

FEDERAL COMMUNICATIONS COMMISSION

In the Matter of: MB Docket No. 08-214

HERRING BROADCASTING, INC.
D/B/A WEALTHTV,
Complainant, File No. CSR-7709-P
v.

TIME WARNER CABLE, INC.
Defendant.

HERRING BROADCASTING, INC.
D/B/A WEALTHTV,
Complainant, File No. CSR-7822-P
v.

BRIGHT HOUSE NETWORKS, LLC,
Defendant.

HERRING BROADCASTING, INC.
D/B/A WEALTHTV,
Complainant, File No. CSR-7829-P
v.

COX COMMUNICATIONS, INC.,
Defendant.

HERRING BROADCASTING, INC.
D/B/A WEALTHTV,
Complainant, File No. CSR-7907-P
v.

COMCAST CORPORATION,
Defendant.

Volume 16

Wednesday, April 29, 2009

9:30 a.m.

The Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
Hearing Room TW-A363

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Chief Administrative Law Judge

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1 P R O C E E D I N G S

2 9:38 a.m.

3 JUDGE SIPPEL: Let's go on the
4 record. I just have two things on the
5 preliminaries. We need to get Exhibit 189
6 moved into evidence. I have it right here in
7 front of me. That is -- it was used yesterday
8 by Ms. Wallman on cross examination, I
9 believe.

10 Is that right, Ms. Wallman?

11 MS. WALLMAN: Yes, Your Honor,
12 during the cross examination of Ann Stith of
13 Bright House Networks.

14 JUDGE SIPPEL: Now I remember,
15 yes. And it was marked and we went through
16 the examination, but through oversight it was
17 not moved into evidence. Is there any
18 objection to that?

19 MR. MILLS: No objection.

20 JUDGE SIPPEL: No objection. It's
21 in as WTV 189.

22 (The document, having been marked

1 previously for identification as
2 WTV Exhibit 189, was received in
3 evidence.)

4 MS. WALLMAN: Thank you, Your
5 Honor.

6 JUDGE SIPPEL: You bet. Second
7 item of business, Time Warner, we're waiting
8 for and I'm not sure whether I was specific on
9 instructions on this, but there was the use of
10 the deposition of Ms. Thomas, Diane Thomas.
11 And I'm not -- yes, it was used in connection
12 with questioning Ms. McGovern.

13 Anyway, what I'd like done is to
14 have a -- as we did with Mr. Tagliabue, a
15 cover page and in the few pages that she was
16 examined on, assembled that way and made an
17 exhibit. We've got the full deposition here,
18 but we don't need that.

19 MR. COHEN: That was Mr. Herring,
20 was examined with that.

21 JUDGE SIPPEL: All right.

22 MR. COHEN: I did a part of the

1 use of that and I did move that into evidence
2 and then Mr. Mills used it --

3 MR. MILLS: There were two
4 exhibits that we used and it was reserved
5 whether they be moved into evidence, but it
6 would be perfectly appropriate to address it
7 now. We've moved it into evidence and we had
8 only used the portions, that is just the
9 cover.

10 JUDGE SIPPEL: That's correct.

11 MR. MILLS: And so I would -- now
12 is a good time to renew that motion, that's
13 fine.

14 JUDGE SIPPEL: Well, if that's the
15 status, then fine. Is there any objection to
16 that?

17 MS. WALLMAN: No, Your Honor, just
18 for the record, it was the deposition of Mr.
19 Herring, not Ms. Thomas in a case where --

20 JUDGE SIPPEL: I think we're
21 talking about two different things.

22 MR. MILLS: It was the deposition

1 of Mr. Herring in a case filed by Ms. Thomas
2 against Mr. Herring's company.

3 JUDGE SIPPEL: I have a deposition
4 showing her.

5 MR. COHEN: I'm sorry, Your Honor.
6 You mean the portion of Ms. McGovern's
7 transcript that I read into the record, you'd
8 like that marked? That we have not done. I
9 will do that.

10 JUDGE SIPPEL: That's not your
11 fault because I didn't press on it. But Mary
12 reminds me and she gets the last word on
13 things.

14 MR. COHEN: We will do that, Your
15 Honor. I just need to go back and when I have
16 a chance tonight to look at the transcript
17 I'll remember what pages we read.

18 JUDGE SIPPEL: Fine. Before we
19 close down on Friday.

20 MR. COHEN: It's that piece about
21 the TV competitive set. I think it was like
22 352 and 353.

1 JUDGE SIPPET: I've got the page
2 turned over.

3 MR. COHEN: I'll create an
4 exhibit. I think it was 351 to 353. We'll do
5 that. Thank you, Your Honor.

6 MR. MILLS: While we're on the
7 topic, Your Honor, the two Cox exhibits that
8 were marked and moved into evidence and the
9 Court reserved on that were the transcript
10 portions, I understand Ms. Wallman doesn't
11 have an objection to those.
12 So we would move those into evidence.

13 JUDGE SIPPET: Are they around
14 someplace?

15 MR. MILLS: I'll get those.

16 MR. COHEN: We have no other
17 preliminary while Mr. Mills is looking.

18 JUDGE SIPPET: Go ahead, yes, sir.
19 Mr. Harding?

20 MR. HARDING: Yes, if you recall
21 on Time Warner Cable 75, there were two
22 corrections suggested by Mr. Herring during

1 his testimony.

2 JUDGE SIPPEL: I do remember.

3 MR. HARDING: So we have --

4 JUDGE SIPPEL: It was a yes for a
5 no and a no for a yes?

6 MR. HARDING: We will offer a
7 revised 75.

8 JUDGE SIPPEL: Thank you. Thank
9 you, sir. That will be substituted for the
10 75, I believe the 75 I had received into
11 evidence, but it was subject to the
12 substitution.

13 MR. HARDING: Yes, Your Honor.

14 JUDGE SIPPEL: And this is going
15 to be the substitution.

16 (The document, having been marked
17 previously for identification as
18 TWC Exhibit 75 was replaced as TWC
19 Exhibit 75.)

20 MR. HARDING: And just for the
21 record I'll point out the differences.

22 JUDGE SIPPEL: Thank you.

1 MR. HARDING: Number one, we have
2 removed the Bates number that was on the
3 original 75, so it's clear that this is not
4 the one that was produced in discovery.

5 JUDGE SIPPEL: Excellent.

6 MR. HARDING: And we have changed
7 the answer on RCN from "no" to "yes" and the
8 answer on Armstrong from "yes" to "no" based
9 on the more updated information provided by
10 Mr. Herring during his testimony.

11 JUDGE SIPPEL: Thank you, sir.
12 That task is accomplished. So ordered.

13 MR. MILLS: And Your Honor, with
14 regard to those exhibits for Cox, it's Cox
15 Exhibit 105 and Cox Exhibit 106.

16 JUDGE SIPPEL: 105 and 106. Those
17 numbers sound familiar. They were excerpts of
18 transcripts?

19 MR. MILLS: Yes, sir.

20 JUDGE SIPPEL: Were they
21 identified? I don't have -- here, we go.
22 I've got them now. I've got them now.

1 I do have them identified on the
2 23rd, they were identified. And there's no
3 objection. Ms. Wallman was asked about this,
4 no objection?

5 MS. WALLMAN: I have no objection,
6 Your Honor.

7 JUDGE SIPPEL: Then they are
8 received in evidence on this date as Cox
9 Exhibits 105 and 106.

10 (The documents, having been marked
11 previously for identification as
12 Cox Exhibit 105 and Cox Exhibit
13 106, were received in evidence.)

14 MR. MILLS: Thank you, Your Honor.

15 JUDGE SIPPEL: Thank you. Any
16 other preliminary matters?

17 Mr. Solomon?

18 MR. SOLOMON: Your Honor, Comcast
19 calls Madison Bond to the stand.

20 JUDGE SIPPEL: Mr. Bond, will you
21 rise while I administer the oath, sir?

22 WHEREUPON,

1 MADISON BOND
2 WAS CALLED FOR EXAMINATION BY COUNSEL FOR
3 COMCAST AND, HAVING FIRST BEEN DULY SWORN, WAS
4 EXAMINED AND TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. SOLOMON:

7 Q I'm handing out an exhibit marked
8 Comcast Exhibit 3 which is the direct
9 testimony of Madison Bond. It's marked highly
10 confidential, but we aren't going to discuss
11 any of the highly confidential issues as part
12 of the direct testimony.

13 JUDGE SIPPEL: Didn't I see you
14 last week?

15 THE WITNESS: Yes.

16 (Laughter.)

17 JUDGE SIPPEL: I opened the door
18 for that.

19 BY MR. SOLOMON:

20 Q Mr. Bond, will you take a look at
21 Exhibit 3?

22 A Yes.

1 Q Is this your written direct
2 testimony and is that your signature on page
3 12?

4 A It is.

5 Q Is your written testimony true and
6 correct?

7 A Yes.

8 MR. SOLOMON: I move that Comcast
9 Exhibit 3 be received into evidence.

10 JUDGE SIPPEL: It's identified as
11 the witness identified it.

12 (Whereupon, the above-referred to
13 document was marked as Comcast
14 Exhibit 3 for identification.)

15 Is there any objection?

16 MS. WALLMAN: WealthTV has no
17 objection, Your Honor.

18 JUDGE SIPPEL: Thank you. It's
19 received. It's identified and received today
20 as Comcast Exhibit 3.

21 (The document, having been marked
22 previously for identification as

1 Comcast Exhibit 3, was received in
2 evidence.)

3 BY MR. SOLOMON:

4 Q Mr. Bond, I'd like to ask you a
5 few questions to allow you to summarize your
6 written direct testimony. What is your
7 position at Comcast and what are your
8 responsibilities?

9 A I'm the executive vice president
10 of content acquisition for Comcast cable. I'm
11 responsible for negotiating programming
12 agreements and license agreements for the
13 content that appears on the Comcast cable
14 systems which can include television networks,
15 retransmission consent agreements with
16 broadcasters, deals with movie studios,
17 etcetera.

18 Q Have Comcast and WealthTV entered
19 into an affiliation agreement?

20 A No.

21 Q Can you tell me some of the key
22 reasons why not?

1 A We've met. We met off and on with
2 Charles and his group over the years and
3 generally --

4 Q Charles?

5 A Charles Herring, Mr. Herring. And
6 generally speaking, we were never able to come
7 to terms with them. WealthTV always sought a
8 very significant distribution commitment, a
9 significant license fee and a long term. We
10 didn't think the programming was all that
11 compelling, the programming idea was all that
12 compelling.

13 Q You said you had discussions over
14 a period of time. Did you have some
15 discussions before April 2008?

16 A Yes.

17 Q Can you give a summary of those
18 discussions?

19 A I met and had telephone calls with
20 Charles really going back several years. I've
21 talked with him more than a dozen times as we
22 discussed both his progress or what he had

1 achieved in terms of distribution, his
2 programming had evolved and how his business
3 model rates might have changed.

4 Q And what were the reasons during
5 those discussions that you -- the discussions
6 never led to an agreement?

7 A Really the same reasons that I had
8 said earlier.

9 Q Now you had some discussions with
10 -- did you have discussions with Mr. Herring
11 in April 2008?

12 A I did.

13 Q Can you summarize those
14 discussions?

15 A He and I spoke in April of '08 a
16 little more intensely about a deal and I had
17 said to him -- I had offered previously that
18 there were ways in which we might be able to
19 test the viability of the programming through
20 VOD or other ways.

21 Q Can you explain what you mean by
22 VOD?

1 A Video on demand. In other words,
2 putting WealthTV programming on our video on
3 demand platform for free, available to
4 customers in some number of systems and that
5 the usage of that programming might indicate
6 the value of the programming.

7 Shall I go on with respect to the
8 '08 conversations.

9 Q Yes, please.

10 A So I had offered to him in 2008,
11 in April of '08 that we would launch it, that
12 we would do a deal with WealthTV that would
13 allow it to be launched on the Comcast
14 systems, what we often call a quote hunting
15 license deal, but that we would commit to
16 carry and assist him in a major metro area
17 which I felt would probably best suit their
18 target demographic.

19 And we had some discussion about
20 various cities, where that might happen. I
21 had talked to him about a launch in Chicago
22 where we had some bandwidth because of the

1 digital transition and those conversations
2 were really just beginning and they more or
3 less, WealthTV more or less withdrew from the
4 conversation and filed the litigation.

5 Q Were you willing to continue to
6 negotiate with them?

7 A Yes. They had said that WealthTV
8 -- WealthTV had said that they had a statute
9 of limitations which I think was expiring in
10 a couple of weeks or they thought it might
11 expire in a couple of weeks. I said we could
12 keep on working on it over the next couple of
13 weeks or we would be willing to toll the
14 application of statute while we continued to
15 discuss it.

16 Q What was your understanding of
17 WealthTV's willingness to continue to
18 negotiate?

19 A Well, we were having, I was having
20 discussions with Mr. Herring. He had told me
21 that he was going to check with his lawyer and
22 then basically I didn't hear from him again

1 and they filed the litigation.

2 Q During the period you were talking
3 with WealthTV, did Comcast enter into
4 affiliation agreements with channels not owned
5 by Comcast?

6 A Yes.

7 Q Can you give me a sense of how
8 many?

9 A During the time period we were
10 speaking with WealthTV, well over 100
11 channels.

12 Q These are channels in which
13 Comcast had no ownership interest. Is that
14 correct?

15 A Correct.

16 Q Can you give some examples?

17 A There's really a lot of examples.
18 Bloomberg, RFD-TV, Black Television News
19 Channel, Discovery Channel, Animal Planet, The
20 Learning Channel, ESPN and ESPN-2, Disney
21 Channel, NBC, MSNBC, USA, SciFi, TCN, TNT,
22 CNN. We did deals with probably 60 ethnic

1 programmers during this time period.

2 Q And some of these were independent

3 --

4 A Univision.

5 Q Sorry. Some of these were
6 independent programmers not connected with
7 another media company, is that correct?

8 A Correct.

9 Q Did Comcast carriage of INHD or
10 Mojo or Comcast ownership interests in iN
11 DEMAND play any part in the fact that you
12 didn't enter into an affiliation agreement
13 with WealthTV?

14 A No.

15 Q During the time that you were
16 talking with WealthTV in 2008, what were you
17 doing regarding Mojo?

18 A Trying to shut it down.

19 Q Did you, in fact, shut it down?

20 A Yes.

21 Q One final matter I want to ask you
22 about, are you familiar with the argument that

1 WealthTV made in its brief that there's
2 something discriminatory about the fact that
3 Comcast carried INHD and Mojo without a
4 written contract?

5 A I am aware of that.

6 Q Why didn't you have a written
7 contract with INHD or Mojo?

8 A It really wasn't a benefit to us
9 to have a written contract, given the fact we
10 did end up shutting it down. We really
11 weren't, we Comcast, weren't interested in
12 committing to it. So it wasn't in our
13 interest to have a written contract.

14 Q Can you explain a bit more why it
15 wasn't in your interest when you started
16 carrying INHD?

17 A Well, when we launched INHD, we
18 did not really know if it had a future, it
19 might have a future, it might not have a
20 future. We launched it at the time to provide
21 a backdrop for sports and to also provide a
22 place for some HD programming that was out

1 there that really didn't have a channel home.

2 We always thought it might end up
3 going away at some point in time with the
4 proliferation of HD, other HD channels which,
5 in fact, happened.

6 Q Has Comcast carried some networks
7 in which it didn't or doesn't have an
8 ownership interest without a written contract?

9 A Yes.

10 Q Can you give me a sense of how
11 many?

12 A Well, over time, dozens, many
13 major programmers are often carried without a
14 contract.

15 Q Thank you. I have no further
16 questions.

17 JUDGE SIPPEL: Cross examination,
18 Ms. Wallman?

19 MS. WALLMAN: Thank you.

20 CROSS EXAMINATION

21 BY MS. WALLMAN:

22 Q Good morning, Mr. Bond.

1 A Good morning.

2 Q I'm Kathy Wallman. We've met
3 before.

4 A Yes.

5 Q I'm counsel to WealthTV. In your
6 job at Comcast, is it fair to say that you are
7 the leader of the content acquisition group?

8 A It is.

9 Q And in other MSOs, that might be
10 known as the programming group, is that
11 correct?

12 A It could be, yes.

13 Q To whom do you report in your
14 position?

15 A Steve Burke.

16 Q And does Mr. Alan Dannenbaum also
17 work in the content acquisition group?

18 A Not any more.

19 Q Did he at one time?

20 A He did.

21 Q Until how recently did he work
22 there?

1 A He left my group around the
2 beginning of '08. I'm a little fuzzy on the
3 dates.

4 Q Does he still work elsewhere at
5 Comcast?

6 A Yes.

7 JUDGE SIPPTEL: Just raise your
8 voice just a bit.

9 THE WITNESS: If I get a little
10 closer, that might help.

11 JUDGE SIPPTEL: Getting closer
12 almost always helps, yes.

13 BY MS. WALLMAN:

14 Q So currently, how many other
15 people work for you in the content acquisition
16 group?

17 A About 30.

18 Q And among them is there a division
19 of responsibilities by geography or some other
20 specialization?

21 A There is.

22 Q Could you please describe that

1 structure?

2 A I have one person who reports to
3 me by the name of Jen Gaiski, G-A-I-S-K-I.
4 She handles much of the contract
5 administration function, interactions with the
6 field, channel change requests, budgets, that
7 sort of thing.

8 I have another direct report, Matt
9 Strauss, and he's responsible for new media
10 work.

11 Kathy, are you asking me right now
12 what my department looks like or what it
13 looked like when Alan was there?

14 Q No, I just mean to get a bit of an
15 overview of about how the group is organized
16 right now.

17 A Okay, fine. I just wanted to make
18 sure I was being responsive.

19 Q Thank you.

20 A So Matt Strauss handles new media
21 efforts for us. Allan Singer is another
22 direct report and he handles programming

1 negotiations. His role is probably most
2 similar to Alan Dannenbaum. And then I have
3 another direct report, David Jensen. And
4 David Jensen handles international
5 programming.

6 Q At Comcast, is there anyone at
7 your level, your coordinate level with similar
8 responsibilities for affiliation agreements on
9 behalf of Comcast?

10 A Do you mean with respect to
11 Comcast networks?

12 Q With respect to Comcast networks,
13 yes.

14 A So in other words, on the opposite
15 side of the table, as it were? Is that --

16 Q Pardon me. Let me ask a better
17 question. As I understand it in your role as
18 head of content acquisition, it's your job to
19 sign contracts for carriage, if the company
20 decides to extend carriage to a programming
21 service, is that correct?

22 A Yes.

1 Q Is there anybody else who would
2 have the authority at your coordinate level to
3 sign such an agreement?

4 A Oh, I see. No, I'm responsible
5 for that.

6 Q So is it fair to say that nothing
7 gets carriage on the Comcast cable platform
8 without your agreeing that it's a good idea to
9 do that?

10 A Well, inside the company it's
11 obviously a collaborative effort. I don't --
12 I certainly don't run the company and I have
13 people to whom I report and there is much
14 discussion among the management team at
15 Comcast about carriage issues. And certainly,
16 many, many carriage issues are made at the
17 field level if there's a contract in place.
18 So I wouldn't say that I am solely responsible
19 or the sole determination in any way on
20 carriage decisions.

21 Q Now when Comcast is in the process
22 of deciding, considering, let's say, whether

1 a network should be carried by Comcast, you
2 indicated in your testimony that one of the
3 considerations is whether that programming
4 service presents a successful brand. Is that
5 correct?

6 A Yes, among other considerations.

7 Q So a programming service that's
8 not associated with a successful, existing
9 brand would have a greater hurdle than one
10 that does have an existing, successful brand.
11 Is that fair to say?

12 A Well, potentially, there's many
13 factors involved in that. We've launched a
14 lot of channels that didn't have a pre-
15 existing brand.

16 JUDGE SIPPEL: I'm sorry, didn't
17 have a what?

18 THE WITNESS: Did not have a pre-
19 existing brand.

20 BY MS. WALLMAN:

21 Q Does an example of that come to
22 mind?

1 A Sure, Altitude Sports in Colorado.

2 Q Is there any example outside the
3 sports programming field come to mind?

4 A Yes, many. Black Television News
5 Channel that we signed a deal for. College
6 Sports Television, Tennis Channel. If I had
7 some time to think about it, I could probably
8 come up with dozens of examples. SciFi
9 Channel, for instance. We launched that and
10 it didn't have an existing brand.

11 JUDGE SIPPPEL: Didn't have an
12 existing?

13 THE WITNESS: Didn't have an
14 existing brand. I mean that's going back some
15 years, but if you look at the cable lineup
16 right now, it's got hundreds of channels on it
17 and pretty much all of those channels, not all
18 of them, but most of them when they launched,
19 didn't have existing brands.

20 BY MS. WALLMAN:

21 Q What about HD launches?

22 A HD did you say?

1 Q HD launches.

2 A Yes.

3 Q If a channel desires to be
4 launched in HD, is it more difficult if the
5 channel doesn't have an HD standard digital
6 feed already in place? Is that a factor in
7 deciding whether there's a successful brand to
8 launch on HD?

9 A Well, I don't exactly know how to
10 answer that. High Def, high definition is
11 more of a viewing technology than it is a
12 programming model. So if you're in high def
13 only there's a different subset of customers
14 to which it would be available because not
15 everybody has an HD set. HD has other
16 attributes to it that are different than SD.

17 JUDGE SIPPEL: I thought that was
18 a pretty clear question. I'm sorry, I didn't
19 mean to cut you off.

20 THE WITNESS: No, that's all
21 right.

22 JUDGE SIPPEL: I thought that was

1 a pretty -- will you ask that question again
2 and see if you can answer that question. You
3 said you were having difficulty answering and
4 I'd like to know why. It seemed pretty clear
5 to me.

6 BY MS. WALLMAN:

7 Q Let me try it this way, if a
8 network wishes to be launched on Comcast on
9 HD, but doesn't have a standard digital feed -
10 -

11 A Standard definition.

12 Q Standard definition, pardon me,
13 feed, on Comcast, is that a strike against it
14 in your consideration of carriage for HD?

15 A I don't think it's a strike
16 against it per se. It's just that what I was
17 trying to say is there's a smaller subset of
18 customers that have high def sets, so it's a
19 more limited subset of people to whom the
20 channel would be available, but I don't
21 necessarily consider it a strike against it.
22 We have launched HD-only channels.

1 Q What's an example of that?

2 A Discovery HD Theater, Palladia,
3 Universal HD, HDNet.

4 Q When Comcast agreed to carry INHD,
5 was it at that time also carried in SD?

6 A No.

7 Q When Comcast agreed to continue to
8 carry Mojo after it was rebranded as you've
9 called it from INHD, was Mojo carried on SD?

10 A No.

11 Q You indicated in your testimony
12 that another factor that Comcast considers is
13 whether a programmer has programming
14 experience, prior programming experience.

15 A Yes.

16 Q Correct?

17 A I do.

18 Q And you indicated that a negative
19 consideration in the case of WealthTV was that
20 the company lacked prior experience in
21 programming. Is that correct?

22 A Yes.

1 Q Your judgment about it lacking
2 prior experience in programming is premised on
3 your acquaintance with which individuals in
4 the company?

5 A At WealthTV?

6 Q Yes.

7 A The Herrings.

8 Q Did you meet others who spoke to
9 you on behalf of WealthTV?

10 A They had other consultants for a
11 period of time that I spoke with within the
12 cable industry.

13 Q I'm sorry, I spoke too quickly.

14 A That's all right. I said I had
15 met with other consultants that they had who
16 had been in the cable industry.

17 Q JUDGE SIPPEL: Are you getting
18 this, Madam Reporter?

19 COURT REPORTER: Yes.

20 THE WITNESS: Am I speaking too
21 softly?

22 JUDGE SIPPEL: A little bit. This

1 is the person you have to convince you're
2 speaking loudly.

3 THE WITNESS: I apologize. I mean
4 it's --

5 JUDGE SIPPEL: No need to
6 apologize.

7 THE WITNESS: Other people say
8 that about me.

9 JUDGE SIPPEL: If you had a
10 Blackberry, there would be a problem.

11 (Laughter.)

12 Go ahead. Let him finish and stay
13 with your question, because you're entitled to
14 an answer. Please.

15 BY MS. WALLMAN:

16 Q So you said you did meet with
17 others representing WealthTV who did have
18 experience in the cable industry, correct?

19 A Yes.

20 Q And did you take that into account
21 in your judgment that the channel lacked
22 management with prior programming experience?

1 A The folks that I met with I didn't
2 think had prior programming experience, at
3 least that wasn't my perception. They had
4 experience in the cable industry, but I didn't
5 think they had programming experience.

6 Q What do you mean by programming
7 experience then?

8 A Well, what I mean by that is if to
9 use an example, if you had a conversation with
10 someone from Viacom, they have a very
11 significant track record of producing hit
12 shows and popular channels that resonate with
13 consumers, in fact, to become part of a
14 cultural landscape. So a company like Viacom
15 would have a significant track record of
16 success which would be a factor to consider if
17 Viacom were pitching a particular programming
18 entity.

19 Q What, if anything, did you know
20 about the -- let me ask specifically. You
21 realize that David Asch, a senior person at iN
22 DEMAND, you realize that he didn't have any

1 prior experience running a linear cable
2 channel before he was entrusted with the
3 responsibility for iN DEMAND and Mojo,
4 correct?

5 A Yes.

6 Q That didn't deter you from
7 including INHD and Mojo in the Comcast lineup,
8 did it?

9 A No.

10 Q Do you know whether Mr. Jacobson
11 had any experience running a linear cable
12 channel before he became involved with INHD
13 and Mojo?

14 A No, he did not.

15 Q But that didn't deter you from
16 including INHD and Mojo in the Comcast lineup,
17 correct?

18 A No. We had --

19 Q I can take your answer as that.

20 A All right.

21 JUDGE SIPPEL: I just want to get
22 one clarification. I heard you testify to one

1 specific question. You answered the Herrings.

2 It was plural.

3 THE WITNESS: Yes.

4 JUDGE SIPPPEL: Did you have
5 discussions -- who did you -- who specifically
6 did you have conversations with whose name was
7 Herring?

8 THE WITNESS: Charles Herring and
9 his father. Most of my conversations were
10 with Charles. I was in one meeting that his
11 father was at and I think there were a few
12 other times that his father was on the phone.

13 JUDGE SIPPPEL: Okay, do you recall
14 of his father?

15 THE WITNESS: I'm having a bit of
16 a mental block right now which is
17 embarrassing.

18 JUDGE SIPPPEL: I'm not trying to
19 embarrass you. I get those. All right, but
20 you think you only talked at one time on a
21 joint call with Charles Herring and his
22 father?

1 THE WITNESS: No, I probably had
2 several calls with Charles, which his father
3 was also on the call and then there was one
4 meeting some years ago which he was in.

5 JUDGE SIPPEL: So your testimony
6 with respect to this -- what you felt to be a
7 little programming experience, you were
8 including both father -- I think it's Robert
9 if I'm not mistaken.

10 THE WITNESS: Yes, yes, thank you.

11 JUDGE SIPPEL: Robert and Charles
12 Herring plus all the other people that you
13 talked to at the Herring organization, whether
14 they be consultants or employees?

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: How do you come to
17 a conclusion that somebody has no programming
18 experience? What do you have to observe to
19 come up with that conclusion? With this
20 situation, what did you observe to come up
21 with that conclusion?

22 THE WITNESS: Well, first off,

1 it's not -- that's only one factor. It's not
2 -- so that's the sine qua non of the decision.

3 JUDGE SIPPEL: I didn't ask that
4 question.

5 THE WITNESS: Fair enough.

6 JUDGE SIPPEL: What do you do?
7 What are the elements? What are the
8 ingredients? At what point do you say, you
9 know, I think that person or that organization
10 has little programming experience?

11 THE WITNESS: Well, when you're
12 dealing -- it's really whether there's a track
13 record of a success, whether they've been
14 involved in the television business where they
15 have contacts with the people who actually
16 produce programming which are movie studios,
17 sports leagues, all the variety of people in
18 the television industry that produce
19 programming, whether they have those kind of
20 relationships, whether they're in the
21 industry, whether they have those contacts.
22 Whether they --

1 JUDGE SIPPEL: Go ahead, keep
2 going. Go ahead.

3 THE WITNESS: Whether the folks
4 involved have had a track record of producing
5 hit television shows. So for instance, Gerry
6 Laybourne started a channel called Oxygen.
7 She had previously worked at Nickelodeon, had
8 been responsible for a raft of very -- really
9 the launch of that channel and a raft of very
10 important hits. So she formed a channel
11 called Oxygen. We gave it distribution. She
12 came to the table with both industry
13 connections and a history of producing hit
14 television.

15 JUDGE SIPPEL: Did she have to do
16 anything other than that? What else did she
17 have to show you? She had those two things.

18 THE WITNESS: Well, in that case,
19 she also had what we felt was a compelling
20 programming idea.

21 JUDGE SIPPEL: So the programming
22 --

1 THE WITNESS: Of course, she had a
2 particular programming idea which -- this is
3 actually, when this happened I was at TCI.

