

1 either your partners or law firm, what was
2 redacted?

3 A Could be. I've not read into the,
4 into this. So I would -- I don't think it
5 would be appropriate for me to ask somebody,
6 or for them to provide it.

7 Q You don't know if you were able to
8 sign that protective order?

9 A I do not know.

10 Q Do you agree with me that equity
11 impacts carriage decisions?

12 A As a theoretical matter, it is
13 possible, but it's really an empirical
14 question.

15 Q Does it move the dial on carriage
16 decisions?

17 A Again, I go back to it's really an
18 empirical question of whether it moves the
19 dial.

20 Q If it can move the dial, would you
21 agree with me that it's more likely to move
22 the dial when you have a greater amount of

1 equity?

2 A Here's where it gets a little
3 complicated.

4 Q Can you answer that question yes
5 or no?

6 A I'm not comfortable answering it
7 yes or no. I'd like to give an explanation of
8 my view.

9 Q Do you agree with me that equity
10 is an incentive to grant broader carriage?

11 A The question is whether it's a
12 significant incentive, and so it's really an
13 empirical question.

14 Q Okay. Do you agree with me just
15 generally, that equity gives -- if a company
16 has equity in a network, they have an
17 incentive to grant broader carriage to that
18 network, yes or no?

19 A The answer is, as a directional
20 matter, as a matter of theory, but it's an
21 empirical question about the magnitude.

22 Q Have you reached -- have you

1 conducted an analysis and reached an opinion
2 on whether Tennis Channel would enjoy the
3 carriage it enjoys from DirecTV, but for the
4 equity agreement?

5 A I have not measured what the
6 distribution level for DirecTV would be but
7 for the carriage agreement, and I stated such
8 in my direct testimony, and I maintain it as
9 a comparable. But I say one has to be careful
10 to do direct comparisons, because of that lack
11 of ability to do that comparison.

12 Q Same question for Dish. You have
13 not conducted an analysis of how much, if any,
14 Dish's carriage of Tennis Channel would vary,
15 absent the equity interest?

16 A Same answer.

17 Q You haven't conducted that
18 analysis?

19 A I have not conducted an analysis,
20 and I incorporate that, I believe
21 appropriately, into my testimony.

22 Q Do you have any evidence that

1 DirectTV and Dish coordinated their carriage
2 decisions regarding Tennis Channel in any way?

3 A What do you mean, with each other?

4 Q Yes sir.

5 A It's not something I studied.

6 Q Have you seen any evidence of that
7 in the documents you've looked at?

8 A It's not something I've seen any
9 evidence to support, one way or the other.

10 Q Have you conducted an analysis of,
11 at launch or shortly after launch, when Golf
12 Channel and Versus received broad carriage
13 from Comcast? So I'm asking the same question
14 I just asked you about DirecTV and Dish.
15 Because I derailed myself, let me start it
16 again.

17 Have you conducted any analysis
18 with respect to the broad penetration granted
19 at or around launch by Comcast or Golf Channel
20 and Versus, as to what their carriage would
21 be, but for affiliation by Comcast at that
22 time?

1 A I think you asked this question
2 earlier, and I said I had not conducted that
3 analysis.

4 Q And the same question for the
5 renewals; you have not conducted that
6 analysis; correct?

7 A If they have, if they retired it
8 to some lower level, did I do a quantitative
9 analysis? The answer is no.

10 Q Let me talk for a moment about how
11 Comcast has carried Golf Channel and Versus in
12 the past. I believe your testimony cuts off
13 at 2009; correct, in terms of your analysis of
14 carriage patterns of Golf Channel and Versus?
15 I'm looking backwards, so you don't go before
16 it. I haven't pointed that out --

17 A Well, I include the data only back
18 to 2009.

19 Q Thank you. And so are you able to
20 say whether there has ever been a point in
21 time, at which Comcast has granted lower
22 penetration to Golf Channel and Versus than

1 they received on a market basis?

