

1 tier, was there any analysis of what the loss
2 to ad revenue would be to the existing sports
3 networks on the first tier?

4 A It wouldn't just be -- those
5 advertising dollars just don't go to the
6 sports networks. They go to a wide range of
7 sports programming. So I just want to be
8 clear. Adding, when you have 20 options today
9 and you add a 21st, any effect would be
10 extremely small.

11 Q Okay. I want to talk about the
12 renewal decision regarding Golf and Versus.
13 Is that a similar decision to the launch of a
14 network?

15 A No.

16 Q Is it fundamentally different than
17 the launch of a network?

18 A I wouldn't say it's fundamentally
19 different. I would say there are added
20 elements to a renegotiation versus a new
21 launch.

22 Q Then it must be that if you decide

1 to not carry something on the first tier,
2 you've got to tell [REDACTED] people they're
3 not getting that channel tomorrow?

4 A Precisely, and that's -- there's
5 something in the economics literature called
6 loss aversion. Consumers get very upset when
7 they lose something, and it's different than
8 never having it before. So there's a lot of
9 cost with telling people they're not going to
10 get what they previously had.

11 Q So assuming, just for a minute,
12 that Golf and Tennis are the same thing, you
13 can't go back and just say tomorrow you're
14 going to have tennis instead of golf?

15 A You can't do that. That's not the
16 same thing to consumers, and they would not --
17 they would react negatively to losing
18 something.

19 Q Okay. The door's closed, right?

20 A Yes.

21 Q Okay. You examined the costs and
22 benefits of retiering Tennis Channel?

1 A Yes.

2 Q In order to perform your analysis,
3 you had to look at those things, right?

4 A Yes.

5 Q Okay. And you said, I think your
6 testimony was that the numbers just didn't add
7 up, that the cost was too high for Comcast to
8 think about retiering Tennis Channel; is that
9 correct?

10 A Well, I had a quantification of
11 the costs, okay, on the cost side.

12 Q [REDACTED].

13 A Over the term of the agreement, it
14 was about [REDACTED], or about [REDACTED]
15 in net present value terms.

16 Q Okay.

17 A And on the benefits side, Ms.
18 Gaiski, who is an executive at Comcast, went
19 out and talked to executives, to find out was
20 there interest in carrying the Tennis Channel.
21 She can obviously speak to that.

22 But remember, Comcast already had

1 the Tennis Channel at that point. So the
2 customers who really wanted the Tennis Channel
3 were paying for it and getting access to it,
4 because it was available to the subscribers
5 who were on the tennis tier, plus those who
6 wanted the other channels that were in that
7 package.

8 So that's a different calculus,
9 another element of the different calculus to
10 launching anew, and why it's somewhat
11 different than the experience of DirecTV and
12 Dish and AT&T and Verizon.

13 That is partly why like at Time
14 Warner has agreed not to retier, because they
15 already have access to it on the sports tier.
16 They got in in 2003, and that's a similar
17 calculus to what Comcast has done.

18 Q Well, it's even a little stronger
19 than that, I think. Because of the free
20 views, they have access to it on the sports
21 tier, and everybody gets [REDACTED] a year;
22 correct?

1 A That is correct for when the free
2 views are provided, yes, absolutely.

3 Q Okay. Are the four critical
4 tournaments provided each year?

5 A My understanding is they have
6 offered up previews. The precise, which
7 tournaments and who is not something that I
8 can sit here today and give you the precise
9 answer to. I'm sorry. A fact witness would
10 be good for that.

11 Q That wasn't a factor you
12 considered in your analysis?

13 A Well, the factor I was considering
14 was really the movement from sports tier. So
15 it wasn't -- I would put it in the category of
16 something I considered, but it's not something
17 directly in my report.

18 Q Okay. Did you consider what price
19 it would make sense to retier Tennis Channel?

20 A The precise rate price, the answer
21 is no, because you have to know the crossover
22 point, the critical point where the benefits

1 would exceed the costs.

2 Without a complete calculation or
3 quantification of the benefits, that is not
4 something that I know. That may be a good
5 question for the business executives, about at
6 what price. But that's not something I know.

7 Q Okay. So you didn't do the
8 benefit side?

9 A I did the benefits side through
10 the revealed preference analysis, and through
11 the other evidence that I've discussed today.

12 Q For your dollars on [REDACTED], you
13 didn't consider the benefits side?

14 A I did not quantify that, no.

15 Q Okay. So really the discussion of
16 the [REDACTED] isn't all that helpful, if you don't
17 think about what benefit you get for your [REDACTED]?

18 A Well, you're right. You have to
19 quantify the benefit. But there's no way --
20 I've done a lot of these quantifications of
21 the value, the number of subscribers that a
22 channel would get, and there's no natural

1 experiment to estimate that reliability.