4 JUDGE SIPPEL: That's okay.
5 You're going too far beyond what I'm trying to
6 get at.

7 THE WITNESS: Okay.

8 JUDGE SIPPEL: But you're
9 testifying to what I'm hearing to be very
10 significant -- I can stay with you when you
11 start saying that they had to have a good
12 track record. You're looking for good track
13 record. You're looking for a history of
14 programming, that they put programming on
15 which has been top hits or something to that
16 effect. I know exactly what you were saying
17 within that respect. But my question is
18 you're also saying that really that isn't all
19 that -- I'm hearing it this way anyway. It
20 really isn't all that important. That's just
21 one of many things that you consider.

22 THE WITNESS: Yes. Do you want me

1 to --

2 JUDGE SIPPET: No, no, no. I just
3 want to be sure that I'm clear.

4 THE WITNESS: Yes. I wouldn't say
5 it's not all that important. It really
6 depends on what the programming idea is. Can
7 I?

8 JUDGE SIPPET: Please expand on
9 that, yes.

10 THE WITNESS: Would you like me
11 to? I think I can be helpful.

12 JUDGE SIPPET: Yes, I do. But I'm
13 just trying to show -- I want to be sure that
14 I heard you the right way.

15 THE WITNESS: To use another
16 example, I hope you don't mind me using
17 examples. It's really, I think, the way in
18 which I can try to describe --

19 JUDGE SIPPET: Do you have any
20 objections to this, Ms. Wallman? He's your
21 witness.

22 MS. WALLMAN: No, I don't.

1 JUDGE SIPPET: I don't want to cut
2 in.

3 MS. WALLMAN: Whatever is helpful,
4 please.

5 JUDGE SIPPET: Go ahead. Not too
6 long though.

7 THE WITNESS: Fine. So we did a
8 deal with YES Network.

9 JUDGE SIPPET: YES?

10 THE WITNESS: Yes, Y-E-S, which is
11 a sports network in New York. They had
12 exclusive rights to the Yankees.

13 JUDGE SIPPET: Okay, they filed a
14 motion about confidentiality or something. Go
15 ahead.

16 THE WITNESS: And that was a new
17 organization and they didn't have really
18 significant programming experience and they
19 assembled a programming team. But they had a
20 relatively well-defined and well-known
21 programming right or programming concept,
22 Yankees games. They had 152 Yankees games.

1 So that was really a known quantity.

2 So in that case I would say
3 programming experience is relatively
4 unimportant because the necessary experience
5 could probably be acquired pretty easily and
6 that case it was and they're very successful.

7 If you're moving into more of a
8 general entertainment model, then that's much
9 more about the ability to acquire the right
10 shows and create hits and have the right
11 connection with customers and really be in
12 that industry.

13 So it has more importance in that case.

14 JUDGE SIPPPEL: And so -- but then
15 -- I was going to say in that situation then
16 you're judgments become more subjective. Can
17 you follow me on that?

18 THE WITNESS: Yes.

19 JUDGE SIPPPEL: I mean I can be in
20 your chair tomorrow and know that without
21 anybody ever telling me anything that if
22 somebody came in and said they wanted to sell

1 me the Yankee games, that I had something good
2 coming. I would know that. So but when you
3 say it starts getting into something more --
4 not sophisticated rather, but something that
5 is not that -- it doesn't hit that hard, if I
6 can use that term -- am I right?

7 THE WITNESS: Yes.

8 JUDGE SIPPPEL: Am I coming across
9 all right?

10 THE WITNESS: Yes.

11 JUDGE SIPPPEL: I'm sorry, Ms.
12 Wallman, your witness. Go ahead.

13 BY MS. WALLMAN:

14 Q It sounds as though you're
15 painting a picture of a space that's fairly
16 hard to break into if you don't have an
17 existing track record specifically in
18 programming. Is that correct?

19 A No, we've done deals with others
20 who don't have a track record. I mentioned a
21 few of them earlier. Bloomberg Television had
22 no track record. Black Television News

1 Channel didn't really have a track record.

2 Q So in any of those examples that
3 you mentioned or others that might come to
4 mind, was it relevant that those proposing
5 carriage of the network had experience
6 running, operating, creating businesses?

7 A Yes, it was relevant.

8 Q Were you aware of the track of
9 Robert Herring, Sire. and Charles Herring in
10 starting, operating, and monetizing
11 businesses?

12 A I'm sorry. Was your question is
13 the ability to run a business, any business
14 relevant? Maybe I misunderstood your question
15 previously.

16 Q Let me go back. You mentioned a
17 couple of examples of networks that you --
18 that Comcast launched, even though there was
19 no specific programming experience.

20 A Yes.

21 Q As you've discussed that?

22 A Yes, yes.

1 Q So my question was in that event,
2 is it relevant to Comcast decision whether the
3 company and the people behind it proposing
4 carriage of the network have experience
5 starting, running, operating, and monetizing
6 a business?

7 A I see. Yes. That is a relevant
8 factor.

9 Q Were you aware of the track record
10 in that respect of Robert Herring, Sire.?

11 A Yes.

12 Q Were you aware of that fact with
13 respect to Mr. Charles Herring?

14 A Separately from his father's
15 business? My understanding was they had a
16 circuit board, prosperous circuit board
17 business together, that they ran together.
18 That was my understanding.

19 Q I don't mean to say it separately.
20 I'm just not supposed to ask a compound
21 question. So I'm trying to stay out of that
22 trap.

1 A All right.

2 Q Now did you make inquiries of the
3 Herrings, separately, about who would be
4 producing programming for the WealthTV
5 network?

6 A Yes, at various times in our
7 conversation. I don't know if I inquired into
8 it or they talked about it, but they said they
9 would hire programmers. They had some
10 programming DVDs that they shared with us at
11 various times.

12 Q Were you aware that one of the
13 producers for the WealthTV programming was
14 Niki Marvin who had produced the movie "The
15 Shawshank Redemption"?

16 A I don't recall that.

17 Q Now around, at paragraph 10 in
18 your testimony you testify that you had some
19 concerns about the long-term viability of
20 WealthTV as a network because they had no
21 third party financing.

22 A Yes.

1 Q Correct?

2 A Yes.

3 Q You didn't make any inquiry to the
4 Herrings about their finances and whether it
5 would permit them to sustain the long-term
6 viability of WealthTV, did you?

7 A No, but obviously starting a
8 network is a very expensive proposition.

9 Q But you made no inquiry, did you?

10 A No.

11 Q Now you serve as the Chairman of
12 the Board of Directors of iN DEMAND, correct?

13 A Yes.

14 Q And Comcast has a majority
15 ownership interest?

16 A Yes.

17 Q And as Chairman of the Board and
18 as a member of the Board, you had information
19 that called into question the long-term
20 viability of iN DEMAND unless the owners
21 continued to support it, correct?

22 A The long-term viability of iN

1 DEMAND?

2 Q Yes.

3 A We funded iN DEMAND for a period
4 of time. I didn't consider iN DEMAND's
5 viability to be an issue.

6 Q Does Comcast have an obligation to
7 pay for the development of iN DEMAND
8 programming as part of its joint venture
9 agreement with the other owners?

10 A There's a funding obligation.
11 There's a budget approval process and a
12 funding obligation process to the extent
13 there's shortfalls.

14 Q iN DEMAND was audited from time to
15 time, correct?

16 A Yes.

17 Q Do you recall who the auditors
18 were?

19 A No.

20 Q I'd like to show the witness a
21 document to refresh his recollection.

22 JUDGE SIPPEL: You may approach

1 the witness for that purpose. Make sure
2 counsel gets a copy.

3 MS. WALLMAN: Yes, Your Honor.

4 BY MS. WALLMAN:

5 Q I've marked this for
6 identification purposes as WealthTV 200. This
7 is an email exchange from the Chairman of Cox
8 Productions and it's marked confidential.

9 JUDGE SIPPEL: Thank you.

10 (Whereupon, the above-referred to
11 document was marked as WTV Exhibit
12 200 for identification.)

13 MR. MILLS: Your Honor, can I just
14 raise a question? I'm not sure if there's an
15 objection or not. Wasn't this the same
16 material that was excluded with regard to
17 another member of the iN DEMAND Board on a
18 previous examination as beyond the scope of
19 the direct testimony?

20 JUDGE SIPPEL: Well, let's all
21 look at it. I don't -- well, let me look --

22 MR. COHEN: Well, Your Honor, if I

1 could refresh your recollection. There was an
2 effort -- let me wait for Ms. Wallman. I'm
3 sorry. She needs to listen.

4 JUDGE SIPPEL: Let's wait, let's
5 wait until everything is --

6 (Pause.)

7 MR. COHEN: May I proceed, Your
8 Honor?

9 JUDGE SIPPEL: Now is this in the
10 form of an objection?

11 MR. COHEN: Yes, Your Honor.

12 JUDGE SIPPEL: Voir dire?

13 MR. COHEN: Yes, it's a scope
14 objection. I think it properly rests with
15 Comcast, but I'm raising the question just so
16 that we have an even record.

17 There was an effort during Ms.
18 Witmer's cross examination to raise the
19 financial position of iN DEMAND on a cross
20 examination. I objected beyond the scope and
21 I believe that either the objection was either
22 sustained, but we certainly did not get into

1 this area.

2 I don't see anything in Mr. Bond's
3 testimony that would open up the area for this
4 witness. It's true, as Chairman of the Board,
5 he has whatever knowledge he has, but it's
6 still beyond the scope of the written, direct
7 testimony and the oral direct testimony.

8 MR. SOLOMON: Now that I've
9 completed reading, Your Honor, I object on
10 behalf of Comcast. He doesn't testify related
11 to this within his direct testimony and I
12 object on the grounds that it's outside the
13 scope of his direct testimony. I also object
14 on relevance grounds.

15 JUDGE SIPPEL: All right, well, I
16 remember that. I remember -- I know why I
17 excluded that testimony on cross examination
18 because Ms. Witmer, she wasn't qualified to
19 answer. She didn't have the ability to
20 answer. She didn't have the qualifications to
21 answer. She was -- remember, we went into
22 that incompetent witness which I didn't want

1 to think I was criticizing the witness by
2 calling her incompetent.

3 MS. WALLMAN: Pardon me, Your
4 Honor.

5 JUDGE SIPPEL: Is that the same
6 one?

7 MS. WALLMAN: I think you're
8 recalling David Asch, the witness from iN
9 DEMAND.

10 JUDGE SIPPEL: Yes, yes, yes,
11 you're right.

12 All right, well, and you said that
13 this witness is the Chairman of the Board of
14 Directors of iN DEMAND?

15 THE WITNESS: I was not the
16 Chairman of the Board at the time.

17 JUDGE SIPPEL: Everything matters.
18 It all matters. Your testimony is going to be
19 -- it can't be right, wrong or indifferent.
20 It's got to be right. This is outside the
21 scope of his direct examination. There's
22 nothing like this in the direct examination.

1 MS. WALLMAN: Your Honor, I
2 disagree.

3 JUDGE SIPPEL: You do?

4 MS. WALLMAN: Yes, sir.

5 JUDGE SIPPEL: Show us where?

6 MS. WALLMAN: Paragraph 10 of his
7 testimony he says that WealthTV did not appear
8 to have any third party financial support and
9 this lack of support raised concerns regarding
10 the long-term viability of the network.

11 MR. SOLOMON: Your Honor, that
12 doesn't say anything with respect to iN DEMAND
13 and there's been testimony about the fact that
14 iN DEMAND who its owners are. So it's not
15 clear to me the relevance of asking questions
16 about an audit of iN DEMAND as owned by
17 Comcast, Cox, Time Warner and Bright House.

18 JUDGE SIPPEL: Well, I have to --
19 I think that's exactly what the situation is.

20 MS. WALLMAN: If I may, Your
21 Honor, Mr. Bond is copied on these emails. I
22 accept that he was not Chairman of the Board

1 at the time, but he was in the chain of
2 discussion about this growing concern letter
3 that's the topic of the email. And the
4 fundamental contention in this case, Your
5 Honor, is one of discrimination, that the
6 factors that were applied to decide whether a
7 network would get carriage were not evenly
8 applied as between WealthTV, an independent
9 channel, and Mojo, an affiliated channel.

10 JUDGE SIPPEL: Are you saying they
11 should have had WealthTV audited by whoever
12 these people are, Ernst & Young?

13 MS. WALLMAN: Not at all, Your
14 Honor. [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED]

4 JUDGE SIPPEL: If the net worth of
5 iN DEMAND is greater than WealthTV, is that a
6 justifiable reason to go with iN DEMAND

7 [REDACTED]

8 [REDACTED]

9 MS. WALLMAN: No, that's not
10 really what I'm trying to get at, Your Honor.

11 JUDGE SIPPEL: It sounds like that
12 -- I mean it's either -- It's either all or
13 nothing. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 JUDGE SIPPEL: You're trying to
21 say that? I don't see anything -- this
22 document alone could not establish that.

1 You'd have to go into a whole other area. The
2 area would be a very deep area too. Testing
3 the financial strength -- and as Mr. Solomon
4 points out, they really have big backers. I
5 mean iN DEMAND has big backers.

6 MS. WALLMAN: Understood, Your
7 Honor, and that's part of the point.

8 JUDGE SIPPEL: What's wrong?
9 What's wrong with having big backers?

10 MS. WALLMAN: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17 JUDGE SIPPEL: You mean it's a
18 discrimination, you're saying it's
19 discrimination -- a type of discrimination to

20 [REDACTED]
[REDACTED]

22 MS. WALLMAN: [REDACTED]

1 MS. WALLMAN: Let me try to link
2 it up, if I may.

3 JUDGE SIPPEL: Well, you're not
4 going to go down the road -- okay, you can
5 link it up, try to link, certainly you want to
6 establish what your theory is on the record as
7 best you can, but I'm not going to permit
8 going into [REDACTED]

9 [REDACTED]
10 [REDACTED] That

11 issue should have been set way back when and
12 you should have been -- if it was appropriate,
13 there should have been considerable discovery
14 on it and that hasn't been done.

15 I will permit you -- I'm going to
16 identify this, it's identified as your offer,
17 and how did this get turned over in discovery?

18 MS. WALLMAN: It was called for in
19 document production.

20 JUDGE SIPPEL: I know that. But
21 you know, you don't get everything that you
22 ask for. Was there any fight over this one?

1 MS. WALLMAN: No, Your Honor.

2 JUDGE SIPPEL: You just got it?

3 MS. WALLMAN: Yes, Your Honor.

4 JUDGE SIPPEL: But you have to
5 handle it confidential subject to the
6 protective order.

7 MR. MILLS: Your Honor, if I could
8 add that -- I think there's some fundamental
9 logical issues with the argument that WealthTV
10 has made.

11 I don't think that it makes sense
12 to compare the decision of the owners that
13 their own self-funded channel that they could
14 continue to fund as long as it served their
15 purposes is comparable to assessing an outside
16 network and seeing whether it has financial
17 viability. But in any event --

18 JUDGE SIPPEL: Mr. Mills, that's a
19 straight-forward point. I'm trying to find
20 out what it is, if Ms. Wallman has a theory
21 for going down this road a bit, I don't see it
22 yet and it doesn't to me, I've said all the

1 reasons on the record why I don't see
2 anything.

3 MR. MILLS: I would only add one
4 small part which is [REDACTED]

5 [REDACTED] And this doesn't
6 have anything to do with decisions made when
7 Mojo was out there. It's sort of an
8 assumption that there was a comparison made
9 between WealthTV financial viability and Mojo
10 financial viability. Mojo didn't exist in any
11 way, shape, or form in 2004 when this
12 auditor's report was done. So it's another
13 reason why it's not competent evidence.
14 That's my only point.

15 JUDGE SIPPEL: That's a good fact.

16 MR. MILLS: Thank you.

17 JUDGE SIPPEL: Ms. Wallman, wait,
18 Mr. Beckner has a point also.

19 MR. BECKNER: You asked the
20 question of counsel about discovery and the
21 document?

22 JUDGE SIPPEL: Yes.

1 MR. BECKNER: This document here
2 was a Cox document, but I can tell you that
3 with respect to documents that were in the
4 files of Bright House relating to the
5 [REDACTED] we objected
6 to producing those documents and serving
7 formal objections on counsel and when we
8 finally did produce those documents, what we
9 have are Board minutes and things like that in
10 the file, in our employees' files, we redacted
11 from those documents [REDACTED]

12 [REDACTED] [REDACTED]
13 [REDACTED]
14 [REDACTED] in
15 discovery.

16 JUDGE SIPPEL: I think that's
17 significant also. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 MS. WALLMAN: I have an intention

1 as to what I would ask the witness.

2 JUDGE SIPPEL: You need more than

3 that for a --

4 MS. WALLMAN: I want to be careful

5 because the witness is in the room. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 MR. SOLOMON: [REDACTED]

20 [REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 JUDGE SIPPEL: [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 This just opens the door. It doesn't even
15 open the door. It just kind of -- kind of
16 nudges the door.

17 I just think it's completely off
18 the mark for purposes of this case, for
19 purposes of the issues in this case. But I'll
20 identify it, but I'm not going to receive it
21 into evidence. The motions, the objections to
22 the motions, your motion that's coming up, of

1 MS. WALLMAN: Understood, Your
2 Honor.

3 JUDGE SIPPEL: That's my ruling.
4 My ruling is this is rejected as an exhibit or
5 the objections are sustained, however you want
6 to look at it and the witness is not going to
7 have to do anything further with this
8 document. Let's move on to the next area,
9 please.

10 MS. WALLMAN: I do have one more
11 question in this area.

12 JUDGE SIPPEL: All right, let's
13 try it.

14 BY MS. WALLMAN:

15 Q Mr. Bond, in your capacity as
16 Chairman of the Board, did you ever have --
17 strike that.

18 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22 MR. SOLOMON: [REDACTED]

1 [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7 JUDGE SIPPEL: I'm going to
8 sustain the objection. I want to be sure that
9 I'm clear on this. I'm not saying that you're
10 completely off the mark with respect to going
11 down this road. I'm simply saying that it
12 should have been started, going down this
13 road, it should have been started a heck of a
14 lot earlier. It doesn't mean that you would
15 have been guaranteed to get what you need, but
16 you're not going to -- even if -- you're just
17 not going to establish anything with this line
18 here.

19 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED] I don't
2 think. It doesn't, because they are under no
3 obligation to give the same support to
4 WealthTV. And if WealthTV went out and found
5 three backers and came back in again and they
6 still had a business reason for rejecting
7 WealthTV, I would think that they would be
8 permitted to do that.

9 MS. WALLMAN: Your Honor, if they
10 were treating the affiliate and the non-
11 affiliated entities the same, applying the
12 considerations evenly, then that might be the
13 case, yes.

14 JUDGE SIPPEL: Well, it's all the
15 more reason then for not going down this road,
16 but my biggest problem with it is the fact
17 that it wasn't started early enough in this
18 case and it's a very complex issue and I've
19 got an obligation to move this. I think you
20 were one of the people that wanted this case
21 moved along. That's going to break into a
22 screeching halt if I was to permit that one to

1 open up. Remember, they've got the
2 opportunity to then go into your stuff,
3 financial things, I mean.

4 I don't think your clients want
5 that particularly. If they do, that doesn't
6 make any difference either. The point is that
7 that's not what this case is about.

8 Now if I'm wrong on that, somebody
9 upstairs will tell me I'm wrong and maybe
10 they'll send it back down again for another
11 six months of hearing. But I don't think --
12 I kind of get the feeling it's not going to
13 happen.

14 Let's go forward, please.

15 BY MS. WALLMAN:

16 Q Mr. Bond, you refer in your
17 testimony to the consideration of bandwidth
18 capacity as a factor in deciding whether and
19 how to carry channels, correct?

20 A Yes.

21 Q Have you added any new channels in
22 HD this year?

1 A Yes.

2 Q How many?

3 A It varies from system to system,
4 but I would say in excess of 20.

5 Q And Comcast has taken steps to
6 expand the available bandwidth to add HD
7 channels, hasn't it?

8 A Yes.

9 Q Have you implemented switched
10 digital video technology?

11 A No.

12 Q Do you plan to do that?

13 A I don't know.

14 Q What other things are you doing in
15 order to expand the available bandwidth for HD
16 launches?

17 A We've migrated channels from
18 analog to digital. In other words, moved them
19 from an analog tier of service to a digital
20 tier of service.

21 Q Any other steps you've taken?

22 A No, there may be some technical

1 things we've done to improving the efficiency
2 of digital.

3 Q System upgrades, have you made
4 those?

5 A Not recently. I think most of the
6 upgrades were some years ago. There's
7 probably upgrade activity that's underway at
8 any point in time. But generally speaking,
9 the rebuilds were all completed some years
10 ago.

11 Q And adding bandwidth, making it
12 more efficient is a competitive necessity for
13 Comcast, correct, so that it can compete
14 effectively with others such as the DBS
15 providers, is that correct?

16 A Yes.

17 Q Is it fair to say that while
18 Comcast is constrained on that bandwidth it
19 does continue to add channels and has
20 continued to add channels even while operating
21 under these channel constraints, is that fair?

22 A Yes.

1 Q Now in paragraph eight of your
2 testimony, you discuss your understanding of
3 the price that WealthTV was seeking --

4 A Do you mind if I go back to a
5 prior answer just to make sure I'm accurate.

6 JUDGE SIPPEL: Well, it's up to
7 you, Ms. Wallman. He's on cross examination.

8 MS. WALLMAN: I'd prefer to keep
9 with the time limit I'm on.

10 JUDGE SIPPEL: You do have an
11 opportunity on redirect.

12 THE WITNESS: All right, fine.

13 BY MS. WALLMAN:

14 Q Now did Comcast negotiate directly
15 with iN DEMAND for carriage of INHD?

16 A I'm sorry, could you repeat the
17 question?

18 Q Did Comcast negotiate directly
19 with iN DEMAND for carriage of INHD?

20 A No.

21 Q How about for Mojo?

22 A No.

1 Q Did Comcast have any deal with
2 INHD or Mojo independently of the joint
3 venture?

4 A No.

5 Q In terms of the rate that was paid
6 for Mojo, how was that calculated?

7 A We paid a per subscriber fee based
8 on the number of high-def subs that were
9 receiving.

10 Q And that was a source of revenue
11 for iN DEMAND naturally, correct?

12 A Yes.

13 Q And that was a form of payment
14 from the owners to iN DEMAND, correct?

15 A Yes.

16 Q Did you view the price that you
17 were paying for Mojo as lower than the price
18 you were paying for -- you were being asked to
19 pay for WealthTV?

20 A Did I view the price we were
21 paying for Mojo as less than, I'm sorry, more
22 than?

1 Q So I'm clear, let me try again.

2 I'm at paragraph eight. In paragraph eight,
3 you were talking about what you understood
4 WealthTV to be asking for in terms of price.

5 A Yes.

6 Q Was that price better or worse
7 than what you were paying for Mojo?

8 A It was about the same probably.
9 They were seeking for a standard definition
10 fee that was across a very significant number
11 of subscribers, plus a high definition fee.
12 I haven't done the math to compare the two.

13 Q Now in your -- was Comcast
14 obligated to pay for INHD even if you weren't
15 actually carrying it in all your systems?

16 A Well, we really didn't have a
17 contract for carriage of INHD. We paid them,
18 changed the manner in which we paid, but we
19 paid a fee for each HD subscriber.

20 Q A fee for each --

21 A Each high-def subscriber that got
22 Mojo.

1 Q And was that the arrangement as to
2 rate from the inception of INHD?

3 A No.

4 Q What was the original arrangement?
5 I won't call it a contract because you said
6 there was not a written contract, but what was
7 the arrangement or understanding as to how
8 much Comcast would be paying INHD?

9 A We paid a fee per digital
10 subscriber, digital basic subscriber.

11 Q So digital basic subscriber would
12 include SD and HD customers?

13 A It would, the subsets might be
14 different. It included D1 subscribers which
15 is a standard definition level of service. It
16 may not include all HD subs.

17 Q Okay. So if one or more Comcast
18 systems decided to discontinue carriage of
19 INHD, the owners would still be obligated to
20 make a payment to iN DEMAND, is that correct?

21 A We're probably not obligated, but
22 we were paying based on digital basic

1 subscribers, D1 subscribers.

2 Q Are you -- what was the case with
3 respect to Mojo? At a certain time INHD, how
4 it got the locution notice and contention in
5 the case, when it morphed into or rebranded as
6 Mojo, was the arrangement any different?

7 A Yes, at about the same time we
8 also migrated the payment structure to a per
9 high-def Mojo subscriber payment.

10 Q Now you indicated that there was
11 no written contract between Comcast and iN
12 DEMAND for carriage of INHD, correct?

13 A Yes.

14 Q Nor for Mojo, correct?

15 A Yes.

16 Q And that was unnecessary because
17 of the relationship between the companies,
18 correct?

19 A I also wasn't that interested in
20 having a written contract.

21 Q But it wasn't necessary because of
22 the relationship between the companies,

1 correct?

2 A I suppose not.

3 JUDGE SIPPEL: Let's see if we can
4 do better than "I suppose not."

5 THE WITNESS: Okay.

6 JUDGE SIPPEL: Press a little bit.

7 MS. WALLMAN: I will.

8 JUDGE SIPPEL: Go ahead.

9 BY MS. WALLMAN:

10 Q I'd just like to have a clear
11 answer. A contract, a written contract was
12 not necessary between Comcast and iN DEMAND
13 because of a relationship between the
14 companies, a yes or no answer would be
15 appreciated if you can provide one.

16 A Yes.

17 Q So you indicated that you, by
18 which I take it to mean you in your Comcast
19 capacity, were not that interested in having
20 a written contract with iN DEMAND, is that
21 correct?

22 A Yes.

1 Q And you testified earlier that
2 that was not in your view beneficial to
3 Comcast, correct?

4 A Yes.

5 Q Would it have been beneficial to
6 iN DEMAND?

7 A Depending on what the terms of it
8 were, yes, it could have been.

9 Q You were the Chairman of the Board
10 of iN DEMAND?

11 A Yes.

12 JUDGE SIPPEL: Can we get a time
13 period? He wasn't chairman back in 2004?

14 MS. WALLMAN: Yes, Your Honor.

15 BY MS. WALLMAN:

16 Q When did you become Chairman of
17 the Board of iN DEMAND?

18 A The beginning of '07.

19 JUDGE SIPPEL: And you still are
20 today?

21 THE WITNESS: Yes.

22 BY MS. WALLMAN:

1 Q So when you became -- did you
2 serve on the Board of iN DEMAND before you
3 became Chairman of the Board?

4 A I did.

5 Q And during what period did you
6 serve on the Board, but not Chairman yet?

7 A 2003, from 2003.

8 Q Do you have an understanding of
9 the term fiduciary duty?

10 A Yes.

11 Q Did you have a fiduciary duty as a
12 Board Member to iN DEMAND?

13 A I believe so.

14 Q Did you have a fiduciary duty --

15 MR. SOLOMON: Objection.

16 MR. COHEN: Your Honor, again, I
17 don't see remotely what the relevance of this
18 is to the case. We're now going into a line
19 of fiduciary duty. We're going to open up a
20 lot of lines of inquiry and we're going to
21 have to defend whether Mr. Bond discharged his
22 fiduciary duty. Ms. Wallman, I know is aware,

1 disclosed, directors can be directors of two
2 different companies as long as it's all
3 disclosed. There's no allegation here that it
4 was a big secret to IN DEMAND that Comcast,
5 Mr. Bonds worked for Comcast. I mean I can't
6 see the relevance. And again, this is not
7 just open season on anything that might relate
8 to Mr. Bond. It neither has to do with his
9 statement or the case.

10 MR. SOLOMON: Your Honor, the
11 objection that I was making at the same time
12 in addition to Mr. Cohen is that she's now
13 asking for legal conclusions about his
14 fiduciary duty. He said that he had a
15 fiduciary duty, but when you start getting
16 into questions about the scope of fiduciary
17 duty that's getting into legal questions and
18 he's not testifying as a legal expert here.

19 JUDGE SIPPEL: Your objection is
20 shorter than Mr Cohen's.

21 (Laughter.)

22 MR. SOLOMON: I'll let Mr. Cohen

1 object to that question, but I won't.

2 MR. COHEN: I don't object to the
3 Judge's questions.

4 JUDGE SIPPEL: He can handle it.
5 Ms. Wallman, just a second now.

6 Where are you going with this, Ms.
7 Wallman? Go ahead, what is your relevance,
8 your proffer of relevance to this line?

9 MS. WALLMAN: Mr. Bond was acting
10 in two capacities and has said that the reason
11 there was no written contract was that it was
12 not in Comcast's interest to do so.

13 He had a position of significant
14 responsibility with iN DEMAND and I want to
15 know if he thought it would have been in the
16 interest of iN DEMAND to have a contract.

