

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 15

Tuesday, April 28, 2009

9:30 a.m.

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

BEFORE:

RICHARD L. SIPPEL
Chief Administrative Law Judge

APPEARANCES:

On Behalf of Herring Broadcasting, Inc. d/b/a
WealthTV:

KATHLEEN WALLMAN, ESQ.
Of: Kathleen Wallman, PLLC
9332 Ramey Lane
Great Falls, VA 22066

(202) 641-5387

JOSHUA ROSE, ESQ.
Of: Rose & Rose, P.C.
1320 19th Street, N.W.
Suite 601
Washington, D.C. 20036

(202) 331-8555
FAX (202) 331-0996

On Behalf of Time Warner Cable Inc.:

JAY COHEN, ESQ.
GARY CARNEY, ESQ.
SAMUEL E. BONDEROFF, ESQ.

Of: Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064
Cohen - (212) 373-3163
Carney - (212) 373-3051
Bonderoff - (212) 373-3222
Cohen - FAX (212) 492-0163

Carney - FAX 0051
Bonderoff - FAX - 0222

ARTHUR H. HARDING, ESQ.
Of: Fleischman and Harding LLP
1255 23rd Street, NW
Eighth Floor

Washington, DC 20037
(202) 939-7900
FAX (202) 939-7904

On Behalf of Bright House Networks LLC:

R. BRUCE BECKNER, ESQ.
Of: Fleischman and Harding LLP

1255 23rd Street NW
Suite 800
Washington, DC 20037
(202) 939-7913
FAX (202) 387-3467

On Behalf of Cox Communications, Inc.:

DAVID E. MILLS, ESQ.
JASON RADEMACHER, ESQ.
Of: Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036-6802

Mills - (202) 776-2865
Mills - FAX - (202) 776-4865

On Behalf of Comcast:

DAVID H. SOLOMON, ESQ.
J. WADE LINDSAY, ESQ.

Of: Wilkinson Barker Knauer, LLP

2300 N Street, NW
Suite 700
Washington, DC 20037
(202) 783-4141
FAX (202) 783-5851

MICHAEL D. HURWITZ, ESQ.

Of: Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006-1238
(202) 303-1135
FAX (202) 303-2000

On Behalf of the Federal Communications

Commission:

GARY SCHONMAN, ESQ.

ELIZABETH YOCKUS MUMAW, ESQ.

Of: Federal Communications Commission

Enforcement Bureau
445 12th Street, SW
Washington, DC 20554

(202) 418-1795

FAX (202) 418-5916

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

2 9:37 a.m.

3 JUDGE SIPPEL: On the record. It
4 is Wednesday. It is Tuesday. This would be
5 the 28th of April and we're still with the
6 Defense case on this and it looks like Cox
7 Communications is now up.

8 Mr. Mills. I have one question,
9 one procedural question. So far I've got
10 witnesses through Wednesday, Alan Dannenbaum
11 and Matt Bond and who will be the witnesses
12 then on Thursday. Do we know?

13 MR. MILLS: Well, actually the
14 rest of the Cox witnesses will go Thursday and
15 maybe one on Friday. On Thursday, I
16 anticipate Bob Wilson.

17 JUDGE SIPPEL: Okay.

18 MR. MILLS: And Kimberly Edmunds.

19 JUDGE SIPPEL: Bob Wilson.

20 Kimberly?

21 MR. MILLS: Edmunds.

22 JUDGE SIPPEL: Okay.

1 MR. MILLS: And then Leo Brennan
2 actually cannot make it until Friday and we'll
3 put other witnesses in. We may move some of
4 the expert witnesses earlier to Thursday
5 afternoon instead of Friday to make sure we
6 don't have or minimize any downtime for the
7 Court.

8 JUDGE SIPPEL: Appreciate that.
9 Appreciate that very much. Okay. So at least
10 we will have Bob Wilson and who did you say?
11 Kimberly?

12 MR. MILLS: Kimberly Edmunds.

13 JUDGE SIPPEL: Edmunds, okay. At
14 least we'll definitely have those two on
15 Thursday. Is that right?

16 MR. MILLS: Yes.

17 JUDGE SIPPEL: Wednesday.
18 Thursday. Right.

19 MR. MILLS: Today we just have
20 David Asch which I will present and then
21 there's the two Bright House witnesses.

22 JUDGE SIPPEL: I've got Steve

1 Miron and Ann Stith.

2 MR. MILLS: Correct.

3 JUDGE SIPPEL: That's fine. Okay.

4 Let's begin then.

5 MR. MILLS: All right.

6 JUDGE SIPPEL: If you're ready.

7 Mr. Asch, will you come forward
8 please?

9 MR. MILLS: I call David Asch to
10 the stand.

11 JUDGE SIPPEL: Thank you, sir.
12 Please come up and raise your right hand.

13 WHEREUPON,

14 DAVID ASCH

15 was called as a witness for the Cox and,
16 having been first duly sworn, assumed the
17 witness stand, was examined and testified as
18 follows:

19 (Off the record discussion.)

20 DIRECT EXAMINATION

21 BY MR. MILLS:

22 Q Good morning, Mr. Asch.

1 A Good morning.

2 Q Could you please state your full
3 name and spell it for the record?

4 A David Asch, A-S-C-H.

5 Q And where do you work?

6 A At iN DEMAND Networks.

7 Q Would you give us your title and
8 briefly describe your responsibilities?

9 A Executive Vice President and I
10 oversee programming and new business
11 development and some other areas.

12 Q How long have you been with iN
13 DEMAND?

14 A Since 2002 on a full-time basis,
15 July.

16 Q Okay. Just want to make sure you
17 keep your voice up.

18 JUDGE SIPPEL: Yes, please.

19 BY MR. MILLS:

20 Q Since 2002 on a full-time basis.
21 Can you explain were you there previously?

22 A I was. I worked from 1997 to 1999

1 on a full-time basis as well.

2 Q What were you doing during that
3 two year period?

4 A I worked in the finance area and
5 in business development type areas.

6 Q Where did you go after you left in
7 DEMAND in `99?

8 A I worked for a food start-up
9 company called Impromptu Gourmet.

10 Q And then you returned to in
11 DEMAND.

12 A In January of 2002, I returned as
13 a consultant for about six months and in July
14 I was hired full time.

15 Q And the position you were first
16 hired into was what?

17 A Vice President of Product
18 Management.

19 Q And your current position is
20 Executive Vice President?

21 A Yes.

22 Q Of Programming?

1 A It's more general than that. I
2 handle programming though. It's just
3 Executive Vice President, but I handle
4 Programming.

5 MR. MILLS: Let me show you what's
6 been marked as Cox Exhibit 84 of
7 identification.

8 THE WITNESS: Thank you.

9 JUDGE SIPPEL: Thank you. Okay.
10 This is entitled "Prefile Direct Testimony of
11 David Asch" marked for identification as Cox
12 Exhibit 84.

13 (Whereupon, the document
14 referred to was marked
15 as Cox Exhibit No. 84
16 for identification.)

17 BY MR. MILLS:

18 Q Mr. Asch, do you recognize this
19 document?

20 A Yes.

21 Q And what is this?

22 A This is my direct testimony that I

1 filed in advance.

2 Q And do you see on the last page of
3 that testimony a signature page?

4 A Yes.

5 Q Is that your signature?

6 A Yes.

7 Q Is this testimony the testimony
8 that you wish to present in this case?

9 A Yes.

10 Q Is it true and accurate?

11 A Yes.

12 MR. MILLS: Your Honor, at this
13 time, I would like to move for admission of
14 Cox Exhibit 84 into evidence.

15 JUDGE SIPPEL: Any objections?

16 MS. WALLMAN: A question, Your
17 Honor, and perhaps an issue. Mr. Mills and I
18 had a discussion about paragraph 62.

19 MR. MILLS: Yes. We -- There had
20 been an objection of paragraph 62 and we are
21 not presenting Mr. Asch as anything other than
22 a fact witness. So we are prepared to strike

1 paragraph 62 at the request of WealthTV.

2 JUDGE SIPPEL: Let's do that right

3 now. So I'll grant the motion to strike.

4 Paragraph 62 of Cox 84 is out, stricken.

5 MS. WALLMAN: Thank you and with

6 that paragraph stricken I have no objection.

7 MR. MILLS: Okay. Thank you.

8 JUDGE SIPPEL: Subject to that

9 ruling, the testimony of David Asch prefiled

10 direct testimony of David Asch as identified

11 as Cox Exhibit 84 is received in evidence as

12 84. Thank you.

13 (The document referred

14 to having been

15 previously marked for

16 identification as Cox

17 Exhibit No. 84, was

18 received in evidence.)

19 MS. WALLMAN: One other

20 clarification and pardon me.

21 JUDGE SIPPEL: That's okay.

22 MS. WALLMAN: This document is

1 marked highly confidential.

2 MR. MILLS: There is highly
3 confidential information that remains in this
4 document. We've provided redacted versions to
5 everyone. We've cut down rather dramatically
6 the types of the amount of material in here
7 that is highly confidential. But there still
8 are a few things in here that have been marked
9 highly confidential.

10 MS. WALLMAN: I'm just wondering
11 what the rules of the road are for your direct
12 examination and for my cross. We have people
13 in the room who are not permitted to be
14 purview to highly confidential.

15 MR. MILLS: When I -- I don't
16 believe that anything that I'll ask him for on
17 a very brief direct is going involve highly
18 confidential information. But to the extent
19 that you wish to cross him about that, of
20 course, you obviously welcome to do that and
21 we'll just have to clear the room when and if
22 that occurs.

1 JUDGE SIPPEL: That won't be a
2 problem.

3 MS. WALLMAN: Thank you.

4 BY MR. MILLS:

5 Q Mr. Asch, directing your attention
6 to paragraph eight, the discussion that really
7 begins on paragraph eight, could you very
8 briefly summarize for the Court the evolution
9 and the technology with regard to high
10 definition television in the early 2000s,
11 2001, 2002?

12 A Can I read this real quick?

13 Q Sure. Absolutely. Take your
14 time.

15 A Thank you.

16 JUDGE SIPPEL: This is paragraph
17 28 he's read to himself.

18 MR. MILLS: It's paragraph eight.

19 JUDGE SIPPEL: I'm sorry.
20 Paragraph eight.

21 MR. MILLS: Through 16.

22 JUDGE SIPPEL: Thank you.

1 MR. MILLS: And we're not going to

2 --

3 JUDGE SIPPEL: Let's go off the
4 record.

5 (Whereupon, a short recess was
6 taken.)

7 JUDGE SIPPEL: Back on the record.

8 BY MR. MILLS:

9 Q Let me back up a second. Can you
10 just describe very briefly for the Court what
11 iN DEMAND does? What's its primary business?

