

1 I mean I could interview people at
2 Major League Baseball, but it is what it is.
3 It's a footnote to a press article.

4 Q How about this, how about reading
5 the testimony of the witnesses in this case
6 who were in the negotiations for the equity.
7 Did you bother to do that?

8 A Major League Baseball?

9 Q Yes, my client. You know, my
10 client did the deal with Major League
11 Baseball. You have your testimony in this
12 case. Did you pick up a single deposition and
13 ask yourself, gee, I wonder what the facts
14 are, let me look at what the people who were
15 involved in it remember. Did you do that?

16 A I looked at many depositions, I
17 don't remember looking at that one in
18 particular.

19 Q Instead you read a newspaper story
20 and you do remember what the publication was
21 even?

22 A I think it was the Washington

1 Times.

2 Q The Washington Times. Based on
3 your expert, is it your expert opinion we
4 should believe everything we read in the
5 Washington Times?

6 A No.

7 Q Okay, let me see if I can do
8 another subject quickly before we break.
9 Because I think I'll probably have, still some
10 more questions in the morning, Your Honor.

11 ADMIN. JUDGE SIPPEL: Can you
12 quickly find that footnote for me?

13 MR. CARROLL: It is footnote 18,
14 Your Honor.

15 ADMIN. JUDGE SIPPEL: I'll find
16 it, go ahead.

17 MR. CARROLL: Footnote 18 on page
18 10.

19 ADMIN. JUDGE SIPPEL: I'll find
20 it, go ahead.

21 BY MR. CARROLL:

22 Q Now, another key area of your

1 testimony, as I hear it, sir, related to the
2 econometric analysis you did that was like
3 what you understand the FCC's analysis to have
4 been with respect to the NBC transaction, do
5 you remember that?

6 A Yes.

7 Q You talked about a Professor
8 Goolsbee, right?

9 A Right.

10 Q Do you know him?

11 A Yes.

12 Q Did he actually do any of the FCC
13 work that's in the technical appendix?

14 A He wrote a paper for the FCC. So
15 the answer is no, but he laid out the
16 methodology that was employed by the FCC.

17 Q Well, I just, that's why I asked
18 the question, so please, if we can get back to
19 my question. The analysis itself, that is
20 contained in the technical appendix, did
21 Professor Goolsbee do it or not?

22 A He did not perform that analysis,

1 no.

2 Q And did Professor Goolsbee consult
3 with you on the analysis you did in this case,
4 that you say is like what the FCC did in the
5 technical appendix?

6 A No.

7 Q Did you call him up and say, hey,
8 here's how I'm doing it, what do you think of
9 this?

10 A No.

11 Q Now that's called Peer Review in
12 your line of work, right? Are you familiar
13 with the phrase Peer Review?

14 A Yes, I am.

15 Q Okay, in your line of work, Peer
16 Review is what Scientists, people in the
17 sciences, economics, do with their papers
18 before they publish them.

19 They show their Peers their work
20 so they can troubleshoot it and ask themselves
21 whether it's done correctly, right?

22 A In my academic work I do exactly

1 that. In my consulting work I don't know if
2 I have that liberty.

3 Q Okay, and you did not have that
4 liberty with your work. You're the guy and
5 the only guy who is standing up here for the
6 econometric work that is the basis for your
7 opinion here, right?

8 A Yes.

9 Q You stand by it yourself but you
10 haven't vetted it with anybody else out there?

11 A I don't think that I have the
12 liberty vet my work, pursuant to litigation
13 matters with the experts or consultants.

14 Q Well, you could check
15 methodologies. Supposing you were going to
16 test a certain methodology or employ some
17 methodology, you could have discussed that if
18 you wanted, maybe?

19 A Well, to be clear I have an
20 Econometrician in my firm performing the
21 methodologies I instructed him.

22 Q As you instructed, you own this

1 methodology?