17 JUDGE SIPPEL: Are you talking
18 about an affiliation agreement?

19 MS. WALLMAN: Yes. That's the
20 only question I have left in the line.

21 JUDGE SIPPEL: All right, well, I
22 can take note of the fact, I'm going to be

1 right on this. You're a lawyer, isn't that
2 correct? Trained, comfortable in this field
3 as a lawyer, is that correct?

4 THE WITNESS: Yes, I haven't
5 really practiced in this field, but I was
6 practicing law and did practice law for a
7 period of time.

8 JUDGE SIPPEL: So you do
9 understand what the nature of fiduciary duty
10 is?

11 THE WITNESS: I do.

12 JUDGE SIPPEL: We found out that
13 not every executive understands that, from the
14 news, but not in this case. So -- all right,
15 well, you said you've got one or two more
16 questions. I'll overrule the objections just
17 to permit you to finish this line.

18 BY MS. WALLMAN:

19 Q Did you consider in connection
20 with your position of responsibility, first as
21 a Board Member, and then as Chairman of the
22 Board, whether it would be in the interest of

1 iN DEMAND to seek and obtain a carriage
2 agreement with Comcast?

3 A I didn't violate my fiduciary
4 duty. I didn't consider whether a written
5 agreement was necessary. We didn't feel that
6 a written agreement was necessary.

7 JUDGE SIPPPEL: Let me ask was that
8 a deliberate choice? In other words, did you
9 sit down with the other directors or with the
10 officers or lawyers at some point and said you
11 know, somebody is saying that maybe we should
12 have an agreement, an affiliation agreement,
13 and somebody else said well, I don't need you
14 need that. And so a decision was made or is
15 this something is just the way the thing
16 evolved?

17 THE WITNESS: It was really more
18 the way the thing evolved. It really didn't
19 seem that a written agreement was necessary.

20 JUDGE SIPPPEL: Nobody raised it?

21 THE WITNESS: Right. We had a
22 structure and we paid --

1 JUDGE SIPPPEL: Nobody came to the
2 Board, and nobody came to you, no Board Member
3 or Director said you know, I think we ought to
4 think about having an affiliation agreement
5 with IN DEMAND, but it didn't come up that way
6 at all?

7 THE WITNESS: With INHD. I don't
8 remember that.

9 JUDGE SIPPPEL: You would have
10 known if it did happen?

11 THE WITNESS: I don't remember
12 that, no.

13 JUDGE SIPPPEL: Why do you have to
14 qualify your answer that way. If that came up
15 as another matter of business while you were
16 on the Board of Directors, even going back to
17 that, I think you'd remember that, wouldn't
18 you?

19 THE WITNESS: Well, the only
20 reason I said that is it's six years ago. I
21 don't remember anybody saying I don't think it
22 happened, I don't think we ever talked about

1 doing it.

2 JUDGE SIPPEL: Do you want to
3 pursue that at all? I think it's clear from
4 the record that -- I mean unless you've got
5 some document to go behind his testimony on
6 this, he's saying that's the way it happened.

7 MS. WALLMAN: I'm finished with
8 that line of questioning, Your Honor.

9 JUDGE SIPPEL: Thank you. I got
10 carried away. I'm sorry. Let's go back to
11 something else.

12 BY MS. WALLMAN:

13 Q Focusing your attention, please,
14 on paragraph eight, so is -- if you can
15 explain, when you put these figures in the
16 testimony, 8 cents and 14 cents, how does your
17 understanding that the initial term was free,
18 affect these figures?

19 A I don't think the initial term was
20 free. I think they were offering -- I think
21 it varied at various times, but I think they
22 were offering a relatively brief free period,

1 then followed by committed carriage on all,
2 more or less, all Comcast systems at a rate
3 structure escalated, rate structure that
4 escalated.

5 Q Did you have an understanding that
6 WealthTV was interested and willing to
7 negotiate on price?

8 A Yes. We had several negotiations
9 about rate structure -- discussions about rate
10 structures.

11 Q Did you come to understand that
12 beyond the free period that HD rate that you
13 list here in paragraph eight was in line with
14 what WealthTV was charging to another of its
15 major distribution partners?

16 A That's what they represented to
17 me, Wealth did. I didn't have any personal
18 knowledge, but that's what they told me.

19 MS. WALLMAN: I'd like to show the
20 witness a document, and if I may approach.

21 JUDGE SIPPEL: Certainly.

22 MS. WALLMAN: This is marked for

1 identification purposes as WealthTV No. 196.

2 And it's an email exchange internal to Comcast

3 and Mr. Bond is copied on these emails.

4 JUDGE SIPPEL: Thank you. And the

5 subject, is there a subject to these emails?

6 Re. It doesn't say.

7 MS. WALLMAN: It's a little hard

8 to

9 --

10 JUDGE SIPPEL: Thank you, okay.

11 (Whereupon, the above-referred to

12 document was marked as WTV Exhibit

13 196 for identification.)

14 MS. WALLMAN: This document is

15 marked highly confidential and it was produced

16 by Comcast.

17 MR. SOLOMON: Ms. Wallman, just to

18 make clear, this document is marked highly

19 confidential, so --

20 JUDGE SIPPEL: She said that.

21 Does it have to stay that way?

22 MR. SOLOMON: Can I confer with my

1 client? Can we go off the record for a moment
2 with respect to your question?

3 JUDGE SIPPPEL: Yes, sure. Let's
4 go off the record.

5 (Off the record.)

6 JUDGE SIPPPEL: Back on the record.

7 MR. SOLOMON: This document
8 doesn't need to be treated as confidential.
9 The document marked WTV 196.

10 JUDGE SIPPPEL: Okay, then we'll
11 strike the confidential heading designation.
12 Thank you.

13 Now this has been marked as 196
14 for identification. Well, maybe you'll do a
15 little bit more to identify for the record
16 exactly what this is and what the purpose for
17 its use is.

18 MS. WALLMAN: Yes, Your Honor.
19 This is an email exchange that appears to me
20 to involve at the top of it first -- first
21 two-thirds I'll say of page one is an email
22 exchange involving Jennifer Gaiski, Allan

1 Singer, Matt Bond is copied on a couple of the
2 exchanges and then below is an email from
3 Charles Herring of WealthTV to Matt Bond,
4 Allan Singer who is internal to Comcast, as I
5 understand it, and perhaps Mr. Bond can tell
6 us who Kelly O'Connor is.

7 JUDGE SIPPEL: There was an
8 expert, Dr. Singer, but that has nothing to do
9 with this. He was -- that was for NFL, I
10 guess, right?

11 MS. WALLMAN: I believe Mr. --

12 JUDGE SIPPEL: So this Singer has
13 nothing to do with that Singer.

14 MS. WALLMAN: I believe Mr. Bond
15 indicated that Mr. Singer was a person who
16 works within the content acquisition group.

17 JUDGE SIPPEL: I think he did,
18 thank you.

19 BY MS. WALLMAN:

20 Q Mr. Bond have you had a chance to
21 look at this?

22 A I have.

1 Q Do you recall seeing this document
2 prior to today?

3 A I have seen it prior to today.

4 Q And in the middle of the first
5 page there's an email from Mr. Singer to Ms.
6 Gaiski on which you're copied that says "I've
7 taken the liberty to send this to you.
8 Basically, Verizon has them on their version
9 of V2 at about a blended rate of 15 cents
10 pspm. If Verizon had 3MM" which I assume
11 means million "digital subs by YE, year end,
12 their payment would be \$6 million. They also
13 have a non-size based MFN. Wealth indicated
14 they would carve into their existing MFN rate
15 for specific rollout commitment and specified
16 systems by 2009. That is about all there is
17 to know except for the obvious question."

18 Mr. Bond, does this refresh your
19 recollection about whether you received
20 information independently of the Herrings
21 about the rate that Verizon was paying?

22 A No, I think Allan is referring in

1 this email to information that Charles had
2 provided. That's what I think he's
3 summarizing.

4 JUDGE SIPPPEL: You mean Charles,
5 you mean Charles Herring?

6 THE WITNESS: Mr. Herring. I
7 apologize.

8 MR. SOLOMON: Allan is Mr.
9 Dannenbaum?

10 THE WITNESS: No, Allan is Mr.
11 Singer. I'm sorry.

12 BY MS. WALLMAN:

13 Q And do you understand at all the
14 reference at the end of the email "that is
15 about all there is to know except for the
16 obvious question"?

17 A I don't know what that means.

18 Q Did you ask anyone to look into,
19 to verify independently, what Verizon was
20 paying WealthTV?

21 A No.

22 MS. WALLMAN: Your Honor, I would

1 like to move this into evidence?

2 JUDGE SIPPEL: Any objection to
3 that?

4 MR. SCHONMON: Your Honor, the
5 Bureau has just an observation that at the
6 very bottom of page one that's in the email
7 from Charles Herring to Mr. Bond, "there's a
8 reference I've attached in Excel spreadsheet
9 for your consideration and further
10 discussions." And it's -- that spreadsheet is
11 not attached to this. If there's any
12 relevancy to the spreadsheet, it ought to be
13 a part of this exhibit if it's going to be
14 received into evidence.

15 JUDGE SIPPEL: That's not true.
16 She's using this on cross examination, Ms.
17 Wallman, and if she doesn't think this
18 spreadsheet is of interest in cross
19 examination, if there's no objection by the
20 witness to not having the spreadsheet to
21 consider, she can use this any way she wants.
22 It's an incomplete. Your point is it's an

1 incomplete document. I agree with that. She
2 can use it on cross.

3 MS. WALLMAN: Just to clear, Your
4 Honor, this as was produced to us. This came
5 from the Comcast files.

6 MR. SOLOMON: Your Honor, we have
7 no objection.

8 JUDGE SIPPEL: Well, that answers
9 that. It's in as -- it's received as WTV 196.

10 (The document, having been marked
11 previously for identification as
12 WTV Exhibit 196, was received in
13 evidence.)

14 If I wait any longer, I'm going to
15 hear from Mr. Cohen. So I want to get that
16 one right in.

17 (Laughter.)

18 BY MS. WALLMAN:

19 Q Mr. Bond, in your testimony you
20 indicate that it is typical for new networks
21 to provide HD services to Comcast at no
22 additional charge. Is that correct?

1 A Yes.

2 Q Do you have any recollection of
3 what the free period of service proposed by
4 WealthTV was?

5 A Well, my recollection is that it
6 varied in different proposals, but it was
7 typically a couple of years or less.

8 JUDGE SIPPPEL: What does that
9 mean, a couple, two?

10 THE WITNESS: Two.

11 BY MS. WALLMAN:

12 Q Well, I'd like to focus on the
13 last period of discussions that you recount in
14 your written direct testimony beginning at
15 page 12.

16 JUDGE SIPPPEL: Page 12 or
17 paragraph 12?

18 MS. WALLMAN: Page 5, paragraph
19 12.

20 JUDGE SIPPPEL: Do you want to read
21 the paragraph before you respond or are you
22 good to go?

1 THE WITNESS: I think I'm okay.

2 BY MS. WALLMAN:

3 Q Now, the sequence of events
4 recounted in this part of your testimony picks
5 up in April of '08. And you recount in here
6 that you had an understanding that the one-
7 year period following the pre-filing notice is
8 required of the FCC regulations. The one-year
9 anniversary of that letter was coming up,
10 correct?

11 A Yes.

12 Q Did you have any discussions in
13 2007 with WealthTV?

14 A I believe we talked to him towards
15 the end of 2007 around Thanksgiving. And then
16 the email you showed me also indicates that we
17 must have had another conversation at the end
18 of January in '08. And then I talked to him
19 again in April of '08.

20 Q When you testified earlier in your
21 direct testimony that although you had talked
22 to WealthTV from time to time, Comcast, you on

1 behalf of Comcast spoke to WealthTV more
2 intensively in this April time frame, correct?

3 A Yes.

4 Q And why did Comcast do that more
5 intensively in that period?

6 A Well, Mr. Herring had told me that
7 they were going to file a lawsuit against us
8 and I had been talking to him for quite some
9 time and I, to the extent a deal was possible,
10 I wanted to try to reach out to him and see if
11 a deal could be struck that would avert a
12 dispute.

13 JUDGE SIPPEL: You mean avert -- a
14 complaint being filed?

15 THE WITNESS: Yes, that's what I
16 meant.

17 JUDGE SIPPEL: What do you do?
18 You file a notice that you're going to file a
19 complaint? And you have a year within which
20 a notice be give to file it?

21 MS. WALLMAN: Yes, Your Honor.
22 There's a provision of the FCC regulations

1 that says if you are going to file a -- if you
2 intend to file a program carriage complaint,
3 you're required to send a notice to the
4 potential defendant. You're required to wait
5 at least ten days before filing a complaint,
6 but you must file it within one year of that
7 initial notice.

8 JUDGE SIPPEL: And the notice, of
9 course, goes to the FCC as well.

10 MS. WALLMAN: It's not required to
11 be sent to the FCC, but optionally, it can be.

12 JUDGE SIPPEL: All right, I'm just
13 asking that question because I've never done
14 that. I've never sued anybody at the FCC, so
15 I want to be sure that I know what the nitty-
16 gritty is here.

17 MS. WALLMAN: Understood, Your
18 Honor.

19 JUDGE SIPPEL: But you understood
20 that plainly?

21 THE WITNESS: I did.

22 JUDGE SIPPEL: I mean so that was

1 something would keep entering into your mind
2 in terms of the negotiations from what you've
3 said.

4 THE WITNESS: Yes.

5 JUDGE SIPPEL: So you want to
6 reach out because that was your term, reaching
7 out and one of the reasons was because the
8 year was coming up, but you didn't want to
9 have a complaint filed, if you could avoid it.

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: It could be
12 avoided.

13 THE WITNESS: I think the actual
14 chronology was I think he called me or sent me
15 an email that said --

16 JUDGE SIPPEL: He being Mr.
17 Charles Herring.

18 THE WITNESS: Yes, sent me an
19 email or called me to say that they would be
20 filing a complaint. And then that's when I
21 tried to get engaged to see if we could avert
22 the dispute, the complaint.

1 JUDGE SIPPEL: Has that happened
2 to you before, somebody calls you up and says
3 I want to tell you about my programming and by
4 the way I'm getting a complaint ready to file
5 with the FCC? Has anybody else done that to
6 you or suggested that to you, I should say?

7 THE WITNESS: Well, yes. It
8 happened in the case of MASN.

9 JUDGE SIPPEL: All right. Well,
10 does that give them more of a -- does that
11 condition give them more of an entre to
12 discussion with you? I don't want to call it
13 negotiations, but at least an overture to you
14 about a deal?

15 THE WITNESS: Well, I think it
16 accelerated, I suppose, it brought it to a
17 head would be the best way to describe it. We
18 ultimately didn't reach a deal, so I suppose
19 it wasn't productive. But the actual timing
20 of it, the fact that they did say they were
21 going to file a complaint, obviously brought
22 it to my attention. It brought it up top of

1 mind and it, you know, drove me to engage with
2 Mr. Herring to see if we could reach a deal.

3 JUDGE SIPPPEL: Well, that's what I
4 say, you reached out to them to see if there
5 was something that you might agree to, and it
6 was in the context of having been told that
7 there's a lawsuit on its way, by the way, and
8 am I right?

9 THE WITNESS: Yes.

10 JUDGE SIPPPEL: Am I saying it the
11 right way?

12 THE WITNESS: Yes, correct.

13 JUDGE SIPPPEL: I mean it sounds to
14 me like it's -- if you don't get an answer
15 from ringing the doorbell, you knock on the
16 knocker and then you do get an answer. That's
17 quite a -- that's more than just giving
18 somebody your business card, by the way, I'm
19 going to file a lawsuit.

20 All right, thank you.

21 Disregard my comment there, but
22 just go ahead.

1 Ms. Wallman?

2 BY MS. WALLMAN:

3 Q Mr. Bond, in this series of
4 conversations you recount beginning in
5 paragraph 12, you come around to explaining
6 some terms that you ask WealthTV to consider,
7 correct?

8 A Yes.

9 Q Prior to the beginning of that
10 sequence of events, prior to April of 2008,
11 had Comcast made any definitive offer to
12 WealthTV about terms of carriage?

13 A I don't think we made a definitive
14 offer of carriage. We talked about the VOD
15 idea. I talked about the issues that I had
16 with their structure and their launch
17 commitment and the term and the overall very
18 high level of commitment, as well as the very
19 -- the way in which the fees and the costs
20 accelerated very rapidly over time.

21 And it didn't seem like there was
22 a way to really reach a deal. They weren't

1 interested in -- it didn't seem to me that
2 they were interested in a deal that we would
3 be interested in doing. I talked about ways
4 in which we might do a deal, but we never made
5 a formal, written proposal.

6 Q So nothing --

7 JUDGE SIPPEL: Who is we?

8 THE WITNESS: Comcast. My team.

9 JUDGE SIPPEL: YOur team. Did you
10 ever receive a formal proposal from WealthTV
11 side?

12 THE WITNESS: Yes, on several
13 occasions, we received essential a form
14 affiliation agreement, I guess I would call
15 it.

16 JUDGE SIPPEL: Okay. Go ahead,
17 Ms. Wallman. I'm sorry. I'm sure those are
18 in the record.

19 MS. WALLMAN: I'm not sure they
20 are. I would like to show the witness a
21 document in that connection.

22 JUDGE SIPPEL: Okay. I anticipate

1 too much. Go ahead.

2 MS. WALLMAN: I've marked for
3 identification WealthTV Exhibit 204. I'd like
4 to approach the witness to give him a copy.

5 JUDGE SIPPEL: Please do.

6 MS. WALLMAN: This is on WealthTV
7 letterhead. It's a term sheet, titled term
8 sheet for distribution of WealthTV.

9 (Whereupon, the above-referred to
10 document was marked as WTV Exhibit
11 204 for identification.)

12 JUDGE SIPPEL: Thank you. And you
13 just identified it as -- and as you've
14 identified it, this is identified as WTV
15 Exhibit 204 for identification.

16 The witness has a copy and he's
17 looking at it.

18 (Pause.)

19 JUDGE SIPPEL: And this does bear
20 no confidential designation on it.

21 MS. WALLMAN: No, Your Honor.
22 This was produced in the files of Comcast.

1 JUDGE SIPPEL: Comcast. Bates
2 numbered.

3 MS. WALLMAN: You are, of course,
4 welcome to look at as much of the document as
5 you would like --

6 JUDGE SIPPEL: Direct him to --
7 direct him to a specific portion?

8 MS. WALLMAN: Yes.

9 JUDGE SIPPEL: Direct him to the
10 portion and see what he wants to read.

11 MS. WALLMAN: I was just going to
12 say that I'm going to be asking about what's
13 labeled Exhibit A rate card on page four of
14 the exhibit.

15 JUDGE SIPPEL: Thank you.

16 THE WITNESS: I have it.

17 JUDGE SIPPEL: He has it. He says
18 he has it.

19 BY MS. WALLMAN:

20 Q Mr. Bond, does this comport with
21 your recollection of the free period for which
22 WealthTV was offering its programming?

1 A Well, as I said, I think the deals
2 that I saw the time might have varied, but I
3 think this is pretty similar. The date on
4 this is 2008, April 2008. But the rate card
5 looks pretty --

6 JUDGE SIPPEL: Where do you see
7 that?

8 THE WITNESS: It's on the front
9 page, Your Honor, second line.

10 JUDGE SIPPEL: Oh yes, April 14,
11 2008.

12 THE WITNESS: So I note in this
13 case it's 2007 is listed as free. The 2007
14 was already gone by April 14, '08.

15 BY MS. WALLMAN:

16 Q Do you recall whether Mojo offered
17 a free initial term to Comcast?

18 A It did not.

19 Q Do you recall whether INHD offered
20 a free term?

21 A It did not.

22 Q Did Comcast bargain for a free

1 term in either of those cases?

2 A No.

3 MS. WALLMAN: Your Honor, I'd like
4 to move WealthTV Exhibit 204 for admission
5 into evidence.

6 JUDGE SIPPEL: Any objection?

7 MR. SOLOMON: No objection.

8 JUDGE SIPPEL: It's received
9 without objection. Thank you.

10 (The document, having been marked
11 previously for identification as
12 WealthTV Exhibit 204 was received
13 in evidence.)

14 BY MS. WALLMAN:

15 Q Now to your recollection, what was
16 the -- in the back and forth in April of '08,
17 what were the elements of the last offer that
18 you recall Comcast extending to WealthTV?

19 A What I indicated to him we would
20 do is do an agreement, an affiliation
21 agreement and we would commit to launch in a
22 market, in an urban market. And we had some

1 back and forth. He wanted certain markets or
2 suggested certain markets. I had suggested
3 some other markets. We had discussion as it
4 related to the license fee structure and as it
5 related to the obligation to launch in high
6 definition as well as an obligation to launch
7 in standard definition.

8 So we talked about the rate
9 structure, discussed it. We talked about a
10 potential launch commitment. We talked about
11 the launch obligation of SD and HD. But the
12 negotiations were sort of terminated.

13 Q What rate did Comcast offer to
14 pay?

15 A I don't recall exactly what rate
16 that we offered to pay. My recollection was
17 that we were willing to pay somewhere in the
18 neighborhood of the eight cent rate in the
19 markets as an SD fee. And my recollection was
20 that I had wanted high definition, yet the
21 high definition version to be made available
22 for free, I think Mr. Herring said he couldn't

1 do that, so we discussed possibly the HD,
2 maybe the HD feed would have a fee but its
3 launch would be optional rather than required.

4 Q Did you offer WealthTV a hunting
5 license?

6 A Yes, in addition to the launch
7 commitment.

8 Q Did you make specific offer as to
9 which system or systems you were willing to
10 actually launch WealthTV on?

11 A Well, I had suggested perhaps
12 Chicago or another market like Atlanta. He
13 had suggested the Bay Area or HOuston. I
14 think it was really a topic for discussion.

15 Q You say in your testimony that
16 it's incorrect when WealthTV asserted that you
17 -- that Comcast would agree to distribute
18 WealthTV to only 40,000 WealthTV subscribers,
19 do you see that?

20 A I do.

21 Q Page seven.

22 A I do.

1 MR. SOLOMON: Your Honor, if I
2 could object. I'm not sure that's precisely
3 what it says. I object to the question, given
4 the characterization of the testimony.

5 JUDGE SIPPEL: Can you rephrase
6 the question? I'll sustain the objection.

7 Can you rephrase it, please?

8 MS. WALLMAN: Yes.

9 BY MS. WALLMAN:

10 Q At the top of page seven, Mr.
11 Bond, your testimony says "at no time during
12 these discussions did I state that Comcast
13 would agree to distribute WealthTV only to
14 40,000 WealthTV subscribers."

15 A YES, I see that.

16 Q What does that statement mean?

17 A Well, what I had told him is that
18 we would launch him in a market. We had some
19 discussion surrounding what that market would
20 be. I felt that it was a topic open for
21 discussion of where and when that would occur.
22 I think the 40,000 was something that was in -

1 - it must have been in some pleading. I think
2 that was a reply to something that Mr. Herring
3 had said. But I didn't say to him that you
4 would only get 40,000 customers from Comcast.

5 Q Just to be clear, Mr. Bond, the
6 second time that WealthTV appears in that
7 sentence, is that correct or should that be
8 Comcast?

9 A It was WealthTV subscribers on
10 Comcast systems would be the best way to put
11 it.

12 Q But the subscription relationship
13 that you're talking about would be between
14 Comcast and its customers, correct?

15 A Yes, you're absolutely correct.

16 Q Did you have in mind a particular
17 number of subscribers who would be able to
18 receive WealthTV as part of the offer of
19 actual carriage that you made in April of
20 2008?

21 A Well, I think it was a topic of
22 negotiation of the number of subscribers that

1 it would be provided to. I discussed with him
2 the launch in a part of Chicago that that
3 would expand over time as the digital
4 footprint of Chicago expanded, but I actually
5 considered that we were having a discussion or
6 thought we were having a discussion about a
7 potential carriage obligation and it didn't
8 take the situation. We were really on -- I
9 thought the beginnings of the conversation
10 when WealthTV terminated the discussion on
11 this point.

12 Q Your perception was that you were
13 at the beginning of the conversation even
14 though your contacts and discussions had gone
15 back several years with WealthTV?

16 A No. What I meant was with regard
17 to this particular point, where the roll out
18 commitment would be.

19 Q With respect to when you say "part
20 of Chicago", what do you mean by "part of
21 Chicago"?

22 A Well, what I talked to Mr. Herring

1 about was to launch in the portion of Chicago
2 that had been converted to a digital footprint
3 at that moment, that amount of subs that had
4 been converted to a digital footprint or
5 digital architecture.

6 Q And do you know what that number
7 was as of April 2008?

8 A I think the number was about
9 100,000 customers that had been converted to
10 a digital architecture.

11 Q And is it the case that the entire
12 Chicago system had not been converted in that
13 fashion, that only a part of the Chicago
14 system had been?

15 A Not at that moment in time.

16 Q And so it's possible to have
17 different parts of a system, the Chicago
18 system, as an example, that are in different
19 states of rollout with respect to digital
20 deployment, is that correct?

21 A Yes.

22 Q Do you know as of April 2008 how

1 many to use your term D1 subscribers were in
2 the Chicago system that you had in mind in
3 your conversations with Mr. Herring?

4 A In that subset, it was probably
5 between 40,000 and 50,000. I don't know the
6 exact number.

7 Q So is it fair to say that when you
8 say in your testimony that at no time during
9 these discussions did I state that Comcast
10 would agree to distribute WealthTV only to
11 40,000 WealthTV subscribers, you had in mind
12 a relationship, a deployment that might grow
13 over time, but the lower bound could be as low
14 as 40,000 at the start, correct?

15 A At the start, but yes, the
16 assumption was the distribution would grow
17 over time.

18 Q Do you know what percentage of IN
19 DEMAND Comcast owns?

20 A Fifty-one percent.

21 Q Even though -- pardon me, withdraw
22 it.

1 With respect to this exchange in
2 April of 2008, did you tell WealthTV that
3 there would be reevaluation of its status
4 within some period of time after April 2008?

5 A What I said to Mr. Herring was I
6 was willing to do a deal and I was willing to
7 give them a shot, to show the value of their
8 programming and show that the channel would
9 resonate with consumers. So to the extent
10 that it was successful and systems wanted to
11 launch it, they would be able to launch it.
12 Obviously, they would be able to launch it
13 broadly.

14 Q Was it your offer that WealthTV
15 would get the benefit of the initial
16 deployment that you discussed, the D1
17 subscribers in Chicago and that that would
18 grow over the period of a year?

19 A Over a period of a year? Just a
20 year?

21 Q A period of a year and then
22 reevaluation? What did you have in mind with

1 respect to reevaluation and how did it relate
2 to what you were offering with respect to
3 Chicago?

4 A I didn't really have a structure
5 of reevaluation. It was really a proposal to
6 Mr. Herring for a deal which would set in
7 place the terms of carriage, price, and what
8 not, and that we would commit to a launch,
9 despite some of the misgivings we had had
10 about the channel and the idea. We would
11 commit to a launch. We would put it on in
12 Chicago, which I think was really open to
13 negotiation. What I feel was happening there
14 is he wanted four markets or something, it was
15 unclear. I was saying this market here, but
16 I expected there would be some discussion and
17 we would presumably, if there was going to be
18 a deal we'd come to some kind of commitment
19 level as to what the launch obligation would
20 be.

21 So if we -- if he had said yes to
22 what I said or if we negotiated another deal,

1 we would have launched it in accordance with
2 that in that system.

3 If it ended up being a success,
4 and let's say other areas that were
5 surrounding or other parts of the country,
6 other systems felt this was a powerful and
7 important channel and important for us to have
8 competitively, then they would have the
9 business framework, WealthTV would have and
10 Comcast would have the business framework
11 under which additional launches could occur.
12 It wasn't -- I didn't consider it to be a one-
13 year -- necessarily a one-year process, a
14 formalized process.

15 Q Thank you. You testified that you
16 didn't offer in this connection a specific
17 rate, correct?

18 A No, actually, I think I did offer
19 a specific rate which I recall was about eight
20 cents with the HD being optional.

21 Q And did you offer a specific term?

22 A I don't recall what term we talked

1 about. I don't recall if we -- now that I --
2 I can't recall when we were talking on the
3 phone if we talked about term or not.

4 JUDGE SIPPPEL: HD optional at
5 eight cents or at a different price?

6 THE WITNESS: I think because he
7 had told me he had an MFN issue with other
8 distributors, he needed the 14 cent rate. So
9 I said it would be -- my recollection is I
10 said it would be at that rate, but it would be
11 optional.

12 BY MS. WALLMAN:

13 Q Did you indicate whether you would
14 insist upon an MFN term?

15 A I don't recall if I talked about
16 it in that conversation, but I would have
17 wanted, in any deal we would have done, it
18 would have been typical for us to be protected
19 by an MFN.