12 A We're an aggregator of Pay Per
13 View and Video On Demand programming.

14 Q When you say "aggregator" of
15 programming could you just explain what that
16 means?

17 A Sure. We license programming from
18 any number of program suppliers and distribute
19 it on a linear or Video On Demand basis this
20 transactional programming to cable operators
21 across the country.

22 Q And who are the cable operators

1 that you primarily distribute it to?

2 A We generally distribute to most of
3 them at least some of our products. But
4 certainly large MSOs like Comcast and Cox,
5 Time Warner, Bright House, Cablevision,
6 Charter and then some other MSOs like
7 Mediacom, Grande, Midcontinent, Service
8 Electric, etc.

9 Q And then going back to my first
10 question can you tell us what happened in the
11 early 2000s with regard to HD technology?

12 A Sure. In the early 2000s, much of
13 what people saw on television was in standard
14 definition which is 480 lines of resolution on
15 TV screen. By, say, the early 2000s, the
16 technology had advanced both on the production
17 side and the equipment side such that high
18 definition television was a reality and was
19 commercially buyable and high definition
20 television has far greater resolution on the
21 video quality. It also has better audio
22 quality as well.

1 When you produce high definition,
2 it has to be done with special equipment.
3 That equipment is often much more expensive
4 for producers. If you're a consumer of high
5 definition, you have to have a special TV set
6 as well, a high definition TV set. Both of
7 those things while they were very expensive at
8 that time it looked as if over the next
9 several years it would be much more affordable
10 both on the production side and on the
11 consumer side.

12 Q Could you -- What did you do as a
13 result of that with regard to your business?

14 A Well, we started looking into high
15 definition and there was very little
16 programming available for the cable operators.
17 At that point in time because it looked like
18 it was going to be a big thing we looked into
19 aggregating high definition programming.

20 Q Okay. Did there come a time when
21 you decided to offer a product --

22 JUDGE SIPPEL: Sorry to interrupt.

1 There's a Blackberry alarm. Check them. Off
2 the record.

3 (Whereupon, a short recess was
4 taken.)

5 JUDGE SIPPEL: On the record.
6 Sorry about that. Sorry to interrupt. Mr.
7 Mills.

8 MR. MILLS: Thank you.

9 BY MR. MILLS:

10 Q Just direct your attention to the
11 INHD and INHD2 channels. Can you describe how
12 that was first conceived at iN DEMAND?

13 A Yes. Because there was a little
14 programming available, we were asked to
15 aggregate programming on a linear basis for
16 the cable operators.

17 Q For which cable operators?

18 A For Comcast, Cox, Time Warner,
19 Bright House.

20 Q Were those the owners of iN
21 DEMAND?

22 A Yes.

1 Q Why was iN DEMAND in a
2 particularly good position to do that?

3 A There were two reasons. From an
4 infrastructure standpoint, we actually had a
5 transponder where we could put the channels.
6 That's a satellite in the sky where you
7 actually have to have the channels sitting and
8 we actually had transponder space.

9 We also originated some of these
10 things in our origination facility. So we had
11 some experience in infrastructure there and
12 then lastly on the programming side a lot of
13 the content at that time was in the sports and
14 movie and music, specifically concert area,
15 and we had relationships with a lot of those
16 folks be they studios, be they small movie
17 suppliers or event suppliers. So we were well
18 positioned to do that.

19 Q When you say content was
20 available, do you mean HD content?

21 A Yes.

22 Q Okay. Who was responsible for

1 this INHD/INHD2 project within in DEMAND?

2 A It was a group effort, but I was
3 largely responsible. My colleague Sergei
4 Kuharsky who at that time headed up Marketing
5 was involved. Stacie Gray who at that time
6 headed up Creative Services was involved and
7 then some other folks as well.

8 Q And who controlled the decision
9 making with regard to the development of that
10 programming?

11 A I controlled that for the most
12 part.

13 Q Was there any owner involvement in
14 that?

15 A None.

16 Q Can you -- Did you identify a
17 particular demographic when you first started
18 INHD/iHND2 that you were attempting to serve?

19 A Yes.

20 MR. MILLS: Let me show you Cox
21 Exhibit No. 39 which has already been admitted
22 into evidence. I will distribute a copy for

1 everyone's convenience.

2 JUDGE SIPPEL: Thank you. This is
3 in evidence?

4 MR. MILLS: Yes, sir.

5 JUDGE SIPPEL: Thank you.

6 BY MR. MILLS:

7 Q Mr. Asch, this is a couple of
8 emails that we've handed you as Cox Exhibit
9 39. Do you recognize these?

10 A Yes.

11 Q And what is this?

12 A This is an email from Dan York to
13 a group of people, primarily the management of
14 iN DEMAND.

15 Q Are you one of the recipients of
16 this email?

17 A Yes.

18 Q What was the significance of this
19 email? This is in September of 2003, correct?

20 A Yes.

21 Q What was the significance of this
22 email with regard to the INHD and INHD2

1 channels?

2 A To some degree, this framed the
3 audience that we were going to be going after
4 and with the programming we would be looking
5 to acquire would look like.

6 JUDGE SIPPEL: Is that a highly
7 confidential on this? Is that going to stay?

8 MR. MILLS: No, Your Honor. We're
9 going to remove that designation from this
10 document.

11 JUDGE SIPPEL: Thank you.

12 BY MR. MILLS:

13 Q I direct your attention the first
14 paragraph on the first page. Could you just
15 read that to yourself please?

16 A Okay.

17 Q Can you please describe for us
18 what the demographic audience that INHD/INHD2
19 was targeting at the beginning of its
20 development?

21 A Men 18 to 49.

22 Q And why was that?

1 A Those are the people that
2 generally were buying the TV sets. There
3 weren't a lot of high def consumers, but the
4 ones that could afford that generally were a
5 little more upscale. So it meant that they
6 were a little older and they were often people
7 who watched things like sports or movies and
8 that's why they intended to be men.

9 Q There was some testimony in this
10 case about the demographic or some confusion
11 about 18 to 49 or 25 to 49 as the age group
12 that was being targeted. Could you explain
13 what your target demographic was? Other than
14 male, what was the age group and can you
15 explain the difference between those?

16 A Well, men 18 to 49 is a
17 destination used by Nielson for ratings
18 purposes. Our network wasn't rated. When we
19 talk about 25 to 49, that simply refers to an
20 area that we were likely targeting more of.
21 We were not targeting the very young males in
22 general. It tended to be a subset of that 18

1 to 49, but the higher end, say, the 25 to 49.

2 Q Did you use one or both of those
3 different age groups when you described the
4 demographic?

5 A We used both. It depended.

6 Q Okay. Can you describe briefly
7 for the Court what you did to acquire
8 programming, what programming you were looking
9 for and how you acquired it?

10 A Early on, there was not a lot
11 available. So we had a team of people that
12 would go out and either solicit programming
13 from producers or would be receiving pitches
14 from producers and suppliers and we would make
15 decisions based on budgetary constraints. In
16 some cases, we acquired product in bulk. In
17 other cases, we acquired one op programs.

18 Q When you acquired programming in
19 bulk, what does that mean?

20 A In a lot of cases if you buy many
21 programs at once, you often get a break on
22 price. So if you buy ten episodes as opposed

1 to one episode of something the aggregate cost
2 might be a little bit more attractive.

3 Q What were trying to acquire? What
4 kind of programming were you trying to
5 acquire?

6 A We tried to target a lot of sports
7 content especially early on. We had a natural
8 -- We had an ability to help in some cases
9 produced events in high def in addition to
10 sports. So, for instance, whether it be a
11 boxing match or a mixed martial arts match we
12 might be able to co-produce those in high def
13 again at a pretty affordable cost.

14 We also looked to acquire movies
15 because movies look good in high def and that
16 also served the target audience. We also
17 acquired some music, especially concerts. We
18 ran concerts on Pay Per View and Video On
19 Demand and we had relationships with those
20 suppliers as well.

21 Q What kind of concerts did you
22 particularly target?

1 A We focused on rock concerts for
2 the most part and in a lot of cases they were
3 nostalgia bands. Ozzy Osbourne is an example.
4 The Who is an example. In some cases or I
5 should say most cases these were taped shows.
6 They often were not live.

7 Q Were you able to get programming
8 in these categories for both INHD and INHD2 24
9 hours a day, seven days a week, 365 days a
10 year?

11 A Yes. In all of our deals, we made
12 sure we could run them on both networks.

13 Q Was there any other kind of
14 programming that you also had to include in
15 these channels?

16 A We did. Because there was almost
17 a catch-as-catch-can type of approach since
18 there wasn't a lot of high def programming, in
19 some cases we acquired some animated
20 programming, some family type programming,
21 some kids programming.

22 Q Why would you include on a channel

1 with a demographic of 18 to 49 males or 25 to
2 49 males?

3 A I admit it's not a perfect fit,
4 but we were in the business of programming two
5 networks on a full-time basis 24/7/365 and we
6 needed to fill the channels.

7 Q Over time, did that change with
8 regard to children's and other type of off
9 demographic material?

10 A Yes. In most cases, we would even
11 schedule that very early in the mornings. We
12 did not schedule that in prime time. And as
13 we acquired a bigger library of content that
14 suited more of our audience we would retire
15 that programming.

16 Q So what programming were you
17 retiring?

18 A Lot of the kids --

19 MS. WALLMAN: Objection. This
20 goes beyond the scope of direct.

21 MR. MILLS: The direct testimony
22 directly addresses the programming of this

1 that's essential to this case and this is
2 addressing information that came up in other
3 prefiled direct which is the purpose of the
4 oral direct I believe.

5 JUDGE SIPPEL: And this is
6 relevant to what? This targeting this group
7 18 to 49?

8 MR. MILLS: The males 18 to 49 and
9 how the programming decisions were made at iN
10 DEMAND with regard to the channel that's at
11 issue here.

12 JUDGE SIPPEL: I'll overrule the
13 objection.

14 MR. MILLS: Thank you, Your Honor.

15 BY MR. MILLS:

16 Q What was the material that was
17 retired?

18 A A lot of the animated product, a
19 lot of the kids and general family
20 entertainment product.

21 Q Okay. Let's move on to paragraph
22 28.

1 JUDGE SIPPET: You said where you
2 were going to continue showing -- Your deals
3 or agreements would allow you to show on what?
4 Both channels? Is that what you said?

