

1           Q       You talked in your direct  
2 testimony about how much it would cost Tennis  
3 Channel, how much it would cost Comcast to  
4 grant broader carriage to Tennis Channel, and  
5 this may be a moment where folks need to leave  
6 the room, because I'm going to ask about  
7 numbers.

8                   JUDGE SIPPEL: Well, we'd better  
9 do that then. I'd like to be sure. I'm  
10 sorry, sir, but -- we should be close to the  
11 end.

12                   MR. SCHMIDT: Have you signed that  
13 protective order?

14                               (Whereupon, at 6:09 p.m., the  
15 hearing was adjourned to closed session.)

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1 C L O S E D S E S S I O N

2 6:09 p.m.

3 BY MR. SCHMIDT:

4 Q I think I covered this. You  
5 talked about the cost to Comcast if it granted  
6 broader penetration to Tennis Channel, right?

7 A That is true.

8 Q You did not specifically quantify  
9 the monetary benefits that Comcast would  
10 realize, if it ran a broader carriage for  
11 Tennis Channel?

12 A I could not come up with a  
13 reliable way to estimate that.

14 Q How much would Comcast save if it  
15 put Golf Channel on the sports tier?

16 A It's not an analysis that I've  
17 conducted.

18 Q Much more than it saves by putting  
19 Tennis Channel on the sports tier; correct?

20 A If you're just analyzing that  
21 side. But then you look at the decisions of  
22 the other MVPDs, and no one else is carrying

1 Golf Channel on the sports tier.

2 Q That's not my question. My  
3 question is Comcast would save much more by  
4 carrying Golf Channel on the sports tier than  
5 it saves by carrying Tennis Channel on the  
6 sports tier?

7 A If one is just looking at the cost  
8 side of that piece.

9 Q Let me ask you that question.  
10 Have you looked at the benefits side of that  
11 piece? Have you quantified the benefit  
12 Comcast enjoys from carrying Golf Channel or  
13 Versus on Expanded Basic, such that you can  
14 say here's what they would lose in dollar  
15 terms if they moved them up to the sports  
16 tier?

17 A I have not done a quantitative  
18 analysis, empirical analysis, but I have used  
19 revealed preferences, that every major MVPD  
20 carries Golf Channel on a highly penetrated  
21 tier.

22 Q You didn't look at every major

1 MVPD; you looked only at cable companies;  
2 correct?

3 A That's not true.

4 Q In terms of your percentage;  
5 correct?

6 A No. Every single one is listed on  
7 that table.

8 Q You looked only -- your percentage  
9 looked only at the cable companies; correct?

10 A No. They're percentages for every  
11 single MVPD right here.

12 Q I'm talking about your averages,  
13 sir?

14 A Well, I just want to be precise.  
15 Percentages are listed here. In terms of all  
16 cable companies --

17 JUDGE SIPPEL: What number  
18 document are you referencing?

19 THE WITNESS: 1102. You are  
20 correct when I said all cable companies other  
21 than Comcast as one line item, and I'm only  
22 looking at cable companies other than Comcast.

1 But I'm looking at all the major MVPDs on each  
2 line above that.

3 BY MR. SCHMIDT:

4 Q Now do you know how much Comcast  
5 would save by moving Versus to the sports  
6 tier?

7 A Assuming they were contractually  
8 able to?

9 Q Or if they did it at a  
10 renegotiation?

11 A Sitting here today, I can't tell  
12 you. I know that they would save -- I believe  
13 they don't save anything if they move it down  
14 [REDACTED], given the structure  
15 of their contract.

16 Q If they moved it to the sports  
17 tier, would that be [REDACTED]  
18 [REDACTED]?

19 A No, it would be [REDACTED]. I'm  
20 providing a caveat to my analysis.

21 Q They'd save [REDACTED]  
22 [REDACTED] by moving either Golf Channel or

1 Versus to the sports tier?

2 A One is just looking at one side of  
3 the equation there. That may be the  
4 calculation.

5 Q You didn't calculate how much  
6 benefit they get from having Versus on analog  
7 basis, in terms of actual dollars, did you?

8 A I looked at the behavior of the  
9 other MVPDs, the programming expenditures and  
10 the other factors that drove the decision.