2 A Yes.

3 Q I want to be clear now before I go
4 into it. You stand by it, correct?

5 A Yes.

6 Q Okay. I don't want to find out
7 when we're in it that, oh, I didn't do it, I
8 didn't know that happened. You own this
9 analysis that you did, and you're prepared to
10 put your reputation behind it in this
11 courtroom, correct?

12 A Yes.

13 Q Okay, let's see how you did it.
14 The analysis we're talking about is in
15 paragraphs 24 and 25, of your opinion. That's
16 where you discuss it, right?

17 A Correct.

18 Q Actually you start, it starts on
19 paragraph 23. You introduce it, you reference
20 the FCC's work. Talk about in paragraph 24.

21 And in paragraph 25, you lay out
22 the methodology that you used, correct?

1 A Correct.

2 Q And we're going to need a few more
3 terms here for the glossary, Your Honor. My
4 apologies, it's getting long. And I'm going
5 to try to walk us through this which you,
6 here, sir.

7 As I understand it, what you did
8 was you went and you got DMA information,
9 correct? DMA?

10 A DMA is part of it. There's a lot
11 of inputs going on. Yes, DMA --

12 Q Okay.

13 ADMIN. JUDGE SIPPEL: What does
14 that stand for?

15 THE WITNESS: Designated Market
16 Area.

17 ADMIN. JUDGE SIPPEL: Thank you.

18 BY MR. CARROLL:

19 Q Designated Market Area, and that's
20 a term that refers to the way that the nation
21 is divided by markets for video programming,
22 geographically, correct?

1 A Right. And that's the way SNL
2 Kagan keeps market shares.

3 Q And do you know how many DMAs
4 there are nationwide?

5 A I think it the 200s.

6 Q About 200. And you went, for each
7 DMA on the list, we'll say it's about 200.
8 And you looked up to find out what Comcast's
9 market share was in that DMA, is that correct?

10 A That was one part of it, correct.

11 Q Well, we're going to build to it,
12 I have to take it in steps.

13 A Okay.

14 Q So you looked up the market
15 shares, you have a list of DMAs, about 200
16 long, and you have the market share
17 information for Comcast market share, correct?

18 A Correct.

19 Q And then you are going to do some
20 analysis related to the averages of those
21 market shares, correct?

22 A Correct.

1 Q Now let me show you first a list
2 of the DMAs and just see if you can confirm
3 for me that this looks right to you? Your
4 Honor, may I approach?

5 ADMIN. JUDGE SIPPEL: Please do.

6 BY MR. CARROLL:

7 Q This is exhibit 1090. Do you
8 recognize this, sir? Exhibit 1090 is a list
9 of DMAs?

10 (Whereupon, the document referred
11 to was marked as Exhibit Number
12 1090 for identification.)

13 A Yes.

14 Q And it has, we have the market
15 shares next to it and we've taken this just
16 from the work that you've shared with us in
17 this case, do you see that?

18 A Yes.

19 Q Now, first thing, if you wanted to
20 calculate the average market share for this
21 list of DMAs, what you would do is you would
22 just add up all the market shares that are on

1 this list, and you would divide it by the
2 number of DMAs on the list, right?

3 A That would be a simple average,
4 yes.

5 Q Well, that is how you would do
6 what everybody regards as the straightforward
7 average for this list, correct?

8 A Straightforward is not a term of
9 art. There's a simple average and there's
10 weight average. And what you described is a
11 simple average.

12 Q Simple average, simple average.
13 And the simple average, we put that average on
14 the last page here of exhibit 1090, is ,
15 do you see that?

16 A Right, which is nowhere near,
17 which nowhere near describes Comcast market
18 share, average market share. Comcast, itself,
19 gives its average market share and it's 10-K,
20 it's nothing close to .

21 Q Really. What number does Comcast
22 give?

1 A They give a number in the 40s, I
2 believe.

3 Q Okay, we'll check on that. Now
4 did you calculate this average, when you did
5 your work, this, did you do this calculation
6 and get ?

7 A No, because for the same reason
8 that Comcast weights different markets
9 differently, my methodology weighted different
10 markets differently.