2 Dr. Singer doesn't undertake that
3 analysis. I haven't seen anybody try to
4 quantify the benefits, to show that the
5 decision was irrational.

6 No one has done that analysis, to
7 be able to quantify it, because it is -- you
8 have to, in some sense, rely on the business
9 judgments of the individuals, and as well as
10 the evidence from other business players who
11 aren't vertically integrated, like Time
12 Warner, Charter or Cablevision, etcetera.

13 Q Okay. Turning your attention to
14 the Commission's analysis in the merger order?

15 A Yes.

16 Q Now just as background, to make
17 sure I have this right, this analysis
18 concerned Comcast's four channels
19 collectively, did not look at just the Golf
20 and Versus separated out; is that correct?

21 A That's correct. I also looked at
22 G-4 and Style together. They never did Golf

1 and Versus together. They just did the four
2 together, and then they did G-4 and Style
3 together, and those were the two analyses.

4 Q Okay, and did you perform a
5 similar analysis for just Golf and Versus?

6 A That was the, in response to Dr.
7 Singer's analysis, that was what I attempted
8 to do.

9 Q Okay. So that's going -- are we
10 saving questions on that?

11 MR. SCHMIDT: Yes, at least I am.

12 MR. KNOWLES-KELLETT: If you are,
13 I am.

14 (Laughter.)

15 MR. KNOWLES-KELLETT: Thank you.
16 That's all I have, Your Honor.

17 JUDGE SIPPEL: Anybody have
18 anything more on that? No. Going, going,
19 gone. Are we finished?

20 MR. CARROLL: We have nothing
21 further for Mr. Orszag.

22 JUDGE SIPPEL: Well, what about

1 all this you were talking about this morning?

2 Has that been cleared up enough or --

3 MR. CARROLL: I think what we
4 would like to do is we would like to ask Dr.
5 Singer to take a walk during the day. We've
6 gotten the further data, as I understand it,
7 regarding Mr. Orszag's new analysis.

8 I think I have a further
9 understanding of it from his testimony, beyond
10 the disclosure. I think we'd like to take a
11 look at that and then come back to them in
12 pretty short order, on whether we need a
13 deposition this weekend, per Your Honor's
14 suggestion.

15 JUDGE SIPPEL: Well, we can't -- I
16 guess your office is in D.C., I take it?

17 THE WITNESS: Not really, but
18 that's okay.

19 MR. CARROLL: Your Honor, we'll
20 make -- I'll be available.

21 JUDGE SIPPEL: They'll make him
22 available.

1 MR. CARROLL: We'll move this
2 issue.

3 (Simultaneous speaking.)

4 JUDGE SIPPEL: All right. I don't
5 have to say anything more. But I'm going to
6 relieve him from -- when he leaves the stand
7 here, okay. Are you all set then? Thank you
8 very much.

9 (Witness excused.)

10 JUDGE SIPPEL: We'll do things as
11 they come up. Thank you very much, everybody.

12 MR. CARROLL: Your Honor, there's
13 something we had.

14 JUDGE SIPPEL: Beg pardon?

15 MR. CARROLL: Only one additional
16 thing. It doesn't relate to Mr. Orszag.

17 JUDGE SIPPEL: You can leave sir.

18 MR. CARROLL: We received a
19 briefing from the other side with respect to
20 Mr. Rigdon.

21 JUDGE SIPPEL: I did, yes.

22 MR. CARROLL: We have prepared our

1 response, and we can offer it up to you for
2 evening reading, in case you're looking for
3 something to do. The next witness tomorrow
4 that starts the day is another expert, and
5 then Mr. Rigdon will be after that person. So
6 he could come up tomorrow afternoon.

7 JUDGE SIPPEL: All right. So
8 okay, a homer. Who's the first witness?

9 MR. CARROLL: Mr. Egan is next.

10 JUDGE SIPPEL: Okay.

11 MR. CARROLL: And Your Honor, may
12 I tender the copies?

13 JUDGE SIPPEL: Yes, please do.
14 Thank you.

15 MR. CARROLL: We have four copies
16 here. We'll take care of the, whatever the
17 filing that has to happen in addition, we'll
18 see that that happens.

19 JUDGE SIPPEL: Okay, and how about
20 Mr. Bond? When are we going to see Mr. Bond?

21 MR. CARROLL: He's coming up.
22 I've already told the other side, after Mr.

1 Rigdon, Mr. Bond and then Ms. Gaiski.

2 JUDGE SIPPEL: Okay. Thank you
3 very much. We're in recess until 9:30
4 tomorrow morning.

5 (Whereupon, at 6:42 p.m., the
6 hearing was recessed, to reconvene at 9:30
7 a.m. on Thursday, April 28, 2011.)

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