11 Q Try to answer my question, sir.  
12 You did not look at the specific dollar  
13 benefit that Comcast receives from keeping  
14 Versus on Expanded Basic, as opposed to the  
15 sports tier, did you?

16 A I don't know a reliable way to  
17 provide an econometric, a quantitative  
18 estimate of that number. So I did not do it,  
19 because I can't come up with a reliable way.

20 Q You can't do that, can you?

21 A I have done it on other contexts  
22 where one can do it reliably. You need a

1 natural-type experiment. There is not one  
2 here that I'm aware of, where I would have  
3 access to the data.

4 Q You would agree with me, wouldn't  
5 you, that Comcast could actually get  
6 substantial benefits from carrying Golf  
7 Channel and Versus on its sports tier?

8 A You could have one directional  
9 effect, that the sports tier becomes more  
10 highly attractive, and then a negative effect,  
11 that the Expanded Basic or the most highly  
12 penetrated tier becomes less attractive. So  
13 the net effect would have to be part of the  
14 analysis.

15 Q Let me try my question, which is a  
16 yes/no question. It's possible that you could  
17 get extra revenue from having Golf and/or  
18 Versus on the sports tier; correct?

19 A Yes, and you could have extra  
20 revenue if you put ESPN on the sports tier.

21 Q You could have extra revenue,  
22 beyond the revenue that Comcast currently

1 enjoys, in connection with Golf and Versus;  
2 correct?

3 A Not necessarily.

4 Q Is that a possibility?

5 A I think it's highly unlikely.

6 Q Have you done an analysis that  
7 looks at that question, that lets you rule out  
8 that possibility?

9 A Given the behavior of the other  
10 MVPDs, it's highly unlikely that that would be  
11 an empirical fact.

12 Q Let's go back to my question.  
13 Have you done an analysis that lets you say if  
14 -- let me try to break it down a little bit.  
15 It's possible that Golf could make the sports  
16 tier bigger, right?

17 A It could make the sports tier  
18 bigger.

19 Q In which case Comcast would have  
20 to pay Golf less money; correct, in subscriber  
21 fees, right?

22 A It would pay -- in that

1 hypothetical, it would pay Golf less money.

2 Q I agree it's a hypothetical, but  
3 in that hypothetical, it would pay Golf less  
4 money; correct?

5 A Yes, that is correct.

6 Q And it would get more revenue, in  
7 terms of extra sports tier revenue; correct?

8 A Not necessarily, no. I don't  
9 agree with that.

10 Q I'm not talking net yet. I'm  
11 talking just from the sports tier. It would  
12 grow sports tier revenue; correct?

13 A Okay. You used revenue generally.  
14 Sports tier revenue would likely go up.

15 Q And it's possible that the  
16 increase in sports tier revenue, coupled with  
17 the savings in its per subscriber rates to  
18 Golf, would outweigh any losses it suffered;  
19 correct?

20 A That is not a true statement.

21 Q That's impossible?

22 A Well, if that were the case, you

1 would expect other cable companies, other  
2 MVPDs, to do that, because they are profit-  
3 maximizing. They haven't done it. So thus,  
4 it is, as an empirical matter, that is not  
5 true that that's going to happen.

6 Q So let me see if I understand your  
7 testimony. Your testimony, you've done the  
8 analysis of how much money Comcast gets from  
9 having Golf or Versus on Expanded Basic;  
10 correct?

11 A It's revealed from the behavior of  
12 other people.

13 Q Have you done an analysis of how  
14 much money Comcast gets from having Golf and  
15 Versus on Expanded Basic?

16 A I have not quantified the effect.

17 Q Have you done an analysis of how  
18 much money Comcast would earn from moving Golf  
19 and Versus to the sports tier?

20 A I have not done that quantitative  
21 analysis, because one would not need to,  
22 because it's revealed by the behavior of

1 others.

2 Q If you haven't done those  
3 analyses, you can't tell us, as an economic  
4 matter, that here's how much money they would  
5 lose or gain if they put Golf and/or Versus up  
6 to the sports tier, can you?

7 A I can't tell you with 100 percent  
8 certainty, but I can tell you it's highly,  
9 highly unlikely.

10 Q Well, subject to -- you can't rule  
11 out that possibility, can you?

12 A I can't rule out the possibility  
13 that the sky will be green tomorrow, so the  
14 answer is I can't rule it out with 100 percent  
15 certainty.