11 Q Okay, well I just want to take it
12 a step at a time, you're jumping ahead. I
13 just want to establish, so you didn't even
14 calculate what the straight, simple average
15 would be, is that right?

16 A I didn't do a lot of things that
17 were not germane to my analysis, and that's
18 one of them.

19 Q I see. Instead, is it your
20 testimony that you did a weighted average?

21 A Well, what happened --

22 Q Is that your testimony, yes or no?

1 A I did a weighted according to a
2 particular weight, which is where the head
3 ends showed up in the other database.

4 Q Do you use the term weighted
5 average to describe your work anywhere in the
6 direct testimony you submitted, sir?

7 A I don't know if I do or not.

8 Q You can't think, as you sit here,
9 of any place where you described this as a
10 weight average, before now, can you?

11 A I cannot.

12 Q And there are rules for doing a
13 weighted average in your line of work, aren't
14 there?

15 A Well, here you're confusing a unit
16 of observation. The unit of observation is
17 the head end in my analysis, and what your,
18 that's where we have Comcast carriage
19 decisions at the head end.

20 You're acting as if the unit of
21 observation in this analysis is the DMA level
22 which is incorrect.

1 Q Sir, I'm just asking you
2 questions. And my question is simply, for
3 you, there are rules that are scientific rules
4 in your line of work for when it's appropriate
5 to do a weighted average, correct?

6 A No, I don't think there's rules
7 about when it's appropriate to do a weighted
8 average.

9 Q So you think you can do a weighted
10 average in this situation without regard to
11 any principles or rules?

12 A No, I didn't say that either.

13 Q Isn't one of the rules for
14 weighted average that you have to do the
15 weighting when it's appropriate to, for a
16 particular purpose?

17 You can't just do a weighted
18 average. You have to have a particular reason
19 for doing the weight, the weight that you're
20 doing, correct?

21 A As it turns out, I didn't do, I
22 did not do a weighted average. Each head end

1 was treated equally in my analysis.

2 Q I thought you said you did a
3 weighted average?

4 A No.

5 Q Is your testimony now that you did
6 not do a weighted average?

7 A When you look, when you --

8 ADMIN. JUDGE SIPPEL: Let him
9 answer the question.

10 THE WITNESS: When you, your, the
11 premise of your question was wrong, and I
12 should have corrected it. Your premise was
13 that the unit of observation was the DMA.

14 From that perspective, you can
15 describe what I did as a weighting based on
16 how many head ends showed up in the DMA. But
17 my unit of observation was the head end.

18 Each head end in my analysis was
19 given equal weight, which is why you don't see
20 the word weighted in my write up.

21 MR. CARROLL: Let's test that.

22 ADMIN. JUDGE SIPPEL: Do we have

1 an answer for this question? I heard, when we
2 began this line, there was something called a
3 simple average and something called a weighted
4 average.

5 And we have number . When you
6 say straightforward, whether or not that is a
7 simple average or a weighted average?

8 THE WITNESS: The is, well, Mr.
9 Carroll, I'm assuming that it is a simple
10 average.

11 ADMIN. JUDGE SIPPEL: You're
12 assuming that?

13 THE WITNESS: I didn't do that
14 computation.

15 ADMIN. JUDGE SIPPEL: Oh, I'm
16 sorry, I'm sorry, all right.

17 MR. CARROLL: May I approach, Your
18 Honor?

19 ADMIN. JUDGE SIPPEL: Please do.

20 BY MR. CARROLL:

21 Q This is exhibit 1091, sir. Now in
22 exhibit 1091, we've gone through the same DMAs

1 that were on the last exhibit and looked at
2 your work and you tried to replicate what you
3 must have done and that's why we've listed
4 this as the Singer methodology.

5 And I want you to confirm for us,
6 that you've got it right. What you did is for
7 each of the DMAs listed there, you applied a
8 multiplier, based on the number of head end
9 that was in the DMA. You applied a multiplier
10 to the Comcast share, is that correct?

11 (Whereupon, the document referred
12 to was marked as Exhibit Number
13 1091 for identification.)