20 Q And what about drop rights? Did
21 you speak about drop rights and explain
22 whether that would be part of the offer that

1 Comcast intended to make?

2 A I don't recall talking about that.

3 Q You indicated that WealthTV had on
4 occasion sent you proposals and terms sheets
5 for carriage, correct?

6 A Yes.

7 Q Did you send one back to WealthTV?

8 A I don't recall ever sending a
9 written agreement, written proposal.

10 Q Including in the context of these
11 April 2008 discussions?

12 A I don't think so.

13 Q Earlier, you indicated that there
14 was no written contract between Comcast on the
15 one hand or INHD or Mojo on the other hand.
16 Correct?

17 A Yes.

18 Q Nevertheless, each was carried
19 widely on Comcast systems, correct?

20 A Yes.

21 Q Would you say most of the Comcast
22 systems carried those services?

1 A Yes.

2 Q Would you say almost all of them
3 carried those services?

4 A Yes.

5 Q And in the event that a Comcast
6 system dropped INHD from carriage, would they
7 continue to make payments? Comcast would
8 continue to make payments to INHD?

9 A Well, we did drop it and we didn't
10 continue to make payments.

11 Q Well, before the time that it was
12 actually shut down, if a Comcast system
13 decided to drop carriage of Mojo, were there
14 continuing payments from Comcast to INHD on
15 the total subscriber base?

16 A As far as I know that fact pattern
17 didn't occur.

18 Q Do you know whether INHD had
19 carriage on The Dish Network?

20 A They did not.

21 Q How about DIRECTV?

22 A They did not.

1 Q Is carriage by other MVPDs a
2 factor in carriage decisions at Comcast?

3 A Yes.

4 Q And the absence of a carriage
5 agreement with INHD and Dish or INHD and
6 DIRECTV didn't deter you from carrying INHD?

7 A No. We weren't obligated to
8 continue carrying INHD.

9 Q And with respect to Mojo, Mojo
10 didn't have carriage agreements with Dish or
11 DIRECTV either, did they?

12 A No.

13 Q And that didn't deter you from
14 offering carriage to Mojo on the Comcast
15 system, correct?

16 A No.

17 Q In paragraph 20, you recount that
18 ultimately IN DEMAND did shut down Mojo on
19 December 1, 2008 because the cable company
20 partners and IN DEMAND no longer saw value in
21 continuing to operate Mojo. Do you see that
22 paragraph?

1 A Yes, I do.

2 Q Was a shutdown specifically on
3 December 1, 2008 or did the shutdown bracket
4 a period of time when it stopped appearing on
5 Comcast systems?

6 A I think it stopped transmitting
7 December 1, '08. Maybe I don't understand
8 your question.

9 JUDGE SIPPEL: Has he answered
10 your question?

11 BY MS. WALLMAN:

12 Q I think you have answered my
13 question.

14 A Okay.

15 Q Thank you. Now you say that the
16 cause of the decision to shut the service down
17 was the cable companies' partners no longer
18 saw value in continuing to operate Mojo.
19 Correct?

20 A Yes.

21 Q But you in your Comcast role
22 developed doubts some time before December 1,

1 2008 about whether Mojo should continue to be
2 carried, correct?

3 A Yes.

4 Q What's your earliest recollection
5 of when you began to articulate such doubts?

6 A Probably in '07.

7 (Pause.)

8 MS. WALLMAN: 'd like to show the
9 witness a document.

10 JUDGE SIPPEL: Approach the
11 witness, please.

12 MS. WALLMAN: This is marked for
13 identification as WealthTV 201. It's from the
14 Cox files, an email on which Mr. Bond is an
15 addressee and it's marked highly confidential.

16 JUDGE SIPPEL: Thank you.

17 (Whereupon, the above-referred to
18 document was marked as WTV Exhibit
19 201 for identification.)

20 JUDGE SIPPEL: Show it to Mr.
21 Mills and see if we still need that
22 designation.

1 MS. WALLMAN: Mr. Mills.

2 JUDGE SIPPEL: It's identified as
3 April 29th for identification.

4 (Pause.)

5 MS. WALLMAN: Mr. Mills, it's your
6 decision. I don't intend to refer to the
7 specific rates.

8 MR. MILLS: Your Honor, there are
9 pages in here that contain profit and loss
10 information and the kind of financial
11 information that we have been continuing to
12 protect for this company. So I'd appreciate
13 Ms. Wallman -- if she were to limit the
14 examination, if you wish.

15 MS. WALLMAN: I intend to conduct
16 a very brief examination without mentioning
17 any of the figures.

18 MR. MILLS: That's fine.

19 JUDGE SIPPEL: Do we need to take
20 this in the back?

21 MS. WALLMAN: No, I'm going to ask
22 a general question about the communication of

1 the email.

2 JUDGE SIPPEL: Why don't we just
3 pull the first page and use the first page.
4 Can that be done?

5 MS. WALLMAN: That's okay with me
6 as long as that doesn't invoke a completeness
7 objection.

8 JUDGE SIPPEL: Well, it's cross
9 examination. As long as -- that's true, as
10 long as Mr. Mills doesn't object.

11 MR. MILLS: I don't object if she
12 just wants to cross examine with the first
13 page. It's not been moved into evidence. We
14 can address that at the time.

15 I don't know what her questions
16 are going to be.

17 JUDGE SIPPEL: Let's take it one
18 at a time.

19 MR. MILLS: Thank you.

20 BY MS. WALLMAN:

21 Q Mr. Bond have you seen this email
22 before?

1 A I don't recall seeing it. But I'm
2 an addressee on it.

3 Q As you look at this email does it
4 refresh your recollection in any respect about
5 a change in the rate structure that Mojo was
6 offering to the owners who distributed it?

7 A This is referring to the change in
8 the rate structure that I discussed earlier,
9 yes.

10 JUDGE SIPPEL: So it's December
11 14, 2007, according to the date on the
12 document.

13 THE WITNESS: That's correct.

14 BY MS. WALLMAN:

15 Q And is it fair to say that the
16 gist of this is that the owners were being
17 asked to pay a higher rate on a smaller base
18 of subscribers and although the number of
19 cents per subscriber was going up the number
20 of subscribers was going down and it was
21 indicated that this would yield a significant
22 reduction in the monthly rate charged in the

1 owners

2 systems correct?

3 A Yes.

4 Q So although you don't remember
5 this specific document, you do have a
6 recollection roughly contemporaneous to the
7 end of December that there was a proposed
8 change in the rate structure?

9 A Yes.

10 Q And how, if at all, did this
11 affect your view about whether Mojo should
12 continue in operation or cease to operate?

13 A Well, the reduction in fees were
14 helpful, but my point of view with respect to
15 the shutdown in Mojo was not materially
16 affected by this.

17 JUDGE SIPPEL: Do we have much
18 longer to go with this witness, because we're
19 getting some requests for a break. Do you
20 want to break for ten minutes?

21 MS. WALLMAN: Yes, I do have
22 probably 45 minutes more.

1 JUDGE SIPPEL: Oh yes, we've got
2 to break.

3 Let's take our usual ten-minute
4 break and we'll be back in 15 minutes.

5 (Laughter.)

6 JUDGE SIPPEL: Off the record.

7 (Off the record.)

8 JUDGE SIPPEL: You're still under
9 oath, Mr. Bond.

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: Okay, Ms. Wallman?

12 MS. WALLMAN: Thank you, your
13 Honor.

14 BY MS. WALLMAN:

15 Q Mr. Bond, before the rate card as
16 between Mojo and Comcast changed, Comcast and
17 the other owners were paying Mojo on a base of
18 all of D1 subs, correct?

19 A Yes.

20 Q And after they were paying on a
21 base of HD subs, correct?

22 A Yes.

1 Q Now, going back to your answer to
2 an earlier question of mine, I asked you if
3 you had a view about whether the rate that
4 WealthTV was seeking which you mention in
5 paragraph 8, was higher or lower than what
6 Mojo was charging, correct?

7 A Yes.

8 Q Do you see in paragraph 8, you
9 recite that you understood that WealthTV was
10 seeking 14 cents per subscriber for the HD
11 routing of its network. I believe in your
12 answer to my question, you said you thought
13 the rates were about the same. Is that your
14 recollection of your testimony?

15 A Yes. I think I said the expense,
16 the actual fees that would be paid would be
17 about the same. I think I said I'd have to
18 calculate it because they're a little
19 different.

20 Q And when you say that, are you
21 taking into account what you say in the prior
22 line about an eight-cent per subscriber from

1 the standard definition version?

2 A Yes.

3 Q But if the -- if you looked at the
4 HD rate that you understood WealthTV was
5 seeking and you compared it to the Mojo rate
6 for D1 subs, the net outlay from Comcast to
7 Mojo would be higher, correct, because it's
8 calculated on a much larger base than merely
9 the HD subscribers, correct?

10 A Well, I think the 14 cents on HD
11 is additive to the eight cents. Maybe I
12 didn't understand the proposal but I think
13 it's eight cents on standard depth and 14
14 cents on HD.

15 Q So you didn't understand at that
16 time that the HD fee for WealthTV might be
17 available separately at a rate of 14 cents for
18 HD subs; is that correct?

19 A I think they were combined. I
20 think you paid eight cents for the D1 SD subs
21 and then you paid an additional 14 cents for
22 the HD subs.

1 Q Going back to what's been marked
2 for identification as Exhibit 201, the --

3 A I'm sorry, which one is that?

4 Q This is 201.

5 JUDGE SIPPEL: 201.

6 MS. WALLMAN: It says Wilson, Bob
7 at the top.

8 JUDGE SIPPEL: Revised model rate
9 card.

10 THE WITNESS: Oh, okay, the one
11 we've been looking at. I'm sorry. Yes, I'm
12 looking at it.

13 BY MS. WALLMAN:

14 Q Before the rate card changed, was
15 Comcast offering Mojo on a paid HD tier, in
16 other words, one that required an additional
17 subscription fee that subscribers would pay in
18 order to see it?

19 A No.

20 Q What kind of tier was it offered
21 on before the rate card changed?

22 A It was basically provided to all

1 HD customers, high definition customers.

2 Q At no additional charge?

3 A There were box charges, equipment
4 charges, HD access charges, but there was no
5 specific tier charge.

6 Q So no incremental recurring
7 monthly fee in order to watch the MoJo
8 programming?

9 A No, there were equipment charges
10 and access fees and whatnot, depending on how
11 many HD boxes to you and what level of service
12 you were at those charges might vary.

13 Q And did that -- did the terms of
14 that offering to subscribers change after the
15 rate card changed?

16 A No.

17 Q Now, by this time, in December of
18 2007, had you begun to form an opinion that
19 continuing Mojo was not a good idea?

20 A Yes.

21 Q And the change in rates didn't
22 change your mind about that; is that correct?

1 A Yes.

2 Q Did there come a time when a third
3 party approached Comcast, you in particular,
4 about the possibility of buying Mojo?

5 A I don't think anybody approached
6 me about buying Mojo. I think someone
7 approached iN DEMAND about buying Mojo.

8 Q Did you become aware that a third
9 party was interested in buying Mojo?

10 A I did.

11 MR. COHEN: Your Honor, I'm going
12 to object. It's beyond the scope of direct.
13 I think we're going, again, very far afield.

14 JUDGE SIPPPEL: Ms. Wallman.

15 MS. WALLMAN: Your Honor, one of
16 the topics covered in direct testimony here is
17 the shutdown of Mojo and I'm exploring the
18 reasons that led to the shutdown of Mojo.
19 This is not a --

20 JUDGE SIPPPEL: It might be helpful
21 to just ask the witness to give the reasons as
22 of the December 14th date and then you can --

1 if there's anything left over that he hasn't
2 covered, that 201 can bring out, then you can
3 use it in that way?

4 MS. WALLMAN: Well, I was going to
5 move onto a different exhibit.

6 JUDGE SIPPEL: Well, let's do
7 that. Is this one going to be offered into
8 evidence now?

9 MS. WALLMAN: Yes, your Honor.
10 I'd like to offer 201 for admission.

11 JUDGE SIPPEL: With or without the
12 pages that have the numbers on them?

13 MS. WALLMAN: I'm amenable to
14 doing it in whichever way will be simplest.

15 MR. MILLS: It will be simplest to
16 excise everything after the first page.

17 JUDGE SIPPEL: Just take the first
18 page, which to the extent he has testified to
19 it. Now, is there any objection to receiving
20 it in that fashion?

21 MR. SOLOMON: No, your Honor.

22 JUDGE SIPPEL: No objection, it's

1 received in evidence. One page and we can
2 remove the confidential designation, correct?

3 MR. MILLS: Yes, your Honor.

4 (The document referred to having
5 been marked as WTV Exhibit Number
6 201 for identification was
7 received in evidence.)

8 MR. COHEN: Your Honor, if I may--

9 JUDGE SIPPEL: Yes, sir.

10 MR. COHEN: -- where Ms. Wallman
11 is going now is precisely the subject of my
12 objection. I mean, she now intends to show
13 the witness a document --

14 JUDGE SIPPEL: Well, let's see
15 what she's going to proffer.

16 MR. COHEN: The potential sale of
17 Mojo.

18 JUDGE SIPPEL: Well, let's ask
19 her. Ms. Wallman, what is it that you intend
20 to do next, the subject matter?

21 MS. WALLMAN: The subject matter
22 is did Mr. Bond ever consider selling Mojo as

1 an alternative to shutting it down?

2 MR. COHEN: I don't understand the
3 relevance.

4 JUDGE SIPPEL: All right. Where
5 is his testimony that he talked about Mojo
6 shutting down?

7 MR. COHEN: He does say that, your
8 Honor, but I don't understand what that has to
9 do -- I mean, the shutting down Mojo -- I
10 don't want to talk about why the witness put
11 it in but whether or not it was shut down or
12 they were going to sell it, I can't imagine
13 what that has to do with Wealth's complaint of
14 discrimination. That's the issue in this --

15 JUDGE SIPPEL: Okay. Let's --
16 now, you have documents on this that you
17 wanted to go over? Well, tell me where that's
18 going? You're referring to that this is
19 relevant to his testimony.

20 MS. WALLMAN: Paragraph 20 on page
21 8.

22 JUDGE SIPPEL: It says "Ultimately

1 iN DEMAND did shut down Mojo on December 1,
2 2008 because David Partners (phonetic) no
3 longer saw value in continuing to operating
4 Mojo". All right. Do you have reason to
5 believe that that's not a true and fair
6 statement? Are you --

7 MS. WALLMAN: I don't doubt that
8 it's true as far as it goes, but it doesn't
9 speak to why it was that they no longer saw
10 value in continuing to operate Mojo. I have
11 one document and, perhaps two questions to
12 explore it.

13 JUDGE SIPPEL: Well, I just don't
14 -- before you get to a document, if -- I'm
15 trying to move this along. I mean, you know,
16 you're both right. Mr. Cohen's got a very
17 good objection. It's true that the door's
18 been open to this extent. Why don't you just
19 ask the witness if he knows anything about the
20 option of selling it?

21 MS. WALLMAN: Your Honor, if I
22 could also just direct the witness' attention

1 and perhaps yours to the end of paragraph 18,
2 in which he refers to Comcast Exhibit 5, a
3 true and correct copy of another e-mail
4 exchange between me and Mr. Shell. In that e-
5 mail I indicate that I would not be interested
6 even in selling Mojo to a new owner if it
7 meant that Comcast would have to continue to
8 carry Mojo. So, in fact, this is an exhibit
9 in evidence.

10 JUDGE SIPPPEL: So Exhibit 5 would
11 be what you what you want to have marked now?

12 MS. WALLMAN: It's already been
13 entered into evidence by Comcast. I'd like to
14 ask the witness about it.

15 JUDGE SIPPPEL: So it's in the
16 record.

17 MS. WALLMAN: Yes.

18 JUDGE SIPPPEL: All right, I think
19 the fastest thing to do is to let Ms. Wallman
20 go down this a little bit.

21 MR. COHEN: I renew my objection,
22 your Honor.

1 JUDGE SIPPEL: Well, I'm going to
2 overrule the objection for lots of reasons.

3 MR. SOLOMON: I would note that
4 this material is highly confidential.

5 JUDGE SIPPEL: This material being
6 what his testimony is.

7 MR. SOLOMON: This paragraph 18
8 and 19 of his testimony.

9 JUDGE SIPPEL: Okay, do we need to
10 --

11 MR. SOLOMON: I don't know what
12 you're going to ask, so --

13 JUDGE SIPPEL: Do we need to
14 excuse your clients?

15 MS. WALLMAN: I'm amenable to
16 doing that.

17 JUDGE SIPPEL: I'll ask Mr. Robert
18 and Mr. Charles Harrington to please leave the
19 courtroom. It won't be long, gentlemen.

20 (Gentlemen exit courtroom.)

21 JUDGE SIPPEL: All right, you may
22 proceed, Ms. Wallman.

1 MS. WALLMAN: Thank you. May I
2 approach the witness and show him Comcast
3 Exhibit 5?

4 JUDGE SIPPEL: Yes, please do. Do
5 you have a copy for us, too? Thank you. One
6 page, two pages, okay, thank you. I have
7 nothing on the second page except highly
8 confidential. Do we need the second page?

9 MS. WALLMAN: I don't need it for
10 my purposes.

11 JUDGE SIPPEL: Well, there's
12 nothing on it. Am I wrong?

13 MS. WALLMAN: No, your Honor. We
14 duplicated it as produced to us.

15 JUDGE SIPPEL: All right, so why
16 don't we just take off the second page as
17 being a blank page? It saves something, I'm
18 not sure what, but -- all right, this is
19 Comcast Exhibit 5. It says, from Mr. Bond,
20 the witness. It's dated September 12th,
21 2007 to Mr. Burke is on the list and it
22 regards Mojo.

1 MS. WALLMAN: Yes.

2 JUDGE SIPPEL: It's already in the
3 record as Comcast 5. So go ahead, you may ask
4 the witness whatever you want to ask him.

5 BY MS. WALLMAN:

6 Q Sir, in the process of thinking
7 about what to do about Mojo, this e-mail is
8 dated September 12th, 2007, and you indicated
9 that at some point you began to have doubts
10 about whether it was worthwhile to continue
11 carriage of Mojo. Did your -- did your
12 concerns about this predate September of 2007?

13 A They must have.

14 Q And so is it fair to say that --
15 much of this document is redacted and I don't
16 mean to go into anything that's not on the
17 face of this document. But is it fair to say
18 that at some point there was some sort of
19 expression of interest in somebody buying Mojo
20 and your statement at the top of this page, "I
21 would rather just shut down Mojo than sell
22 it", redacted and entered into a continuation

1 of carriage.

2 A Yes.

3 Q So is this the e-mail you had in
4 mind when you wrote the testimony in paragraph
5 18?

6 A That's the -- I'd have to look at
7 it. This is Exhibit 5.

8 Q Is that the citation page?

9 A Yeah.

10 JUDGE SIPPEL: Comcast Exhibit 5.
11 Do you want to give it some thought, if you
12 want to take a look at your testimony in the
13 document.

14 THE WITNESS: Your Honor, the
15 attachments aren't part of this. Well, it
16 does say Comcast Exhibit 5, yes.

17 JUDGE SIPPEL: Well, the two pages
18 that were handed up to me, the second page is
19 just blank. Yes, it's redacted, it's
20 deliberately redacted.

21 THE WITNESS: Yes, well, the
22 testimony says, "Comcast Exhibit 5 is a true

1 and correct copy of another e-mail exchange
2 between Mr. Shell and me".

3 JUDGE SIPPEL: I see.

4 THE WITNESS: This says Comcast
5 Exhibit 5 on the top.

6 JUDGE SIPPEL: All right, but your
7 concern is that you're saying it's a true and
8 correct copy but it really isn't because of
9 the redacted?

10 THE WITNESS: No, no, no, I'm not
11 concerned about anything, your Honor.

12 JUDGE SIPPEL: All right, let's
13 go. Let's go.

14 MS. WALLMAN: Thank you.

15 JUDGE SIPPEL: What's the
16 question? You want to know who it is or why
17 the -- why he's reluctant or what do we want
18 to know?

19 MS. WALLMAN: Nothing further on
20 that, your Honor.

21 JUDGE SIPPEL: Really, well, I'm
22 curious now. You'd rather shut it down than

1 just sell it. And is it because of the party
 2 that would be interested in buying it? The
 3 redacted material, is that a company or
 4 something that --

5 THE WITNESS: It is a company but
 6 that isn't why we're saying I'd rather just
 7 shut it down.

8 JUDGE SIPPEL: Can you offer some
 9 explanation as to why? I mean --

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: Any objection to
 12 that? I mean, confidential -- well, it's
 13 going to be -- let's hear it.

14 THE WITNESS: Well, as time had
 15 gone on, many other cable networks that were
 16 premier, well-branded, basic cable networks
 17 were creating HD, high definition versions or
 18 their services, simulcast of their services.
 19 And these services were being put up there.
 20 We needed to launch them for competitive
 21 reasons. They were basically free to us to do
 22 so, and so there was a proliferation of HD

1 channels out there and I didn't see -- I
2 didn't see that Mojo really was a compelling
3 necessity any more in terms of the carriage on
4 the cable systems.

5 So to sell it, if it -- to sell it
6 to somebody, to the extent it would
7 necessitate a continuation of carriage on the
8 cable system --

9 JUDGE SIPPEL: Oh, I see.

10 THE WITNESS: -- really wasn't
11 where my head was at. My head was at
12 recapturing the band width and not carrying
13 the service.

14 JUDGE SIPPEL: I see. Right, it's
15 not like buying whatever, a dozen head of
16 cattle and you put it in a truck and take it
17 away. It would be there and whoever bought it
18 would want to keep it on your band.

19 THE WITNESS: Yes, probably what -
20 - any potential deal most likely would have
21 involved a continuation of carriage. So I'm
22 just cutting to the chase and saying if it

1 involved a continuation of carriage, which it
2 most probably would have, I wouldn't have been
3 interested.

4 JUDGE SIPPET: All right, now let
5 me ask this question. Does -- I understand
6 what you said about moving other programming
7 to HDO (sic). And this is in December of 2007
8 when HD -- I'm sorry, not HDO, HD. That's
9 when HD was kind of coming into its own; is
10 that right, that time period?

11 THE WITNESS: Yes. HD, high
12 definition TV sets had been sold really going
13 back to '04, but they were ramping up and
14 programmers, cable television programmers,
15 were all announcing launch plans for their own
16 versions of their own high definition
17 services.

18 JUDGE SIPPET: Now, is that --
19 that's -- does that -- if you convert from
20 what was it SD to HD, do I use the right
21 terms? Would it be a conversion or a --

22 THE WITNESS: It's really in

1 addition.

2 JUDGE SIPPET: In addition to SD.
3 Does that mean that you have to use more band
4 width?

5 THE WITNESS: It does, quite a bit
6 more.

7 JUDGE SIPPET: That's all I have.
8 Do you want to move on or do you want to ask
9 him some questions about that?

10 MS. WALLMAN: One or two more,
11 your Honor.

12 JUDGE SIPPET: Thank you.

13 BY MS. WALLMAN:

14 Q You said in response to the
15 presiding Judge's question that -- about this
16 September `07 e-mail that you had come to
17 believe that Mojo was not a compelling
18 offering any more; is that correct?

19 A Yes.

20 Q Comcast continued to carry Mojo
21 until December 1st, 2008 according to your
22 testimony, correct?

1 A Yes.

2 Q Is there a reason that you
3 continued to carry Mojo though you decided it
4 was not compelling programming?

5 A Yes.

6 Q And what was that reason, please?

7 A It just took time to wind it up.
8 It took time to talk to the other partners of
9 iN DEMAND and go through it, winding up any
10 business. There's a time period over which it
11 took place. I would have liked it to have
12 been earlier.

13 Q Was -- now, in paragraph 9 of your
14 testimony, you indicate that one of the
15 reasons you didn't carry WealthTV's
16 programming was that you didn't find it to be
17 a -- find it to represent a compelling value
18 proposition, correct?

19 A Yes, yes.

20 Q So it took more than a year for
21 all those things to happen, as you say, to get
22 Comcast out of its obligation or get Comcast

1 to not carry -- pardon me, withdrawn.

2 It took a year, a little more
3 than, if we use the September `07 e-mail as a
4 bench mark though you say your doubts may have
5 developed earlier, it took more than a year
6 to conclude carriage of Mojo?

7 A Yes.

8 Q Was there any sense in which the
9 consensus of the iN DEMAND partners for that
10 decision was necessary?

11 A Yes.

12 Q Why was that?

13 A The shutdown of the service, the
14 actual shutdown of the service, was something
15 we sought to get consensus on among the Board
16 because it was an iN DEMAND channel.

17 Q And is that because of the
18 relationship between the owners on the one
19 hand and iN DEMAND on the other?

20 A No. Mojo was owned by iN DEMAND,
21 was an iN DEMAND product. So to the extent we
22 were going to shut it down, it wasn't simply

1 a Comcast decision. That was an IN DEMAND and
2 Board decision. So we sought consensus
3 relating to that decision.

4 Q But Comcast separately as a
5 company could have dropped Mojo at any time,
6 correct?

7 A We could have.

8 Q But you didn't do that, correct?

9 A No.

10 Q Why did you not do that?

11 A Because we were on a pathway and a
12 process to shutting the network down and that
13 seemed to be the cleanest way to do it. The
14 shutdown took longer than I would have liked.

15 Q What do you mean by the cleanest
16 way to do it?

17 A Well, as opposed to having the
18 channel still existing but not carried on the
19 Comcast systems, it seemed like at the time
20 the best way to do it would be to wind up the
21 network, shut down the network and then that
22 would be it with respect to carriage.

1 Q But if you were concerned about
2 band width capacity, and the competitive
3 implications of that, why would you not act on
4 your judgment that you had formed in at least
5 September 2007 to reclaim the band width and
6 get rid of Mojo?

7 A Well, perhaps I should have, but
8 as I think I explained, I had assumed the
9 wrap-up was going to happen relatively soon.
10 It just took longer than I would have liked
11 and it was one of these situations where it
12 seemed to continue on for a little bit, awhile
13 longer. Additionally, there were some issues
14 relating to the pre-emptions for baseball
15 content on Mojo in the summer of `08 that led
16 the systems to want to keep it on at least
17 through the summer of `08 and then -- so there
18 were just issues that come up typically when
19 this kind of thing happens that end up pushing
20 it further out.

21 JUDGE SIPPPEL: Did you have to do
22 any negotiation with -- or get releases from

1 advertisers when -- in connection with the
2 shut-down?

3 THE WITNESS: I don't know if that
4 happened or not. I wouldn't really have been
5 involved in that.

6 JUDGE SIPPEL: Okay. Are we all
7 set, Ms Wallman?

8 MS. WALLMAN: Yes, your Honor.

9 MR. COHEN: Can we let the clients
10 come back in?

11 JUDGE SIPPEL: Oh, can we take the
12 confidentiality off of this document now.
13 It's redacted. So what, it's a Comcast
14 document. Is it solid? It's redacted. Yeah,
15 I guess that's what we want. We're only
16 getting one page of it and the stuff I guess
17 you were concerned about has all been
18 redacted.

19 THE WITNESS: I think that's fine,
20 your Honor.

21 JUDGE SIPPEL: We can scratch
22 confidentiality on this one page?

1 THE WITNESS: Yes, on this first
2 page.

3 JUDGE SIPPEL: Okay, Mr. Solomon?
4 Okay. Well, that's what he testified to under
5 cross examine. You can show the document to
6 your clients at the break and you can explain
7 to them what went on while they were out of
8 the room --

9 MS. WALLMAN: Thank you, your
10 Honor.

11 JUDGE SIPPEL: -- to the extent
12 you wish to.

13 BY MS. WALLMAN:

14 Q Mr. Bond, did there some a time
15 when the -- when INHD became Mojo?

16 A Yes.

17 Q And in that connection, did you
18 have an understanding of the target
19 demographics of Mojo?

20 A Generally, yes, I did.

21 Q What did you understand them to
22 be?

1 A Young males perhaps with a bit of
2 an urban bent.

3 Q Any particular age bracket of
4 males?

5 A I don't recall how it was
6 specifically defined. My understanding was it
7 was going to be targeted to young men.

8 Q Any other characteristics like
9 affluent?

10 A I don't recall that specifically.

11 JUDGE SIPPEL: What do you mean by
12 young, young men as their customer?

13 MS. WALLMAN: Well, I was
14 attempting to get at that with the age bracket
15 question.

16 BY MS. WALLMAN:

17 Q Do you have any other more
18 specific understanding of --

19 A Well, my understanding of young
20 would mean is men in their twenties.

21 JUDGE SIPPEL: Men in their
22 twenties?

1 THE WITNESS: Perhaps early
2 thirties. Twenties and early thirties.

3 JUDGE SIPPEL: Twenties and early
4 thirties.

5 BY MS. WALLMAN:

6 Q And what is the basis for your
7 understanding of what the demographics are?

8 A My recollection of Board
9 presentations from iN DEMAND at the time they
10 proposed it.

11 Q Do you have a recollection of the
12 tag line that Mojo adopted in connection with
13 the transition as it has -- the proposition is
14 in contention but for purposes of questioning
15 I'll use rebranding. In the rebranding of
16 INHD to Mojo, do you have a recollection of
17 what tag line Mojo used to identify itself?

