

1 Q Is that a fair construction, Mr.
2 Egan?

3 A What?

4 Q That you are not offering an
5 opinion on whether or not tennis or Tennis
6 Channel reach upscale viewers?

7 A You are really not being -- let me
8 restrain myself.

9 JUDGE SIPPEL: That's my fault.

10 THE WITNESS: You haven't asked me
11 just now about Tennis Channel's upscale
12 viewing, okay, in this discussion of Versus
13 and the U.S. Open rights, and this piece about
14 ESPN2. So, in your question just now you
15 asked me about Tennis Channel's upscale
16 viewing. So I'll stay with my original answer
17 to you. I haven't seen that evidence. That
18 isn't contradicted by other substantial -- you
19 know, authoritative-looking evidence.

20 BY MR. SCHMIDT:

21 Q Are you giving an expert opinion
22 on whether -- on the income demographic of

1 Tennis Channel? Yes or no.

2 A Yes.

3 Q And is your opinion that the MRI
4 data showing a demographic of about [REDACTED],
5 and the Mendelsohn data discussing the
6 demographic among viewers who earn more than
7 [REDACTED], and the Simmons data from 2007, is
8 not representative, but the 2010 Simmons data,
9 based on the [REDACTED] people that we looked at,
10 is representative?

11 A I'm --

12 Q Can you answer that yes or no?

13 A I'm getting -- I can't answer your
14 question yes or no, because it's a loaded
15 question. We have conflicting data, okay?
16 And what I'm telling you is that it conflicts,
17 and so I can't be certain about Tennis
18 Channel's -- not tennis, but Tennis Channel's
19 -- the income level of Tennis Channel.

20 I can tell you the best evidence I
21 have, after parsing through all of it, is the
22 Simmons Experian study, which says that it is

1 not an upscale audience.

2 Q But you can't be certain on that.

3 A I can't be 100 percent certain,
4 no.

5 Q Can you be reasonably certain on
6 that?

7 A I'm reasonably certain on that,
8 yes.

9 Q Okay. And that's based on the
10 [REDACTED] Simmons study data.

11 A That's correct.

12 Q Okay. It's correct, isn't it,
13 that you have not done any analysis of
14 customer feedback that Comcast received
15 regarding its channels -- Versus, Golf
16 Channel, Tennis Channel?

17 A I have not done analysis. I have
18 seen some testimony, some evidence, that there
19 wasn't customer feedback of any material
20 nature, but I have not done any research.

21 Q You haven't seen any internal
22 Comcast studies of customer satisfaction?

1 A No.

2 Q And you conducted no study of why
3 or whether Comcast customers value Versus or
4 Golf, correct?

5 A Correct.

6 MR. SCHMIDT: Thank you.

7 JUDGE SIPPEL: Forever? You're
8 finished. Oh, we have to go --

9 THE WITNESS: Is it possible to
10 take a two-minute bathroom break?

11 JUDGE SIPPEL: Absolutely. Well,
12 we don't take two-minute breaks, because there
13 isn't -- it takes about five minutes.

14 THE WITNESS: Five minutes. I'll
15 be right back.

16 JUDGE SIPPEL: We're going to come
17 back in 10 minutes. We're all going to get
18 out -- we'll be back in 10 minutes, and then
19 we'll finish you up.

20 THE WITNESS: Okay. All right.
21 Thank you.

22 JUDGE SIPPEL: You bet. We're in

1 recess.

2 (Whereupon, the proceedings in the
3 foregoing matter went off the
4 record at 2:10 p.m. and went back
5 on the record at 2:20 p.m.)

6 JUDGE SIPPEL: Okay. Back on the
7 record.

8 Your witness, Mr. Oshinsky.

9 MR. OSHINSKY: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. OSHINSKY:

12 Q Mr. Egan, I want to take you back
13 to the beginning of your written direct
14 testimony, paragraph --

15 JUDGE SIPPEL: This is counsel
16 with Bureau of Enforcement, by the way.

17 BY MR. OSHINSKY:

18 Q Paragraph 7, yes, page 5. Down
19 near the bottom of the page, you give the
20 statement that the ratings are not typically
21 a material consideration for an MVPD. It's
22 difficult for me to understand how that can be

1 true. Could you explain that?