14 A I did not apply a multiplier. I
15 don't know if that mathematically turns out to
16 be the case, but what I did, my unit of
17 observation was the head end, because Comcast
18 gave to me its carriage decision at the head
19 end level.

20 Q How about the market share? Did
21 you get market share information at the head
22 end level?

1 A It doesn't exist at the head end
2 level from SNL Kagan.

3 Q So what you did was you took
4 information at one level and applied it to a
5 different level, isn't that right?

6 A That's absolutely right, and I
7 can't think of a better way to map, if I'm
8 trying to explain the hypothesis here, is does
9 Comcast decisions at the head end level, can
10 they be explained by market share.

11 If SNL Kagan only keeps market
12 share at the DMA level, I have to do that
13 mapping.

14 Q Well, it would not be acceptable
15 in science for you to do a technique just
16 because it's, you couldn't do it the right
17 way, that wouldn't be acceptable, correct?

18 A Well, I don't understand what
19 you're saying.

20 ADMIN. JUDGE SIPPEL: Is this a
21 science or is this a methodology.

22 BY MR. CARROLL:

1 Q Let's ask that. This is, what
2 we're talking about is a scientific method for
3 how one does an averaging as part of a
4 regression analysis, correct, sir?

5 A No.

6 Q You don't consider this science?

7 A I do consider it science but what
8 the problem, if I can explain it to the Judge.
9 Is that, Your Honor, the Comcast carriage data
10 for where Comcast puts the Tennis Channel.

11 Remember, how I told you that in
12 roughly of the markets, it carries
13 Tennis Channel on the sports tier. But, on
14 occasion, around percent of the time, it
15 deviates and it carries Tennis Channel more
16 broadly.

17 ADMIN. JUDGE SIPPEL: You did,
18 sir, versus , okay, go ahead.

19 THE WITNESS: That carriage data
20 was presented to me by Comcast at the head end
21 level. What I wanted to do was it see if the
22 variation in Comcast treatment of Tennis

1 Channel could be explained by Comcast market
2 share in that area.

3 The problem being is that when you
4 go to SNL Kagan and there might be other
5 vendors of market share data, but you go to
6 SNL Kagan, that's the vendor that I subscribe
7 to.

8 The market share level is kept at
9 the DMA level. So what I had to do was merge
10 head ends, based on where they are
11 geographically, into DMAs.

12 BY MR. CARROLL:

13 Q Let's, and I want to follow up
14 right there. That merging that you did. Do
15 you have exhibit 1091 in front of you?

16 A Yes.

17 Q So let's go down to Boston. Do
18 you see it says Boston, Manchester, do you see
19 that?

20 A I don't.

21 Q Third item down, sir.

22 A I see it

1 Q How big an area, geographically,
2 is that DMA, do you know?

3 A Geographically I don't know,
4 population-wise huge.

5 Q Right, but it covers not just
6 Boston, the city itself, it covers a lot of
7 the suburbs. Does it go all the way up to
8 Manchester, NH?

9 A That's the name of the DMA, so I'm
10 going to presume that it includes Manchester.

11 Q Because that's a big area, isn't
12 it?

13 A It is a big area.

14 Q Right. And there are head ends
15 in that area, is that right?

16 A There are Comcast head ends.
17 There could be more head ends.

18 Q Okay. And a head end, Your Honor,
19 let's just clarify that term. Head end refers
20 to the particular unit that is being used to
21 send out the signal over the cable wires.
22 Correct, si?

1 A Correct.

2 ADMIN. JUDGE SIPPEL: Just repeat
3 that, a particular unit?

4 MR. CARROLL: It's the unit where
5 the equipment that is sending out the signal
6 to the customers in a particular area.

7 ADMIN. JUDGE SIPPEL: Thank you.

8 Q Now, what you did for the Boston
9 area, this merge that you're describing is
10 Comcast market share that you got from Kagan,
11 was , but that was the market share for
12 the whole area, right?