18 A I don't recall.

19 MS. WALLMAN: May I show the
20 witness a document?

21 JUDGE SIPPEL: You may.

22 MS. WALLMAN: This has been marked

1 for identification purposes as WealthTV
2 Exhibit 14.

3 JUDGE SIPPEL: And what does it
4 relate to?

5 MS. WALLMAN: This has been
6 admitted into evidence. I'm sorry, it's not
7 marked for identification. It has been
8 admitted into evidence and it was screen shots
9 from the Mojo website.

10 JUDGE SIPPEL: There's nothing
11 confidential on this we have to worry about?

12 MS. WALLMAN: No, your Honor.

13 JUDGE SIPPEL: Thank you.

14 THE WITNESS: Thank you.

15 JUDGE SIPPEL: Mr. Herring, the
16 only reason we're asking that, you know,
17 certainly we want you in the courtroom, but
18 also when you're in the courtroom I can leave
19 the door open. It's a little cooler in here.

20 MR. HERRING: Glad to be wanted
21 somewhere, your Honor.

22 JUDGE SIPPEL: You're entitled to

1 be here. Okay, do you have 14 in front of
2 you there?

3 THE WITNESS: I have it.

4 JUDGE SIPPEL: And that's in
5 evidence; is that right?

6 MS. WALLMAN: Yes, your Honor.

7 JUDGE SIPPEL: As -- whose exhibit
8 is it?

9 MS. WALLMAN: That is a WealthTV
10 exhibit.

11 JUDGE SIPPEL: And it's 14,
12 WealthTV 14?

13 MS. WALLMAN: It's 14.

14 JUDGE SIPPEL: What's your
15 question?

16 BY MS. WALLMAN:

17 Q Does this refresh your
18 recollection at all, Mr. Bond, as to the tag
19 line that Mojo used?

20 A To be honest with you, it doesn't
21 refresh my recollection. It seems to be on
22 the website, but I don't recall that being a

1 tag line for Mojo.

2 JUDGE SIPPEL: Well, why don't you
3 read into the record what the "that" is?

4 THE WITNESS: Absolutely. It
5 says, "Don't live a little, live a lot".

6 JUDGE SIPPEL: "Don't live a
7 little, live a lot". Is that your question?

8 MS. WALLMAN: Well, I was seeking
9 to refresh his recollection but I --

10 JUDGE SIPPEL: He said -- he
11 didn't really need -- he never said he had a
12 recollection to, you know, to bring up. He's
13 -- he doesn't seem to be too familiar with the
14 subject at all.

15 MS. WALLMAN: Well, your Honor, I
16 did ask him before showing him the document
17 whether he knew what the tag line was. He
18 said he didn't, so I showed him the document
19 for purposes of refreshing recollection. It
20 doesn't appear that it did.

21 JUDGE SIPPEL: Yeah, but it's
22 usually when the witness says, "I don't

1 recall", he said, "I don't know", but I don't
2 have any problem with what you did. Do we have
3 to go any further with this document then?

4 MS. WALLMAN: No, your Honor.

5 JUDGE SIPPEL: Thank you. Next
6 question.

7 BY MS. WALLMAN:

8 Q With respect to the April 2008
9 back and forth that you had with WealthTV, you
10 indicated that you did not send them anything
11 in writing; is that correct?

12 A Yes.

13 Q Did you have an intention that if
14 the discussions progressed, and a deal was
15 reached, that it would be memorialized in
16 writing?

17 A Yes. Well, I assumed WealthTV
18 would desire that.

19 Q I'm sorry, could you repeat that?

20 A I assumed that WealthTV would have
21 desired a contract.

22 JUDGE SIPPEL: I think you're

1 volunteering more than was asked.

2 THE WITNESS: Okay, I'm sorry.

3 BY MS. WALLMAN:

4 Q Did you have an intention that if
5 a deal were reached it would be memorialized
6 in writing?

7 A Yes.

8 Q Did you have any view at the time
9 that you were negotiating with WealthTV in
10 2008 that the talks might eventuate in
11 carriage without a written contract?

12 A No, as I said, I assumed Wealth
13 would want a contract and I was fully willing
14 to execute a contract.

15 Q Did you view a written contract
16 desirable on Comcast's part as well?

17 A It's a bit speculation because it
18 never crossed my mind, but I probably could
19 have carried it without a contract but I would
20 have assumed that WealthTV would have wanted
21 a contract and I intended to do so if we
22 reached an agreement.

1 Q With respect to paragraph 17 of
2 your testimony --

3 JUDGE SIPPEL: We're back to
4 Comcast Exhibit 3.

5 MS. WALLMAN: Yes, your Honor.

6 JUDGE SIPPEL: Thank you.

7 BY MS. WALLMAN:

8 Q Did you view INHD originally as a
9 showcase channel for HD content?

10 A Sort of.

11 Q Could I have a yes or no possibly?

12 A I think showcase is the wrong
13 term.

14 Q What term would you use?

15 A We -- INHD was launched as a place
16 where -- a channel where sports programming,
17 local sports programming, could be overlaid on
18 the channel and then other programming could
19 be acquired, HD programming, that were -- you
20 know, that was out there either from sports
21 leagues or from other providers that didn't
22 have a channel home and could, you know, be

1 put into Mojo -- excuse me, into INHD.

2 Q It appears you're referring to
3 here in paragraph 17 that INHD was not a
4 themed network, was it?

5 A No.

6 JUDGE SIPPEL: Is that a word of
7 art? I mean, do we need an explanation? Does
8 the witness know what that means? I guess he
9 does. He answered the question.

10 MS. WALLMAN: Yes, your Honor.

11 JUDGE SIPPEL: Is that kind of an
12 inside term, though, that you have to be in
13 Mr. Bond's job before you know what it means?
14 I don't know what it means.

15 MS. WALLMAN: Well, let me ask the
16 witness.

17 BY MS. WALLMAN:

18 Q Do you have an understanding of
19 what the term "themed" means?

20 A I think by that what you were
21 trying to say is it doesn't have a programming
22 theme, a specific programming theme, like is

1 it a kid's channel. Is that what you meant?

2 Q That was my question, yes.

3 A Yes, I understood it.

4 JUDGE SIPPEL: So to put that into
5 context, your question was, was that --

6 MS. WALLMAN: My question was, I
7 said to Mr. Bond in the period that you're
8 referring to in paragraph 17, INHD was not a
9 themed network, was it? And his answer was --

10 JUDGE SIPPEL: Yeah, that's true.
11 Well, basically that means that it didn't have
12 anything -- I mean, it wasn't trying to go
13 over anything that had a target, we're using
14 that, target or purpose. It's just there.

15 MS. WALLMAN: Well, I used the
16 word "theme". It doesn't have a theme of --
17 a unifying theme. That was my question and I
18 --

19 THE WITNESS: Well, it was high
20 definition programming. It had sports, it had
21 movies, it had IMAX material on it.

22 JUDGE SIPPEL: All right, that's

1 good enough for me.

2 BY MS. WALLMAN:

3 Q Going back again to the 2008
4 discussions that you were having with
5 WealthTV, and as they related to the Chicago
6 proposal that you discussed, do you know how
7 many HD subscribers were in the Chicago system
8 that you were discussing?

9 A I don't.

10 Q Do you know how many HD subs Mojo
11 had on Comcast system in the same period,
12 April 2008?

13 A I don't know off the top of my
14 head.

15 Q Now, did there come a time in 2006
16 when you decided that Comcast was not
17 interested in extending a carriage offered to
18 WealthTV at that time?

19 A Yes.

20 Q And would it be fair to say that
21 WealthTV continued to contact Comcast to seek
22 a carriage agreement after that?

1 A Yes, and I continued to talk to
2 Charles very regularly all along this time
3 period.

4 Q So throughout -- even after you
5 signaled to them no, not now in 2006, they
6 continued to contact you?

7 A Yes, and I continued to meet with
8 them.

9 Q Now, in paragraph 3 of your
10 testimony, on page 2, you testified, "It was
11 important to emphasize that Comcast does not
12 discriminate among programming providers on
13 the basis of whether the individual network
14 seeking carriage is affiliated or not
15 affiliated with Comcast". Do you see that?

16 A I do.

17 Q Is it fair to say that your
18 understanding of what Comcast does is that it
19 treats affiliates and non-affiliates even-
20 handedly?

21 A Yes.

22 Q Are you aware of testimony of your

1 boss Steve Burke, in a different case in this
2 courtroom from about 10 days ago, that varies
3 with that understanding of Comcast's approach?

4 MR. SOLOMON: Your Honor, I
5 object. Mr. Burke's not here to characterize
6 his testimony.

7 JUDGE SIPPEL: Sustained.

8 MS. WALLMAN: May I read from the
9 transcript?

10 JUDGE SIPPEL: Without Mr. Burke
11 being here to be asked on redirect, I mean,
12 just use testimony of another party in another
13 case as cross examination?

14 MS. WALLMAN: This was an
15 admission by a party opponent.

16 JUDGE SIPPEL: Well, I haven't
17 ruled on that. I'm not going to do it either
18 here. No, I'm going to sustain the objection
19 and I'm not going to permit that to be used in
20 this case on the basis of what your -- for
21 cross examination purposes.

22 MS. WALLMAN: Almost finished,

1 your Honor. Can I have a moment?

2 JUDGE SIPPEL: Thank you.

3 BY MS. WALLMAN:

4 Q Mr. Bond, just to be clear, your
5 recitation at the top of paragraph 3, is that
6 the company's position that it does not
7 discriminate among programming providers?

8 A Yes.

9 MS. WALLMAN: Your Honor, I, of
10 course, will accept your ruling but there is
11 a contrary statement on point a company
12 position articulated by Mr. Burke of Comcast
13 in sworn testimony and I'm prepared to show
14 from the transcript with I'm referring to.

15 JUDGE SIPPEL: It's not the proper
16 use of cross examination. If you want to
17 establish an admission by way of -- there's
18 several ways to try and do that but this is
19 not a way to do it.

20 MS. WALLMAN: One more moment,
21 your Honor. Your Honor, I have nothing
22 further.

1 JUDGE SIPPET: Thank you. Mr.
2 Schonman.

3 MR. SCHONMAN: Thank you, your
4 Honor. Mr. Bond, my name is Gary Schonman.
5 I'm co-counsel for the Enforcement Bureau.
6 I'll try to make this as quickly as possible
7 because it's already quarter of 1:00.

8 FURTHER CROSS EXAMINATION

9 BY MR. SCHONMAN:

10 Q I'd like to direct your attention
11 to your direct written testimony that's
12 Comcast Exhibit 3 at paragraph 10
13 specifically.

14 A Uh-huh.

15 JUDGE SIPPET: I've got to say Ms.
16 Mumaw did a great job yesterday afternoon.
17 And it was fast. It was just quick. I just
18 wanted to let you know. You weren't here.

19 MR. SCHONMAN: Do you have that in
20 front of you, Mr. Bond?

21 THE WITNESS: I'm looking at it,
22 yes.

1 BY MR. SCHONMAN:

2 Q All right, I want to keep
3 everything in context and in paragraph 10, if
4 I understand correctly, you're talking about
5 two elements that Comcast considers, among
6 several, in determining what programs it will
7 carry on Comcast's lineup; is that correct?

8 A Yes.

9 Q Okay. And the two items that
10 you're discussing are prior experience in the
11 programming business and third party financial
12 support. So let's talk about each one of
13 those. Put me in a time frame here. In
14 paragraph 10, are you talking about your
15 relationship with Wealth up until April of
16 2008?

17 A Yeah, I think that's fair. I
18 don't think this piece of it changed
19 materially over the time period I was talking
20 of.

21 Q In the very first line of
22 paragraph 10, you indicate that WealthTV's

1 owners and management had no prior experience
2 in the programming business.

3 A Yes.

4 Q What was your basis for
5 understanding that Wealth had no prior
6 experience in the programming business?

7 A Well, when they first came in,
8 they hadn't -- as I said earlier, they hadn't
9 been in the programming business. They hadn't
10 developed channels. They were successful
11 entrepreneurs and in other -- in another
12 field. So when they first approached us, they
13 hadn't really been in the programming
14 business. They were going to seek to hire
15 people to try to produce programming. They
16 had some DVDs that showed programming.

17 I do suppose in fairness, after a
18 certain period of time, they did launch, so
19 they did -- they were programming the network.
20 So they did have the experience of programming
21 their own network.

22 Q So you came to understand that

1 they had some level of programming experience?

2 A Well, really not unrelated to
3 their network, no prior experience before they
4 launched WealthTV.

5 Q I just want to deviate for one
6 moment. This sort of sounds to me like
7 situation it's the lament of every college
8 graduate, "I can't get a job because I don't
9 have experience and I don't have experience
10 because I can't get a job". You're familiar
11 with that.

12 A Yeah. Well, TV is very hard, very
13 difficult.

14 Q My question is, from your
15 experience in the industry, how does a
16 fledgling network get the attention of a
17 distributor if it has no prior experience?
18 What does it have to do?

19 A Well, I think that it's not --
20 it's not a de facto or a sine qua non of doing
21 a carriage deal. We've done lots of carriage
22 deals with people who didn't have prior

1 experience but they may have -- what's really
2 first and foremost is really what's the
3 channel. You know, is it a good idea? Can
4 they execute on it? The prior experience is
5 really sort of an execution issue more than
6 anything else.

7 Q I don't understand that.

8 A Meaning that you can have a great
9 idea. You can be the person who came up with
10 the idea to do home shopping, but if you don't
11 execute on it well, you're not going to
12 succeed over the long term. So that's a great
13 idea but it has to be executed upon. You can
14 be the person who came up with the Food
15 Network and the Food Network didn't do very
16 well for a long time until they finally hit on
17 a -- you know a programming theme that really
18 resonated with customers.

19 So by execution that's what I mean
20 by that.

21 Q Is it fair to say then that it's
22 an indication -- past experience is an

1 indication of possible future success?

2 A Yes. I think that's fairly
3 stated.

4 Q The other item that you mention in
5 paragraph 10 has to do with third party
6 financial support. And according to your
7 testimony, it did not appear to you that
8 WealthTV had that. What was your basis for
9 saying that it didn't appear to have third
10 party financial support?

11 A It was my understanding that it
12 was being self-funded --

13 Q Was that a problem? I'm sorry.

14 A -- by the Herrings, I said.

15 Q Are you finished?

16 A Yes, sir.

17 Q Was that a problem for you, that
18 it was self-funded rather than having third
19 party financial support?

20 A Potentially. We've launched
21 networks that are funded -- are self-funded by
22 individuals. Once again, this is really an

1 execution risk. This is really about whether
2 the idea, if it's a good idea, if it's a
3 worthwhile idea, can it be executed upon? So
4 as I said, we've launched networks that have
5 been self-funded by people before and it's --
6 it's been successful. So it's one more --
7 it's just a factor really.

8 Q Would one of those networks that
9 you launched that were self-funded, would that
10 have been perhaps the Bloomberg Network?
11 Would that be one of them?

12 A Yes, that's an example.

13 Q Is it fair to say that lack of
14 third party financial support would not
15 destroy the prospects for a fledgling network?

16 A Certainly not. We've launched
17 HDNet, MASN, Altitude. There are -- if I
18 really sat down and thought about it, there's
19 plenty of examples of self-funded networks.

20 Q Now, there came a time in April of
21 2008 when the negotiations with Wealth and
22 Comcast were ratcheted up; is that fair to

1 say?

2 A Yes.

3 Q And that came after a phone call
4 from Mr. Herring at WealthTV.

5 A A phone call or an e-mail, I can't
6 recall which.

7 Q Did you -- and in that phone call,
8 it was revealed to you that WealthTV was
9 contemplating filing a complaint with the FCC.

10 A Yes.

11 Q Did you take that as a courtesy
12 call or a threat?

13 A Well, it felt threatening to me, I
14 suppose. I think it was couched in terms of
15 being a courtesy but I certainly took a threat
16 of litigation. I know that's a negative.

17 Q And upon receiving that telephone
18 call and the notice of a -- of -- that
19 WealthTV was contemplating filing a complaint
20 with the FCC, did your view of WealthTV change
21 in any regard?

22 A No, but I was willing to engage

1 more seriously and productively to see if we
2 could break through.

3 Q And let me go a little more into
4 depth about that. Is it fair to say that up
5 until April 2008, Comcast was skeptical about
6 WealthTV's content and prospects for long-term
7 success?

8 A Yes.

9 Q And after you received this phone
10 call indicating an inclination to file a
11 complaint with the FCC, did that change your
12 opinion about the content that WealthTV wanted
13 to provide?

14 A No.

15 Q Did it change in any way the fact
16 that they may have had limited prior
17 experience in the programming business?

18 A No.

19 Q Did it change in any way the fact
20 that it may have been self-supporting rather
21 than relying on third party financing?

22 A No.

1 Q Were there any other elements that
2 changed which caused you to ratchet up the
3 negotiations other than the fact that they
4 leveled a threat at you?

5 A No.

6 Q In your prior testimony, your
7 direct testimony with Mr. Solomon, you
8 indicated that over the course of time that
9 you were talking with the folks at WealthTV,
10 Comcast had the occasion to add dozens of new
11 channels to its lineup. Is that correct?

12 A Yes.

13 Q Among those dozens of channels
14 that Comcast added, in your estimation, did
15 any of those channels compete for the same
16 audience that WealthTV was targeting?

17 A No, all of those channels were HD
18 simulcast or HD versions of existing basic
19 networks.

20 Q Among those dozens of channels
21 that Comcast added to its lineup during the
22 period of time we're talking about, did any of

1 those channels complete for the target
2 audience of Mojo or INHD?

3 A Yes, services like MTV, which is
4 targeted to young people. Spike TV, though I
5 don't know if that's been added yet. That's
6 new, that hits a young male demographic.
7 We've added sports channels that probably
8 disproportionately target me, not necessarily
9 young men. So, if you look at the basic
10 lineup of all the channels that you know today
11 about cable, those are really the channels
12 that we're talking about.

13 Q Now, INHD, you said was not a
14 themed -- was not a themed product.

15 A Yes.

16 Q Did it have a target audience?

17 A I don't think so.

18 Q Is the concept of the themed
19 program, is that the same as a target
20 audience? I'm trying to understand the
21 distinction, if there is any, between theme
22 and target audience. Is there a distinction?

1 A Well, I think, in my mind -- I
2 don't think theme, by the way, is really a
3 term of art in the industry. So I think it
4 has the meaning, I think we would ascribe to
5 it, just in normal conversation but how I
6 would look at it is, a theme would be
7 describing the kind of programming it is.

8 So you could say Nickelodeon is a
9 kid's theme channel because it has kid's
10 programming on it. The target audience would
11 be describing the audience that you're trying
12 to hit. So in the case of Nickelodeon, that
13 would be children ages six to 13. I'm just
14 guessing that's how they would describe it.
15 So stated differently, ESPN's theme would
16 probably be sports. Its target audience is
17 probably defined more in terms of demographic
18 of men 18 to 54, something like that.

19 Q I understand. Is theme, then,
20 akin to genre?

21 A I suppose. It seems like that's
22 another word that would adequately describe

1 it.

2 Q That's a word that's been bantered
3 about here from time to time, I think. So,
4 INTV (sic) did or did not have a target
5 audience?

6 A You mean NHD?

7 Q Yes, thank you.

8 A No, it was an HD service and it
9 had sports on it. So to the extent they were
10 thinking about a target audience at that
11 moment in time because this is in an early
12 adoption mode, it, by definition, probably
13 would have been directed more to men because
14 men were typically Hd set buyers. It had
15 sports on it. We had the overflow product of
16 sports. So I expect that its target, so to
17 speak, would have been men, because a lot of
18 the content was male oriented.

19 Q Did the focus of NHD become more
20 refined over time?

21 A Well, they launched the Mojo
22 programming block at some point in time and

1 what they were trying to do is given the
2 proliferation of HD channels, they were trying
3 to develop a programming voice.

4 Q So it did become more refined or
5 it didn't become more refined?

6 A Yes, yes, it did.

7 Q It did. And what did it become
8 refined to? At its height, before it was
9 changed to Mojo, how would you describe its
10 programming? What was the target audience
11 just prior to this change to Mojo?

12 A I don't think it changed that
13 significantly. They had the program block of
14 Mojo, so I think they were heading to the
15 direction of targeting young men. So it
16 changed a little bit in that direction, I
17 believe.

18 Q Well, was the change to Mojo just
19 a name change, like a store would change the
20 name, but the content in the store, they're
21 still selling men's suits?

22 A Well, I don't have the exact

1 programming grid in front of me, but it wasn't
2 as though the content changed overnight. A
3 lot of the content was still the same. It was
4 really more positioning and I think they were
5 emphasizing some of this male oriented
6 programming more.

7 Q Would you characterize it as
8 basically a name change?

9 A I think it was more than a name
10 change.

11 Q And in what respect was it more
12 than a name change?

13 A Because I think they went out and
14 developed or acquired some additional
15 programming that wasn't on there previously.
16 I think they re-ordered the lineup a bit to
17 put certain content in prime time that hadn't
18 been there. I'm not really a complete expert
19 on what their programming grid was.

20 Q Would you look at your direct
21 written testimony, Comcast Exhibit 3, and I'd
22 like to direct your attention to paragraph 12,

1 and it carries over onto page 6, from page 5
2 to page 6.

3 A Uh-huh, yes.

4 Q And specifically at the top of
5 page 6, the sentence, "Mr. Herring rejected
6 this proposal claiming that WealthTV had
7 `earned' broad commitment of carriage from
8 Comcast", and the word "earned" is in quotes.
9 Do you see this?

10 A I do.

11 Q What would -- first of all, what
12 did you mean by the word "earned" and what was
13 your -- well, what did you mean by the word
14 "earned" in quotes there?

15 A Well, what he said to me was when
16 I discussed this, he said based on his
17 securing distribution with the telephone
18 companies that he was beyond this and he had
19 earned a broad distribution commitment, I
20 suppose because he had gotten that
21 distribution on the telephone companies.

22 Q In your mind, what was the

1 significance of that statement that he made to
2 you, if any?

3 A I didn't think it was accurate.

4 Q Why is that?

5 A I didn't think he -- I don't think
6 getting that distribution indicated to me that
7 he had earned a broad carriage commitment.

8 Q Did it have any significance at
9 all to you?

10 A Yeah, yeah, the fact that he had
11 gained distribution was -- on the telephone
12 companies was significant, but also
13 significant was that he had not gained
14 distribution on the satellite platforms or
15 other cable companies.

16 Q Did you tell him that?

17 A I don't remember if I did or not.

18 Q Further down in paragraph 15,
19 that's also on page 6 --

20 A Yes.

21 Q -- at the very bottom there's a
22 sentence that says, "I also told Mr. Herring

1 that Comcast would agree to toll the program
2 carriage statute of limitations".

3 A Yes.

4 Q And just to put us in the right
5 time frame, I think we are -- are we in April
6 -- by this time we're in April of 2008 or
7 thereabouts?

8 A Yes.

9 Q Why did Comcast agree to toll the
10 statute of limitations?

11 A This was all happening really in
12 one day, because I was interested -- if there
13 was a deal to be done, if we could work out a
14 business arrangement, where he could get some
15 distribution and, you know, show the
16 performance of his content, and have a
17 structure of carriage, then I wanted to
18 actually get that done as opposed to being in
19 litigation over it. So that's why I was
20 willing to toll the statute of limitations.

21 Q All through your negotiations
22 with Wealth, is it fair to say that Comcast

1 was concerned about the audience appeal for
2 Wealth's proposed programming?

3 A Yes.

4 Q And Wealth proposed, if I
5 understand correctly, that it would provide
6 free carriage? Is that the right way to say
7 it? They would provide a free period of time
8 --

9 A Correct.

10 Q -- when they wouldn't charge
11 Comcast for carriage on its system.

12 A Correct.

13 Q And that period was for two years.

14 A Well, the rate card stated it as -
15 - if you look at the other exhibit they
16 provided, it was specified in terms of years,
17 so it said two years, `07 and `08. The
18 proposal was made in April of `08, so the
19 free period was two years. By the time we
20 would have launched it, it would have in
21 practicality been six months, let's say.

22 Q Did you raise that with Mr.

1 Herring, saying, "Gee, you know, you were
2 offering two years. We've already consumed a
3 year or a year and a half. Can we do it two
4 years from the date of the agreement?"

5 A No, my recollection is a little
6 fuzzy on this but I think I would have -- I
7 think I offered to pay him from Day 1.

8 Q Why is that?

9 A Well, because I was changing the
10 rate card around. It wasn't that exact rate
11 card. We had a -- remember this was all
12 happening really in kind of one-day's time
13 frame, but the free period isn't -- in a long-
14 term deal, a free period isn't that meaningful
15 because you start, you know, paying fees. As
16 I said, I don't recall our exact discussion on
17 the free period. Maybe I said okay to the
18 free period but I was really open to lots of
19 negotiation on all the elements of the rate
20 card. I didn't want to necessarily have to
21 launch in HD. That was one concern I had
22 because of band width, but essentially I would

1 have searched for some kind of financial
2 arrangement to the extent it could have
3 worked, both financial arrangement and in
4 terms of the distribution.

5 Q I'm curious though, if a
6 programmer approaches you and offers even six
7 months of free carriage, why would you be
8 prepared to pay it? Free is free, it's good
9 for the company.

10 A Because I was talking about a
11 reduced price. He wanted -- he had a certain
12 rate structure here that was not what I wanted
13 to do. So it's -- you're really looking at
14 the gestalt, I guess, of the negotiation of
15 the numbers.

16 Q I'm going to ask you a question
17 now which is a little theoretical but had you
18 been successful in negotiating a contract with
19 WealthTV, is it fair to say that Comcast would
20 have entered into that reluctantly because of
21 the threat of a complaint with the FCC?

22 A Actually, I don't think I would

1 say that. I talked to Mr. Herring for, you
2 know, many times over a period of years and I
3 didn't hold any animosity.

4 Q Well, but you testified earlier
5 that you really didn't care for the
6 programming. You had some other reservations
7 about they didn't have third party financing,
8 they didn't have experience, long-term
9 experience in the industry. And that didn't
10 change.

11 A No, but I might have been wrong.
12 If we had launched them and it turned out to
13 be a resounding success or they had found the
14 magic sauce or they had come up with a hit
15 show, or they had become a good network, then
16 I certainly didn't hold a grudge.

17 Q I just wanted to go over something
18 which I think the record may be a little fuzzy
19 on it. It has to do with the extent to which
20 Comcast had written agreements with program
21 providers. Is it a fact that Comcast had a
22 written agreement with all independent program

1 providers whose programs had carried on
2 Comcast's lineup?

3 A Independent, in this case you mean
4 not affiliated with any media company?

5 Q Not affiliated with Comcast.

6 A Oh, not affiliated with Comcast.

7 Q Yes, in other words, let me
8 rephrase that. Thank you for clearing that
9 up.

10 A Okay.

11 Q Is it fair to say that Comcast had
12 a written affiliation agreement with all
13 program providers in which it did not have a
14 financial interest?

15 A No, we have a lot of carriage with
16 networks in which we don't have a financial
17 interest that's not under contract, at
18 varying times.

19 Q Can you give me an example?

20 A Well, it's probably confidential
21 if I actually speak about that.

22 Q Okay, but there are more than two?

1 A Yes.

2 Q And there are channels, that is
3 networks, that Comcast carries in which it
4 does have a financial interest.

5 A Yes.

6 Q Mojo had been one of them,
7 correct?

8 A Yes.

9 Q But it currently carries others in
10 which it has a financial interest?

11 A Yes.

12 Q As to those, does it have written
13 affiliation contracts?

14 A Sometimes yes, sometimes, no.

15 Q Why the distinction sometimes yes,
16 sometimes no?

17 A Well, the reality is you work on
18 the deals that there's a pressing need to get
19 done and so sometimes -- and this is true
20 really whether the content -- whether the
21 network is affiliated with Comcast or not. So
22 we have networks that we carry without a

1 written contract right now. And if there ever
2 is an issue or a reason why we really need to
3 get a contract on it, we'd do a contract.

4 Q Would you look at paragraph 16 of
5 your direct written testimony? Here we're
6 talking about whether Comcast discriminated or
7 not.

8 A Yes.

9 Q And in the second sentence you
10 state, "Over the past five years in which I
11 have been dealing with WealthTV, it has
12 refused any offer of carriage I made". I'm
13 going to stop right there. The sentence does
14 continue. Do you see that portion?

15 A I do.

16 Q Are you saying here that WealthTV
17 has rejected each and every offer that Comcast
18 has made during the entire term of the
19 relationship that you've had with WealthTV?