2 A Sure. And I can understand why it
3 would be, because you hear -- that's what you
4 hear. You know, you hear ratings all the time
5 -- ratings, ratings, ratings, ratings. But a
6 cable company or a satellite company is in a
7 subscription business. You know, what they
8 are all about is maintaining, retaining, and
9 acquiring customers. And ratings don't speak
10 to that.

11 Perceived value -- like, for
12 instance, I mentioned to you that we used to
13 do research at Cablevision Industries or at
14 Renaissance Media, we weren't doing rating
15 research. We were looking at perceived value
16 of a service, if it was something we were
17 considering adding, we were looking -- trying
18 to find demand in the marketplace.

19 So our package of services and
20 their ability to sustain that subscription or
21 acquire new subscribers was -- is the
22 motivator. The ratings at any moment in time

1 on a channel are far more important if you're
2 trying to sell advertising, and you're walking
3 into, you know, a sophisticated advertiser who
4 presumably understands ratings, and you're
5 trying to show them that if I get you into
6 that slot, a lot of people will watch.

7 Q But how do you evaluate the value
8 of content if you don't pay any attention to
9 rating?

10 A Well, the way that you do that is
11 by understanding the totality of the
12 programming that is on the channel that is
13 being offered to you. So you are looking at
14 many of the things I talked about. So let's
15 just -- let's say it's a sporting channel. So
16 you're looking at, okay, is it events? Is it
17 non-events? If it's events, what are those
18 events? What are the sports? How many do you
19 have? Do you have exclusive rights? Are
20 these replays or original?

21 Does it comport with my carriage?
22 I might be -- like for a while at CVI we were

1 very heavy in the southeast, right? So, you
2 know, certain sports really play to that that
3 may not in California. So you are really
4 looking at those kind of issues.

5 The programmers -- don't mistake
6 me, the programmers will typically have
7 ratings to present to you. So it's not like
8 I never saw ratings, but they really weren't
9 something I would put a lot of weight in.

10 Q But how do you know even that
11 people are interested in live programming
12 unless you go -- you refer to ratings?

13 A How do I know?

14 Q Yes. We had an analogy here of
15 playing baseball on the moon. Suppose you ran
16 a program where you played baseball on the
17 moon and you found out that the ratings were
18 through the roof. That was what everybody
19 wanted to see, over tennis or NFL. How would
20 you judge the value of that programming if you
21 didn't know what the ratings were?

22 A Because I would know. This is

1 what I do. I would know that baseball on the
2 moon is or isn't popular.

3 Q But how would you know?

4 A How would I know that? From all
5 of the evidence around me, from -- are my
6 friends talking about it? Are my customers
7 asking for this? Are my employees talking
8 about it?

9 Q Yes. Well, that was actually some
10 of the problem I had when you began, your
11 early testimony. It sounded like you were
12 evaluating the programming on these three
13 channels by what you liked, what you thought
14 was valuable. And you sound to me like you're
15 an avid golfer but not an avid tennis player.

16 So I ask you again, how would you
17 know what the value of the content is, what
18 people are interested in watching, unless you
19 refer to ratings?

20 A I think I have explained it, and
21 that is that a programmer will come in, make
22 their presentation to you. You ask questions

1 of them. They will show you ratings, so you
2 have that information. However, what is of
3 more interest to you is, is this -- again, I'm
4 talking sports. Is this a sport that is
5 popular in my neck of the woods?

6 So college sports, okay, I know
7 that college sports are very big in southeast.
8 I know that.

9 Q I don't know how you would know
10 that, unless you referred to ratings.

11 A This is what I do for a living and
12 the person at the MVPD that is -- does this
13 for a living. So they know that. And then,
14 I'll know whether my customers are asking for
15 it. Do you have that college sports channel?
16 Do you have that thing?

17 So a cable company is a very local
18 company. You may think of Time Warner as a
19 giant I guess New York-based company, but they
20 actually operate locally. They have all these
21 offices and people on the phone, and they are
22 talking to the -- so customers tell them. And

1 if you're not carrying a channel that is
2 becoming popular, you'll know about it, and
3 your employees will feed that back to you.

4 So, you know, these are the ways
5 that you learn about programming that you may
6 not be carrying.

7 Q Okay. And your direct testimony
8 -- and you have also testified that content is
9 one of the most important things that the
10 MVPDs look at when they decide carriage?