16 Q I hope you can rule out the  
17 possibility that the sky will be green  
18 tomorrow. You cannot rule out the possibility  
19 that Comcast would come out ahead financially,  
20 if it moved Golf and Versus up to the sports  
21 tier?

22 A Given the behavior of others, it's

1 highly, highly, highly unlikely.

2 Q Could you rule it out?

3 A Not with 100 percent certainty.

4 MR. SCHMIDT: Your Honor, subject  
5 to reopening on this one question that I  
6 haven't gotten into, regarding the new  
7 analysis, I'll pass the witness to the  
8 Enforcement Division.

9 JUDGE SIPPEL: Okay. Mr. Knowles-  
10 Kellett.

11 CROSS EXAMINATION

12 BY MR. KNOWLES-KELLETT:

13 Q I'm Bill Knowles-Kellett. I'm  
14 representing the FCC Enforcement Division. Do  
15 you view one measure of the quality of  
16 programming, the production costs associated  
17 with producing a program; is that correct?

18 A That would be -- that's factored  
19 into programming expenditures, as measured by  
20 Kagan. So yes, that is an element of the  
21 programming expenditures calculation.

22 Q Okay. Is this your idea, to use

1 these production costs as a measure of  
2 programming quality, or is that an industry?

3 A Well, the industry -- Kagan, which  
4 is the industry data source, publishes this  
5 data, making it available to all industry  
6 analysts. So I would say given that it's part  
7 of the Kagan data, it is part of the kinds of  
8 data that industry looks at.

9 Q Have you seen other analyses that  
10 use that as a measure of quality of  
11 programming?

12 A I believe there are a bunch of  
13 academic papers that have used it. I haven't  
14 seen necessarily internal analyses of  
15 companies that have used it.

16 Q Okay. Can you tell me any of the  
17 academic papers?

18 A Sitting here today, I think  
19 Tasmian-Chippe. I may be misguided on this,  
20 but I think in her paper, which was in the  
21 American Economic Review, I believe she was  
22 measuring programming quality by this.

1                   But I may be misguided on that.  
2           She does an analysis of programming carriage,  
3           and I sort of -- I vaguely recall that she  
4           used something like this. So that's what I  
5           was -- that was in my recollection. And  
6           again, I haven't read the paper in a few  
7           years, so I'm not sure that she uses it.

8           Q           Would it be fair to say that it's  
9           largely your invention, to use this to measure  
10          quality of programming?

11          A           No, because it's in the Kagan  
12          data.

13          Q           Okay. Did you talk to anybody  
14          about different sports, and what it costs to  
15          produce hours of those sports?

16          A           I am aware of the differences in  
17          the costs. But remember, the production costs  
18          are a small function of total programming  
19          expenditures.

20          Q           I'd love it if you explain that to  
21          me.

22          A           Okay. So the main programming

1 expenditures are going to be rights, paying  
2 like the ESPN paying the college football  
3 conferences. I mean they, according to the  
4 chart, ESPN spends, I think it's almost [REDACTED]  
5 [REDACTED] a year on programming expenditures.

6 The vast, vast majority of that  
7 money -- they're not spending [REDACTED] a  
8 year in production. They're spending [REDACTED]  
9 [REDACTED] to pay college football conferences,  
10 to pay the NFL, to pay all of the different  
11 rights holders. It's that value that they  
12 assess in paying those rights holders, that  
13 they'll then try to turn around and recoup  
14 those costs from their -- from distributors.

15 So the vast majority of costs are  
16 generally, for somebody like ESPN, are going  
17 to be in, when they're paying for valuable  
18 rights.

19 Q So wouldn't it have been better to  
20 do your study using rights?

21 A The problem is some, a lot of  
22 rights information is confidential, and what

1 Kagan is trying to do is estimate rights. So  
2 that is included in the programming  
3 expenditures. So they're looking at  
4 programming expenditures plus programming  
5 costs, which are my production costs.

6 So the answer is one could have  
7 used that as a measure. Then you would have  
8 missed the measures of quality, like to the  
9 extent that an entity, say the Golf Channel,  
10 is investing heavily in the production quality  
11 of their programming. You would miss that  
12 increased expenditures, which would presumably  
13 make the channel more valuable.

14 Q Where does that presumption come  
15 from though? That's what really troubles me,  
16 is that presumption. I don't see any basis  
17 for that in here.