5 THE WITNESS: Yes.

6 JUDGE SIPPET: Both channels being
7 what? The new INHD channel?

8 THE WITNESS: INHD and INHD2.

9 JUDGE SIPPET: And that being
10 what? What does each one do?

11 THE WITNESS: They were two
12 separate channels, both 24/7 channels.

13 JUDGE SIPPET: Yes.

14 THE WITNESS: And when you say
15 what did they do.

16 JUDGE SIPPET: Well, was one of
17 them exclusively in HD programming?

18 THE WITNESS: No, they were both
19 all high def programming.

20 JUDGE SIPPET: They were all --
21 Both of them?

22 THE WITNESS: They both were high

1 def programming.

2 JUDGE SIPPEL: All right. Then
3 what kind of programming would be on -- Was
4 there different programming on each one?

5 THE WITNESS: We -- The two
6 channels did not have the same things on at
7 the exact same time. But a lot of the content
8 from one channel might air at a different time
9 on the second channel as well.

10 JUDGE SIPPEL: Was there a --
11 Obviously, there was some kind of a business
12 reason for doing it that way. Why couldn't
13 you do the same thing with one? You're going
14 to get twice as much coverage or that goes to
15 different regions or?

16 THE WITNESS: Part of that, there
17 weren't a lot of channels out there. So when
18 we launched the two services they didn't have
19 a lot of place to showcase high def
20 programming. So they had two channels. We
21 just tried to program them a little
22 differently so you didn't have what was on one

1 channel exactly mirror what was on the other
2 channel. But it was all high def programming
3 and it was a lot of the same programming.

4 JUDGE SIPPET: And it was designed
5 to -- Both were targeted at the same male 18
6 to 49.

7 THE WITNESS: Yes.

8 JUDGE SIPPET: Just that there was
9 that variance for -- I'm not quite sure I
10 understand why, but it's -- there's nothing
11 inconsistent about doing it that way, the way
12 you explained it.

13 THE WITNESS: Right.

14 JUDGE SIPPET: So I'll just accept
15 it the way you explained it.

16 THE WITNESS: One example I can
17 give if it adds a little bit of --

18 JUDGE SIPPET: Do you mind if I do
19 this?

20 MR. MILLS: No, not at all.

21 JUDGE SIPPET: Go ahead.

22 THE WITNESS: A baseball game. So

1 if we ran a live baseball game, that could
2 only run on one network. We wouldn't run that
3 on two networks. At that same time while the
4 baseball is running on one network, we might
5 run a movie on the other network.

6 JUDGE SIPPEL: I see. And both
7 would be in high def.

8 THE WITNESS: Correct.

9 JUDGE SIPPEL: And why couldn't
10 you run it on both networks?

11 THE WITNESS: I guess technically
12 we could, but it wouldn't be good for the
13 consumer. You might say a consumer who
14 doesn't want to watch a baseball game may want
15 to watch a movie instead. So we would program
16 the channels differently. There were two
17 channels to provide customers or viewers with
18 more options for high definition.

19 JUDGE SIPPEL: Okay. A member of
20 my family who I will not identify, he has this
21 TV set where he would watch like -- Let me
22 take that hypothetical. He would watch the

1 movie and then up in the corner have a little
2 box that will have the baseball game or visa
3 versa.

4 THE WITNESS: Okay.

5 JUDGE SIPPEL: Is that doable with
6 your INHD set-up or INHD and INHD2 set-up?

7 THE WITNESS: I don't know. I
8 think that's something technical related to
9 what you can do with your TV or set top box.
10 We program two separate channels though.

11 JUDGE SIPPEL: So that's got
12 nothing to do with your targeting or your
13 business decision right there.

14 THE WITNESS: That example you
15 gave doesn't have -- That has nothing to do
16 with what was on our channels.

17 JUDGE SIPPEL: Thank you.

18 MR. MILLS: Absolutely. Maybe
19 I'll go back just a second and ask one or two
20 questions to help clarify this.

21 BY MR. MILLS:

22 Q What was the original business

1 purpose of programming these two channels for
2 the owners?

3 A There were two. One is there
4 weren't a lot of channels, but there was this
5 high def programming and they needed a place
6 to showcase this. So they launched two
7 channels again because they had the bandwidth
8 but there weren't a lot of channels for that.

9 The other reason they did this is
10 they needed a place to offer pre-emptive
11 programming. In some cases or I should say on
12 some evenings, a baseball game might be
13 produced in high def or a basketball game and
14 they needed a place to put this. So the
15 channel might be preempted at any given time.

16 Q Can you just explain that concept
17 for the Court a little bit better? Who is
18 doing the preempting and where is that
19 preempting occurring?

20 A It would be -- Okay. So
21 preemption, we would schedule the channel on
22 a 24/7 basis. However, a cable operator in

1 any location might have a regional sports
2 time. So whether it would be the New York
3 Mets in the New York market, they may drop
4 that game. That game might be produced in
5 high definition and they would overlay that
6 right on top of whatever we had scheduled.

7 So if you're a viewer in that
8 specific market, you'd be seeing that New York
9 Knicks game rather than whatever we had
10 programmed there and we didn't control that.
11 That was done by the local cable operator in
12 whatever market it was.

13 Q Just to be clear when you say "we
14 didn't control that," when you say "we," who
15 is we?

16 A iN DEMAND or myself.

17 Q Who did control it?

18 A The cable operators in that
19 market.

20 Q Did the owners have the right to
21 do that?

22 A Yes.

1 Q And did they do that over the
2 years? Do you know?

3 A They did. From the beginning,
4 they did.

5 Q Okay.

6 A It increased as more games were
7 produced in high definition as well.

8 Q Was that part of the original
9 purpose of the channels?

10 A Yes.

11 Q Did you have any expectation when
12 these channels were first conceived and
13 developed as to how long they would last?

14 A I didn't. We knew that the
15 solution -- We knew that it was going to be a
16 somewhat temporary solution. We didn't know
17 exactly how long that would be. The reason
18 that it was started, the reason the networks
19 were started was that there weren't a lot of
20 networks in high def. We knew that inevitably
21 a lot of the standard definition cable
22 networks would eventually have high def feeds

1 and we knew that those would likely take the
2 place.

3 Q Take the place of what?

4 A Of INHD or INHD2.

5 Q And did you have any idea how long
6 it would be before INHD and INHD2 were
7 replaced by the owners with other standard
8 definition networks?

9 A We didn't know that at the time.

10 Q Okay. If you turn to your
11 testimony at paragraphs 28 through 32, that's
12 Cox Exhibit 84, paragraph 28. There's a
13 heading there, "Developing a Branding Strategy
14 for INHD and INHD2." Do you see that?

15 A Yes.

16 Q Can you explain briefly to the
17 Court what that means?

18 A Yes. Could I read this first
19 very quickly?

20 Q Absolutely.

21 JUDGE SIPPEL: Sure. Take
22 whatever time you need to finish.

1 THE WITNESS: Thank you.

2 (Pause.)

3 Okay.

4 MR. MILLS: All right. Are we on
5 the record?

6 THE WITNESS: Okay. After we had
7 launched the networks, we knew that we would
8 have to create a better destination for the
9 specific audience to come to. So if our
10 audience was male, we knew that we would have
11 to evolve from just a lot of very random
12 programming. So at that point --

13 BY MR. MILLS:

14 Q Let me ask you about that before
15 you go on. Did you do anything to make that
16 determination?

17 A Yes. We did some marketing
18 studies.

19 MR. MILLS: I'll show you what's -
20 -

21 (Off the record comments.)

22 I'll show you what's already been

1 marked and admitted into evidence I believe.

2 No, not yet. It's been reserved. Okay. This

3 is Time Warner Exhibit 12.

4 JUDGE SIPPEL: Thank you.

5 MR. ERKMANN: -- attached to the
6 back.

7 JUDGE SIPPEL: And you say Time
8 Warner is not in evidence or Time Warner 12
9 rather is not in evidence.

10 MR. MILLS: Not at this point,
11 Your Honor, but we'll attempt to lay a
12 foundation with this witness to admit this
13 into evidence. Okay?

14 JUDGE SIPPEL: It's under highly
15 confidential standing.

16 MR. MILLS: That's correct.

17 JUDGE SIPPEL: How do we want to
18 handle that? Mr Cohen?

19 (Off the record comments.)

20 MR. MILLS: We'll remove that
21 designation, Your Honor.

22 JUDGE SIPPEL: Thank you.

1 BY MR. MILLS:

2 Q Mr. Asch, do you recognize this
3 document, Time Warner Exhibit 12?

4 A Yes.

5 Q What we've handed out is actually
6 the one that was marked in this case as Time
7 Warner Exhibit 12 for identification and then
8 a color copy of the exact same thing at the
9 back end so it's a little easier to read. Do
10 you see that?

11 A Yes.

12 Q Is the color copy the same as the
13 black and white except for the fact that it's
14 in color?

15 A Yes.

16 Q To help everyone here the first
17 page is a cover page dated August of 2005,
18 correct?

19 A Yes.

20 Q That's Time Warner Exhibit 12 for
21 identification page one, yes?

22 A Yes.

1 Q If you look at Time Warner 12 page
2 seven, is that the cover page for another
3 study that was done on June 27, 2007?

4 A I don't have page seven. Oh,
5 okay.

6 Q Do you have it?

7 A Okay. Yes.

8 Q And that's dated June 27, 2007?

9 A Yes.

10 Q And then the last thing look at
11 Time Warner Exhibit 12 page 12. Do you see
12 that?

13 A There's not a -- It looks like --
14 Is this -- Okay. There's not a page number on
15 it.

16 Q Oh, the color ones don't have the
17 page numbers. I apologize that the --

18 A Okay.

19 Q And that one is dated, is the
20 cover page for that study dated November 29,
21 2007, correct?

22 A Yes.

1 Q Can you identify these documents?
2 What are they?

3 A These are research documents
4 conducted by a research group on the audience
5 and then some of the usage patterns.

6 Q And is Frank N. Magid Associates,
7 Inc. the company that you hired to do this
8 research?

9 A Yes.

10 Q And are these copies of all the
11 pages of those studies?

12 A Yes.

13 Q Did iN DEMAND, did you, rely on
14 these studies in assessing your demographic
15 audience?

16 A Yes.

17 Q For the channel INHD?

18 A Yes.

19 Q And later in 2007 for the channel
20 when it was known as Mojo?

21 A Yes.

22 Q And what did these -- Let's focus

1 on the August 2005 study, particularly if you
2 look at the sixth page. What was this study
3 telling you? What did you take away from this
4 study with regard to the demographic for INHD
5 while it was still INHD?