2 A What do you mean by a market
3 basis? On average or for --

4 Q Using an analysis -- I apologize.

5 A Or for cable companies, excluding
6 Comcast or for all MVPDs?

7 Q Using an analysis like the one you
8 used in Comcast Exhibit 1102. Using an
9 analysis like that, where you look at the
10 average carriage by all cable companies other
11 than Comcast, are you able to point me in to
12 a point in time where Comcast has ever granted
13 lower carriage to Versus and Golf than the
14 market average for cable companies other than
15 Comcast?

16 A One way or the other, I cannot
17 tell you whether that is a true statement or
18 not.

19 MR. SCHMIDT: I'd like to show you
20 a Comcast document, if I may. May I approach,
21 Your Honor?

22 JUDGE SIPPEL: Certainly you may.

1 MR. SCHMIDT: I'll state for the
2 record that this is Tennis Channel Exhibit
3 306, which is not yet in evidence.

4 (Whereupon, the document
5 referred to was marked
6 for identification as
7 Tennis Channel 306.)

8 JUDGE SIPPEL: Thank you.

9 (Off the record discussion.)

10 MR. SCHMIDT: We would move this
11 into evidence at this time.

12 JUDGE SIPPEL: It's entitled
13 "Distribution Status Report, National
14 Networks," marked as Tennis Channel Exhibit
15 306. Any objection?

16 MR. TOSCANO: No objection, Your
17 Honor.

18 JUDGE SIPPEL: It's in as Tennis
19 Channel 306.

20 (Whereupon, the document
21 referred to as Tennis
22 Channel 306, was

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received in evidence.)

BY MR. SCHMIDT:

Q Okay. So if you look at this document, does this appear to be -- first off, this is a Comcast document; correct?

A That is correct. I mean I believe it to be.

Q You see the Comcast symbol down in the bottom right corner?

A Yes, I mean I can't confirm, with 100 percent certainty. I believe it to be.

Q No reason to question that?

A No reason.

Q Okay, and it lists the distribution for various Comcast-owned networks, and I believe it's reporting as of March 2006. Is that correct?

A It's a little unclear if it's May 2006 or March 2006, but I don't think that necessarily changes the conclusion, because it's -- those are two months apart.

Q Okay, and that won't impact my

1 questions, I don't think. Do you see it has
2 penetration levels at major MVPDs for Golf
3 Channel?

4 A Yes, I do, and for OLN.

5 Q And OLN is now Versus; correct?

6 A That is correct.

7 Q And you did not conduct an
8 analysis looking at a document like this, and
9 applying the same kind of analysis that you
10 applied in Exhibit 1102, did you?

11 A I did not present this in my
12 direct testimony a similar analysis to this,
13 but I had examined the Kagan data and other
14 data on penetration rates previously.

15 Q If you did do such an analysis,
16 can you tell just by looking at these numbers,
17 if this was your data set, that the
18 penetration for all cable companies other than
19 Comcast would be lower in 2006 than it is in
20 2009 or 2010?

21 A I don't know that for sure,
22 without sitting here and calculating it. So

1 I can't tell you one way or the other.

2 Q I will represent to you that we
3 did a simple average of these numbers. We
4 actually did it a couple of different ways,
5 and every way we did it, looking at all these
6 companies other than Comcast, came out with a
7 number lower than the numbers in 1102.

8 I don't want to make you do that
9 on the stand, but I've got a calculator. We
10 can do it. My question is do you have any
11 reason to doubt that these levels of carriage
12 in 2006, from MVPDs other than Comcast, would
13 be lower than the levels you cite in 1102?
14 Does that appear reasonable to you, looking at
15 this data?

16 A It appears possible given, you
17 know, that Echostar, for example, at the
18 moment in question here was, you know, low
19 carriage of both, and Cablevision had low
20 carriage of the Golf Channel. That's
21 possible.

22 Q Actually no carriage for Versus by

1 Echostar; correct?

2 A That is -- at that moment, yes.

3 Q NCTC had low carriage --

4 A But, you know, they were
5 relaunching it, it looks like, on AT 180,
6 which is a pretty highly penetrated tier, just
7 after this period in question.

8 So that's why I have -- you know,
9 this may be, produce a somewhat different
10 result, if one actually used May instead of
11 March, because AT 180 would probably be, I
12 think it's a highly penetrated tier. I don't
13 know the details about the numbers that it
14 would actually reflect.