18 A The presumption that increased  
19 expenditures on production costs translate  
20 into value to consumers.

21 Q And to quality. That's the, you  
22 know, if you wanted to film baseball on the

1 moon, you know, it would be incredibly  
2 expensive. It doesn't make it better  
3 baseball.

4 A I agree with that statement.

5 Q So you know, extrapolating from  
6 that, you know, it could be very expensive to  
7 film sailing down in New Zealand. That  
8 doesn't make it better sailing than out of  
9 Norfolk.

10 A Right. But presumably a rights  
11 holder in the U.S., who's buying sailing  
12 rights, would pay less for the programming  
13 rights, knowing that they would have to have  
14 those production costs to fly all the way to  
15 New Zealand to air them.

16 Just as, I believe, and I might be  
17 mistaken on this, on a lot of the rights, the  
18 Tennis Channel doesn't pay an actual rights  
19 fee to the rights holder, to the tennis  
20 tournament, because it has to incur those  
21 production costs.

22 So that is, in essence, how -- the

1 cost. So you are -- this translates, and the  
2 tables and the figures are in my testimony, to  
3 a pretty tight relationship between fees and  
4 distribution and programming expenditures. So  
5 it does show up in the data as a statistically  
6 significant relationship.

7 Q I was troubled by that too.  
8 Couldn't it just be just the opposite, that  
9 the penetration gives the people more money to  
10 spend, and so they do?

11 A You are right to think about  
12 causality. That is a potential issue. But  
13 the experience of looking at the industry is  
14 not that circumstance. Generally, a  
15 distributor is looking at the rights they have  
16 at that moment. They're not going to grant  
17 the rights to then say oh -- grant the  
18 distribution, and that will then produce the  
19 expenditures.

20 It tends to be reverse in the  
21 industry, that people will buy the rights and  
22 then go out and seek distribution, and that is

1 far more the pattern that you observe.

2 Q Okay. Comcast is the largest  
3 player in the cable market; is that correct?

4 A That is correct. They have the  
5 most subscribers.

6 Q Is it a behemoth? Would you say  
7 that?

8 A I wouldn't use that word.

9 Q Okay. Do they do more for other  
10 cable operators?

11 A That's not the type of term. I  
12 would say it's bigger than, it's larger than  
13 any other cable provider. The next largest  
14 one would be Time Warner, which has about ten  
15 million fewer subscribers.

16 Q Okay. Can we go to Tennis Channel  
17 Exhibit 16?

18 JUDGE SIPPEL: Which one?

19 BY MR. KNOWLES-KELLETT:

20 Q Tennis Channel Exhibit 16, page  
21 40.

22 A What document is that, sir?

1 Q Tennis Channel Exhibit 16. It's  
2 sitting on the stand at the moment.

3 A Okay. And what page did you want  
4 me to --

5 Q Page 40.

6 A Okay, I'm here.

7 Q Do you see where it says  
8 "Comcast"? How many subscribers do they have?

9 A [REDACTED].

10 Q Okay, and my next biggest cable  
11 operator?

12 A Well, he's including Time Warner  
13 and Whitehouse together. They're actually  
14 independent companies.

15 Q Okay. What's the number they give  
16 for them?

17 A Dr. Singer has [REDACTED] here.

18 Q Okay. So would you say then that  
19 Time Warner is [REDACTED] of Comcast?

20 A It's a little [REDACTED].

21 Q Okay. Would you say it dwarfs  
22 Time Warner?

1           A       That's a term. I think it's  
2 significantly bigger. Comcast is  
3 significantly bigger than Time Warner.

4           Q       Okay. Would you say that  
5 Comcast's offering, then, is the gold standard  
6 offering?

7           A       I don't know if I'd say that.  
8 It's not an economic term. I'd say that's  
9 more of a business term.

10          Q       Is that the offering that  
11 everybody competes with?

12          A       No.

13          Q       Okay. Would it be the offering  
14 that Dish and Direct compete with?

15          A       They're the ones they confront the  
16 most within their footprint.

17          Q       Summertime (ph), is that an  
18 offering that Dish and Direct compete with?

19          A       Oh yes, for sure.

20          Q       Okay. So that's sort of the  
21 standard edition that Direct competes with?

22          A       It's one of the standards they

1 compete with.