6 A Hold on a second. There is not
7 page numbers. Gender.

8 Q It's the last page. It says,
9 "INHD viewers gender/age."

10 A Yes. Okay. Yes.

11 Q What does that --

12 A This page tells us we have a male
13 audience and it's a large male 18 to 49
14 audience.

15 Q Okay, and for the next two
16 studies, did that continue to be true?

17 A Yes.

18 JUDGE SIPPEN: The next two would
19 be -- Are those the June 27th and the November
20 29th or?

21 MR. MILLS: Yes, Your Honor. The
22 June 27, 2007.

1 JUDGE SIPPEL: Right.

2 MR. MILLS: And the November 29,
3 2007.

4 JUDGE SIPPEL: Right. But the
5 first one that you're referring to is an `06
6 date.

7 MR. MILLS: `05.

8 JUDGE SIPPEL: `05 date.

9 MR. MILLS: August of 2005.

10 JUDGE SIPPEL: And where do I find
11 that in this?

12 MR. MILLS: The 2005 on the very
13 first page is the date.

14 JUDGE SIPPEL: Okay. Here it is.
15 Okay. Go on.

16 MR. MILLS: Page one.

17 JUDGE SIPPEL: Not prepared for
18 INHD.

19 MR. MILLS: And it's August of
20 2005.

21 BY MR. MILLS:

22 Q Just for clarification, what was

1 the channel known as?

2 A INHD.

3 Q Had the Mojo brand even been
4 developed yet?

5 A No.

6 MR. MILLS: Your Honor, I move
7 into evidence Time Warner Exhibit No. 12.

8 JUDGE SIPPEL: Any objection?

9 MS. WALLMAN: Possibly, Your
10 Honor. A brief voir dire.

11 JUDGE SIPPEL: Yes, you may.

12 VOIR DIRE EXAMINATION

13 BY MS. WALLMAN:

14 Q Mr. Asch, my name is Kathleen
15 Wallman. I represent Herring Broadcasting
16 known as WealthTV. There are portions of
17 three studies that have been handed to you as
18 part of this exhibit and you indicated that
19 you relied on these pages in evaluating the
20 demographics that you formed your decisions
21 about INHD and INHD2 I believe. Did you rely
22 on any other pages of the study for purposes

1 relevant to that?

2 A We might have. These --

3 MS. WALLMAN: These are incomplete
4 exhibits.

5 MR. HARDING: I might respond to
6 that, Your Honor. These are the pages that
7 were provided to Mr. Egan for reliance in his
8 expert testimony. These were produced in
9 connection with Mr. Egan's deposition. These
10 are the sole pages that deal with demographics
11 which is the subject of Mr. Egan's testimony.
12 There were other pages in these reports
13 dealing with internal business strategies of
14 iN DEMAND that were not relevant to Mr. Egan's
15 studies and which would have required us to
16 maintain a highly confidential designation and
17 this is why we've limited the relevant pages
18 that deal with audience demographics.

19 JUDGE SIPPEL: Thank you, Mr.
20 Harding.

21 Then these were selected pages but
22 they're all focused on demographics.

1 MR. MILLS: That's correct, Your
2 Honor.

3 JUDGE SIPPEL: Who participated in
4 the selection of those pages? Can you tell me
5 that? Maybe Mr. Asch -- something like that.

6 MR. HARDING: I believe Mr. Berman
7 and I.

8 JUDGE SIPPEL: Who did that?

9 MR. HARDING: Mr. Berman and I.

10 MR. MILLS: Mr. Berman is general
11 counsel for iN DEMAND.

12 JUDGE SIPPEL: Right. But again -
13 - Okay. All right. But again these have been
14 -- Mr. Egan has -- Well, I'm just repeating
15 what you said. They were prepared for Mr.
16 Egan as the expert. This witness is being
17 asked to testify to a certain -- Mr. Egan will
18 also be testifying to this in an expert
19 capacity.

20 MR. MILLS: That's correct.

21 JUDGE SIPPEL: And Mr. Asch is
22 testifying to this in his capacity as what?

1 As a programmer?

2 MR. MILLS: As a fact witness who
3 can authenticate that these were the portions
4 of the demographic studies that relate to the
5 demographics.

6 JUDGE SIPPEL: All right. I'm
7 accepting that.

8 MR. MILLS: Thank you, Your Honor.

9 JUDGE SIPPEL: Ms. Wallman, is
10 there any further objection or further testing
11 on this?

12 MS. WALLMAN: If I could just --

13 JUDGE SIPPEL: Go ahead.

14 MS. WALLMAN: If I could ask Mr.
15 Mills, is he just authenticating these or is
16 he going to testify? Is his fact testimony
17 based on this exhibit?

18 MR. MILLS: He's authenticating
19 the exhibit and he's already testified about
20 the demographics and the impact of the
21 demographic study on his programming
22 decisions.

1 MS. WALLMAN: No objection.

2 MR. MILLS: Thank you.

3 JUDGE SIPPEL: Thank you.

4 MR. MILLS: Let's move on.

5 JUDGE SIPPEL: Received in
6 evidence is TWC 12.

7 (The document referred
8 to having been
9 previously marked for
10 identification as TWC
11 Exhibit No. 12, was
12 received in evidence.)

13 Thank you, Mr. Harding.

14 MR. MILLS: Thank you, Your Honor.

15 JUDGE SIPPEL: You cleared it very
16 quickly.

17 DIRECT EXAMINATION (Cont'd.)

18 BY MR. MILLS:

19 Q Can you please for the Court very
20 briefly if programming that was developed for
21 INHD while it was still INHD before the Mojo
22 brand that addressed this demographic if any?

1 A Yes. We had a lot of sports
2 programming. We had licensed movies from
3 select studios that were similar to this. We
4 did a lot of music programming specifically
5 concerts.

6 Q Were there any original series
7 that you prepared that you developed?

8 A There were some, yes.

9 Q Can you give us some examples?

10 A Some examples of those would be
11 "Fields of Glory" which is about famous
12 college football stadiums. Another example
13 would be "Hardwood Heavens" and that was about
14 famous college basketball arenas. Another
15 example would be a show called "The A List"
16 which featured basketball games from well-
17 known high school teams. We had a show called
18 "The Tour de Gorge" which featured competitive
19 eating contests.

20 Q Any others that you can think of?
21 Do you know the name "Cathedrals of the Game"?

22 A Yes. "Cathedrals of the Game"

1 that was a show we licensed from major league
2 baseball. We didn't actually produce that,
3 but we licensed it from major baseball and
4 that featured a lot of ball parks around the
5 country, a lot of famous baseball stadiums.

6 Q What is FHM?

7 A FHM is a magazine that is no
8 longer in existence, but it's similar to Maxim
9 Magazine, a so-called laddie magazine.

10 Q Did you have a show based on that?

11 A We did. It was called "FHM
12 Uncovered" and it was behind the scenes look
13 at some of the photo shoots that were put in
14 the magazine itself.

15 Q And how would you describe the
16 target demographic of all the shows that
17 you've described?

18 A They all had a male demographic.

19 Q Okay. In 2005, were you
20 continuing to look for additional HD content?

21 A Yes.

22 Q How did you go about that?

1 A In 2005, we were trying to build
2 up a library and we needed to work with
3 producers or program suppliers. We would try
4 and retire some of the programming that didn't
5 focus on our target audience as soon as we
6 were able to build up a catalog that focused
7 more on the male demographic.

8 Q Did there come a time when you --
9 Let me ask you about the research that was
10 done. What did you take away the research in
11 terms of branding the channels?

12 A In terms of --

13 Q What did you need to do?

14 A One of the things we needed to do
15 was focus much more on what we were doing is
16 to try and create a destination for this male
17 audience. We had a good amount of
18 programming, but we definitely needed to
19 acquire more programming that suited that
20 destination. If we were going to have any
21 hope of selling ads, we certainly needed to
22 have more programming that targeted that and

1 created more of a destination.

2 Q And so did there come a time when
3 you conceived an idea of rebranding the two
4 channels?

5 A We did.

6 Q And that was in the middle of
7 2005. Is that correct?

8 A That sounds about right.

9 Q Could you please describe for the
10 Court what that was all about?

11 A In 2005 after doing some of this
12 research, we had two networks at that time and
13 we decided that after doing this research we
14 needed to focus on what I'll call the sports
15 or competition enthusiast and the non-sporting
16 or competition enthusiast and because we had
17 two networks we decided to make one focused
18 more on the area of competition and we decided
19 to make the second still focusing on this male
20 demographic but more a lifestyle channel.

21 Q And what was the first channel
22 going to be called?

1 A It was going to be called H2H or
2 Head to Head.

3 Q Head to Head. And what was the
4 second channel going to be called?

5 A Mojo.

6 Q And did you make a presentation of
7 that idea to the owners?

8 A We did.

9 Q And what happened?

10 A Unfortunately they didn't like it
11 necessarily. What ended up happening while we
12 had wanted to go forward with this they did
13 not want to we ran the two channels. Instead
14 they had made a decision that they wanted to
15 eliminate one channel.

16 Again, these channels had been
17 started to serve a use to showcase HD
18 programming and at that point they wanted to
19 reclaim some of that bandwidth. So they
20 decided to eliminate one of our channels.

21 Q And so which channel was
22 eliminated?

1 A H2H.

2 Q And it had to be in INHD2?

3 A Yes.

4 Q What did you do with the remaining
5 channel then?

6 A We rebranded it or I should say at
7 that point in time we planned our rebranding
8 it as Mojo.

9 Q And how did you begin it rebrand
10 it as Mojo?

11 A We used a nesting strategy and
12 this is pretty common in the cable industry
13 whereby we had a prime time block. Because
14 most viewers will watch shows in prime time,
15 we decided to do a limited block of
16 programming on an HD and we called it Mojo.

17 Q So was it called a Mojo block?

18 A Yes.

19 Q And do you remember when the Mojo
20 block began to air?

21 A In June of 2006.

22 Q Just so the Court understands,

1 were these changes in INHD that you've
2 described in the programming were these
3 gradual or sudden changes? Can you describe
4 for the Court how those changes occurred?

5 A No, they were gradual changes.
6 Our audience had always been the same. A lot
7 of the programming had been the same and we
8 continued to use a lot of the programming.
9 Because we had limited programming budgets, we
10 often had to reair programming. So it was a
11 very gradual change through this whole
12 process.

13 Q And what was the involvement of
14 the owners, if any, in that gradual change?

15 A Virtually none.

16 Q And you say "virtually." Was
17 there any owner involvement in the programming
18 decision making?

19 A No. All we did was present to
20 them on very rare occasions like board
21 meetings.

22 Q And that was just to inform them

1 or was that to get their permission?