20 A Well, they've turned down any
21 ideas that I've ever come up with, whether you
22 want to call it an offer or not. But when I

1 suggested they, you know, kind of put it on
2 VOD. When I talked about the hunting license,
3 when we were dealing in April with the
4 commitment to launch in Chicago or some other
5 system.

6 Q Further in that sentence you say
7 that, "WealthTV has consistently rejected my
8 suggestions about how it can test its appeal
9 to our customers". Do you see that?

10 A I do.

11 Q What suggestions did you make to
12 WealthTV?

13 A That would have been about the
14 VOD. I suggest they put some of their content
15 on Video on Demand and see how it performed.

16 Q Any other suggestions you made?
17 I'm just noting, you used the term
18 suggestions, plural, so I'm assuming there's
19 more than one.

20 A Well, I would say the
21 conversations in April were really about that.
22 That was actually launched in Linear.

1 Q So there was only one suggestion?

2 A Well, there was the launch on
3 Linear and there was the VOD suggestion. I
4 can't recall, I may have suggested we try out
5 some of their programming on broadband. I
6 might have -- as this went along, I might have
7 thrown that out as another idea.

8 Q At any time in your negotiations
9 with WealthTV, did Comcast consider WealthTV
10 in any way whatsoever to be in competition
11 with Mojo or its predecessor in name in HD?

12 A No.

13 Q Not at all.

14 A Not at all.

15 Q In April of 2008 when the
16 negotiations with WealthTV were ratcheted
17 because of the threat of a complaint with the
18 FCC, did Comcast engage in a tactic to kind of
19 string WealthTV along to try to run out the
20 clock? Do you understand my question?

21 A You mean run out the statute of
22 limitations?

1 Q Correct.

2 A Is that what you mean by the
3 clock?

4 Q Yes.

5 A No. No, that's -- we actually
6 talked about it and I was willing to toll it.
7 Well, I was willing to work on a deal up to
8 the May deadline, but I was also willing to
9 toll it.

10 JUDGE SIPPEL: Did you have to get
11 clearance to do that from anybody, from Mr.
12 Burke or somebody, I mean, to negotiate the
13 extension?

14 THE WITNESS: Well, I probably
15 would have asked our general counsel about it.

16 BY MR. SCHONMAN:

17 Q Mr. Bond, I just want to clear up
18 one point where the record might be a little
19 fuzzy or I might be a little fuzzy. There was
20 discussion earlier about NHD when it was
21 launched and whether it had long-term
22 prospects, what the intentions were for NHD.

1 And my question for you is, did you ever
2 foresee the possibility of NHD being on the
3 air long-term, being carried long-term?

4 A Possible. Yes, I did.

5 Q In terms of long-term, did you
6 have any idea at the time -- strike that.

7 What do you mean by long-term?

8 A Well, really permanently, either
9 NHD would not succeed or not find a place and
10 it would go away or they would -- the market
11 might develop in such a way that it actually
12 became a compelling product.

13 Q When NHD was developed, was there
14 a business plan?

15 A There -- yes, there was a business
16 plan surrounding the acquisition of content
17 and the rate structure and whatnot.

18 Q Were there periodic business plans
19 for NHD?

20 A Yes, I think they did an annual
21 budget.

22 Q Was there a cutoff point that you

1 had in mind for NHD, for example, gee, after
2 two years if it's not off and running and
3 serving a purpose, we'd better pull the plug,
4 a date that you had in mind?

5 A Not that precisely, but what you
6 said is relatively accurate. I thought we
7 would -- we would launch the network we had,
8 didn't have a long-term commitment and I
9 figured that in a few years, the HD, high
10 definition landscape would become clarified
11 and it would be clear as to whether it had a
12 future. That ended up being more or less the
13 case.

14 Q Was NHD ever self-supporting, that
15 is, did it make money?

16 A Yes.

17 Q And did Mojo make money?

18 A Yes.

19 Q Was it -- was Mojo profitable?

20 A I believe so.

21 Q Was NHD profitable?

22 A I don't recall the exact P&Ls I'm

1 sorry, back when it was NHD.

2 Q Was there any concern among the
3 executives at Comcast including yourself, that
4 carrying WealthTV would have been detrimental
5 to Mojo?

6 A No.

7 Q Any concern that carrying WealthTV
8 would have competed with Mojo for revenue?

9 A No.

10 MR. SCHONMAN: That will be it,
11 your Honor.

12 JUDGE SIPPEL: Any redirect?

13 MR. SOLOMON: Very brief redirect.

14 REDIRECT EXAMINATION

15 BY MR. SOLOMON:

16 Q Mr. Bond, earlier in your
17 testimony --

18 JUDGE SIPPEL: I'm sorry, is there
19 any other cross, that's --

20 MR. MILLS: No, your Honor.

21 MR. COHEN: No, your Honor.

22 JUDGE SIPPEL: I'm sorry, Mr.

1 Solomon.

2 BY MR. SOLOMON:

3 Q Mr. Bond, earlier in your
4 testimony at one point you said you wanted to
5 fix an answer for accuracy. I think it was in
6 the context of capacity issues, but I'm not
7 sure. Do you remember what you wanted to fix?

8 A Yes, the question was, was there
9 anything else you did to find band width and
10 I simply wanted to say one of the things we
11 did to find band width was shut down Mojo.

12 Q Do you remember you got some
13 questions about the impact of Mr. Jacobson's
14 and Mr. Asch's prior experience when you were
15 deciding whether or not to launch INHD.

16 A Yes.

17 Q Was either of them the head of iN
18 DEMAND when you launched INHD?

19 A Yes, Rob was, Mr. Jacobson.

20 Q At the time you launched INHD?

21 A Yes.

22 Q Are you familiar with a Stephen

1 Brenner?

2 A Yes.

3 Q Who is he?

4 A He was Rob's predecessor, Mr.

5 Jacobson's predecessor.

6 Q Did he have any experience in the
7 programming business?

8 A Yes.

9 Q He was involved with INHD or iN
10 DEMAND rather?

11 A Yeah, he was involved with iN
12 DEMAND.

13 Q What was his position with INHD,
14 iN DEMAND, sorry?

15 A He was the president and CEO.

16 JUDGE SIPPEL: Who was that? What
17 was his name?

18 THE WITNESS: Stephen Brenner.

19 JUDGE SIPPEL: Brenner.

20 BY MR. SOLOMON:

21 Q And did he have programming
22 experience, do you know?

1 A He did.

2 Q You mentioned at one point you
3 were talking about new channels launched
4 during the period WealthTV was negotiating and
5 you said something about high definition
6 versions of SD channels and I'm not sure
7 whether you were -- what question you were
8 answering but when you answered at one point
9 that all of the new channels launched during
10 that period were HD versions of SD channels,
11 were you talking about all channels you
12 launched or all HD channels you launched?

13 A No, I'm sorry, just HD channels.
14 We actually did launch some HD Net. We
15 launched HD Net as well and that's not a
16 simulcast. That's not an HD version.

17 Q So it wasn't all HD channels.

18 A Yes, mostly all though.

19 Q And with respect to launching,
20 were there situations where you launched new
21 networks during that period, not necessarily
22 on HD that weren't -- in which Comcast didn't

1 have an ownership interest?

2 A Yes.

3 Q You mentioned when you were
4 talking, answering some of Mr. Schonman's
5 questions that you didn't have a long-term
6 commitment with INHD and Mojo; is that
7 correct?

8 A Yes.

9 Q Was that important?

10 A Yes.

11 Q Why was it important?

12 A Well, it gave us the flexibility
13 ultimately to determine if the content -- if
14 the product was succeeding from a distributor
15 perspective and whether we wanted to continue
16 to carry it.

17 Q Did any of the WealthTV proposals
18 involve a short-term commitment, only a short-
19 term commitment?

20 A I don't think so. I don't recall
21 getting one that involved a short term
22 commitment. I think they were all long-term

1 commitments.

2 MR. SOLOMON: I have no further
3 questions.

4 JUDGE SIPPEL: Anything on that?

5 MS. WALLMAN: Your Honor, I have a
6 brief recross on Mr. Schonman's --

7 JUDGE SIPPEL: All right.

8 RECROSS EXAMINATION

9 BY MS. WALLMAN:

10 Q Mr. Bond, just to be clear, the
11 answers you provided to Mr. Schonman about
12 suggestions and ideas that were made to
13 WealthTV in the course of back and forth with
14 them, those suggestions and ideas did not
15 include, did they, providing WealthTV's HD
16 signal in any market?

17 A They did not.

18 Q And when you told Mr. Schonman, in
19 response to his question that INHD was
20 profitable, does that include amounts that
21 Comcast would have paid to IN DEMAND in
22 consideration for carriage of INHD?

1 A It does.

2 Q And the Mojo block that was
3 offered in 2006, was that a lifestyle theme
4 channel would you say?

5 A To be honest with you, I don't
6 recall exactly what was on the block.

7 MS. WALLMAN: Thank you, your
8 Honor. Thank you, Mr. Bond.

9 JUDGE SIPPEL: Anything more?

10 MR. SOLOMON: No.

11 JUDGE SIPPEL: I have nothing
12 more. You're excused as a witness again, Mr.
13 Bond. Thank you. Okay, let's -- you're not
14 to talk about your testimony of course, with
15 any other Comcast witness until all the
16 testimony is in.

17 THE WITNESS: All right, thank
18 you.

19 JUDGE SIPPEL: Let's go off the
20 record, briefly.

21 (Discussion held off the record.)

22 JUDGE SIPPEL: We're going to have

1 two witnesses this afternoon and we're in
2 recess for lunch until quarter of 3:00. Thank
3 you. That's it, we're off the record.

4 (Whereupon, at 1:26 p.m. a
5 luncheon recess was taken until 2:52 p.m.)

6 JUDGE SIPPEL: We have a witness
7 ready to go.

8 Whereupon

9 ALAN DANNENBAUM

10 was called as a witness by counsel for Time
11 Warner and, after having been first duly
12 sworn, was examined and testified as follows:

13 JUDGE SIPPEL: Did you get that
14 on the record?

15 COURT REPORTER: Yes, although I
16 think there is a Blackberry.

17 JUDGE SIPPEL: Will you hand it
18 down the table? Because even off -

19 MR. SOLOMON: Your Honor, I am
20 presenting Comcast Exhibit No. 8, which is the
21 direct testimony of Alan DANNENBAUM which has
22 been previously marked.

1 (Whereupon the aforementioned
2 document was marked for
3 identification as Comcast Exhibit
4 No. 8)

5 JUDGE SIPPEL: Thank you.

6 MR. SOLOMON: And the exhibits,
7 59 I believe, is referenced in the
8 confidential material. We are also making
9 that nonconfidential.

10 JUDGE SIPPEL: Which is that? Is
11 that the testimony from this morning?

12 MR. SOLOMON: No, Exhibit No. 9
13 was an exhibit that's already been entered
14 into evidence in what's referred to in what's
15 marked confidential. So I'm lifting the
16 confidentiality of the testimony.

17 JUDGE SIPPEL: Thank you.

18 MR. SOLOMON: We are also lifting
19 the confidentiality of that exhibit.

20 JUDGE SIPPEL: I've got two
21 copies.

22 MR. SOLOMON: Oh, sorry.

1 JUDGE SIPPEL: No, that's all
2 right. Now that's identified. Now it's a
3 question of receiving it.

4 So you may proceed, sir.

5 DIRECT EXAMINATION BY COUNSEL FOR COMCAST

6 BY MR. SOLOMON:

7 Q Mr. Dannenbaum, do you have in
8 front of you a seven-page document marked for
9 identification as Comcast Exhibit No. 8, and
10 entitled, Direct Testimony of Alan Dannenbaum?

11 A Yes.

12 Q Can you look on page seven?

13 A Yes.

14 Q Is that your signature?

15 A It is.

16 Q Is this your direct testimony?

17 A Yes, it is.

18 Q Is it true and correct?

19 A Yes, it is.

20 MR. SOLOMON: Your Honor, I move
21 that Exhibit No. 8 be received into evidence.

22 JUDGE SIPPEL: Is there any

1 objection?

2 MS. WALLMAN: No, Your Honor.

3 JUDGE SIPPEL: It's received into
4 evidence as Comcast No. 8.

5 (Whereupon the aforementioned
6 document having been previously
7 marked for identification as
8 Comcast No. 8 was received into
9 evidence)

10 JUDGE SIPPEL: And I notice again
11 this goes back to - oh April 5, 2009, that's
12 current. Thank you. You may proceed.

13 BY MR. SOLOMON:

14 Q Mr. Dannenbaum, I'd like to ask
15 you a few questions to summarize your
16 testimony.

17 Did your responsibilities at
18 Comcast ever involve negotiation of carriage
19 agreements with programmers?

20 A Yes.

21 Q During what period of time?

22 A Roughly 1995 until July of 2007.

1 Q Did you hold different jobs during
2 that period?

3 A Yes.

4 Q Could you explain for the Court
5 each job that you had?

6 A Sure. I was initially in the
7 legal department of Comcast Cable. And did
8 various things, one of which was attorney
9 responsibilities for what was called the
10 programming department.

11 Then I became a member of the
12 programming department and was responsible for
13 negotiating and among other things evaluating
14 programming that was distributed by Comcast.

15 Q And what was your final position
16 in the programming department?

17 A Well, as - by the time we ended my
18 tenure there, we called the content
19 acquisition department. But my final position
20 there was senior vice president of content
21 acquisition.

22 Q Who did you report to in that job?

1 A Matt Bond.

2 Q Did Comcast and Wealth TV enter
3 into an affiliation agreement prior to your
4 taking on different responsibilities in the
5 company in July, 2007?

6 A No.

7 Q And just to confirm, in July,
8 2007, you switched to a different job, is that
9 correct?

10 A That's correct.

11 Q Why didn't Comcast and Wealth TV
12 enter into an affiliation agreement during
13 that time period?

14 A Well, among other reasons, they
15 were a new programming service run by people
16 that had little or no television programming
17 experience. There was limited bandwidth on
18 our cable systems, and it was a timeframe when
19 there were lots of high definition channels
20 from established brands that were expected to
21 be launched, and Wealth TV did not have an
22 established brand at that point.

1 In my opinion they were not
2 valuable in terms of attracting new
3 subscribers or underserved subscribers, and no
4 one from Comcast - not anyone at the division
5 level, at the system level, at the region
6 level or corporate level - ever expressed any
7 interest in launching Wealth TV's service.

8 Q Are you familiar with the
9 allegation made by Charles Herring of Wealth
10 TV that on August 16th, 2006 meeting you said
11 that Comcast will not allow another MTV to be
12 made on Comcast's back without owning it?

13 A Yes.

14 Q Did you say that to Mr. Herring?

15 A No, I did not. And it would have
16 been - it would not have made any sense for me
17 to say that, because during the same timeframe
18 that I was having discussions with Wealth TV
19 I was personally involved in negotiating and
20 concluding agreements with new channels that
21 were not owned in anyway by Comcast. Some of
22 those channels, just as an example, Lifetime

1 Movie Network, Fox Business Network, Gospel
2 Music Channel, Logo, those are just some
3 examples of agreements that were concluded in
4 that timeframe for new channels not owned by
5 Comcast.

6 Q And for all of these Comcast had
7 no ownership interest, is that correct?

8 A Correct.

9 Q Are you familiar with the
10 allegation made by Charles Herring of Wealth
11 TV that in July of 2005, you told him you
12 would put an end to an effort by Wealth TV to
13 gain carriage on Adelphia Cable?

14 A Am I familiar with that
15 allegation?

16 Q Yes.

17 A Yes.

18 Q Did you make that statement?

19 A I don't recall ever making that,
20 and I do not believe that I did.

21 Q Did you in fact ever call Adelphia
22 regarding its potential carriage of Wealth TV?

1 A I don't recall ever calling them,
2 and I don't believe that I did.

3 Q Did Comcast carriage of INHD or
4 Mojo or Comcast's ownership interest of In
5 Demand play any part in the fact that you
6 didn't enter into an affiliation agreement
7 with Wealth TV during the period that you had
8 these responsibilities?

9 A No, none whatsoever.

10 Q After you changed jobs in July,
11 2007, did you have any further involvement in
12 deciding whether Comcast should enter into an
13 affiliation agreement with Wealth TV?

14 A No.

15 MR. SOLOMON: I have no further
16 questions.

17 JUDGE SIPPEL: Any cross-
18 examination, Ms. Wallman?

19 MS. WALLMAN: Thank you, Your
20 Honor.

21 CROSS EXAMINATION BY COUNSEL FOR HERRING

22 BROADCASTING

1 BY MS. WALLMAN:

2 Q Good afternoon, Mr. Dannenbaum.

3 A Good afternoon.

4 Q My name is Kathy Wallman. I'm
5 counsel to Wealth TV.

6 When do you first recall hearing
7 from any representative of Wealth TV
8 concerning Wealth TV?

9 A I believe it was sometime early in
10 2004 when I first met with representatives
11 from Wealth TV.

12 Q Do you recall receiving any
13 communication from any representative of
14 Wealth TV prior to your meeting?

15 A I don't recall.

16 Q I'd like to show the witness an
17 email for purposes of refreshing his
18 recollection.

19 MS. WALLMAN: May I approach?

20 JUDGE SIPPPEL: Yes, you may
21 approach.

22 Tell Mr. Solomon what it is you

1 are going to give the witness. You can ask
2 questions.

3 MS. WALLMAN: This is a document
4 that Comcast has marked confidential. And
5 it's (***) 3:00:03) emails.

6 MR. SOLOMON: Thank you.

7 JUDGE SIPPEL: WTV No. 220 for
8 identification.

9 (Whereupon the aforementioned
10 document was marked for
11 identification as WTV Exhibit No.
12 220)

13 BY MS. WALLMAN:

14 Q Mr. Dannenbaum, with respect to
15 this document, does it help refresh your
16 recollection as to communication with a
17 representative of Wealth TV prior to a meeting
18 with any representative of Wealth TV?

19 A If this predated that meeting,
20 then yes.

21 Q Do you recall whether that meeting
22 occurred in March of 2004?

1 A I do recall that there was a
2 meeting in March of 2004. I just didn't know
3 the exact date.

4 Q Do you recall whether at that
5 meeting you were presented with a deck, a
6 PowerPoint deck?

7 A Not specifically.

8 Q Do you recall who was at that
9 meeting?

10 A I know that Charles Herring and
11 Donna Thomas were there. I'm not sure who
12 else was there besides me.

13 MS. WALLMAN: I'd like to show
14 the witness a document to see whether it
15 refreshes his recollection as to having
16 received a deck at a meeting with Wealth TV in
17 March of 2004.

18 JUDGE SIPPEL: You may approach.

19 MS. WALLMAN: Thank you. This
20 has been marked - been received into evidence
21 as Wealth TV Exhibit No. 117.

22 JUDGE SIPPEL: This is already in

1 evidence?

2 MS. WALLMAN: Yes, Your Honor.

3 BY MS. WALLMAN:

4 Q Do you know who Jen Gaiski is?

5 A Yes.

6 Q Who is she, please?

7 A She was a colleague of mine in the
8 content acquisition department.

9 Q Do you know whether your meetings
10 with Wealth TV was on March 26th, 2004?

11 A I don't know. I don't recall the
12 specific date.

13 Q Would you kindly turn the pages
14 and look at this document to see whether it
15 refreshes your recollection about materials
16 presented to you in the course of the meeting.

17 A I don't recall specifically seeing
18 this. But I'm not saying I didn't see that.
19 I just don't recall.

20 Q So this does not help you remember
21 whether there were presentation materials at
22 the meeting that you attended with Wealth TV

1 representatives?

2 A I believe there were, but I
3 honestly can't specifically recall seeing this
4 particular exhibit.

5 Q And this document doesn't help you
6 recollect what the content of the presentation
7 materials were; correct?

8 A Correct.

9 Q We'll be gathering that document.
10 Now you indicated in your summary
11 of written direct testimony that people who
12 you spoke with at Comcast never expressed any
13 interest in launching Wealth TV; is that
14 correct?

15 A That's correct. I'm saying nobody
16 ever expressed any interest, whether it was
17 people I talked to or not. There is not a
18 single person at Comcast that expressed any
19 interest in launching Wealth TV.

20 Q So not only did people you ask say
21 that they were not interested, but you had no
22 volunteer expressions of interest in Wealth;

1 is that it?

2 A Correct.

3 Q Did there come a time in 2005 -
4 pardon me, withdraw.

5 Did there come a time in 2004
6 subsequent to this initial meeting that you
7 recall having when you undertook negotiations
8 with Wealth TV about the prospect of carriage?

9 A I wouldn't call them negotiations.
10 I think there were discussions that we had
11 periodically, starting in March of '04.

12 Q Did Wealth TV make a specific
13 proposal about terms of carriage on Comcast?

14 A I believe they made a proposal
15 regarding just license fees and a revenue
16 share. It wasn't specific beyond that.

17 Q What do you recall about the terms
18 of the offer insofar as you just identified
19 those that you remember?

20 A I recall that my boss at the time,
21 Matt Bond, forwarded an email that stated that
22 Wealth TV was willing to provide their service

1 free of license fees for some period of time -
2 I don't remember if the length was specified
3 - and that there was a willingness on their
4 part to share some of their advertising
5 revenue.

6 MS. WALLMAN: I'd like to show
7 the witness a document that has been marked
8 for identification as Wealth TV Exhibit 221.
9 May I approach?

10 JUDGE SIPPEL: You may.

11 Do you intend to move 220 in?

12 MS. WALLMAN: I had 117, Your
13 Honor, that I offered - yes, I do intend to
14 move 220 in. Thank you.

15 JUDGE SIPPEL: Is there any
16 objection to 220 coming in?

17 MR. SOLOMON: I haven't seen it
18 yet.

19 JUDGE SIPPEL: You haven't seen
20 it yet?

21 MR. SOLOMON: Oh, I'm sorry, 220.
22 I thought you were talking about the new one.

1 I have no objection to 220.

2 JUDGE SIPPEL: Okay, 220 is
3 received.

4 (Whereupon the aforementioned
5 document having been previously
6 marked for identification as
7 Wealth TV No. 220 was received
8 into evidence)

9 BY MS. WALLMAN:

10 Q Mr. Tannenbaum is this the email
11 forwarded from Mr. Bond that you were
12 referring to in a prior answer?

13 A Yes.

14 Q And you see on page two of the
15 exhibit there is an email from Michael Kasson
16 copying Donna Thomas. Who is Michael Kasson?

17 A I believe he was a representative
18 of Wealth TV. I don't recall ever having any
19 direct contact with him.

20 Q When you saw this email around the
21 time when it was originally sent - do you
22 recall seeing it around the time it was

1 originally sent?

2 A Yes.

3 Q And did you take from it an
4 understanding of what the terms of carriage
5 were that Wealth TV was proposing?

6 A Inasmuch as what's written here,
7 sure.

8 Q And on the top line here, you say,
9 I am going to Boston on Fri. For the
10 broadcasters' meeting. You are responding
11 evidently to an email from Matt Bond asking,
12 do you think we can fit these guys in?

13 So I take it that that meeting
14 didn't occur at least right away after the
15 22nd day of June in 2004; is that correct?

16 A Meeting with Wealth TV, you mean?

17 Q Yes.

18 A I think that is correct.

19 Q In 2005, did it come about that
20 you gave Wealth TV some encouragement about
21 the prospect of gaining carriage on Comcast?

22 A No, I never gave them

1 encouragement about gaining carriage. I think
2 we discussed the possibility of providing them
3 with what's known as a hunting license
4 agreement. But I think I was very consistent
5 in stressing to them and communicating to them
6 that it was low priority, and there were other
7 things going on that were going to take
8 precedence over that.

9 MS. WALLMAN: I'd like to show
10 the witness a document marked Wealth TV -
11 pardon me, Your Honor, I'd like to move into
12 evidence Wealth TV Exhibit No. 221.

13 JUDGE SIPPEL: 221 is identified.
14 Is there any objection?

15 MR. SOLOMON: No objection, Your
16 Honor.

17 JUDGE SIPPEL: it's received.
18 It's WTV 221.

19 (Whereupon the aforementioned
20 document having been previously
21 marked for identification as WTV
22 No. 221 was received into

1 evidence)

2 JUDGE SIPPEL: Are these going to
3 continue to be confidentially marked?

4 MR. SOLOMON: These don't need to
5 be confidential, Your Honor.

6 JUDGE SIPPEL: Thank you. That's
7 the same as the earlier one, 220, and 221,
8 that you described as confidential. Okay.

9 Go ahead.

10 MS. WALLMAN: This Exhibit is
11 marked Wealth TV 230, but is not marked
12 confidential by Wealth TV. It's an email
13 exchange between Alan Dannenbaum and John
14 Ghiorzi of Wealth TV.

15 (Whereupon the aforementioned
16 document was marked for
17 identification as Wealth TV
18 Exhibit No. 230)

19 BY MS. WALLMAN:

20 Q Mr. Dannenbaum, if you could try
21 to look at the second page of what's been
22 marked as Wealth TV 230 for identification.

1 The beginning of the chain there is a
2 communication from John Ghiorzi to you, and it
3 begins with the salutation, Alan, and goes
4 over to the second - on the first page, goes
5 over to the second page and says, I have just
6 set up a conference with Kelly for December
7 6th from 11:00 to 12:00 noon Eastern Standard.
8 Why don't you shoot me that agreement you
9 mentioned last time you met with Charles and
10 we can get a heads up on it before our call.

11 Do you see that?

12 A Yes.

13 Q Do you know what agreement is
14 referenced in that in-bound email to you?

15 A Yes, I believe we had been
16 discussing the possibility of generating a
17 hunting license agreement. Again that is an
18 agreement that doesn't have any committed
19 carriage or required carriage. That's why
20 it's called a hunting license.

21 Q So then on November 16th, your
22 response to Mr. Ghiorzi is, if I can I will.

1 A Yes.

2 Q And did that mean if you could you
3 would send him the agreement that was
4 referenced in the prior page?

5 A Yes.

6 Q And then there is a further
7 inbound from John Ghiorzi asking again for the
8 agreements in anticipation of a conference
9 call, and your response is: unlikely. We are
10 just overwhelmed at the moment. Not sure when
11 I could make it happen. Do you see that?

12 A Yes.

13 Q Can you explain the circumstances?
14 Why were you overwhelmed at the moment?

15 A We typically had a lot going on.
16 We had a large number of channels that we
17 carried, and we had relationships with, and it
18 was just a lot of activity generally in the
19 department.

20 And as I said before, most of that
21 if not all of it took priority over doing a
22 hunting license for Wealth TV where there was

1 no expressed interest of carriage and no
2 expectation that we were actually - that any
3 of our systems would actually carry it.

4 Q So was the hunting license an
5 empty gesture?

6 A I wouldn't say it was an empty
7 gesture. I mean I tried to be courteous and
8 open minded with Wealth TV, and I think that
9 is demonstrated in emails and other exchanges
10 where I tried to point out ways to get their
11 programming distributed, you know, not just by
12 having a linear launch.

13 So there was, I was simply trying
14 to be helpful.

15 Q Do you know whether those other
16 emails were produced as part of discovery?

17 A I believe they were.

18 Q So at the time when you had no
19 expressions of interest, that you either found
20 upon inquiry or being volunteered to you about
21 carriage you continued to work toward getting
22 a hunting license agreement with Wealth TV; is

1 that correct?

2 A I don't know, work toward is a - I
3 don't believe that is an accurate depiction.
4 I think there was the possibility that we were
5 going to produce a hunting license agreement.
6 But it was as I stated low priority, and never
7 really elevated to anything more than that.

8 Q Did you ever suggest to a
9 representative of Wealth TV that it would be
10 possible to get a linear agreement, HD or SD,
11 going?

12 A I don't think so. I'm not sure.
13 You say, suggest that?

14 Q Yes.

15 A No, I don't think I suggested that
16 other than a hunting license agreement.

17 Q You said you began dealing with
18 Wealth TV in 2004; correct?

19 A Correct.

20 Q And you left the content
21 acquisition group in 2007; correct?

22 A Correct.

1 Q You indicated in your summary of
2 direct testimony that Wealth TV was just
3 starting out. That was true in 2004, correct?

4 A Correct.

5 Q Was it true in 2005?

6 A I would say they were still new.

7 Q Was it true in 2006?

8 A Sure.

9 Q Was it true in 2007 when you left
10 the group?

11 A I would still have considered them
12 a new programming service, yes.

13 Q How many carriage agreements did
14 Wealth TV have in 2006?

15 A I don't know.

16 Q How many carriage agreements did
17 Wealth TV have in 2007?

18 A I don't know.

19 MS. WALLMAN: If I may have just
20 a moment, Your Honor.

21 JUDGE SIPPEL: You may.

22 MS. WALLMAN: Your Honor, I want

1 to make sure to move into evidence Wealth TV
2 Exhibit No. 230.