2 Q It says that Comcast has [REDACTED]  
3 [REDACTED] households?

4 A Roughly speaking, that's correct.

5 [REDACTED]

6 Q And Dish and Direct have another  
7 [REDACTED]?

8 A It's more. It's more like [REDACTED]  
9 [REDACTED].

10 Q Okay. So they're competing like  
11 about half of the competition is between  
12 Comcast and Dish and Direct.

13 A It doesn't quite work that way,  
14 but there's significant competition between  
15 DirecTV and Dish, and Comcast. The reason is  
16 Comcast isn't in every part of the country.  
17 So they're only competing with DirecTV  
18 obviously in the areas they serve.

19 Q Okay. So in about [REDACTED] of the  
20 areas, is it true that Dish and Direct and  
21 Comcast are the primary competitors?

22 A It's going to be [REDACTED],

1 but it's going to be more on the order of  
2 magnitude of -- I'm going to hazard a guess.  
3 It's going to be more like [REDACTED].

4 Q Okay. I think that you were  
5 testifying that you weren't sure there would  
6 be a ripple effect to Comcast's decision to  
7 carry the Tennis Channel on a particular tier.  
8 I had trouble with that. Do you think there's  
9 a ripple effect when Comcast decides where  
10 it's going to carry a particular channel?

11 A Not necessarily. I believe there  
12 are a host of examples of channels, where  
13 Comcast has launched them in various ways, and  
14 other providers have not followed, or vice-  
15 versa. So I don't think the -- there's  
16 academic literature on this.

17 Q So you say there's no ripple  
18 effect?

19 A I have not seen evidence to  
20 support a ripple effect theory.

21 Q Okay, and similarly, Comcast's  
22 decision to launch Golf and Versus, put Golf

1 and Versus on a wide tier. You don't see any  
2 ripple effect?

3 A I'm not seeing any evidence in the  
4 literature to support that ripple effect, that  
5 if it didn't make sense, they may negotiate  
6 aggressively and try to get big price  
7 discounts. That is the other cable operators  
8 or DirectTV, in order to keep them on a highly  
9 penetrated tier.

10 But that's what would make  
11 rational business sense, that a Time Warner of  
12 the world or a Charter of the world would say  
13 look, if you want us to carry it on a highly  
14 penetrated tier, you've got to give me a  
15 better deal.

16 Q Okay. Another quick question, and  
17 I'm sorry if I just missed this. What are ad  
18 avails?

19 A Advertising availabilities. So a  
20 programming network, like say the Tennis  
21 Channel or Golf Channel or Versus, when they  
22 contract with say, I'm going to just use Time

1 Warner as my example, they will often, as one  
2 element of the agreement, provide let's say  
3 two minutes per hour to Time Warner in the  
4 hour slot, that say for Golf Channel.

5 For those two minutes, Time Warner  
6 is allowed to sell that advertising to  
7 advertisers. So that is a benefit to Time  
8 Warner, in terms of it lowers the effective  
9 price of the license fee.

10 Q So let -- this I'm just trying to  
11 get straight for the -- if Comcast were to  
12 carry Tennis Channel on a widely spread tier,  
13 they would get to sell a minute or two of  
14 advertising each hour to the whatever, [REDACTED]  
15 [REDACTED] people, additional people that would  
16 see it.

17 A Yes.

18 Q They're carried right now by [REDACTED]  
19 [REDACTED]  
20 [REDACTED] people. Is  
21 that correct?

22 A That is correct.

1           Q       Okay, and does that appear in your  
2 analysis anywhere?

3           A       The benefit quantification of the  
4 incremental benefit?

5           Q       Any kind of discussion about the  
6 ad avails?

7           A       It does not. The benefit piece  
8 does not, I do not quantify, because to  
9 quantify is an extremely difficult thing.

10          Q       Okay, and was there any analysis  
11 of the offset, any analysis of loss to ad  
12 revenue if they were to do that? Were you  
13 here when they -- let's see, it was the vice  
14 president, who testified that they're  
15 competing for a sports budget. Did you listen  
16 to that testimony?

17          A       I read the transcript of the  
18 testimony. I was not physically here.

19          Q       Okay. When these ad accounts come  
20 up, there's a sports budget that's set aside  
21 for advertising on sports networks. If you  
22 added another sports network to the first