2 A It was to inform them.

3 Q At some point, the channel was
4 fully rebranded as Mojo. Is that correct?

5 A Yes.

6 Q What was the date of that?

7 A May 2007.

8 Q As a result of that, did you
9 continue to market or begin to market that
10 channel as Mojo?

11 A When it was rebranded, yes, there
12 was marketing for it.

13 Q And were you successful in getting
14 more advertising as a result of the marketing
15 efforts?

16 A Yes, we definitely got more
17 advertisers.

18 Q Did the owners help you in any way
19 in getting advertisers?

20 A No.

21 Q Were there any obstacles to your
22 obtaining advertisers or growing the channel?

1 A Yes. We were a very small network
2 and we weren't Nielsen rated. Because the
3 distribution of the network was small, it was
4 always a challenge to get advertisers. The
5 other issue we had was because the network
6 could be preempted by local programming and we
7 didn't know when that would happen it made a
8 little challenging for advertisers to come on
9 board as well.

10 Q Why would advertisers care about
11 that?

12 A They care because they want to
13 know that their ads are being seen by the
14 maximum number of people and if in a certain
15 market it's not being seen then they have a
16 concern with that.

17 Q And when say the distribution, was
18 there a limitation on the distribution of the
19 channel?

20 A Yes, it was only offered on a high
21 def basis.

22 Q By the owners?

1 A Yes. On either basis. I think by
2 everybody, by all the affiliates we had.

3 Q Do you know whether the owners
4 ever distributed the INHD or Mojo channel to
5 their full digital subscribers?

6 A They did not to my knowledge.

7 Q Mr. Asch, did you or anyone at iN
8 DEMAND to your knowledge copy WealthTV in
9 developing the Mojo brand?

10 A No.

11 Q Did you or anyone in iN DEMAND
12 copy WealthTV in developing or acquiring the
13 programming for Mojo?

14 A No.

15 Q Did you or anyone in iN DEMAND
16 copy WealthTV in developing the concepts or
17 the demographics of Mojo?

18 A No.

19 Q Did you get any information from
20 the owners, any of the owners of iN DEMAND, in
21 the development of the ideas or programming
22 for Mojo?

1 A I did not.

2 Q Did anyone on your team to your
3 knowledge?

4 A No.

5 Q There was no written affiliation
6 agreement between iN DEMAND and the owners
7 with regard to the INHD/Mojo channel, correct?

8 A That's correct.

9 Q Do you know why that is?

10 A Not really.

11 Q Did you understand the terms of
12 carriage by the owners of the INHD and Mojo
13 channel?

14 A Somewhat, yes.

15 Q What were those terms?

16 A There wasn't an affiliate
17 agreement. They carried the channels, but
18 they could preempt them whenever they wanted
19 and I would imagine they could also drop the
20 channels if they selected to do that.

21 Q How was -- What was iN DEMAND paid
22 by the owners with regard to the channel? Do

1 you know?

2 A Yes. They were paid based on
3 digital subscribers especially in the early
4 years.

5 Q In the early years. During what
6 period of time were they paid on a digital
7 subscriber basis?

8 A 2003 through 2007, I think.

9 Q And do you know what -- After that
10 period, was there a different basis for the
11 payments that were made by the owners to iN
12 DEMAND with regard to that channel?

13 A Yes. They were then paid based on
14 HD subscribers.

15 Q Okay.

16 JUDGE SIPPEL: Can I ask a
17 question?

18 THE WITNESS: Please.

19 JUDGE SIPPEL: You said there was
20 a -- You started this line of QA with you said
21 a destination was needed.

22 THE WITNESS: Yes.

1 JUDGE SIPPEL: What does that
2 mean? What's a destination?

3 THE WITNESS: Well, particularly
4 for advertisers, they like to know that
5 they're going to attract viewers at a certain
6 point in time and we wanted to upgrade our
7 programming to create more of that
8 destination. So something that would attract
9 viewers to want to watch a certain program at
10 a certain time.

11 JUDGE SIPPEL: And identified
12 certain time, would that be --

13 THE WITNESS: So for instance
14 prime time is an area. So most people watch
15 TV between the hours of 8:00 p.m. and 11:00
16 p.m. and whenever we would program our best
17 programming we would try to put it on in that
18 time.

19 JUDGE SIPPEL: Okay. So identify
20 times and that was -- Was the desired
21 destination prime time? Am I understanding
22 it?

1 THE WITNESS: Yes. I guess the
2 destination, if a baseball game aired early
3 and started at 7:00 p.m., that still would
4 have been good programming. But we tried to
5 create a destination. I think the default is
6 most people watch TV during 8:00 p.m. and
7 11:00 p.m. So we would try to target that for
8 any original programming we would do.

9 JUDGE SIPPEL: Thank you.

10 MR. MILLS: If I could follow up,
11 Your Honor, just to clarify.

12 JUDGE SIPPEL: Please do.

13 BY MR. MILLS:

14 Q Is the idea of creating a
15 destination are you referring to the channel
16 being a destination that viewers would
17 recognize?

18 A Yes.

19 Q What's another example of a
20 channel, a network, that is an obvious
21 destination that people would recognize?

22 A The Broadcast Network.

1 Q Just give me a cable network.

2 A A cable network, FX.

3 Q How is that a destination people
4 would know what they were going to see?

5 A They permit a show called "Rescue
6 Me" and that's a very well-known show. So
7 that might be a designation where they are
8 trying to drive viewers to that network at a
9 specific time on a specific day.

10 Q What about a sports network? Can
11 you think of an example of a sports network?

12 A ESPN.

13 Q How is that a destination people
14 would recognize?

15 A They carry a lot of professional
16 sports and, for instance, if an NBA playoff
17 game is on, then that's certainly something
18 that's going to attract viewers and they'll
19 market to that specific show at that time on
20 that date.

21 Q When INHD was called INHD, what
22 did INHD stand for?

1 A It was an acronym, In High
2 Definition.

3 JUDGE SIPPPEL: What is it? That's
4 with a small I in front of it.

5 THE WITNESS: No, it was all caps.
6 It was all caps. INHD.

7 JUDGE SIPPPEL: There was a capital
8 I.

9 THE WITNESS: Yes. They were all
10 caps.

11 JUDGE SIPPPEL: And that meant In
12 High Def or In High Definition.

13 THE WITNESS: It did. It was more
14 a play on words. We hoped to get that. We
15 didn't necessarily say that's why we're going
16 to call it that specifically. But it was a
17 good play on words for that.

18 BY MR. MILLS:

19 Q And you had in your testimony
20 mentioned something about a randomness to the
21 channel. Do you remember that?

22 A I might have, yes.

1 Q Did that -- Where did that concept
2 come from?

3 A Early on there wasn't a lot of
4 programming. So when we acquired programming
5 we had to license some shows that didn't
6 necessarily -- that may not have hit our exact
7 target demographic all the time.

8 Q And was the idea of creating a
9 destination a reaction to that?

10 A Yes.

11 Q And how did that work?

12 A Well, a lot of that programming we
13 were trying to retire. As soon as we were
14 able to build up our library and acquire more
15 programming that didn't target the men 18 to
16 49 audience, we retired that other programming
17 or relegated it to very early points in the
18 schedule.

19 Q How did that process help you to
20 create a destination that was more targeted to
21 your demographic?

22 A The more content we could put on

1 our networks that hit this audience and what
2 they would likely want to watch like sports,
3 movies, concerts, the more we felt we created
4 a destination or attract more people to watch
5 the shows or the network on a regular basis.

6 Q And the name Mojo, did that fit
7 into that plan? The brand?

8 A It did, yes. Our goal was to try
9 -- When we created Mojo, our goal was to try
10 and super-serve this same audience. We knew
11 a lot of the content already targeted that
12 audience. But in developing better
13 programming we felt that Mojo would help us
14 serve that audience even better.

15 Q Okay. Did there come a time when
16 the channel was terminated?

17 A Yes.

18 Q And when was that?

19 A In 2008.

20 Q And do you know the reasons why
21 the owners decided to terminate Mojo?

22 A Yes.

1 Q What were they?

2 A To a large degree what we had done
3 had run its course because a lot of standard
4 definition networks now had high definition
5 feeds and the cable operators were looking for
6 space to put these networks on. These
7 networks often were very highly branded and
8 very well distributed and at that point they
9 decided to shut down Mojo and they could use
10 that bandwidth to launch some of these other
11 networks.

12 Q Were the owners interested in
13 developing Mojo as a network at that point?

14 A No.

15 Q Did you have a view about that?

16 A Personally yes. As part of the in
17 DEMAND management and certainly the head of
18 programming for the channel, we took it very
19 personally and I wished they had given it more
20 of a chance to be a network. But I think for
21 them it had run its course because there were
22 a lot of channels at that point that were

1 launching high definition feeds and they just
2 didn't have the room for it.

3 MR. MILLS: Okay. Thank you. No
4 further questions, Your Honor.

5 JUDGE SIPPEL: Cross-examination?

6 MS. WALLMAN: Thank you, Your
7 Honor.

8 CROSS-EXAMINATION BY COUNSEL

9 FOR HERRING BROADCASTING

10 BY MS. WALLMAN:

11 Q Good morning again, Mr. Asch. Do
12 you need more water?

13 A That'd be great, thank you.

14 Q Your professional background is in
15 business? You got an MBA?

16 A Yes.

17 Q And before you were asked to
18 aggregate on a linear basis the programming
19 that became NHD and NHDE2 had you ever been
20 responsible for programming a linear cable
21 network before?

22 A No.

1 Q When NHD was first put on the air,
2 is it fair to call that a showcase channel,
3 showcasing the technology and richness of high
4 definition?

5 A I didn't hear the first part of
6 what you said, I'm sorry.

7 Q Is it fair to call what NHD
8 started out as as a showcase?

9 A Yes, it showcased a lot of high
10 definition programming.

11 JUDGE SIPPEL: That would be - we
12 are talking about what, 2003 or something like
13 that?

14 MS. WALLMAN: Yes, at the
15 inception when HD first came on the air.

16 BY MS. WALLMAN:

17 Q And you indicated in your
18 testimony that the programming in NHD had some
19 randomness to it; correct?

20 A Yes.

21 Q Now just to be clear there came a
22 time that NHD2 was shut down, correct?

1 A Yes.

2 Q That didn't function any more.

3 And that was at the direction of the owners?

4 A Yes.

5 Q So the randomness of the channel
6 by your testimony was eventually brought into
7 some order by the rebranding process; is that
8 correct?

9 A It was brought into order - I'm
10 not sure what - when you say it was brought
11 into order by the rebranding process, what do
12 you mean by that?

13 Q Well, I'll accept your answer.
14 Let me try to ask a better question.

15 A Okay.

16 Q At some point the randomness that
17 you identified that was associated in some
18 fashion with NHD went away.

19 A Well, the randomness, even earlier
20 than that, was - I would say it was random
21 because there would be some programs that
22 would target what we were trying to do.

