's point number one. But
10 number two and perhaps more important is they
11 do it at the price [REDACTED] at which MASN is
12 asking Comcast to pay in this proceeding. So
13 it wipes out a whole bunch of issues all at
14 once. I think the ratio therefore has a lot
15 of importance.

16 JUDGE SIPPEL: Now are these the
17 subscribers of the non Comcast MVPDs that
18 you're --

19 THE WITNESS: Correct. Is it okay
20 for me to give an example? I could give a
21 hypothetical.

22 MR. KIM: Please. I think that

1 would help the Court.

2 THE WITNESS: Okay. I can do this
3 very quickly. Just let's focus on a
4 geographic area and I'm going to make up some
5 market share numbers that will make this very
6 obvious. But if you would assume, Your Honor,
7 that Comcast has 66 percent of the subscribers
8 in a given area. Are you following?

9 JUDGE SIPPEL: Comcast has 66
10 percent.

11 THE WITNESS: Sixty-six percent.
12 Let's assume that DirectTV has 32 percent.

13 JUDGE SIPPEL: Okay.

14 THE WITNESS: And then let's have
15 Mom and Pop 1 as one percent.

16 JUDGE SIPPEL: Okay.

17 THE WITNESS: And Mom and Pop 2
18 has one percent. I just made that up. So I
19 hope that that sums to 100, but it can be
20 confirmed. Sixty-six, 32, one, one.

21 JUDGE SIPPEL: Well, give it 100.

22 THE WITNESS: Okay. So what we

1 want to do when computing the statistic which
2 Mr. Burke referred I think to it
3 affectionately as the Hal ratio in the last
4 proceeding and I like that, too, is we're
5 going to take -- Because it's very lengthy to
6 say MASN non Comcast penetration on subscriber
7 weighted basis, that's the last time I'll say
8 that.

9 But let's take Comcast out of the
10 equation because they're arguing that they've
11 got legitimate business reasons for not
12 carrying MASN in a contested area. So let's
13 wipe the 66 off the board and all we have left
14 with in my hypothetical that I gave you, Your
15 Honor, right?

16 JUDGE SIPPEL: Yes.

17 THE WITNESS: Is DirectTV's 32,
18 Mom and Pop 1 and Mom and Pop 2. Now I'm just
19 going to ask you to assume that DirectTV
20 carries MASN and Mom and Pop 1 can't carry it
21 because they can't afford it and Mom and Pop
22 2 can't carry it because they can't afford it.

1 Under my statistic, the Hal ratio, or the MASN
2 non Comcast penetration on a subscriber
3 weighted basis is 34 over 36, sorry, 32 over
4 34. Are you with me?

5 JUDGE SIPPEL: Yes.

6 THE WITNESS: That's the
7 penetration, 32/34, on a subscriber weighted
8 basis, right, because I just took DirectTV's
9 32 and the denominator is 34. It's DirectTV's
10 32 plus Mom and Pop 1 plus Mom and Pop 2.
11 That's the denominator of 34. So under my
12 statistic, MASN's penetration would be 32 over
13 34. I can't do that number in my head, but
14 it's some number that's close to 100 percent.

15 Under the -- And I'm sure we'll
16 get into this especially under cross, but
17 Comcast's statistic they would argue that the
18 majority of non Comcast MVPDs in this example
19 don't carry MASN, right, because they would be
20 able to cite the fact that Mom and Pop 1
21 doesn't carry it. That's one vote in their
22 mind. Mom and Pop 2 doesn't carry it. That's

1 two votes and then DirectTV carries it. So
2 they would claim that the majority, this is
3 Mr. Orszag's statistic, don't carry MASN and
4 I reject that unequivocally.

5 JUDGE SIPPEL: You mean like two-
6 thirds don't carry it.

7 THE WITNESS: They would say the
8 majority. He doesn't give a percentage. He
9 just keeps repeating the majority and this is
10 true. I cannot dispute. There are tons of
11 Mom and Pops in the contested area, right,
12 many of whom have fewer than 100 subscribers.
13 And I just want to say, "Let's have a grown-up
14 and adult conversation about how MASN is
15 really doing" and in my opinion it is
16 appropriate from an economist's perspective to
17 give the votes their due weight and when
18 DirectTV in my example has 32 percent, right,
19 I don't want them given equal weight nor do I
20 think that any economist would want them given
21 equal weight to the Mom and Pop with one
22 percent and the other Mom and Pop with one

1 percent.

2 That was a long digression, but I
3 hope that it -- I appreciate you allowing me
4 to go through it. But I think it will give a
5 lot more context to what the 80 percent means
6 in Table 8.

7 JUDGE SIPPEL: Okay. So transfer
8 all of that methodology to -- Are you taking
9 79 and 81 and 77 and coming up with 80
10 percent?