15 Q So I'd like to focus on the data
16 in this table. Whatever time this was,
17 Echostar had lower rates of carriage for both
18 Golf Channel and OLN than it did today, as did
19 DirecTV for --

20 A Just for the Golf Channel.

21 Q For Golf Channel.

22 A It had -- DirecTV had a higher

1 penetration rate for OLN/Versus.

2 Q As did Cox; correct?

3 A On DirectTV, I'm just -- let me
4 make sure the record's clear. The higher,
5 higher than Comcast.

6 Q Mr. Orszag? Your Honor, may I ask
7 that the witness answer the questions I've
8 asked, and not what he wants to speak into the
9 record. I don't think that's fair.

10 JUDGE SIPPEL: Well --

11 MR. SCHMIDT: His counsel will
12 have the opportunity to ask him questions.

13 JUDGE SIPPEL: No, I understand
14 your frustration, but we got the same
15 treatment from your witness. I mean I thought
16 maybe that's an occupational thing, that --

17 MR. SCHMIDT: I think there is
18 some of that. There were occasions where Mr.
19 Singer was asked to answer yes or no and he
20 did, and I have not received that.

21 JUDGE SIPPEL: You didn't get --

22 MR. SCHMIDT: Once, I believe,

1 from Mr. Orszag.

2 MR. TOSCANO: Your Honor, that's
3 unfair.

4 (Simultaneous speaking.)

5 JUDGE SIPPEL: Well that's
6 definitely -- yes. I mean it's at -- well.
7 You ask him questions like can you answer yes
8 or no, and if you can't, then --

9 MR. SCHMIDT: Yes.

10 JUDGE SIPPEL: So he said yes but,
11 or he said no but.

12 MR. SCHMIDT: I'm not hearing the
13 "yes but" right now, but I'll move on, Your
14 Honor.

15 JUDGE SIPPEL: Well, obviously I'm
16 giving you, you know, it's a quick answer.
17 But that's how I'm reading it, essentially.

18 MR. SCHMIDT: Understood, Your
19 Honor.

20 JUDGE SIPPEL: For some reason or
21 other, it's not surprising me. Now if it's
22 too much, then you know. But keep going,

1 please.

2 BY MR. SCHMIDT:

3 Q Thank you, Your Honor.

4 Cablevision is lower in 2006 than it was in
5 2010; correct?

6 A I think you're now asking a
7 different question relative to 2010. So I'd
8 need to get that data.

9 Q See what happens?

10 A Now Cablevision is actually higher
11 in 2006 than it was in 2010. I might not be
12 understanding -- oh, I'm sorry. I was looking
13 at Charter. I apologize, I apologize. Yes,
14 you are correct. Cablevision is higher.

15 Q Cox is lower in 2006 than it was
16 in 2010; correct?

17 A That is correct.

18 Q Let me try it this way, and maybe
19 I can short-circuit some of these questions,
20 and not ask you to do math on this table. If
21 I tell you the hypothesis that first of all,
22 Comcast's carriage of Golf and Versus has not

1 changed dramatically over time, has it, the
2 penetration level?

3 A It's gone up a little bit.

4 Q A slight bit, right?

5 A Yes.

6 Q And that's pretty close to what it
7 was from launch; correct?

8 A I don't know that to be the case
9 from launch. I know that in 2001, give or
10 take, that it was on a highly penetrated tier.
11 But remember, because of the nature of the
12 evolution of the industry, the nature of the
13 Expanded Basic tier has changed in pretty
14 significant ways.

15 There's a lifeline tier, a very
16 basic tier, and then Expanded Basic. So the
17 percentages may move around, as people adopt
18 one or the other packages over time. So I
19 can't say with certainty one way or the other.

20 Q My question is simply do you know
21 if there's been more than, say, a five or ten
22 percent variation in the levels at which

1 Comcast has carried Versus and Golf from the
2 time of launch?

3 A One way or the other, I can't give
4 you -- I can't tell you.

5 Q Can you refute the hypothesis that
6 Comcast launched Versus and Golf with broad
7 penetration that was far ahead of the market,
8 and the market has caught up over time,
9 although to be fair, not fully to this date.
10 Can you refute that hypothesis from any
11 analysis you've done?