13 A That's as good as you can get it.

14 Q All you had was one market share.
15 You understand that's an average market share
16 for the whole area, right?

17 A Correct.

18 Q Okay, so you're working with an
19 average for the whole area. You took that
20 average and put it into your calculation
21 times, didn't you?

22 A Well, each --

1 Q Is that correct?

2 A I didn't put it in, well, each
3 head end that is part of the Boston DMA, was
4 assigned a market share of percent.

5 Q You put it in times, correct?

6 A I just, I'm not comfortable with
7 the way that you're phrasing, I put it in. I
8 did the merging of the two databases as best
9 as I could.

10 Q Sir, the way you did it was you
11 had to put, input numbers into your
12 calculation. When you went to put the numbers
13 in, how many times did you put in the market
14 share , when you calculated the average?

15 How many times did you put that
16 market share into your data calculation?

17 A Well, I didn't put it in, but it
18 was merged in times.

19 Q times?

20 A Yes.

21 Q And Lafayette, Indiana, by
22 example, was put in , correct?

1 A Only because Comcast must have
2 in that DMA.

3 Q And each of the numbers that we
4 see under the column, Singer Multiplier, that
5 represents the number of times that you took
6 the average market share, for a geographical
7 area and put it into your average calculation,
8 correct?

9 A With the caveat that I don't want,
10 put in suggests that I'm kind of willy-nilly
11 dropping it in. I mean I'm merging two
12 different databases.

13 Q You input, you input each of the
14 market shares shown there, the number of times
15 that is in the column under Singer Multiplier,
16 correct?

17 That's how many times you inputted
18 when you figured the average.

19 A Okay, I'll accept that.

20 Q Okay. Now, the results of this
21 work that you did, was you calculated an
22 average of , is that right? Did

1 you do that or not?

2 A That would be the average for the
3 entirety of the sample, but remember what I
4 was trying to do was break apart the sample
5 into head ends that carried Tennis Channel on
6 sports tier versus head ends that carry Tennis
7 Channel on the more broadly distributed tier.

8 I will note that the , you
9 know, I didn't, this isn't my number, is very
10 close to what Comcast offers as its own market
11 share and it's 10-K

12 Q Move to strike as non-responsive.
13 If you just answer my question, sir. The
14 average that you calculated for the two
15 groups, when you did the calculation, you came
16 up with percent for one of them and
17 percent for the other, is that right?

18 A I'd have to go back and look, but
19 you've given me a number that bounds the
20 average of the entirety so it sounds
21 reasonable, but I mean it would have to be,
22 mathematically it would have to come out that

1 way.

2 Q Well, do you remember what the
3 range was that you reported in your, isn't it
4 on --

5 A I'll look it up real quick.

6 Q Isn't on, in paragraph 25, page 14
7 of your report, the two market averages you
8 computed were for one of them and
9 for the other.

10 Those were the two averages you
11 calculated, right?

12 A Correct.

13 Q Okay, now, both of those averages
14 are a whole lot bigger than the simple average
15 of , right?

16 A The simple average shouldn't even
17 be compared here, it makes no sense.

18 Q Well, let's see, that will be for
19 his Honor to decide. Do you agree with me?

20 A No, I want to counsel his Honor
21 that when, that number just has no relevance
22 in the way that I conducted the analysis.

1 Q Do you know what the market share
2 is that Comcast reports in it's 10-K? You
3 said earlier you thought it was in the 40s.
4 Are you sure of that?

5 A That's my memory, yes.

6 Q Would it surprise you to know that
7 the 10-K lists the market share as 23.1
8 percent.

9 A Yes, that would surprise me and I
10 wouldn't want to go by your Blackberry, I want
11 to go back and look at the 10-K.

12 Q How about your own report where on
13 page 70, paragraph 101, you identify Comcast
14 market share as roughly percent.

15 A No that's, now we're mixing apples
16 and oranges. They have percent of the
17 entirety of MVPD customers, but I'm talking
18 about what they call in their 10-K, their
19 video penetration rate.

20 We're only looking at Comcast in-
21 region markets here. And in their own 10-K
22 they'll list the video penetration rate and my