1 Mainly what we were doing especially early on
2 with HD was sports, rock concerts, things like
3 that. Every now and then we would have
4 programs I had mentioned like a kids' program
5 or an animated program. But that was earlier
6 on. And that's when I talk about randomness.
7 Most of the programming still hit this target
8 that we were trying to shoot for.

9 Q So over time as the novelty of the
10 high def showcase channel wore off you looked
11 to make it more focused around theme; is that
12 correct?

13 A It was more focused but it was
14 still on the same target, yes. We never
15 changed the target that we were trying to
16 program for.

17 Q And you retired some of the
18 programming I think; you used the word,
19 retired, in your testimony. So would Puss `n'
20 Boots be an example of the programming you
21 retired?

22 A That's an example, yes.

1 Q Rumpelstiltskin would be another
2 one?

3 A Yes.

4 Q The Boy Who Drew Cats, yes?

5 A Yes.

6 Q Rain Game, that was retired?

7 A Yes.

8 Q Travel shows were retired?

9 A Some travel shows.

10 Q Animated shows were retired?

11 A In general. There were certain
12 types of - when you say animated shows, I
13 would need to be more specific probably. But
14 I would say if they were more family based
15 animated shows, yes.

16 Q The Davy Crockett Show was
17 retired?

18 A Yes.

19 Q You indicated that you
20 acknowledged that there was no written
21 contract with defendants, the owners of Mojo,
22 no written carriage contract, correct?

1 A Yes.

2 Q Yet Mojo was widely carried on the
3 systems, correct?

4 A To my knowledge, yes.

5 Q Now did the owners ever tell you,
6 you being in charge of Mojo, that you should
7 try to gain carriage on their systems by means
8 of a hunting license?

9 A They never told me that.

10 Q Did they ever tell you that with
11 respect to NHD?

12 A I was never given that instruction
13 at any point.

14 Q Was -

15 A I'm sorry, one clarification also.
16 That is not necessarily what I did. That's
17 more in our affiliated relations area. I
18 didn't - I happen to know what that means, but
19 that was not my prerogative.

20 Q What do you mean by at that point?

21 A That was not my responsibility;
22 still is not.

1 Q With respect to NHD?

2 A Correct.

3 Q Is it within your responsibility
4 with respect to Mojo?

5 A No.

6 Q I understood that your title was
7 executive vice president and that you had
8 rather broad responsibilities; is that not
9 correct?

10 A Yes, affiliated relations has
11 never been part of my responsibility.

12 Q So in your position at In Demand,
13 you wouldn't necessarily know whether the
14 company was required - whether the channel,
15 NHD, was required to have a hunting license?

16 A I wouldn't - I'm sorry, can you
17 say it again? I would not know?

18 Q Withdraw.

19 Was Mojo successful in gaining
20 carriage on DIRECTV?

21 A We were not.

22 Q Did you seek carriage?

1 A We did both I think as NHD and as
2 Mojo.

3 Q And what about the Dish Network?
4 Did Mojo seek carriage on the Dish Network?

5 A Yes.

6 Q Was it successful?

7 A No.

8 Q How about NHD?

9 A I don't know all the timing, but -
10 I don't know. I know we tried to seek
11 carriage on both of those. But I don't
12 remember the timing, and at what point I don't
13 really know.

14 Q What about the AT&T U-verse
15 system, the video delivery system? Did NHD
16 seek carriage on AT&T?

17 A Yes.

18 Q And was it successful?

19 A I'm sorry, you asked about NHD.
20 Again, that is one - I don't know the timing
21 of the U-verse, it's fairly new, so I don't
22 know what timeframe you are talking about.

1 Q Let me ask about Mojo. Did Mojo
2 seek carriage on AT&T U-verse?

3 A Yes.

4 Q Was it successful?

5 A No.

6 Q Did the owners ever indicate to In
7 Demand that carriage on other MVPDs was
8 important to their decision as to whether to
9 carry Mojo on their systems?

10 A Can you say that again?

11 Q Did the owners ever indicate to In
12 Demand that carriage - Mojo's carriage on
13 other MVPDs was important to the owners'
14 decision about whether to carry Mojo?

15 A I don't know if that was important
16 to their decision to carry Mojo. They were
17 all carrying Mojo.

18 Q Thank you.

19 You have a finance background; is
20 that correct?

21 A Yes.

22 Q Are you familiar with the term,

1 going concern?

2 A Yes.

3 Q What does that mean to you?

4 A For certain companies an auditor
5 may express an opinion that there is some
6 question as to the viability of the company.

7 Q And are you familiar with the
8 term, keep well letter?

9 A I'm sorry?

10 Q Are you familiar with the term,
11 keep well letter?

12 A I am not.

13 Q To your knowledge was the auditor
14 of In Demand ever concerned about In Demand
15 being a going concern?

16 MR. COHEN: Your Honor, I'm going
17 to object as being beyond the scope of
18 anything for which Mr. Asch has been offered.
19 Nor do I see the relevance to this case in
20 general.

21 MR. MILLS: He beat me to the
22 punch. I was going to make the same

1 objection, this is going beyond the scope of
2 the direct examination, either written or
3 oral.

4 JUDGE SIPPPEL: All right, well let
5 me ask Ms. Wallman, what is your point? What
6 are you trying to establish at this point?

7 MS. WALLMAN: One of the issues
8 in the case, Your Honor, is the factors that
9 are employed when the owners of In Demand make
10 decisions about whether to grant carriage to
11 a network. And it's been asserted that the
12 financial stability of the channel is
13 important, an important factor, to how they
14 decide whether to grant carriage.

15 And I'm exploring whether there
16 were issues about the financial stability.

17 MR. COHEN: Your Honor, as Ms.
18 Wallman knows, when you look at the financial
19 stability of a channel, you look at the
20 financial stability of the owners of the
21 channel. The owners of the channel were three
22 large cable MSOs, plus Bright House. And it's

1 a silly point to try to argue that if In
2 Demand by itself had got an auditor's opinion,
3 which is an accounting issue, that that would
4 have any bearing on carriage.

5 You asked him - NBC might have a
6 channel that on its own doesn't make any money
7 for some period of time. Nobody would
8 conclude that you would look at the economics
9 of the channel and ignore the economics of
10 NBC. So that's not what the testimony has
11 been.

12 MS. WALLMAN: If I may, Your
13 Honor, the issue in this case is
14 discrimination. And the law requires the
15 defendants to make arms length decisions and
16 not favor an affiliate or a non-affiliated
17 programming.

18 JUDGE SIPPEL: You say that might
19 be a motive to discriminate in favor of an
20 affiliate? The thrust of what you are getting
21 at? I'm talking about your theory?

22 MS. WALLMAN: Yes, it does go to

1 motive. It's against the law to favor an
2 affiliate over a non-affiliate. And if they
3 looked at their affiliate and said, we are not
4 concerned about the finances, that's an issue.

5 MR. MILLS: Your Honor, this
6 witness has no knowledge of what the owners -

7 JUDGE SIPPEL: Let's not tell him
8 what he's not supposed to know, unless you
9 want to excuse the witness.

10 MR. MILLS: I certainly don't
11 want to do what you just described. That's
12 not my intention. But the question is whether
13 this is beyond the scope of his testimony, and
14 the owners are all available coming in and can
15 be examined on that issue without describing
16 the issue. I think this is not the right
17 witness for those types of questions. He
18 hasn't been offered on this.

19 JUDGE SIPPEL: Well, I understand
20 that. But she can certainly ask questions
21 about his knowledge.

22 Yes, sir, Mr. Beckner?

1 MR. BECKNER: Your Honor, I think
2 there is kind of a process. That is, Wealth
3 TV is the plaintiff. They have the burden of
4 proof. They have a case to put on. They put
5 on their case. Part of their case included
6 this, then they certainly had the right and
7 the opportunity to so indicate, and even to
8 indicate that they desired the testimony of
9 certain witnesses about that issue.

10 But for them to come in in the
11 defendant's case, which is where we are now,
12 and start using the witnesses that are here
13 for their own purposes, that is going beyond
14 the scope of the direct testimony that the
15 defendant's offered, seems to me to be
16 completely unfair because it deprives the
17 defendants themselves of the opportunity they
18 are entitled to have to respond to the
19 plaintiff's case.

20 The plaintiff's case is over. It
21 finished on Friday.

22 MS. WALLMAN: Your Honor.

1 JUDGE SIPPEL: I'm trying to stay
2 with her analysis. Go ahead, Ms. Wallman.

3 MS. WALLMAN: I think you heard
4 my analysis. This part of the case, we are in
5 part supposed to rebut sort of legitimate
6 business justifications of the defendants.
7 One of their asserted justifications is, we
8 didn't like the financial profile, the
9 financial stability, of Wealth TV.

10 JUDGE SIPPEL: Well, who didn't
11 like it? Who's financial profile are you
12 talking about?

13 MS. WALLMAN: The issue in the
14 case is discrimination.

15 JUDGE SIPPEL: I understand that.

16 MS. WALLMAN: If you look at the
17 financial profile of one and say that's a
18 problem, and look at the financial profile of
19 the other and say it's not, even if they had
20 underlying issues.

21 So I'm entitled to explore whether
22 they offer a legitimate business justification

1 that when they see the financial stability of
2 a channel for which they grant the carriage.

3 JUDGE SIPPEL: Now let me back up a
4 little bit on this. Are you contending that
5 the financial position of INHD is - what is
6 the entity that you are questioning the
7 financial stability of?

8 MS. WALLMAN: I'm asking about In
9 Demand.

10 JUDGE SIPPEL: In Demand, and have
11 you been able to discover specific information
12 about the financial viability of In Demand?

13 MS. WALLMAN: Yes, Your Honor, I
14 have.

15 JUDGE SIPPEL: And you have
16 documents to show what you are seeking to
17 prove?

18 MS. WALLMAN: I do have
19 documentary evidence, yes. The reason for my
20 asking this gentleman these questions is he's
21 an executive vice president. He worked in the
22 finance department. And when we were talking

1 about this during the admission session I was
2 told that this is the man who can tell me what
3 I need to know about In Demand. I think it's
4 a reasonable question where his third
5 justification is financial stability. The
6 inference is that they were not concerned
7 about financial stability of In Demand - and
8 perhaps they should have been - but they had
9 some concern about the financial stability of
10 the independent channel that's seeking
11 carriage.

12 JUDGE SIPPEL: Well, was it ever -
13 was it suggested or stated that we don't -
14 something to the effect that we don't want to
15 do business with Wealth TV because we are not
16 satisfied with their financial stability?