11 A Yes.

12 Q Isn't it true that when a channel
13 like Versus or Golf is widely distributed
14 their revenues increase, and, therefore, the
15 money that they have to provide better
16 content, more valuable content, goes way up?

17 A I think that's true, yes.

18 Q Okay. I just have a couple more.
19 Didn't the content on Golf Channel and Versus
20 improve once they received wider distribution?
21 Have you done a study of that?

22 A I haven't done a study on that,

1 but I do have experience, because, you know,
2 I've been there, I've been around. But I can
3 tell you that in the case of Golf Channel,
4 they acquired more PGA tournaments, the older
5 -- you know, as they got bigger and older.
6 They had a deal with the PGA from the
7 beginning, but the number of tournaments and
8 all that they -- that they ran increased.

9 Versus -- we know that they picked
10 up hockey later in life, so, yes, I think that
11 that's correct.

12 Q Okay. Just one last one. You
13 testified that you analyzed the reasonableness
14 of Comcast's decision about carriage in 2009,
15 and you found that it was reasonable.

16 A Yes.

17 Q Is that correct? Would your
18 analysis have changed had you been able to see
19 Tennis Channel Exhibit 35 and the related ones
20 which discuss the acquisition of rights for
21 the U.S. Open for Versus?

22 A I don't know what Exhibit 35 is.

1 Is that one I have already?

2 MR. OSHINSKY: If I can approach.

3 THE WITNESS: I have Exhibit 35?

4 MR. OSHINSKY: Yes, you do.

5 THE WITNESS: Okay.

6 MR. OSHINSKY: And 40.

7 THE WITNESS: Okay. I have

8 Exhibit 82, 42, 41, 40. You said and 40?

9 MR. OSHINSKY: 40 and 35.

10 THE WITNESS: 178. I'm looking
11 for 35.

12 MR. OSHINSKY: It's a one-page
13 memo.

14 THE WITNESS: What's it about?

15 MR. OSHINSKY: These are about
16 acquiring -- Comcast acquiring --

17 THE WITNESS: Okay.

18 JUDGE SIPPEL: Which one do you
19 have now?

20 THE WITNESS: I have 40 and I have
21 35. Okay. I'm sorry. Now, sir, would you
22 restate your question?

1 BY MR. OSHINSKY:

2 Q My question is: would your
3 analysis of the reasonable of the business
4 decision change had you seen these exhibits
5 when doing your analysis? If you were able to
6 look at the value that Comcast placed on the
7 U.S. Open rights and --

8 A No, I would not.

9 Q -- and tennis.

10 A Yes. No, I would not.

11 Q So, in other words, this doesn't
12 convince you -- what you have heard previously
13 doesn't convince you of the valuableness of
14 the U.S. Open? Or that value doesn't matter
15 to you?

16 A Oh, it's a different question than
17 you asked me. So I think the U.S. Open is
18 valuable, but I was responding to the
19 question, would it have changed my opinion
20 about the reasonableness of that business
21 decision. And to that I answer no.

22 The enormity of the increase of

1 dollars that Comcast was going to pay by
2 moving that channel down, in 2011, just sort
3 of back of the envelope, I would tell you it's
4 a [REDACTED] increase in the year is
5 enormous.

6 And I don't see any way that
7 Comcast could recoup that money, much less get
8 a return on the investment, nor why that is in
9 the best interest of its customers, because
10 eventually some extent of that is passed down
11 to customers where that is in their benefit.

12 Programming is available today,
13 and so customers who want it can pay for it.
14 And it seems to me a very reasonable business
15 decision to say this is very favorable for the
16 programmer, it's not so favorable for our
17 customers or for us.

18 Q But did you do an analysis of the
19 reasonableness of the business decision had
20 they acquired these rights?

21 A No.

22 MR. OSHINSKY: That's all we have,

1 Your Honor.

2 JUDGE SIPPEL: Okay. I just want
3 to follow up a little bit on what Mr. Oshinsky
4 has asked you. You said that there is -- one
5 aspect of your answer was that if you take a
6 -- if you take a Tier 3 programmer and you
7 drop the programmer down to Tier 2, that
8 somewhere down the line the customer is going
9 to be paying -- the customer that subscribes
10 to Tier 2 is going to be paying more money.
11 Does that paraphrase you the right way?