12 A I can't refute that as a --
13 because I haven't conducted that analysis.

14 Q Let's look at your other table,
15 which I believe is 1103, the Carriage Rate for
16 Tennis Channel. Let me know when you have
17 that in front of you.

18 A I have it.

19 Q Now I thought I heard you say on
20 direct, and tell me if I'm wrong, I think I
21 also heard you say on cross that it was
22 important to look at the decisions of all

1 other MVPDs?

2 A All the major MVPDs, yes.

3 Q But you did not do that, did you,
4 in your analysis in Exhibit 1103?

5 A Yes, I did.

6 Q Did you add into your number the
7 penetration level of DirectTV?

8 A DirectTV's right on the table, on
9 the first line.

10 Q Is it reflected in the [REDACTED]
11 percent?

12 A No. That is just all cable
13 companies, and it is specified quite precisely
14 what it is, that line item.

15 Q So you --

16 A In my analysis, I include all the
17 MVPDs. In that one line item, I just have the
18 cable companies.

19 Q When you looked at Comcast's
20 carriage, to see whether it was in line with
21 the market, you looked at the [REDACTED] percent
22 number; correct?

1 A I included that as one part of my
2 analysis. It wasn't the only part of my
3 analysis.

4 Q And in that [REDACTED] percent number,
5 you backed out DirecTV; correct?

6 A That is correct.

7 Q You backed out Verizon; correct?

8 A They're not a cable company.

9 Q So is that correct?

10 A That is correct.

11 Q You backed out Dish?

12 A That is correct, if they're not a
13 cable company.

14 Q And you backed out AT&T?

15 A That is correct. They're not a
16 cable company.

17 Q Well, did you back out every telco
18 company?

19 A I believe I backed out the telco
20 companies, and the major telco and the DBS
21 companies.

22 Q Which telco companies did you back

1 out, other than AT&T and Verizon?

2 A Those are the two that I backed
3 out.

4 Q Did you back out any others?

5 A No, because I actually don't think
6 I received any specific data about the
7 carriage of each of the individual -- any
8 others, if there are any others that are
9 offering TV carriage out there.

10 Q Do you know if telco, other telco
11 companies are included in your set, that led
12 you to generate the [REDACTED] percent?

13 A Sitting here today, I do not.

14 Q Is it possible you included some
15 telco companies, but not AT&T and Verizon?

16 A I don't think there's another big
17 telco company that offers TV service, and the
18 answer is I did not back it out.

19 Q Not my question, sir. My question
20 is can you rule out the possibility that you
21 included some telco companies and not others
22 in generating your [REDACTED] percent --

1 A I cannot rule out that
2 possibility.

3 Q And you'd agree with me, that the
4 companies you excluded from your calculations,
5 are some of the companies that grant the
6 broadest carriage to Tennis Channel?

7 A I looked -- the answer is yes,
8 because I'm looking at the cable companies.

9 Q And they're also some of the
10 biggest MVPDs in the country; correct?

11 A I'm backing out four of the large
12 MVPDs who are not cable companies.

13 Q Is there any analysis in your
14 report, where you try to come up with a market
15 average for carriage of Tennis Channel, that
16 includes DirectTV, Cox -- I'm sorry, DirectTV,
17 Verizon, AT&T and Dish?

18 A I don't include the average, but
19 I'm including looking at every single one, and
20 Comcast is right in the middle of the ten
21 major ones.

22 Q You didn't include them in any

1 kind of market average; correct?

2 A The only average I was trying to
3 do, because there's lots of small cable
4 companies out there. So I was trying to
5 capture all of those other people who aren't
6 carrying, a lot of them not carrying the
7 Tennis Channel, in this. That's what I was
8 trying to add, so that it was -- there's a
9 fuller picture of the carriage.

10 Q So is the answer to my question
11 no, you did not conduct any analysis of the
12 average carriage that includes DirecTV,
13 Verizon, Dish and AT&T?