11 THE WITNESS: Correct and I'm
12 coming up with it, Your Honor, in the exact
13 way that I just came up with my hypothetical.
14 You have the numbers in front of you.

15 JUDGE SIPPEL: I do.

16 THE WITNESS: You understand that.
17 You take Comcast out and you'll get a new
18 denominator that's smaller.

19 MR. KIM: Your Honor, may I
20 approach the witness?

21 JUDGE SIPPEL: Sure. Yes, sir.

22 MR. KIM: Dr. Singer, let me show

1 you what's been marked as MASN Exhibit 241 for
2 identification.

3 (Whereupon, the document referred
4 to was marked as MASN Exhibit No.
5 241 for identification.)

6 And I'll ask you, sir, if you
7 recognize that document.

8 JUDGE SIPPEL: I don't have an
9 exhibit number on this.

10 MR. KIM: Your Honor, I apologize.

11 JUDGE SIPPEL: That's okay.

12 MR. KIM: We were doing these on
13 the fly. It's 241.

14 JUDGE SIPPEL: Well, what about
15 this? What's Table 8? Is that --

16 MR. KIM: Two-four-zero, Your
17 Honor.

18 JUDGE SIPPEL: Two-four-zero.

19 MR. KIM: Yes, sir.

20 JUDGE SIPPEL: That's good enough.
21 And 241 is this one that you just passed out.

22 MR. KIM: The pie chart. Yes,

1 sir.

2 JUDGE SIPPEL: And those are going
3 to be MASN numbers.

4 MR. KIM: Yes, sir.

5 JUDGE SIPPEL: Go ahead.

6 BY MR. KIM:

7 Q Dr. Singer, do you recognize
8 Exhibit 241?

9 A I can't say I recognize it, but I
10 recognize the numbers in it in the sense that
11 they look like they're the same numbers that
12 appear in the prior exhibit.

13 Q Okay.

14 A But this exhibit does not appear
15 in this form anyway in my written testimony.

16 Q And just so the Court's clear,
17 what's the relationship between 241 and 240?

18 A Well, it looks as if someone has
19 taken the same numbers and put them in a pie
20 chart as opposed to a table.

21 Q It's a graphic illustration of the
22 actual number percentages in 240. Is that

1 fair?

2 A Yes. It's much more attractive.

3 Q We're here for looks, Dr. Singer.

4 A Okay.

5 MR. KIM: Your Honor, I would
6 offer MASN Exhibits 240 and 241 for
7 demonstrative purposes only.

8 JUDGE SIPPEL: Is there any
9 objection?

10 MR. BURKE: No objection, Your
11 Honor.

12 JUDGE SIPPEL: They are in for
13 demonstrative purposes.

14 (The documents referred to having
15 been previously marked for
16 identification as Government
17 Exhibits Nos. 240 and 241, were
18 received in evidence.)

19 BY MR. KIM:

20 Q Dr. Singer, why is significant to
21 you in analyzing the question of
22 discrimination that there's so much green on

1 Exhibit 241?

2 A Because I think it puts to rest
3 Comcast's false claim that there is no demand
4 for MASN's programming in the contested area.
5 If there was no demand as they're suggesting,
6 why would so many MVPDs, why would -- Let me
7 just restate it. Why would every major MVPD
8 in the contested areas be carrying MASN at the
9 price that MASN is seeking from Comcast in
10 this dispute? It just makes no economic
11 sense.

12 Q And, Dr. Singer, just so I'm
13 clear, the MVPDs that make up the green shaded
14 portion of 241, do they have an affiliate RSN
15 to protect?

16 A No, they don't.

17 Q Is that relevant to you?

18 A Absolutely.

19 Q Tell me why.

20 A Well, because according to my
21 theory of the case and probably yours as well,
22 what is motivating Comcast here is its

1 affiliation with the CSN MidAtlantic and CSN
2 Philadelphia. If it were not affiliated in my
3 opinion, it would not treat MASN this way.

4 Q How many different ways do you
5 offer to estimate the fair market value of
6 MASN in the disputed regions?

7 A I believe I have one primary
8 approach and two supplemental approaches that
9 in my opinion corroborate my primary approach.

10 MR. KIM: Your Honor, may I
11 approach?

12 JUDGE SIPPEL: You may.

13 MR. KIM: Dr. Singer, I'm showing
14 you what's been marked for identification as
15 MASN Exhibit 242.

16 (Whereupon, the document referred
17 to was marked as MASN Exhibit No.
18 242 for identification.)

19 JUDGE SIPPEL: Another
20 demonstrative?

21 MR. KIM: Yes, sir.

22 BY MR. KIM:

1 Q And I'll ask you if you recognize
2 that.

3 A Yes, I do.

4 Q What is that, sir?

5 A It is a table showing the
6 identities of the MVPDs that carry MASN in the
7 contested areas by a contested area and in
8 parentheses it is showing the price per
9 subscriber per month at which those MVPDs have
10 voluntarily agreed to pay MASN.