17 MS. WALLMAN: Yes, Your Honor.

18 JUDGE SIPPEL: Do we have evidence
19 - I mean has there been testimony on that?

20 MS. WALLMAN: It's in the trial
21 brief.

22 JUDGE SIPPEL: Well, I know it's in

1 the trial brief. But has there been testimony
2 on it? That's what I'm saying, is there
3 evidence in the record?

4 MR. COHEN: I'm not aware of any
5 such testimony, Your Honor. There's a
6 difference between testimony that says that we
7 look at financial stability and the experience
8 of management. But we certainly did not offer
9 - if I recall correctly, I think I do - any
10 evidence from Time Warner Cable saying that
11 the decision of whether or not to grant
12 carriage to Wealth or the level of carriage
13 had anything to do with their finances.

14 JUDGE SIPPEL: This is news to me.
15 I want to make sure I haven't missed
16 something. But - go ahead.

17 MR. MILLS: It may make sense to
18 excuse the witness just so we're not
19 constrained in the types of things we can say.

20 JUDGE SIPPEL: Well, I was thinking
21 that too. But you know what I've heard the
22 witness say is that he didn't have anything to

1 do with affiliation business. The
2 programming, he's a programming person, a
3 finance person.

4 MR. COHEN: The finance
5 background was years before NHD even was
6 launched in 2003. He had a brief stint for a
7 couple of years in the '90s. His
8 responsibilities now do not extend to that
9 area.

10 JUDGE SIPPEL: Well, he's
11 testified.

12 MR. COHEN: He has a finance
13 background. He understands finance.

14 JUDGE SIPPEL: Yes, that's always
15 good to have.

16 MR. COHEN: But I think there is
17 a fundamental lack of logic in the argument -
18 and I think it goes to the relevance of this
19 line of examination.

20 And I don't want do what Your
21 Honor has warned us not to do. I don't want
22 to suggest any answers to the witness.

1 JUDGE SIPPEN: Well, I was
2 concerned about that, but I've reached the
3 conclusion that this witness is not competent
4 to testify in this area. It's not in his area
5 of focus with respect to the business of the
6 company.

7 So my ruling is that he's not
8 competent. Not that you are an incompetent
9 person, but that - that's a legal jargon thing
10 that he is not competent to testify in that
11 area, and it would be a waste of time, and it
12 could be misleading and it could be all the
13 bad things that rules of evidence say you are
14 not supposed to do, in addition to confusing
15 me and that would really be bad.

16 All right, I'm going to sustain
17 the objection. Let's move on.

18 MR. COHEN: Thank you, Your
19 Honor.

20 BY MS. WALLMAN:

21 Q Mr. Asch, what is the target
22 demographic - pardon me, what was the target

1 demographic for Mojo?

2 A Men, 18 to 49.

3 Q Have you ever known it to be
4 described otherwise?

5 A Yes, it might have been described
6 as a subset of that, say 25 to 49.

7 Q So there is no contradiction in
8 describing the demographic each of those two
9 ways; is that correct?

10 A I'm not an expert in this kind of
11 area of research, but I think 18 to 49 men is
12 an established Nielsen metric, for ad ratings;
13 25 to 49 might be something that we used more
14 as a subset to denote that our demographic was
15 a little bit on the older side of that 18 to
16 49 area.

17 Q Do you know that that term, 25 to
18 49, was used in a certain context?

19 A Do I know? I'm not sure I
20 understand the question.

21 Q Well, in response to my prior
22 question you said it might have been used. I

1 want to know if you know whether it has been
2 used.

3 A Yes.

4 Q In what context has 25 to 49 been
5 used?

6 A In describing our target audience.
7 Maybe I'm not understanding your question.

8 Q I'll move on.

9 JUDGE SIPPEL: Well, who would the
10 target audience be described to? If 25 to 49
11 is part of - this is my terminology - but if
12 it's part of your jargon, what do you do with
13 that information in terms of communicating it
14 beyond yourselves?

15 THE WITNESS: So for example, I
16 will try to give an example of how there might
17 be a discrepancy. If you are talking to an
18 advertiser, an advertiser will ask you what is
19 the target demographic, you might say men, 18
20 to 49. If we are talking to a program
21 producer, they say, well, what age are you
22 trying to target for a specific show, we might

1 say, well, 25 to 49, to connote that it's a
2 little bit older as opposed to the younger
3 range of that demographic.

4 JUDGE SIPPEL: All right.

5 BY MS. WALLMAN:

6 Q So you'd use two different
7 descriptions for two different purposes,
8 correct?

9 A Two different descriptions? Those
10 are two examples I gave. For those specific
11 examples, yes.

12 JUDGE SIPPEL: Advertising and
13 programming; that's the distinction I heard.

14 MS. WALLMAN: Yes, I heard the
15 same thing, Your Honor.

16 JUDGE SIPPEL: Okay, that's his
17 testimony. Let's move on to another subject
18 if you are ready.

19 BY MS. WALLMAN:

20 Q Again using the 18 to 49 versus 25
21 to 49, is there any significance that ties
22 into the programming carried on Mojo?

1 A Is there any significance? And
2 you said on Mojo, correct?

3 Q Yes.

4 A Can you explain significance?

5 Q Well, for example, there was a
6 show on Mojo called Three Sheets.

7 A Yes.

8 Q Which involves drinking.

9 A Yes.

10 JUDGE SIPPEL: Involves what?

11 MS. WALLMAN: Which involves
12 drinking alcohol.

13 JUDGE SIPPEL: It's called three
14 what?

15 MS. WALLMAN: It's called Three
16 Sheets.

17 JUDGE SIPPEL: Oh, like sheets.

18 THE WITNESS: Like bed sheets,
19 three sheets.

20 JUDGE SIPPEL: Three sheets?

21 THE WITNESS: Yes, there's a
22 saying, three sheets to the wind.

1 JUDGE SIPPPEL: Oh, yeah. All
2 right, I understand that. Thank you.

3 BY MS. WALLMAN:

4 Q So that show involves drinking
5 alcoholic beverages, correct?

6 A Yes.

7 Q Which is 18 year old, 19 year old,
8 20 year old could not lawfully do, correct?

9 A Yes.

10 Q In the United States.

11 A That is correct.

12 Q So is there a contradiction in
13 describing your demographic as 18 to 49 when
14 you are featuring products and activities that
15 a certain part of that demographic can't
16 lawfully involve themselves in?

17 A Well, again, I don't look at -
18 when you talk about a demographic, that is a
19 broad measure of an audience, 18 to 49.
20 However that is an established metric that
21 Nielsen uses. That might go to the example we
22 talked about, a producer, and we say what age

1 are you targeting, 25 to 49 would certainly
2 fall within that area.

3 Q Could you look back please to Cox
4 Exhibit No. 39 which was shown to you during
5 your summary direct testimony?

6 A Cox 39?

7 Q Yes.

8 JUDGE SIPPEL: September 23, 2003,
9 communication.

10 MS. WALLMAN: I'm just going to ask
11 you about the first paragraph, and I'll
12 certainly give you as much time as you'd like
13 to review that.

14 (Pause)

15 MS. WALLMAN: I directed his
16 attention, Your Honor, to the first paragraph.

17 JUDGE SIPPEL: Thank you.

18 MS. WALLMAN: I'm going to ask
19 you specifically -

20 THE WITNESS: I'm sorry, one
21 second.

22 MS. WALLMAN: I was going to say

1 that I'm going to direct you to the second to
2 last sentence.

3 THE WITNESS: Oh, okay, sorry.

4 JUDGE SIPPPEL: That's the sentence
5 that reads, teenage guys understand and use
6 this kind of technology?

7 MS. WALLMAN: Oh, my mistake, the
8 one before that. You should be of some appeal
9 to the M 12 to 17 demo too.

10 JUDGE SIPPPEL: Do you have that?

11 THE WITNESS: Yes.

12 BY MS. WALLMAN:

13 Q So to your understanding, that
14 sentence, you should be of some appeal to the
15 male 12 to 17 demo too, does that mean that
16 NHD was doing something other than target the
17 male 18 to 49 demo?

18 A We certainly didn't - I'm sorry,
19 you're talking about NHD as well, correct?

20 Q Well, this is from the 2003, so I
21 think it's fair would you agree to associate
22 this with NHD?

1 A Yes. At that point we were
2 targeting men - it talks about men 12 to 17 .
3 To be honest I was reading this email, and I
4 think this is somewhat accurate in indicating
5 how we programmed them to the overarching
6 audience. But the very specific sentences
7 like that I don't know that we followed this
8 so literally as to take every single sentence
9 and say we should actually develop shows for
10 men 12 to 17.

11 Nothing that we did on the network
12 was visibly targeted for that.

13 Q Just because NHD might have some
14 appeal to a demographic outside of males 18 to
15 49 doesn't mean that you are going to target
16 a demographic with something other than 18 to
17 49, correct?

18 A I'm sorry, say that again.

19 Q Just because the programming might
20 have some appeal to 12 to 17 year olds, it
21 doesn't mean that NHD was changing its mind
22 about its target demographic being men 18 to

1 49?

2 A We were always targeting men 18 to
3 49.

4 MS. WALLMAN: I'd like to show
5 the witness a document, Your Honor. May I
6 approach?

7 JUDGE SIPPEL: You may.

8 THE WITNESS: I'm sorry, could I
9 take a bathroom break?

10 JUDGE SIPPEL: That's quite all
11 right. What time is it? Let's come back at
12 10 after 11:00. We're in recess.

13 THE WITNESS: Thank you.

14 (Whereupon at 10:55 a.m. the
15 proceeding in the above-entitled
16 matter went off the record to
17 return on the record at 11:14
18 a.m.)

19 JUDGE SIPPEL: Let's go back on the
20 record.

21 MS. WALLMAN: I was just about to
22 seek to approach and offer the witness a

1 document.

2 JUDGE SIPPEL: Please, yes. I hope
3 that break didn't cramp your style.

4 MS. WALLMAN: No, Your Honor.

5 JUDGE SIPPEL: Okay, we got Wealth
6 Exhibit 12. It's called The Mojo View. Is
7 this in evidence?

8 MS. WALLMAN: It has been
9 accepted into evidence.

10 JUDGE SIPPEL: Has been received?
11 Do you have that document?

12 THE WITNESS: I do.

13 JUDGE SIPPEL: Is there any
14 particular page you want to direct his
15 attention to while you are handing them out?

16 MS. WALLMAN: I may ask the
17 witness to look at the second page, page two
18 of the exhibit, which has the title, the Mojo
19 View.