14 A I did not include that average
15 number.

16 Q Now were you here when Mr. Carroll
17 asked Dr. Singer about the MASN decision?

18 A Yes, I was.

19 Q Particularly the line of questions
20 he asked about what the law is today, and
21 whether we know now, from the FCC, that you
22 need to include all MVPDs? Were you here for

1 that discussion?

2 A I am not a lawyer, so I'm not
3 going to opine on the law. But I was here for
4 that discussion.

5 Q You were here for that discussion.
6 Did you hear when Mr. Carroll asked, I wrote
7 this down and I hope I got it right, do you
8 agree with me, you should be weighting all of
9 them? Did you hear that question from Mr.
10 Carroll?

11 A I don't know if those are the
12 precise words, but I heard a question like
13 that, yes.

14 Q Okay, and he was talking about, as
15 I understood it, and tell me if you have the
16 same understanding, the in-market satellite
17 companies, the in-market telco companies and
18 the out-of-market cable companies; correct?

19 A Yes, and I include all of them in
20 my analysis.

21 Q You didn't include them in your
22 average though, did you?

1 A The average is I'm trying to
2 achieve a different purpose. I'm looking at
3 all of them right here, and I don't leave a
4 single one out. I'm looking at every single
5 one.

6 Q So you did not include them in
7 your average did you?

8 A I did not include them. I specify
9 precisely what my average is. It's just cable
10 companies who I believe are a better
11 comparable, and that MASN decision states
12 precisely that, by the way.

13 Q Let me ask you. I thought you
14 just said you're not here to interpret the
15 law. You're not here to interpret the MASN
16 decision, are you?

17 A No, I'm not.

18 Q Okay. So let me go back to my
19 question, which is the same question Mr.
20 Carroll asked. Do you agree with me, post-
21 MASN, that you should be weighting all of
22 them, cable, satellite, telco, yes or no?

1 A I don't know if he used the word
2 "weighting." I believe you should include, in
3 the analysis at the beginning, every MVPD, and
4 my direct testimony is very explicit, that I
5 say the most direct and compelling evidence
6 comes from the carriage of all of the major
7 MVPDs. So I'm not disagreeing at all with
8 that statement that Mr. Carroll made.

9 Q Okay, so you agree with that
10 statement?

11 A I absolutely agree, that one
12 should consider all of them, and that's what
13 I do.

14 Q That's not my question. My
15 question is do you agree with me that you
16 should be weighting all of them, yes or no?

17 A I don't know if he used the words
18 "weighting."

19 Q Forget his question. That's my
20 question. Do you agree with me that you
21 should be weighting all of them, yes or no?

22 A I think -- I'm not sure what he

1 meant by weighting or your meaning by
2 weighting. I believe one should look at all
3 of them, but I do believe that the most
4 relevant comparables are the companies that
5 are not vertically integrated with Golf and
6 Versus, and have similar technologies, and
7 similar histories and similar competitors.

8 Q Did you weight all of them in any
9 single analysis?

10 A I included them in this table.

11 Q Did you weight them? That's my
12 question, sir. Did you weight the satellite
13 companies, the telco companies and the cable
14 companies, yes or no?

15 A The answer is no because one
16 shouldn't, because of the DirectTV, equity
17 issues with DirectTV and Dish.

18 Q What about AT&T and Verizon?

19 A Remember, they're different
20 technologies and so they should be included in
21 the analysis. They are included here as
22 appropriate.

1 Q But they're excluded from your
2 weighting; correct?

3 A They're not excluded. I have a
4 simple -- I have an average here of cable
5 companies, that was just presented as
6 reference, because there are, I think, 1,000
7 cable companies in the country, and I would
8 want to -- I'm just showing what the average
9 penetration is for every cable company, which
10 is what Comcast is.

11 Q My question is you don't have an
12 average of all MVPDs?

13 A I do not present an average of all
14 MVPDs, because I don't think that is a
15 relevant statistic to look at.

16 Q Well, if the Judge agrees with
17 you, you have not done that calculation?

18 A I have not done that calculation,
19 that is correct.

20 Q And if you did do that
21 calculation, this [REDACTED] number would go up a
22 lot, wouldn't it?