11 Q Why is that relevant to you in
12 figuring out the right prices for MASN in
13 these regions?

14 A As an economist, the best
15 indicator of fair market value which is what
16 I understand I'm supposed to provide in what
17 I call Phase 2 of this proceeding is what
18 other MVPDs are voluntarily paying for the
19 subject programming in the marketplace. By
20 the way, it's not only my opinion. It's what
21 the FCC has said is the most important
22 indicator and that is their first item in

1 their eight prong list of factors in several
2 orders has been to look at the fair market
3 value, to look at the arm's length
4 transactions between voluntary parties in the
5 marketplace for the same programming.

6 MR. BURKE: I would move to
7 strike, Your Honor. I think that's legal
8 testimony which is just improper. I mean I
9 think if Dr. Singer wants to offer economic
10 analysis as to how to value something that's
11 entirely appropriate. But he's testifying
12 about what the FCC rules are.

13 JUDGE SIPPEL: Well, he's going to
14 interpret -- It's not a rule. It's in a
15 decision. Is that correct? Or it's in --

16 THE WITNESS: It's in multiple
17 orders including the Adelphia order, the News
18 Corps, the MO&O and I'm not offering any legal
19 interpretation. But I am informed. I do look
20 to what the FCC says I should do when it comes
21 to measuring value. I did read the eight
22 factor test and the FCC says, "Hal, (1) look

1 to see what other MVPDs are paying in the
2 relevant markets for the same programming. If
3 you have evidence of that, the inquiry ends."
4 That's what they say.

5 Now they go on to offer seven more
6 factors. I'm not offering you a legal
7 opinion. But my analysis is informed by what
8 the FCC told me to do in performing a fair
9 market evaluation.

10 JUDGE SIPPEL: I'm going to
11 overrule the evaluation. He's taking it in an
12 economic context only.

13 MR. KIM: Thank you, Your Honor.

14 JUDGE SIPPEL: Go ahead.

15 BY MR. KIM:

16 Q So, Dr. Singer, am I correct that
17 MASN 2 represents the first approach and your
18 dominant approach in determining the right
19 price in these regions?

20 A Yes, it does.

21 Q You mentioned a Comcast expert. Is
22 that right?

1 A Yes, I did.

2 Q Who is he?

3 A Well, they offer two, but one of
4 whom is in the room, Jonathan Orszag.

5 Q Okay. Just because I don't want
6 to neglect someone in the room, he's right
7 there with us, right?

8 A With the green tie.

9 Q He's looking quite dapper today as
10 always.

11 A I agree. Very handsome.

12 Q Dr. Singer --

13 JUDGE SIPPEL: Did I miss
14 something here?

15 MR. KIM: No, Your Honor.

16 (Laughter.)

17 I thought it was rude not to refer
18 to the fact that Mr. Orszag that we're talking
19 about him and he's right in the room. So I
20 just wanted the record to acknowledge the fact
21 that he's here.

22 I'll move right along and again

1 he's looking better than I am today.

2 BY MR. KIM:

3 Q Dr. Singer, does Mr. Orszag
4 dispute your first approach as far as you
5 know?

6 A I don't think he quite disputes
7 it. I think that he has a problem with the
8 fact and I'll try to paraphrase it. I'm sure
9 he'll do a better job when he gets up
10 tomorrow. But I think he has a problem with
11 the fact that I'm putting all my weight, if
12 you will, on just those MVPDs who have
13 actually entered into an agreement with MASN.
14 I think he would like me to somehow put weight
15 on the noncarriage decisions. But to that, I
16 answer no. You only look at the transactions
17 the people who have voluntarily entered into
18 arm's length transactions or negotiations.

19 The problem, of course, with the
20 holdouts is that you have no idea what their
21 willingness to pay is. It could be zero. It
22 could be [REDACTED] It could be [REDACTED]. Right.

1 In one case just sitting here for the last two
2 days, I think it came out yesterday, we had
3 someone flip, right. We had a Mom and Pop
4 company go from not carrying in which case Mr.
5 Orszag would presumably assign a value of zero
6 to carrying in which case they at [REDACTED], in
7 which case he would assign a value of [REDACTED].

8 So my opinion, Your Honor, is you
9 don't look at all with the noncarriage
10 decisions. Of course, the fact that most of
11 them are Mom and Pops is a further reason not
12 to consider them. But the fact that they're
13 not carrying just means that we can't attach
14 a value. We don't know if it's zero. We don't
15 know if it's [REDACTED] and they might carry
16 tomorrow.

17 So what I do instead is I just
18 look at the carriage decisions of these MVPDs
19 who actually carry MASN when determining fair
20 value.