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: Okay. Now, how
14 much -- do you have any idea how much that
15 might be? Can you quantify it, whatever -- I
16 don't know what it is for the second tier at
17 Comcast, but let's say it's 25. It's probably
18 more than that, but do you know how much more
19 the increment would be to a customer?

20 THE WITNESS: Your Honor, I didn't
21 quantify it. I mean, I -- you know, in
22 theory, I guess you could take the license fee

1 increase and divide it by the number of
2 customers there. But then you have to offset
3 that by, you know, other factors. And I
4 haven't done it, so I don't know.

5 But, you know, this is an equation
6 that -- I could tell you that in my role at
7 CVI or Renaissance, I regularly had
8 programmers come to me and say, "I want to be
9 on a lower level." Disney Channel is maybe
10 the most famous example, because it was such
11 a brutal experience for many distributors. So
12 Disney Channel was a pay service, you know,
13 was a -- like HBO. And you could buy it for
14 \$9.95 or whatever.

15 And then, the Disney Corporation,
16 which is Disney, ABC, ESPN, decided that they
17 wanted to change their business model and get
18 onto "basic." Okay? And they have a lot of
19 leverage, right? And it was a "take it or
20 leave it" deal. And I won't tell you the
21 numbers, but it was a big number that they
22 wanted. Okay?

1 So, you know, this is not -- this
2 is not an unusual proposition. Every
3 programmer -- not every programmer, but most
4 programmers would prefer to be in a lower
5 level, because they get two benefits out of
6 that. They get a sustaining license fee from
7 your basic customer base, right? Okay? It's
8 not a -- it's not optional. Every one of your
9 -- nearly every one of your customers has it,
10 so they are going to get paid by you for that.
11 And, of course, they will have a larger
12 eyeball base to sell from.

13 So, you know, this proposition is
14 not unique to Tennis Channel. This has been
15 going on since -- certainly since the early
16 '90s, and will go on I think as long as there
17 are multi-channel distribution systems like
18 there are today.

19 JUDGE SIPPEL: So it's always
20 going to be well employed, it sounds like to
21 me.

22 (Laughter.)

1 MR. CARROLL: But will we be able
2 to take a lunch break before we handle the
3 next case?

4 (Laughter.)

5 JUDGE SIPPEL: Remains to be seen.
6 Is everybody finished now?

7 MR. TOSCANO: Nothing more, Your
8 Honor.

9 JUDGE SIPPEL: All right.

10 MR. SCHMIDT: One followup
11 question, Your Honor.

12 JUDGE SIPPEL: Click your heels.

13 MR. SCHMIDT: Your Honor, may I
14 just ask --

15 JUDGE SIPPEL: You do?

16 MR. SCHMIDT: -- followup
17 question?

18 RE-CROSS-EXAMINATION

19 BY MR. SCHMIDT:

20 Q The math, sir, that you said it
21 would cost Comcast to bump up the Tennis
22 Channel, it pays its channels ██████ that

1 amount to carry them on expanded basic,
2 correct, roughly?

3 A Oh, I don't know. I didn't do
4 that math. I don't know the answer.

5 Q Looking at the license fees we
6 looked at earlier, it's [REDACTED] as high,
7 roughly, for its channels, right?

8 A The license fee per subscriber is
9 about [REDACTED], yes.

10 MR. SCHMIDT: Thank you. Nothing.
11 Thank you, Your Honor.

12 JUDGE SIPPEL: Is that it?

13 MR. SCHMIDT: That's it, Your
14 Honor.

15 JUDGE SIPPEL: Thank you. Click
16 your heels three times and you'll be back --

17 (Laughter.)

18 THE WITNESS: Thank you, sir.

19 JUDGE SIPPEL: Thank you.

20 (Whereupon, the witness was
21 excused.)

22 We have to make a decision now.

1 Let's see, how are we going to do this? It's
2 20 minutes of three. I'd be inclined to come
3 back at four. Is that all right? And we'll
4 do as much as we can do.

5 I'm sure Mr. -- Mr. Bond knows the
6 neighborhood pretty well, I'm sure.

7 (Laughter.)

8 All right. We're off the record.
9 We're in recess until 4:00 p.m. Thank you.

10 (Whereupon, at 2:35 p.m., the
11 proceedings in the foregoing
12 matter recessed for lunch.)

13 JUDGE SIPPEL: Okay. Well, good
14 to be back. This is a document that I'm not
15 quite clear what it's status is. But I'm
16 inclined to receive it, subject to, if there's
17 a reason to strike it or get it out, I will.