3 JUDGE SIPPET: It's been
4 identified. You just finished testifying to
5 that. Is there any objection?

6 MR. SOLOMON: No objection, Your
7 Honor.

8 JUDGE SIPPET: It's received as
9 WTV 230.

10 (Whereupon the aforementioned
11 document having been previously
12 marked for identification as WTV
13 Exhibit No. 230 was received into
14 evidence)

15 MS. WALLMAN: Your Honor, I have
16 nothing further for this witness.

17 JUDGE SIPPET: Mr. Schonman?

18 MR. SCHONMAN: Your Honor, my
19 colleague.

20 JUDGE SIPPET: Ms. Mumaw, I'm
21 getting used to her style. Go right ahead,
22 ma'am.

1 CROSS-EXAMINATION BY COUNSEL FOR THE FCC

2 BY MS. MUMAW:

3 Q Good afternoon. I'm Elizabeth
4 Mumaw. I'm the co-counsel for the enforcement
5 bureau.

6 I want to talk a little bit with
7 you about what you mean by underserved
8 subscribers. Can you define that for me?

9 A Sure. There are certain segments
10 that have less programming that is targeted to
11 them than others. You know we as a company I
12 think have focused a lot over the last five
13 years to trying to distribute more ethnic and
14 foreign language programming, to try to serve
15 customers that don't have access to as much
16 television programming as let's say English
17 speaking or American customers do.

18 So that's an example of somebody
19 that is underserved I think. Some other
20 minorities probably. I mentioned Logo
21 earlier is a gay and lesbian targeted network,
22 and I think there was a perception that that

1 was an underserved audience.

2 So those are some examples.

3 Q So would an underserved -
4 underserved subscribers reach a particular
5 target audiences?

6 A Yeah, I mean there is - they could
7 be subscribers who hadn't yet gotten cable
8 television because there wasn't enough
9 programming to warrant them paying, so if you
10 could serve those subscribers with more
11 programming you might be able to increase your
12 subscribership by luring them in.

13 Q Would affluent males, age 18 to
14 49, be considered an underserved - what target
15 audience did you think Wealth TV was
16 targeting?

17 A I thought they were targeting high
18 income viewers, and also those that aspired to
19 be.

20 Q Were high income viewers an under
21 served audience?

22 A I do not believe so, no.

1 Q And what audience did you believe
2 Mojo and INHD were targeting?

3 A I wasn't that - I wasn't really
4 involved with INHD and Mojo. I think INHD was
5 an aggregation of different programming.
6 There wasn't a lot of HD programming at the
7 time it started. I think over time as more HD
8 programming became available, it evolved to
9 focus more on a male targeted demographic
10 which is when they rebranded themselves Mojo.

11 Q Do you think as they rebranded
12 they also targeted a specific age demographic?

13 A I don't know that. I recall at
14 the time that it was male targeted; I don't
15 really know that they were targeting a
16 specific age.

17 Q Do you have a general sense of
18 what age bracket they would be targeting?

19 A I would say, young male, but I
20 don't know for sure.

21 Q Did you have a sense of whether
22 they were targeting an affluent demographic?

1 A I - no, I didn't have that sense.

2 Q I'm going to move on to a

3 different subject area.

4 Did you ever tell Wealth TV that
5 you were concerned about carrying Wealth TV
6 because the owners didn't have any programming
7 experience?

8 A Did I ever tell anybody that?

9 Q Anybody at Wealth.

10 A I don't recall.

11 Q Did you ever have any
12 conversations where you asked about experience
13 of anyone on their staff?

14 A I don't recall specifically.

15 Q Did you make any inquiries about
16 what outside investment support Wealth TV had?

17 A I don't recall specifically.

18 Q And then you testified that you
19 checked with others in divisional and
20 corporate management to see if there was any
21 interest in running - or in a hunting license
22 for Wealth TV. Can you talk a little bit

1 about who you talked with and who you checked
2 with?

3 A Sure. I don't recall specific
4 contact. Typically what I would do in
5 addition to talking to my boss, which was Matt
6 Bond, Jan Gaiski who was mentioned earlier was
7 in touch with all of the cable systems and
8 field personnel. So I would routinely check
9 with her to see if any of the systems or
10 regions or divisions had contacted her to
11 express interest in particular services.

12 And in addition to that, although
13 I don't recall specifically who I spoke to, I
14 do recall on a couple of occasions contacting
15 divisional employees and asking them what they
16 thought.

17 Q What do you mean by divisional?

18 A Well, we had - we're split up into
19 geographical divisions. And those divisions
20 have morphed and changed over time, both in
21 the number and in their name and description
22 of which regions they cover, which is one of

1 the reasons I don't recall specifically, and
2 I don't recall the timeframes.

3 So whether it was the mid-Atlantic
4 division which then became part of the
5 Northeast division which is now called the
6 Eastern Division. So these things have
7 changed and morphed, and personnel has changed
8 over time.

9 But I do recall having
10 conversations with at least somebody from
11 either the mid-Atlantic or the Northeast or
12 the Eastern Division, depending on what it was
13 at the time.

14 Q So would it be fair to say that
15 you checked with regional?

16 A Well, yes, the divisions are made
17 up of regions, and the regions are made up of
18 systems. So I checked with divisional
19 employees.

20 Q Thank you.

21 Earlier you testified that you
22 didn't believe that you called Adelpia to

1 discuss carriage of Wealth TV programming.

2 Does that mean that you don't recall or that
3 you didn't make the call?

4 A I am - you know, almost 100
5 percent certain I didn't make the call. I
6 didn't want to say, yes, absolutely I didn't
7 make the call if for some reason I don't
8 remember making that call and it turns out I
9 did. I don't believe I did. I don't have any
10 recollection of doing so. I am virtually 100
11 percent certain I did not do so. But I can't
12 - I just couldn't say with 100 percent
13 certainty I never called.

14 You have to understand there is
15 interaction between people in the industry
16 that happens, at cable shows and whatever. I
17 honestly don't think I made the call.

18 Q Is there something in particular
19 that is making you hesitate on giving those
20 percentages?

21 A The only thing that is making me
22 hesitate is that they asked Judy Meyka, and

1 she said I called. But I don't think I did.
2 I think the answer is, I didn't call. But I
3 didn't feel 100 percent absolutely certain to
4 say that in my sworn testimony.

5 Q How many years does a program have
6 to be - or does a programming service have to
7 be aired before it is considered not new any
8 longer?

9 A I don't think there is any hard
10 and fast rules. I mentioned Lifetime Movie
11 Network earlier. That was around for a number
12 of years I think before the deal that I was
13 referring to got done.

14 So I think there is no hard and
15 fast rule as to when something is new.

16 Q It would be basically considered a
17 guideline?

18 A I think you know that programming
19 networks in some respects are very different
20 from one another, and it's not always easy to
21 say they all fit a certain hole. So I don't
22 think there's any rules or guidelines as to

1 when something is new or not new.

2 MS. MUMAW: That's all I have.

3 Thank you.

4 JUDGE SIPPEL: Any more cross?

5 Mr. Solomon?

6 MR. SOLOMON: No redirect, Your

7 Honor.

8 MS. WALLMAN: Your Honor, I have

9 a brief recross.

10 JUDGE SIPPEL: Briefly.

11 RE-CROSS-EXAMINATION

12 BY MS. WALLMAN:

13 Q Mr. Dannenbaum, when you did the
14 checking to assess interest that you spoke
15 about in response to Ms. Mumaw's question, did
16 you check with Michael Snyder, a contest
17 employee named Michael Snyder?

18 A I don't recall.

19 Q Does that mean you might have, or
20 you just don't remember at all?

21 A Correct, I may have, but I don't
22 recall.

1 Q With respect to the communication
2 concerning Adelphia, did you have
3 communications with Judy Meyka during 2005?

4 A I don't think so. I don't think I
5 ever called Judy. As I said, I may have ran
6 into her at the halls of an industry cable
7 show or something like that. But I honestly
8 don't recall.

9 Q I understand you don't remember a
10 specific all concerning Wealth TV. Did you
11 have any standing instruction or understanding
12 with Ms. Meyka that you should not make
13 channel changes in 2005 without Comcast
14 approval?

15 A I didn't have any standing
16 instruction. As far as I knew.

17 JUDGE SIPPEL: Wait for a
18 question.

19 THE WITNESS: Sorry.

20 MS. WALLMAN: Nothing further,
21 Your Honor.

22 JUDGE SIPPEL: You are excused as

1 a witness, Mr. Dannenbaum.

2 THE WITNESS: Thank you, Your
3 Honor.

4 JUDGE SIPPEL: You may return to
5 your station. Just don't talk about your
6 testimony with any other of the witnesses
7 until this is over. Did you hear that, sir?

8 THE WITNESS: Yes.

9 (Witness excused)

10 MR. COHEN: Your Honor, would you
11 give us five minutes to get Mr. Homonoff?

12 JUDGE SIPPEL: We will. We are
13 off the record.

14 (Whereupon at 3:29 p.m. the
15 proceedings in the above-entitled
16 matter went off the record to
17 return on the record at 3:32 p.m.)

18 JUDGE SIPPEL: We're on the
19 record.

20 Whereupon,

21 HOWARD HOMONOFF

22 was called as a witness by counsel for Time

1 Warner Cable and, after having been first duly
2 sworn, was examined and testified as follows:

3 JUDGE SIPPEL: Please be seated.

4 Mr. Cohen, please proceed.

5 DIRECT EXAMINATION BY COUNSEL FOR TIME WARNER

6 BY MR. COHEN:

7 Q Would you state your full name,
8 please sir?

9 A My name is Howard Homonoff.

10 Q And by whom are you employed?

11 A I am employed by Pricewaterhouse
12 Coopers, LLC.

13 Q And what position do you hold with
14 Pricewaterhouse Coopers?

15 A I'm a director in the
16 entertainment media communications advisory
17 practice for PWC.

18 Q How long have you been a director
19 at PWC?

20 A Since June of 2006.

21 Q And prior to that, sir, did you
22 have your own consulting firm?

1 A Yes, I did.

2 Q And what was the business of your
3 consulting firm?

4 A My consulting firm was, I worked
5 on behalf of, was a business adviser to, a
6 number of media communications companies, and
7 a number both in the cable programming network
8 side of the business, as well as several
9 programming distribution companies.

10 Q And can you give us some idea of
11 some of the assignments you had for program
12 networks?

13 A Yes. I worked on behalf of
14 several mostly startup or early stage cable
15 programming networks such as a network known
16 as American Desi, which was the first English
17 language programming network for South Asian
18 Americans.

19 I worked on behalf of a network
20 called Chronicle DTV, which was a documentary
21 cable network. Another network called the
22 Jewish Channel. Another network called MEP

1 Media. And those were the primary networks
2 that I recall.

3 Much of my work for them was
4 involved in the strategy negotiation execution
5 of programming and distribution agreements, or
6 affiliation agreements.

7 Q And during the time that you had
8 this consulting firm, what was the consulting
9 firm called?

10 A The consulting firm was Homonoff
11 Media Group.

12 Q And during the time that you were
13 operating Homonoff Media Group did you also
14 work on behalf of distributors of programming?

15 A Yes, I did.

16 Q Can you tell us some of those, and
17 what kinds of jobs you had for them?

18 A Yes, I worked primarily on the
19 distribution side for three different clients.
20 The first was Verizon Communications which
21 was, my client was within the Verizon FIOS
22 part of the business. And my role with them

1 was to assist them. This was prior to their
2 formal launch of FIOS, but it was in the
3 strategy negotiation execution of programming
4 affiliation agreements with FIOS, on behalf of
5 FIOS, negotiating with cable programming
6 networks.

7 I performed a similar role for a
8 cable operator known as Suddenlink
9 Communications. It was then known as Cequel
10 III programming. It is today known as
11 Suddenlink Communications.

12 And the third in that category of
13 cable operator is a company called Burlington
14 Telecom.

15 Q Now prior to becoming a
16 consultant, sir, did you work in the cable
17 business?

18 A Yes, I did, for a number of years.

19 Q Did you work for any cable
20 networks?

21 A Yes, I did.

22 Q Can you tell us which ones and

1 what positions you held?

2 A Several positions. I served at
3 NBC, what was then NBC prior to becoming NBC
4 Universal. I served as the general counsel
5 for NBC Cable Networks, which at the time were
6 the cable networks CNBC, MSNBC, as well as
7 CNBC World and Shop NBC.

8 I then served as vice president
9 and general manager of CNBC Strategic
10 Ventures, but which was a combination of
11 business development for CNBC which is my
12 responsibilities were operating what we call
13 the new media businesses that the company had,
14 as well as developing CNBC programming for new
15 distribution platforms, my business
16 development goal.

17 Q And just tell us, what do you mean
18 by new media?

19 A By new media, by digital media I
20 would refer to nontraditional platforms
21 meaning the Internet primarily at the time;
22 also it would include mobile phones, video on

1 demand, outdoor digital media, things other
2 than what we'd call the traditional media
3 platforms such as broadcast or cable
4 television.

5 Q And sir, in the course of your
6 career around the cable business, have you
7 ever worked for a cable operator?

8 A Yes, I did.

9 Q Which one, and what position did
10 you hold?

11 A I worked for a company called
12 Continental Cablevision, which at the time was
13 the third largest cable operator in the
14 country. They were headquartered in Boston.
15 My title was director of corporate and legal
16 affairs. And my role was a mix of business,
17 legal and public responsibilities, a portion
18 of which was related to the negotiation and
19 strategy, execution of programming affiliation
20 agreements on behalf of that MSO.

21 Q And just so the record is clear,
22 we have had some testimony about a cable

1 company called Cablevision. Is Continental
2 Cablevision the same company as Cablevision?

3 A No it's not. It was a -
4 Continental Cablevision was a privately held
5 cable operator based in Boston. Cablevision
6 Systems Corporation, which remains - and
7 Continental Cablevision no longer exists as an
8 independent company. It was later merged into
9 larger cable companies.

10 Cablevision Systems Corporation is
11 an existing cable company headquartered on
12 Long Island.

13 Q And sir, do you ever speak or
14 lecture on issues related to the cable
15 business?

16 A Yes, I do.

17 Q And briefly if you could tell us a
18 little bit about that?

19 A Yes, I spent two years as the
20 program director and associate professor at
21 Drexel University. I was the program director
22 for the Paul Harron Graduate Program in

1 Television Management. It was a combination
2 of MBA and MS and television management. And
3 in that capacity I designed the curriculum and
4 taught a number of classes related to the
5 operation and current issues in the cable
6 television business.

7 I also lecture as a matter of
8 course, have over the years, at Columbia
9 Business School. I am affiliated with the
10 Columbia Institute for TeleInformation at New
11 School University, and before industry
12 organizations such as the Cable Television
13 Marketing Association, the National
14 Association of Television Programming
15 Executives, and a number of others.

16 Q One last question on your
17 background: have you ever served as an expert
18 witness in any cases involving a dispute over
19 distribution of programming?

20 A Yes, I have.

21 Q And could you just briefly tell us
22 about those?

1 A Three circumstances. Two were on
2 behalf of a programming network, one on behalf
3 of a distributor. The two circumstances in
4 which I served on behalf of a programming
5 network my client was the Fox Cable Networks,
6 and they were in programming disputes with, in
7 two different distributors. One was the Dish
8 Network or EchoStar Corporation. The other
9 was the NCTC, National Cable Television
10 Cooperative. Again, both were related to a
11 dispute over terms and conditions for the
12 carriage of cable networks.

13 And then the third expert
14 situation, my client was DIRECTV, a direct
15 broadcast satellite company. And that was in
16 a dispute with a programmer, a programmer
17 known as HDNet.

18 MR. COHEN: Your Honor, I tender
19 Mr. Homonoff as an expert on the distribution
20 of video program networks.

21 JUDGE SIPPEL: Any objection?

22 MS. WALLMAN: No, Your Honor.

1 JUDGE SIPPEL: Cross-examination?

2 MR. COHEN: No, Your Honor. I
3 haven't shown him his statement yet, moved it
4 into evidence. And I just have a few
5 questions to summarize.

6 JUDGE SIPPEL: All right. I will
7 accept his credentials as an expert in the
8 area that you indicated. So that's what we
9 will hear your testimony.

10 MR. COHEN: May I approach, Your
11 Honor?

12 JUDGE SIPPEL: Please do.

13 MR. COHEN: Mr. Homonoff, let me
14 show you what has been marked as Time Warner
15 Cable No. 86 for identification. It's a copy
16 of your direct testimony in this case.

17 JUDGE SIPPEL: Okay, it's so
18 identified.

19 (Whereupon the aforementioned
20 document was marked for
21 identification as Time Warner
22 Cable Exhibit No. 86)

1 JUDGE SIPPEL: Do we need the
2 confidential designation?

3 MR. COHEN: No, we don't, Your
4 Honor.

5 JUDGE SIPPEL: Okay, then that's
6 out.

7 BY MR. COHEN:

8 Q Mr. Homonoff, do you recognize
9 Time Warner Cable Exhibit No. 86?

10 A Yes, I do.

11 Q And is that your signature on page
12 22?

13 A Yes, it is.

14 Q And is everything in Time Warner
15 Cable Exhibit No. 86 true and correct?

16 A Yes, it is.

17 MR. COHEN: I move the admission
18 of Exhibit No. 86, Your Honor.

19 JUDGE SIPPEL: Objections?

20 MS. WALLMAN: No, Your Honor.

21 JUDGE SIPPEL: It's received as
22 your Time Warner TWC Exhibit No. 86, it is

1 received now in evidence.

2 (Whereupon the aforementioned
3 document having been previously
4 marked for identification as Time
5 Warner Cable No. 86 was received
6 into evidence)

7 JUDGE SIPPEL: And do you want to

8 -

9 MR. COHEN: Just five minutes,
10 Your Honor, just to summarize what he's done.
11 And then I'll pass the exhibits to Ms.
12 Wallman.

13 JUDGE SIPPEL: All right.

14 BY MR. COHEN:

15 Q And maybe the most efficient way
16 to do this, Mr. Homonoff, turn to paragraph
17 nine. Is that a summary of the three opinions
18 that you have offered in your testimony?

19 A Yes.

20 Q Okay, and just tell us briefly,
21 what are the three areas in which you are
22 offering opinions as an expert in this case?

1 A The three areas focus in my
2 testimony are first that there are a number of
3 significant challenges faced by cable
4 programming networks seeking to gain carriage
5 with cable operators and other distributors in
6 the multi-channel video world.

7 Q And then let me just ask you
8 quickly, if you can, just in bare summary,
9 tell us in broad outline what those challenges
10 are that you are referring to.

11 A The primary challenges are that
12 there are far more speakers or cable
13 programming networks than there are spaces
14 available for the carriage of those networks
15 on multi-channel video systems including cable
16 systems.

17 That is a result of in part
18 technological constraints or challenges in
19 bandwidth that cable operators face. It is in
20 part due to the fact that cable operators have
21 a number of legal obligations with respect to
22 certain networks, programming that they must

1 carry, such as broadcast television stations
 2 under the must carry laws.

3 In addition cable operators then
 4 go through a sort of series of factors that
 5 they consider in the carriage of programming
 6 networks, such as the content of the networks,
 7 the funding, cost, et cetera, all of which
 8 creates what I would consider a challenging
 9 environment for the distribution of any cable
 10 programming network.

11 Q And do you lay out the detail of
 12 that part of your opinion, in the first part
 13 of your report, paragraph 10?

14 A Yes, I did, that's right.

15 JUDGE SIPPEL: What would you
 16 generally categorize that third item as? Are
 17 these characteristics? Are these
 18 qualifications?

19 THE WITNESS: I would consider
 20 these to be qualifications or a set of
 21 requirements, typically, that a cable operator
 22 would go through the consideration of what

1 cable networks they would launch, to how many
2 subscribers they would launch, where they
3 would launch them, et cetera.

4 JUDGE SIPPET: Is that more in
5 the subjective area? There is an element of
6 subjective judgment that goes into that?

7 THE WITNESS: There is an element
8 of that that is - yes, I would say it is. It
9 is a part of more of a business judgment as
10 opposed to technology or legal constraints.

11 JUDGE SIPPET: All right.

12 BY MR. COHEN:

13 Q About how many cable networks are
14 there seeking carriage?

15 A Well, one reference point that I
16 referred to in my testimony is the National
17 Cable Television Association which represents
18 cable operators and cable programmers, lists
19 565 different cable programmers on their
20 website.

21 Q And how many channels does a
22 typical cable system carry?

1 A It will vary, but even on a system
2 that has a large number of networks carried,
3 it would be in the couple of hundred range,
4 would be a large cable system.

5 Q Now, sir, the second opinion that
6 you summarize in paragraph nine relates to
7 hunting licenses, is that right?

8 A Yes.

9 Q And can you briefly tell us what
10 your testimony is with respect to hunting
11 licenses?

12 A Well, my - a hunting license as I
13 indicated is a programming agreement in which
14 the main terms and conditions have been set in
15 place in the negotiation between the cable
16 operator or distribution company, and the
17 cable programming network. But it is a right,
18 not an obligation, to carry by the cable
19 operators. So that the obligation to carry is
20 subsequent to that initial agreement on terms
21 of conditions.

22 The basis of my testimony is that

1 based on my experience as well as the evidence
2 in the marketplace, hunting licenses have been
3 an often used tool especially for startup or
4 early stage cable networks, although in some
5 cases more established ones as well, in order
6 to get a foothold into the programming
7 distribution world.

8 Q Are you aware of any examples of
9 cable networks that have obtained hunting
10 licenses and used those hunting licenses to
11 obtain broad carriage?

12 A Yes.

13 Q Can you give us examples?

14 A There are several. I point to a
15 network calls the Sportsman Channel, which
16 actually had been a client of mine. It's one
17 of the networks I neglected to mention
18 earlier, at Homonoff Media Group. The
19 Sportsman's Channel has used hunting licenses
20 with Comcast among other companies in the
21 business, and has used that to build its
22 business over the last number of years that

1 they've been around.

2 There are also some more widely
3 distributed networks such as Bloomberg,
4 Eternal Word Network, also known as EWTN, the
5 Word Network, and several others that have
6 gained millions of - today sit at several
7 million subscribers in the cable universe, and
8 have utilized hunting licenses.

9 Q Sir, the third thing you mentioned
10 goes back to paragraph nine, the summary of
11 your opinion, relates to what you call
12 evolving business models for video programming
13 companies beyond traditional linear
14 distribution. Do you see that, sir?

15 A Yes.

16 Q And again could you just summarize
17 for the court what that third opinion is?

18 A This is somewhat of the area we
19 were talking about when we reference new
20 media. But there are a number of cable
21 programming networks. They are increasingly
22 looking to alternative practice as a means of

1 distributing their video programming. And by
2 alternative, I mean other than traditional
3 cable or multi-channel video carriage. And
4 utilizing other platforms in order to expand
5 their business opportunities and grow their
6 revenues. And that is, a couple of primary
7 examples of those alternative platforms are
8 Video On Demand the online or Internet world.

9 Q And are there - can you give us
10 some examples of programmers or programming
11 supplies who have used video on demand to
12 build successful businesses?

13 A Yes. One prominent example is a
14 network or a company called Anime On Demand,
15 or the Anime Network. Which began solely as
16 a video on demand network and was quite
17 successful at that, and then really
18 transformed itself into a linear or a 24-hour-
19 per-day network.

20 There also are a number of video
21 on demand services that exist today that have
22 begun as video on demand; haven't yet become

1 linear networks, but I note them in my
2 testimony: For Kids TV, Martha Stewart, Sports
3 School, that have gained traction and
4 distribution solely on the video on demand
5 side.

6 Q And can you give us an example of
7 one of these online distribution models that
8 serve as an alternative to traditional linear
9 distribution of video programming?

10 A One of the most prominent examples
11 is a service call Hulu.

12 Q Is that H-u-l-u?

13 A H-u-l-u, also H-u-l-u dot com is
14 the website, and Hulu is a joint venture
15 involving NBC Universal, NewsCorp, or Fox, and
16 a private equity investor known as Providence
17 Equity.

18 And Hulu is these two traditional
19 media companies came together, created this
20 online business in which their highest quality
21 broadcast network and sometimes cable network
22 programming is then available on an on demand

1 basis on Hulu and the business model for that
2 is at this point at least entirely an
3 advertising based model. The content is
4 distributed on Hulu dot com, and then
5 syndicated to a variety of other websites
6 across the Internet.

7 Q So that is programming that I
8 access through my computer rather than from my
9 TV, right?

10 A That's right.

11 MR. COHEN: No further questions,
12 Your Honor. I will tender for cross-
13 examination.

14 JUDGE SIPPEL: Ms. Wallman.

15 CROSS-EXAMINATION BY COUNSEL FOR WEALTH TV

16 BY MS. WALLMAN:

17 Q Good afternoon, Mr. Homonoff. My
18 name is Kathy Wallman. We met on the occasion
19 of your deposition. I'm counsel for Wealth
20 TV.

21 Mr. Homonoff, in the preparation
22 of your written direct testimony or in

1 preparation for your expert report before
2 that, what steps if any did you take to
3 investigate the dealings between Wealth TV on
4 the one hand and any of the defendants?

5 A The focus of my testimony was on -
6 was to put in context the negotiations in
7 Wealth TV and Time Warner Cable. I'll focus
8 on that since Time Warner Cable was my client.

9 And so I did not look at the
10 specific factual circumstances, concerning the
11 negotiations between Wealth TV and Time Warner
12 Cable.

13 Q Is the same with respect to
14 dealings between Time Warner Cable and Mojo;
15 is that the same answer?

16 A That would be the same answer,
17 yes.

18 Q So you are not offering any
19 opinion, are you, about whether any of the
20 defendants discriminated in their decision
21 about Wealth TV in these cases, are you?

22 A No.

1 Q Now in paragraph 11, which is on
2 page six of your written direct testimony
3 which has been marked as Exhibit 86, thank
4 you, do you need to look at it or do you have
5 it?

6 A Oh, I have it right in front of
7 me.

8 JUDGE SIPPPEL: It's in evidence
9 as 86. And it is no longer confidential.

10 BY MS. WALLMAN:

11 Q You testified here that there is a
12 general hierarchy of preferences and outcomes
13 among cable programming networks seeking
14 carriage with linear, parens, 24 per day,
15 close parens, programming services. Do you
16 see that?

17 A Yes.

18 Q Why is it that that is a
19 preference?

20 A Why is - why is what a preference?

21 Q What you say here is that - please
22 stand by, I think I understand. Are you

1 stating in paragraph 11 that there is at the
2 top of the hierarchy of preferences a
3 particular preference that a cable programming
4 network seeking linear carriage would prefer
5 above all others?

6 A Yes.

7 Q And what is that?

8 A The preference for any cable
9 operator new or established would be to have
10 their service distributed to as many
11 subscribers as they possibly could.

12 Q And if that were attained, that
13 would potentially be a very valuable
14 agreement, right?

15 A Well, it wouldn't be an agreement,
16 but it would be a valuable approach or
17 outcome.

18 Q Well, if they were seeking
19 carriage for a linear - seeking carriage in
20 linear fashion, and they did attain the goal,
21 they did reach agreement with a cable company
22 for such carriage that would potentially be

1 very valuable to the cable company, correct?

2 A Yes.

3 Q Would it also be potentially very
4 valuable to the programming service?

5 A Yes.

6 Q And in your experience if you know
7 are such agreements normally written
8 agreements?

9 A Generally, yes.

10 Q And does the term of such an
11 agreement vary?

12 A Yes.

13 Q Could it be as long as five years?

14 A Yes.

15 Q Could it be as long as 10 years?

16 A It could be.

17 Q Now Mr. Cohen asked you about the
18 565 networks referenced in your testimony; do
19 you recall that in the course of giving your
20 summary of written direct testimony?

21 A Yes.

22 Q You are not testifying, are you,

1 that all 565 as simultaneously and
2 contemporaneously in contention for carriage
3 on cable companies, are you?

4 A That is - no.

5 Q And if you know, how many of the
6 565 are English language programming networks?

7 A I don't know off the top of my
8 head.

9 Q In paragraph 10, in the middle of
10 the page on page five, you have a section
11 called the challenges facing programmers. And
12 at the end of that paragraph which actually
13 ends on page six, you make reference to the
14 very significant bandwidth commitments that
15 most cable operators operate under today. Do
16 you see that?

17 A Yes.

18 Q Do you have any specific knowledge
19 relating to Time Warner about bandwidth
20 constraints on particular systems?

21 A That sentence is not a reference
22 to particular - to Time Warner in particular.

1 It is a general statement. So I'm not making
2 representation as to a particular constraint
3 on a particular Time Warner Cable systems.

4 Q Do you know whether that general
5 statement applies in particular to Time Warner
6 in any particular respect?

7 A Yes, I am aware of the company's
8 dealings and challenges of bandwidth
9 constraint.

10 Q What is your knowledge of that?

11 A My knowledge of that is over - is
12 both historic and current, historic in terms
13 of seeking carriage on behalf of clients who
14 are cable programming networks, seeking to
15 gain carriage, and being engaged in the
16 discussion, the negotiation of strategizing
17 concerning the distribution of cable
18 programming networks.

19 It is also current with respect to
20 my knowledge of the, and interaction with the
21 industry, and Time Warner Cable.