21 JUDGE SIPPEL: The Mom and Pops,
22 are the Mom and Pops, are they an MVPD? I

1 mean, do they qualify for that?

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: They're integrated
4 and all.

5 THE WITNESS: Oh, they are not
6 vertically integrated in the programming if
7 that's what you're asking. But they are MVPDs
8 in the sense that they supply programming to
9 customers sometimes as few as 22 customers.
10 But, sure, I'm going to give them the MVPD
11 designation.

12 JUDGE SIPPEL: I thought that was
13 an MOS.

14 THE WITNESS: MSO?

15 JUDGE SIPPEL: MSO.

16 THE WITNESS: Oh, no. I think
17 that MSOs are often -- That term of art is
18 often reserved for cable operators that own
19 multiple systems, but --

20 JUDGE SIPPEL: All right. Go
21 ahead.

22 BY MR. KIM:

1 Q That's actually a good point, Dr.
2 Singer. Let me try to lay foundation here.

3 A Okay.

4 Q What is the relationship between
5 MSO and MVPD?

6 A Sure. I think it's correct to say
7 that an MSO is a subset of MVPD. So for MVPDs
8 you have satellite carriers which I don't even
9 want to introduce another acronym. You can
10 have telephone operators and you can have
11 cable companies. So MSOs would be one type of
12 MVPD.

13 Q So all MSOs are MVPDs, but not all
14 MVPDs are MSOs.

15 A I think that's right.

16 Q And what is the difference between
17 an MVPD and a vertically integrated MVPD?

18 A Well, they're pretty close in
19 terms of what they do. The only difference is
20 the vertically integrated MVPD acquires an
21 ownership in the upstream programming
22 division.

1 Q We talked about your first
2 approach now. Do you offer an additional
3 approach to determining what the price is in
4 the disputed regions?

5 A I want to be careful. The other
6 two approaches don't provide price estimated
7 per se. They are intended to corroborate my
8 primary approach. That is to show that MASN's
9 price is reasonable.

10 Q Fair enough. Let me reask my
11 question. Do you provide other ways of
12 assuring that your primary approach which is
13 reflected in MASN 242 is correct in your mind?

14 A Yes, I do.

15 Q Okay. Can you describe the first
16 one for the Court please?

17 A Sure. The first one, short-hand,
18 sorry to introduce another acronym, is called
19 PSPPE. It is an evaluation technique that was
20 described earlier today by Mr. Wyche. It's
21 very simple. The analogy that I would use to
22 explain it to a layperson would be if you're

1 looking at home. It would be the price per
2 square foot. It's kind of a summary
3 statistic, if you will, that would allow you
4 to compare multiple homes in the neighborhood.

5 So all he's doing with the PSPPE
6 is he's taking the price per subscriber per
7 month and he's dividing it by the number of
8 live professional sporting events.

9 Q What did your analysis of the
10 PSPPE do for you with respect to your
11 determination of what the right price is?

12 A Sure. I computed this metric
13 which just think of it as a price per square
14 foot, but it's just a price per live sporting
15 event for MASN in the contested areas and I
16 compared it against the price per sporting
17 event for various Comcast sports networks in
18 the contested areas and I concluded that on
19 that metric MASN was a good deal or was fairly
20 priced relative to what Comcast is pricing for
21 its sports networks in the contested areas.

22 Q Now let's talk about your second

1 alternate approach to determine whether you
2 had it right the first time. Okay. What was
3 that? Was that a regression analysis?

4 A Yes, it was.

5 Q Okay, and could you just briefly
6 describe for the Court what a regression
7 analysis involved?

8 A Sure. This one is hard and I
9 think I tried to do this the last time. But
10 the regression analysis recognizes that many
11 variables, many factors, could be influencing
12 a variable that you're trying to predict. So
13 it's a sophisticated way of controlling for
14 the fact that as you move across observations
15 that other things could be changing. So
16 that's effectively what it is doing.

17 I think when we send the
18 abstraction letter it will be a little clearer
19 what I was doing and what I needed for
20 regression to do it.

21 Q Well, let's go back to your first
22 alternative approach, the PSPPE. Do you

1 understand whether Mr. Orszag criticizes that
2 approach?

3 A I do not believe that Mr. Orszag
4 provided a criticism of that approach in his
5 direct testimony.

6 Q In this case.

7 A In this case.

8 Q Now with respect to your second
9 alternative approach, the regression analysis,
10 do you understand whether Mr. Orszag disputes
11 that?

12 A I think that he had some
13 methodological issues that he raised in his
14 written testimony.

15 Q In his written testimony, did he
16 opine that, the right price, under your
17 analysis could be zero?

18 A Yes, he did.

19 Q So you agree with that?

20 A No, I do not.

21 Q Could you -- I mean this is going
22 to be hard for me because I'm a layman. But