18 MR. CARROLL: That's fine, thank
19 you.

20 JUDGE SIPPEL: Okay. Well, let me
21 just state for the record that this is Tennis
22 Channel's Exhibit 315. It's been identified

1 and is now received into evidence, if it
2 hasn't been already done so.

3 (Whereupon, the document referred
4 to as Tennis Channel Exhibit 315
5 was received in evidence.)

6 JUDGE SIPPEL: Okay. I'm going to
7 ask a favor. Does anybody have a redacted
8 copy of the trial brief for Comcast, by
9 chance? Does anybody just happen to have one?

10 MR. TOSCANO: We can get one. I
11 don't think we have one right here.

12 JUDGE SIPPEL: All right. Just
13 sit tight. Don't worry about it. Why don't
14 you get the one out of my office? Just a
15 question of accommodating the press office and
16 the press.

17 MR. TOSCANO: Can we give any
18 assistance to you? Do you want us to get one?

19 JUDGE SIPPEL: No, we'll be all
20 right. We'll be all right. I was just --
21 pardon me?

22 MR. CARROLL: We can get one very

1 easily, Your Honor.

2 JUDGE SIPPEL: Well, don't worry
3 about it right now, because -- maybe at the
4 break or something, that would be fine. Now
5 let me think. Where are we? Who's our
6 witness?

7 MR. TOSCANO: Gregory Rigdon.

8 JUDGE SIPPEL: Mr. Rigdon. Raise
9 your right hand. I have nothing to sell you.
10 Whereupon,

11 GREGORY RIGDON
12 was called as a witness and, having been first
13 duly sworn, was examined and testified as
14 follows:

15 JUDGE SIPPEL: Please be seated.
16 Okay, and Mr. Carroll.

17 MR. CARROLL: Your Honor, may I?

18 JUDGE SIPPEL: Thank you, sir.

19 MR. CARROLL: Thanks very much.

20 JUDGE SIPPEL: Your witness.

21 DIRECT EXAMINATION

22 BY MR. CARROLL:

1 Q Can you state your name for the
2 record please?

3 A Gregory Rigdon.

4 Q Mr. Rigdon, where are you
5 employed?

6 A Comcast.

7 Q How long have you been at Comcast?

8 A Just under three months.

9 Q Three months. So February?

10 A February 1st.

11 Q How's it going? How's the new
12 job?

13 A It's very exciting.

14 Q When you took on the new job, did
15 they tell you that this was part of the, part
16 of the service?

17 A I had an inkling that this might
18 be part of it.

19 JUDGE SIPPEL: It may be periodic,
20 but it's a fear that we face.

21 BY MR. CARROLL:

22 Q Are you getting battle pay? I'll

1 withdraw that. Let me very quickly do your
2 background. Could you go over your background
3 briefly for His Honor, before you came to
4 Comcast?

5 A Yes, so -- I'm sorry, starting
6 when?

7 Q That's a good question.
8 Employment history. You don't have to do high
9 schools or colleges. Just the various jobs
10 you've held over the years.

11 A Okay. My first job was working at
12 KPMG in their Merchant Banking Division, doing
13 privatization work and the Farmers Union. I
14 worked at America Online for about eight
15 years, nine years, up until 2006, in various
16 roles, primarily in deal-related roles and
17 business affairs and business development
18 units.

19 For the past five years, I worked
20 at Charter Communications in various roles,
21 including business development, procurement,
22 content acquisition strategy.

1 Q And then Comcast starting in
2 February of this year?

3 A Yes. I'm the Executive Vice
4 President of Acquisition and Content.

5 Q Okay, and is that the position
6 that Mr. Bond held before you?

7 A That's correct.

8 Q Okay, and Mr. Bond is now where?
9 Where did he go?

10 A He is at NBC Universal.

11 Q Okay.

12 JUDGE SIPPEL: I'm sorry, he's
13 where?

14 THE WITNESS: At NBC Universal.

15 JUDGE SIPPEL: Oh, that's right.
16 Okay. That's just across the hall now.

17 BY MR. CARROLL:

18 Q Actually, go ahead and answer it.

19 A It's, we're now part of the same
20 company, but he's up in New York and New
21 Jersey.

22 MR. CARROLL: And Your Honor, he's