22 Q When you referred at the end of

1 your answer to interaction with Time Warner
2 Cable, do you have any current interaction
3 with Time Warner Cable other than your
4 engagement in this matter as an expert
5 witness?

6 A Not currently.

7 Q Have you had such engagements in
8 the past with Time Warner Cable?

9 A Yes.

10 Q In what capacity? Let me ask
11 first, as an expert witness?

12 A No.

13 Q In what other capacity have you
14 had engagement with Time Warner Cable?

15 A Time Warner Cable has been a - is
16 a client of Pricewaterhouse Coopers. My
17 particular involvement was an engagement
18 looking at the operations of their programming
19 department with respect, again, sort of the
20 mechanical operations I would describe of the
21 programming group, including compliance,
22 contract management, accounting, et cetera.

1 Q And how recently was that?

2 A That concluded in the late spring

3 of 2008.

4 Q 2008? Have you had any
5 engagements as expert witness for Comcast?

6 A No.

7 Q Cox?

8 A No.

9 Q Bright House Networks?

10 A No.

11 Q Any other professional engagement
12 with any of those three?

13 A On behalf of Comcast.

14 Q And what was the nature of that
15 engagement?

16 A Several engagements on behalf of
17 two different groups of clients within
18 Comcast, one is the internal audit function of
19 Comcast in which we did - provided assessments
20 and a set of recommendations regarding various
21 operations in the company including ad sales
22 and - advertising sales and programming, and

1 then on behalf of the general counsel in his
2 legal department providing a set of
3 recommendations with respect to the discovery
4 and document management practices of the
5 company.

6 Q How about with respect to Cox?

7 A No engagements.

8 Q And Bright House Networks?

9 A No engagements with Bright House.

10 Q A few questions ago I was asking
11 you about your knowledge of Time Warner
12 Cable's bandwidth constraints. Do you have
13 any knowledge specific to Comcast about their
14 bandwidth constraints?

15 A As a general matter, yes. Not
16 with regard to some specific system or
17 technological requirement of a specific
18 system.

19 Q Are you aware that Time Warner has
20 taken steps to expand bandwidth?

21 A Yes.

22 Q And what is your awareness of

1 that?

2 A Well, my awareness again is both
3 historic and current; that there have been
4 various waves over the years in which the
5 cable industry has invested more in expanding
6 their channel capacity, dating from the early
7 1980s, the 1990s, the mid to late '90s, and
8 the investment in digital cable which was a
9 response to the direct broadcast satellite
10 competition, and more recently in things such
11 as switch digital among other technologies.

12 Q And would it be fair to say that
13 expanding capacity and finding more efficient
14 uses of bandwidth is a competitive imperative
15 for the cable industry?

16 A It's a - I would say it's
17 extremely important. Imperative is a relative
18 term; I'm not sure.

19 Q But you would agree it's extremely
20 important?

21 A Yes.

22 Q And why is that?

1 A Because it's a very - it's a
2 competitive environment. It's a competitive
3 environment that cable faces from Verizon and
4 AT&T, from the waterline side of programming
5 distributors, from direct broadcast satellite,
6 DIRECTV, and the Dish Network; from the
7 emergence of online, video opportunities. So
8 I would say that the cable historically as it
9 is currently the need is to provide the most
10 technologically proficient and highest quality
11 service that are going to attract and retain
12 subscribers.

13 Q At paragraph 18 of your written
14 direct testimony marked as Exhibit No. 86,
15 I'll give you a chance to get there. You
16 testify as is evidence from the launch in
17 recent years of HD networks for many of the
18 leading broadcast and cable programming
19 brands, the HD format alone appears to have
20 become less of a differentiator in the
21 programming marketplace.

22 Does that observation apply both

1 with respect to distribution networks and the
2 programming itself?

3 A I think you need to maybe clarify
4 that for me.

5 Q Are you aware of programming
6 services that were designed to showcase the HD
7 format?

8 A Yes.

9 Q An example of that would be what?

10 A VOOM HD is one of the services I
11 noted here that really sold itself as - really
12 as its main claim to fame being the provision
13 of HD programming.

14 Q So is it fair to say that over
15 time HD has not - is no longer enough of a
16 differentiator, and it's important for
17 programming services to have a theme in order
18 to attract viewers?

19 A I would say that generally yes, my
20 point being, HD alone is not enough. Services
21 may seek other - to use other factors to
22 differentiate themselves. Theme could be one

1 of them.

2 Q In paragraph 20 you have some
3 observations, a few sentences about the
4 conditions - pardon me, the prevalent
5 considerations for carriage of a cable
6 programming network. Do you see that?

7 A Yes.

8 Q You don't have any specific
9 knowledge do you of how Time Warner or any of
10 the defendants evaluated Wealth TV, what steps
11 they took; is that correct?

12 A That's right.

13 Q You don't have any specific
14 knowledge, do you, about how they evaluated
15 Mojo for carriage, do you?

16 A No, I don't. I should clarify,
17 the only what I saw in the pleadings, in
18 preparation for this case. So no other
19 investigations or any activities.

20 Q So your readings of the pleadings
21 doesn't really constitute investigation, does
22 it?

1 A No, but I don't want to mislead
2 you, so I have the familiarity from the
3 pleadings, and that is all.

4 Q But you don't have any basis for
5 knowing whether the pleadings are true or not,
6 correct?

7 A That is right.

8 Q Do you have any specific knowledge
9 about what Time Warner did or any of the
10 defendants did in evaluating INHD for
11 carriage?

12 A No.

13 JUDGE SIPPEL: Are you an
14 attorney?

15 THE WITNESS: I am no longer
16 practicing, but I am an attorney, yes.

17 BY MS. WALLMAN:

18 Q In paragraph 22, you make some
19 observations about wholesale programming
20 costs, which you refer to as the price it will
21 cost the MVPD to carry the network.

22 So by that do you mean how much

1 the programming service is charging the cable
2 company?

3 A Yes, what is generally a per month
4 per subscriber fee that the cable operator or
5 MVPD pays to the programming network.

6 Q And this being a wholesale price,
7 there - is there such a thing as a retail
8 price for programming?

9 A Yes, the retail price would be the
10 price that you or I would pay to the cable
11 company for the right to be a subscriber and
12 to receive the package of programming that
13 they provide to us each month.

14 Q And is there typically a markup
15 from the wholesale price to the retail price?

16 A Yes.

17 Q Are you offering any opinion about
18 whether the markup on affiliated programming
19 is higher or lower than the markup on
20 independent programming?

21 A No.

22 Q In paragraph 23 you refer to the

1 possibility of a programming service offering
2 a free initial period of carriage. You use
3 the example of Food Network. Do you see that?

4 A Yes.

5 Q And is it your opinion that an
6 initial free period is an enticement that is
7 generally viewed as a positive thing by cable
8 companies?

9 A It would - yes, I would agree that
10 it is generally - it depends a bit on the
11 circumstance, but it may often be viewed as a
12 positive enticement.

13 Q In the final section of your
14 written direct testimony marked as Time Warner
15 Cable No. 86, beginning at paragraph 34 on
16 page 17, you talk about different avenues that
17 programming networks can use to compete. Is
18 it fair to say that the point here is that
19 programming services could gain traction by
20 relying on models other than advertising
21 support of linear carriage?

22 A I'm sorry, can you repeat that?

1 Q Is it fair to say that your point
2 in this section is that cable programming
3 networks could gain traction, could become
4 successful, employing models other than
5 advertising support of linear carriage?

6 A I guess my point is that in
7 addition to or as supplement to cable
8 programming, that these are other alternatives
9 to a standard to gain traction as you say.

10 Q But the selection of a business
11 model is a business decision of a cable
12 programming network; correct?

13 A That's right.

14 Q And you are not suggesting or
15 opining that discrimination under Section 616
16 if it occurred is erased in the event that a
17 network could succeed by abandoning its
18 business plan for linear carriage or any other
19 form of carriage on a cable platform?

20 MR. COHEN: Your Honor, I'm going
21 to object. She hasn't established a
22 foundation the witness knows what the standard

1 is for discrimination under 616. I don't
2 think it's a proper question.

3 JUDGE SIPPEL: I'm going to
4 sustain the objection. That's - you make the
5 right record, you might be able to make that
6 argument in the findings. But this witness is
7 not going to be able to testify to that. No
8 foundation among other things. Ds

9 BY MS. WALLMAN:

10 Q Mr. Homonoff, are you testifying
11 in any respect concerning the allegation of
12 discrimination in this manner?

13 A No.

14 MS. WALLMAN: I have nothing
15 further, Your Honor.

16 JUDGE SIPPEL: Any other
17 questions, Mr. Schonman?

18 CROSS-EXAMINATION BY COUNSEL FOR THE FCC

19 BY MR. SCHONMAN:

20 Q Mr. Homonoff, good afternoon. My
21 name is Gary Schonman. I'm co-counsel for the
22 enforcement bureau.

1 If there comes a time when you
2 teach classes in the Washington area, give me
3 a call, and I'll take one of your classes.

4 You testified earlier that there
5 are lots of programmers relative to the number
6 of available channels, more channels that
7 there are programs. Fewer channels than there
8 are programmers. Is it fair to say that there
9 are lots of subscribers relative to the number
10 of distributors?

11 A Sure. Yes.

12 Q Lot of eyeballs, fewer MVPDs?

13 A Yes, that's right.

14 Q And MVPDs -

15 A Other -

16 Q I'm sorry.

17 A No, I didn't mean to interrupt
18 your question.

19 Q MVPDs cover cable companies,
20 telcos that are -

21 A Yes.

22 Q - that are engaged in video

1 distribution and the satellite companies?

2 A That's right.

3 Q You testified earlier that there
4 are a number of challenges facing cable
5 companies. And there are also a lot of
6 variables facing programmers. Are you
7 familiar with the term, vertically integrated
8 distributors, and non-vertically integrated
9 distributors?

10 A Yes.

11 Q What do those two terms mean?

12 A Well, a vertically integrated
13 distributor, or it might be a vertically
14 integrated programmer, would be a network or
15 a company that includes ownership of or
16 affiliated ownership with both the programming
17 itself as well as the means of distribution of
18 the programming. So if for example a cable
19 programmer had ownership from a cable
20 operator, it would generally be thought of as
21 a vertically integrated programmer.

22 And non-vertically integrated

1 would generally mean its ownership did not
2 include not just a cable operator but a multi-
3 channel video programming distributor.

4 Q In your expert opinion is a
5 vertically integrated company, distributor,
6 capable of treating a non-affiliated network
7 differently than the way it would treat an
8 affiliated network?

9 A It is - sure. Well, is it - it's
10 capable of treating networks similarly, or
11 it's capable of treating networks very
12 differently based not on the distinction
13 between vertically integrated or non-
14 vertically integrated, but between - for many
15 factors. So that many networks are not
16 treated equally. But they are not treated
17 equally because one network has very
18 argumentative leadership, and the other is run
19 by very smooth talking sales people, and the
20 two networks that one has wonderful original
21 content, the other has sort of readily
22 available commodity like programming. Two

1 networks may have very different pricing
2 incentives that are attached.

3 So oftentimes networks are treated
4 - many networks are treated the same, and many
5 networks are treated differently. I hope
6 that answers your question.

7 Q Well, it does and it doesn't. So
8 I'll ask some more questions.

9 I understand there are a lot of
10 reasons why a distributor, a vertically
11 integrated distributor, might treat different
12 programmers differently. But I want to
13 concentrate on whether the fact that it is a
14 vertically integrated entity, would it treat
15 one of its own programs, that is a network in
16 which it has a financial interest, different
17 from a non-affiliated programmer because of
18 the fact that that non-affiliated - because of
19 the fact that it doesn't have a financial
20 interest in a non-affiliated network?

21 A In my experience it's varied in
22 that. In fact I have seen that in vertically

1 integrated companies, where because the
2 financial incentives for the business units
3 and even the individuals that are responsible
4 for those negotiations, are very different,
5 that the negotiations or the interaction
6 between commonly owned entities on the
7 programming and cable operator side do not
8 operate as - do not operate any differently
9 than entirely unrelated third parties.

10 Now I would say the fact that
11 company A, multi-channel or direct broadcast
12 satellite company, owns a network, more likely
13 than not provides a level of familiarity with
14 the product, and perhaps a - therefore a
15 comfort level about dealing with the content
16 of that network. But again, it becomes one of
17 a number of factors as opposed to in my
18 experience the determinative factor between
19 treating someone the same or different.

20 Q So it could be a factor, not
21 necessarily a determinative factor?

22 A Yes.

1 Q All things being equal, and by
2 that I mean if the vertically integrated
3 company had a financial interest in a network
4 that provided a particular type of
5 programming, and a new company, a new
6 programmer, approached that vertically
7 integrated entity with a similarly situated
8 type of programming, form of programming, in
9 your expert opinion would there be a tendency
10 to favor - for the vertically integrated
11 entity to favor its own network over that of
12 the newcomer?

13 A I wouldn't call it a tendency,
14 because I'd have to say it tends to be on a
15 case by case basis. Which is, what is the
16 content involved. What is the genre involved?
17 Is it a genre in which there is a good deal of
18 either excitement in the marketplace; a
19 feeling that it is a must-have kind of
20 programming; a sense that there is a value
21 proposition with respect to the rate structure
22 that makes something much more appealing that

1 it might otherwise be; those factors all go
2 into whether let's say the second service as
3 opposed to your first, the second service
4 being the non-owned versus the first which was
5 the owned, gets treated very differently than
6 the first.

7 Q Well, in my example, let's assume
8 that both entities, the owned network has very
9 similar programming than the nonaffiliated
10 network; very similar. So that's a given.
11 They are going to reach the same audience.
12 It's going to be as dynamic - they are both
13 going to be similarly dynamic, reach the same
14 audience, perhaps it's even a very desirable
15 audience.

16 Would there be a tendency for the
17 vertically integrated company to favor its own
18 company in which it has a financial network
19 over that of the newcomer; the nonaffiliated
20 network?

21 A I'd have to say, it depends. I
22 would not say as a blanket base, because I

1 think there is a fair amount of sensitivity to
2 being you know, to other people conduct the
3 program in negotiations, to what do
4 subscribers really want, and what is it that
5 if we don't add this additional service, what
6 are our competitors doing? Are competitors
7 carrying the other service? Again other
8 factors that to me naturally enter into that
9 equation.

10 Q It's hard for new programmers to
11 break into the industry, isn't it?

12 A Yes.

13 Q To get carriage?

14 A Yes. It's difficult for new
15 programmers and new programming network. Even
16 if they are not a new programming entity.

17 Q I think this is my fault, because
18 I use terms interchangeably. What is the
19 difference between a programmer and a
20 programming network?

21 A AT least as I am using it, the
22 programmer would be the company that may own

1 one, or they may own a large stable of
2 programming networks. The programming network
3 is the individual in this case 24-hour-per-day
4 network. So ABC or Disney owns - is it Disney
5 in the cable business is referred to as a
6 programmer. But Disney owns many cable
7 programming networks. ESPN is a Cable
8 programming network, as I'm using the term.

9 Q On a scale of one to 10, 10 being
10 extremely difficult, and zero being real easy,
11 how hard is it for a programmer with one
12 network, a brand new network, and a brand new
13 programmer, to break into the business, that
14 is, to get distribution?

15 A It's very difficult. I mean a
16 number of the clients that I represented, when
17 I was at Homonoff Media Group, were generally
18 new or early stage and single network owners.
19 And they each attempted to find different ways
20 into the marketplace, or different
21 differentiators, but in some ways, for each of
22 them as well as many that I didn't represent,

1 it's simply very difficult to get any
2 carriage, and to break through with the
3 marketplace.

4 Q So using my scale, zero very easy,
5 10 extremely difficult, where would it fall?

6 A Well, not being - it depends, but
7 I would say as a general matter if you asked
8 me, if someone asked me, you want to start a
9 new cable network, how hard is it on a scale
10 of one to 10, I'd call it a nine.

11 Q You said it depends. What does it
12 depend on?

13 A It depends on a number of the
14 factors that would - in which you approach the
15 marketplace, and I talk about some of them in
16 my testimony, which is of course the content,
17 and both the quality of the content that is
18 being delivered, as well as the genre of the
19 program, cable operators early on have had a
20 number of categories that they've kind of gone
21 back to, MVPDs, not just cable operators, that
22 have been particularly popular: kids

1 programming, sports, certainly especially
2 regional sports or network sports on ESPN,
3 movies, feature films; so that those kind of
4 tried-and-true categories, if it's appealing
5 content, have tended to do very well over the
6 years even if there were others in that
7 category, others that are seen as too much of
8 a niche, if you look at the NCTA list, the ice
9 skating channel, the B movie channel, the
10 archery, the military channel, a variety of
11 others that have maybe passionate audiences,
12 but quite narrow in their content, have found
13 it difficult to gain widespread distribution.

14 Q I'm sort of struggling here with
15 this concept of a cable company trying to
16 reach the most viewers, I'm struggling with
17 that concept relative to the concept of the
18 program that is reaching a narrow audience.

19 We have gone from broadcasting to
20 essentially narrowcasting, people are trying
21 to reach - that is, programmers are trying to
22 reach niche audiences. How do we - can you

1 help me with the struggle? I mean what is the
2 relationship between trying to reach the most
3 eyeballs, but having narrowcasting?

4 A Well, I think the challenge for
5 the cable operator, the DVS and the telco as
6 well, is how do they attract and retain the
7 greatest number of subscribers they possibly
8 can. Having a greater number of subscribers
9 adds to the asset value of the corporate
10 entity; it adds to the cash flow, the revenue
11 per subscriber per month that you are taking
12 in; and so your ultimate goal is how do I, if
13 I'm starting out, how do I attract
14 subscribers? If I'm well established, how do
15 I maintain the subscribers that I have and not
16 lose them to my competitors?

17 You are less concerned with
18 eyeballs as a cable operator from a how many
19 people are watching channel 99 through 212,
20 than you are for any of your channels, do they
21 help me attract and retain subscribers.

22 So that the balance you have to

1 strike is, having enough different types of
2 content so that you might draw in people. For
3 example, I'll go back to my American Desi
4 example, which was a - the Dish Network was
5 quite aggressive in launching some
6 international channels. And that American
7 Desi eventually won its distribution on the
8 Dish Network.

9 If there was not a lot of
10 advertising associated with that based on the
11 size of the audience, but there were certain
12 subscribers that were willing to be Dish
13 subscribers because Dish had Indian-oriented
14 programming, and many at least at the time the
15 cable operator and DIRECTV operators did not.

16 So there is a thought process that
17 a cable operator goes through in analyzing
18 this content, which is, is this content of the
19 genre and is the specific programmer of the
20 type that I think will either actually attract
21 or help me retain subs.

22 Q I want to switch gears for a

1 moment - thank you very much for that - and
2 switch to fledgling networks. You indicated
3 earlier I believe you have counseled several
4 ?

5 A Yes.

6 Q That have approached you? A
7 fledgling network doesn't have much to present
8 to a prospective cable company, in terms of
9 hard core subscriber information, correct?

10 A That's right.

11 Q If they are not on the air.

12 A If they are not on the air.

13 Q If they are nor carried anywhere.

14 In that type of situation, what is it that a
15 fledgling network can show a cable company in
16 trying to entice the cable company to carry
17 them?

18 A You look at the reason you got
19 into the business if you want to establish
20 your cable network. What is your reason for
21 being? Why do you think that what you are
22 doing or the content that you are going to be

1 producing, will be of value in the
2 marketplace?

3 One of my services, the services
4 that I did some work for, was the Jewish
5 Channel. There are several networks that are
6 aimed at the Jewish community; this was one of
7 them. Obviously, and they were not yet
8 distributed, but the way they approached it
9 was, let's first gather as interesting content
10 as - first of all do we think the demographic
11 that we are selling to is worthy, either big
12 enough or in that case willing to spend money,
13 because it was an a la carte monthly service.
14 They went out and had to invest, spend money
15 to purchase or license various original
16 programming, or motion pictures, or things
17 that they thought would be of interest, and
18 then create materials that you take to the
19 marketplace. You create a demo reel, which is
20 kind of your marketing tool. You get others
21 in the industry from almost a grass roots
22 perspective hire people that you think have a

1 track record and will help you in
2 understanding what it is that will appeal to
3 cable operators. That was obviously part of
4 the reason that people approached me. There
5 were others who had similar skillsets.

6 So you look at your relative value
7 proposition. You look at the audience you are
8 selling to, and you see where the intersecting
9 points are. Part of that might simply be,
10 well, we are going to invest a lot of money
11 and have our service at a very low rate for
12 some period of time, or a very favorable split
13 at an a la carte price, it's a variety of
14 factors in trying to play up why you got into
15 it in the first place to entice someone to
16 carry you.

17 Q All right, let's take this
18 fledgling company and fast forward a year.
19 This fledgling company has now been relatively
20 successful in gaining carriage on some - on a
21 few cable companies but not the major players,
22 say, not the satellite delivery companies and

1 not coverage on some of the large cable
2 companies. And they are salivating to get
3 coverage on those big guys' systems. But they
4 have been on the air in some markets here and
5 there for say a year.

6 Now they approach the big players.
7 What would you expect that cable network then
8 to show the big players? What type of
9 presentation would they make? What type of
10 information would you expect them to show?

11 A After they have had some
12 distribution and are then - at that point at
13 which they've got some distribution but they
14 are seeking -

15 Q Yes, that's correct.

16 A Well, part of that track record,
17 it might be the - it might be anecdotal
18 evidence of subscriber reaction from places
19 where it had been carried. If there was an
20 ability to demonstrate an impact, difficult to
21 show oftentimes, but where there were
22 subscriber gains in particular regions where

1 something was carried, an ethnic service might
2 have an easier time of that than a non-ethnic
3 service by the very unusual nature of it.

4 But you would also be looking at
5 what if any competitors have done. So if at
6 some point are there competitors to that cable
7 operator that are carrying the service that
8 perhaps had not at the beginning, if that is
9 an important factor in whether an operator
10 will or will not carry a service.

11 Q You spoke about anecdotal
12 information. Do you mean numbers, studies,
13 analyses or viewership? Is that what you are
14 referring to?

15 A Yes, I mean you could do that
16 through surveys, through marketing research.
17 It would be difficult to have a - it might be
18 - give me any number, but depending on how
19 many subscribers, how much evidence there was
20 of how much activity. So you might be relying
21 more on anecdotal than scientific.

22 Q Well, you sort of anticipated my

1 next question. In terms of studies and viewer
2 analysis of this, I'll characterize it as this
3 still fledgling network, because it's only on
4 a few systems at this point, it's not going to
5 get rated by let's say the Nielsen Company,
6 correct?

7 A Well, you could get Nielsen
8 ratings with respect to individual markets, so
9 you could get localized Nielsen information
10 even if you didn't yet have national Nielsen
11 information. And in fact I know from my time
12 within CNBC there were times when we would use
13 local information as a selling tool. So even
14 if it might tell a better story, depending on
15 where you were, than a national story,
16 depended on your network.

17 Q I'm not at all familiar with how
18 the Nielsen Company operates, but can a
19 programmer who is carried on say just a
20 handful of small cable companies, could that
21 programmer go to the Nielsen Company and ask
22 for a Nielsen study of how its programming is

1 being received by subscribers in those markets
2 where it is being carried?

3 A Depending on - as long as it was
4 carried in a market, then that market should
5 roughly - the Nielsen subscribers in the
6 market should roughly mirror the complexion of
7 the marketplace. You have a higher margin of
8 error if you are dealing with smaller markets.
9 People in the business are always - have their
10 issues about the science around Nielsen
11 ratings. But you can approach Nielsen for
12 individualized studies. You can approach
13 Nielsen for localized studies of marketplaces,
14 even in the absence of the national, what we
15 think of as the national rating.

16 Q Setting aside Nielsen, let's just
17 say for whatever reason you decided not to go
18 to Nielsen for a rating survey, are there
19 marketing companies which will do a survey for
20 you to determine how your still fledgling
21 network is being received in the community?
22 And by received I mean whether people like it,

1 whether they watch it, whether they enjoy it,
2 whether they crave it?

3 A Sure.

4 Q Lots of companies?

5 A I don't know if I could give you a
6 number. But I know based on my experience
7 that I and companies I have worked for have
8 hired companies to do specialized marketing
9 surveys of their audience, of the profiling of
10 their audiences, which are outside of the
11 Nielsen rating system.

12 Q I just have a few more questions.
13 I'm not going to belabor this, Your Honor.

14 Let's fast forward say another
15 year or two. Our company now that we are
16 talking about is now carried on a few more
17 cable systems. But they still want to get on
18 the systems by the big players.

19 Is it fair to assume that when
20 they approach the large cable companies that
21 they would show even more information about
22 their programming and how it's received and

1 studies and other information in order to
2 convince these cable carriers that they should
3 be carried?

4 A I would presume that to be part of
5 their presentation.

6 Q Now in my example, this
7 theoretical programming network has been
8 carried for a number of years, say three
9 years. At that point is it considered a new
10 cable network?

11 A New isn't a term of art. I guess
12 people would refer to it as probably most
13 likely still refer to it as an early stage.

14 JUDGE SIPPPEL: Is that something
15 more than fledgling?

16 THE WITNESS: These are - there
17 is no science to these terms. Startup to me
18 probably is more purely right at the
19 beginning. But early stage, fledgling, even
20 relatively new, are terms that networks have
21 for several years, and sometimes well into
22 their existence, that you think of as early

1 stage.

2 MR. SCHONMAN: I know this is not
3 a science -

4 JUDGE SIPPEL: I know, but is
5 more - is it something like turn key or green
6 tree like the paper companies or something
7 like that? It gets all packaged up, you know
8 it's materials for the taking, just got to
9 meet the price.

10 THE WITNESS: Well, the service
11 is when you distribute the network, the
12 product itself is for national network is
13 locked effectively; it's the same product that
14 everybody gets. So you decide for that linear
15 network either you are going to take it or you
16 are not going to take it. But you may decide
17 you are going to distribute it to all your
18 subscribers, to a relative - a large portion
19 but not all your subscribers; or perhaps to a
20 very small number of your subscribers, or for
21 most networks or many networks not at all.

22 JUDGE SIPPEL: They just won't

1 take it?

2 THE WITNESS: So for - yeah,
3 which is going back to that 565, there are a
4 number of companies on that list that just
5 don't - for one reason or another haven't been
6 able to get any or have gotten minimal
7 carriage.

8 JUDGE SIPPEL: All right, okay.

9 BY MR. SCHONMAN:

10 Q I'm going to switch gears now.

11 You talked about one of the
12 factors, one of the challenges facing the
13 cable companies is the challenge of capacity.
14 Are you familiar with switched digital
15 technology?

16 A I do not consider myself a
17 technologist, but I am familiar with the term.

18 Q You used it?

19 A Yes.

20 Q What is it?

21 A Switched digital is a - is a
22 technology in which in effect instead of

1 sending hundreds of channels down to your
2 television set, there is one channel and that
3 one channel is switched from different
4 programming source to different programming
5 source depending on what the individual
6 subscriber is calling up.

7 Q Is that in existence today?

8 A Time Warner Cable has to my
9 understanding has some of its systems on
10 switch digital.

11 Q Is that the only company you are
12 aware of that has this technology in place
13 today?

14 A It - I don't believe it's the only
15 one, but I can't think of others right now.

16 Q It's new?

17 A It is a new technology, yes.

18 Q In your expert opinion will it
19 significantly relieve this capacity problem
20 that cable companies are experiencing?

21 A It will have an impact, and it
22 will have a positive impact. My sense of

1 where it's been introduced thus far is that
2 it's an assistance but it is not an
3 elimination of the bandwidth issue even for
4 those cable operators that introduce it.

5 Q For those markets that currently
6 have this technology in place, is it up and
7 running or is it in testing mode, beta mode so
8 to speak?

9 A I believe it's a mix. I believe
10 that it is running on some areas in what I
11 would call beta, what you call beta testing
12 mode.

13 Q So as we sit here today, there is
14 still a capacity problem or there is not still
15 a capacity problem for cable companies
16 generally?

17 A There is still a capacity problem
18 for cable companies generally.

19 MR. SCHONMAN: I have no further
20 questions, thank you.

21 JUDGE SIPPEL: Anybody have any
22 further questions?

1 MR. COHEN: No redirect, Your
2 Honor.

3 JUDGE SIPPEL: No further
4 questions. You are excused as a witness.
5 Thank you very much.

6 THE WITNESS: Thank you.

7 (Witness excused)

8 JUDGE SIPPEL: Let's go off the
9 record.

10 (Whereupon at 4:40 p.m. the
11 proceeding in the above-entitled
12 matter went off the record to
13 return on the record at 4:43 p.m.)

14 JUDGE SIPPEL: What time is it
15 back there? Twenty of 5:00. Excellent time
16 today. WE are in recess until 9:30 tomorrow
17 morning. Thank you very much.

18 (Whereupon at 4:44 p.m. the
19 proceeding in the above-entitled
20 matter was adjourned)

21

22

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