20 JUDGE SIPPEL: Okay. Thank you,
21 Ms. Wallman.

22 BY MS. WALLMAN:

1 Q Mr. Asch, have you seen this
2 document before?

3 A Yes.

4 Q And is this to your knowledge from
5 the Mojo website when it was up and running
6 and had this front end on it?

7 A I don't know, but it might be. I
8 don't know.

9 Q But you have seen it before, and
10 it looks familiar to you?

11 A It does, and I've seen relative
12 numbers like this before.

13 Q So this exhibit indicates that a
14 bullet point male, and it indicates a 70
15 percent of audience; do you see that?

16 A Yes.

17 Q So that suggests that 30 percent
18 of the audience is female; correct?

19 A Using the math I guess that makes
20 sense.

21 Q Now the mere fact that 30 percent
22 of the audience is not in the target

1 demographic doesn't mean that males are not
2 part of the target demographic of Mojo,
3 correct?

4 A Say that again, please; I'm sorry.

5 Q What I'm trying to get at is, you
6 could have a target demographic stated just as
7 you have testified, male 18 to 49. Yet you
8 could also have a measurement that indicates
9 that 30 percent of your audience is not male,
10 and that wouldn't challenge the proposition
11 that your target demographic is male, 18 to
12 49, correct?

13 A I don't really understand the
14 question. Would some women be watching the
15 number? Sure.

16 Q Thirty percent is more than a few;
17 correct?

18 A Okay. Some women, yes.

19 Q Was part of the target demographic
20 of Mojo educated males?

21 A Yes.

22 Q And if one is targeting a 18 to 49

1 demographic the men at the lower end of that
2 demographic are unlikely to have college three
3 (phonetic), correct?

4 A At the lower end - I don't know
5 why - maybe I don't make that inference.

6 Q Well, is an 18-year-old likely to
7 have a college degree?

8 A Oh, I'm sorry, I misunderstood the
9 question. If they are 18 they are likely not
10 going to have a college degree.

11 Q So you describe the demographic as
12 18 to 49. In paragraph 74 of your - and if I
13 understand correctly, you are saying, although
14 it was described as 18 to 49, you did that for
15 certain purposes, and what you were really
16 after was 25 to 49, correct?

17 JUDGE SIPPEL: I'm not so sure he
18 said it that way.

19 MS. WALLMAN: Let me step back.

20 JUDGE SIPPEL: The transcript will
21 speak for itself. But I don't recall hearing
22 it that way, and apparently you don't either,

1 Mr. Asch?

2 THE WITNESS: No, and I think the
3 example I gave -

4 MS. WALLMAN: Well, let me ask.

5 BY MS. WALLMAN:

6 Q The demographic of Mojo is
7 sometimes described as 18 to 49, correct?

8 A Yes.

9 Q And other times it was described
10 as 25 to 49, correct?

11 A Yes.

12 Q Why did you do that?

13 A For example if you were talking to
14 an advertiser that is an established metric
15 they use, male, 18 to 49. If we were talking
16 to a producer of programming to give them a
17 sense of our target audience, we might use 25
18 to 49, specifically for a drinking show that
19 is not going to cater to a younger audience.
20 That is still going to cater toward an older
21 audience.

22 JUDGE SIPPEL: He testified to

1 that. It's repetition.

2 MS. WALLMAN: Yes.

3 BY MS. WALLMAN:

4 Q With respect to paragraph 74 of
5 your written direct testimony, I'm going to
6 ask you about the last sentence of that
7 paragraph. Which reads: Importantly the
8 audience of Mojo is skewed toward the younger
9 end of that demographic.

10 A Uh-huh.

11 JUDGE SIPPEL: You have to say yes
12 or something; don't just -

13 THE WITNESS: I'm reading the
14 paragraph, sorry.

15 JUDGE SIPPEL: Oh, okay.

16 THE WITNESS: Yes, when I talk
17 about the younger end of that demographic,
18 that does not necessarily mean 18 or 19. I
19 mean ages in the 30s. And in a lot of cases
20 when you are talking about programming for a
21 younger audience or an older audience, and we
22 skew into the 30s as opposed to the 40s.

1 BY MS. WALLMAN:

2 Q The last sentence of this
3 paragraph: Importantly the audience is going
4 to be skewed toward the younger end of that
5 demographic. In what sense was that
6 important?

7 A That refers again more to the
8 point we are not skewing toward the high end,
9 meaning the late 40s, for that demographic.
10 For advertisers having a younger median age
11 would be better than having an older median
12 age.

13 Q And with respect to the bullet
14 point here that says, decision makers, and it
15 has the figure, 37 percent, executive slash
16 managerial slash professional. Which part of
17 the demographic would that be referring to?

18 A I can't really comment on that.
19 I'm not really - this was done by a research
20 group with the Magid Company. So I don't
21 necessarily know an answer to that.

22 JUDGE SIPPEL: We are back to

1 Wealth TV 12, right?

2 MS. WALLMAN: That's right.

3 BY MS. WALLMAN:

4 Q The exhibit that you were shown
5 earlier, marked Time Warner Cable 12, could
6 you refer back to that, please.

7 A Yes.

8 Q This is work that is a collection
9 of slides from work that was done by Frank
10 Magid who was also cited as the source in
11 Wealth TV 12.

12 A Okay, yes.

13 Q Was their research different from
14 what you said you relied on in Time Warner 12
15 that went into the creation of this slide, do
16 you know?

17 A I didn't conduct the studies that
18 were done by our research group. But it looks
19 like this particular one in here, these
20 different studies. And this is referring to
21 a specific date. I would have to see the
22 source documents or refer to our research

1 group to see if they refer to different data.

2 Q So you are not sure if you saw the
3 data that supports this slide?

4 A I'm not sure if I saw - this slide
5 here?

6 Q Yes.

7 A These are a couple of pages; I
8 don't know.

9 MR. SCHONMAN: Your Honor?

10 JUDGE SIPPEL: Yes.

11 MR. SCHONMAN: Referring to this
12 slide and that slide; I'm not sure if the
13 record is going to clearly reflect what he is
14 referring to.

15 JUDGE SIPPEL: All right, let's get
16 some kind of a reference that identifies it
17 better than that.

18 BY MS. WALLMAN:

19 Q Mr. Asch, I'm going to be
20 referring to Wealth TV Exhibit No. 12, page
21 two.

22 A Yes.

1 JUDGE SIPPEL: The Exhibit number
2 is TWC 12-2. And your question? There should
3 be a question pending.

4 MS. WALLMAN: I asked a question
5 only to clarify the record as to what he was
6 referring to.

7 JUDGE SIPPEL: All right, next
8 question.

9 BY MS. WALLMAN:

10 Q Do you have any way of knowing
11 whether Mojo actually reached the target
12 demographic that it was seeking to reach?

13 A Do I have any -

14 JUDGE SIPPEL: Well, let's not
15 confuse - you mean any of those targets? This
16 is defined -

17 MS. WALLMAN: Let me ask a better
18 question then.

19 JUDGE SIPPEL: Thank you.

20 BY MS. WALLMAN:

21 Q Mr. Asch, do you know whether Mojo
22 reached the male 18 to 49 target audience?

1 A I can't speak to that
2 specifically. What I do know is that these
3 surveys which were viewers, these are the
4 viewers that were watching the network.

5 JUDGE SIPPEL: Now which are we
6 talking about now, Time Warner No. 12?

7 MR. MILLS: Well, if it was the
8 one he was holding in his hands - that's
9 Wealth TV 12.

10 THE WITNESS: I'm sorry.

11 JUDGE SIPPEL: That's all right.
12 Yours is not to reason why. That's the way
13 the numbering worked.

14 THE WITNESS: The question I
15 thought was not in reference to a specific
16 exhibit. Was it?

17 MS. WALLMAN: No, I meant to ask
18 you generally, do you know whether Mojo
19 reached the 18 to 49 male target demographic?

20 THE WITNESS: And by certain
21 objective measures like Nielsen, I don't. We
22 weren't a rated network. The only thing I

1 rely on are studies that were done by our
2 research department that indicated these were
3 the viewers.

4 BY MS. WALLMAN:

5 Q Now when you say these are the
6 viewers, you are referring to Wealth TV 12,
7 Exhibit No. 12, page two?

8 A Well, you mentioned the men, 18 to
9 49 demographic. I wasn't referring to a
10 specific exhibit in your question you just
11 asked.

12 Q Do you know whether Mojo succeeded
13 in reaching the male 25 to 49 target audience
14 that you referred to?

15 A It would be the same answer.

16 Q In paragraph 23 of your written
17 direct testimony, you quote from an email from
18 Dan York. This paragraph that you quoted in
19 the testimony here is that a description of a
20 target demographic?

21 A The one that begins - are you
22 referring to the paragraph that starts, let's

1 be the cocktail party?

2 Q Yes, the indented single-spaced
3 paragraph.

4 A Okay, I read it. I'm sorry, the
5 question again?

6 Q Is that an expression of the
7 target demographic?

8 A Well, the men 18 to 49 is. The
9 rest of it is a more qualitative description
10 of the audience we were trying to reach.

11 Q Well, referring again back to
12 Wealth TV Exhibit No. 12, page two, are all of
13 these bulleted headings descriptors of the
14 target demographic? Or are they something
15 else?

16 JUDGE SIPPEL: The bullets, I mean
17 they speak for themselves, won't they? I
18 don't know why the witness would be somehow or
19 other paraphrase what is there. You talking
20 about page two?

21 MS. WALLMAN: Yes, I am.

22 JUDGE SIPPEL: Well, that seems to

1 be pretty straightforward in terms of what is
2 being represented. You have a specific
3 question with respect to a specific bullet
4 with respect to something that is in his
5 testimony, what you are seeking?

6 MS. WALLMAN: Yes, my question
7 is, is the extent of the target demographic of
8 Mojo, past tense, was the target demographic
9 of Mojo simply males 18 to 49 with no other
10 descriptors, for example, any of the ones that
11 appear on this page?

12 THE WITNESS: Men 18 to 49 is an
13 advertising target.

14 JUDGE SIPPPEL: Let's try the other
15 one, let's try the 25 to 49. Within that let
16 me call it within that grouping were you also
17 getting or trying to target decision makers?
18 Were you targeting high end consumers? All
19 within that - so you would not want every 25
20 to 49er, you would want a 25 to 49er that had
21 these characteristics, one, some or many?

22 THE WITNESS: Whenever we develop

1 programming I wish it could be so surgical
2 that we could target a specific audience. But
3 we speak in broad strokes, like men 18 to 49,
4 or men 25 to 49. That will encompass some of
5 these bullets that I am referring with this
6 exhibit here.

7 JUDGE SIPPEN: That's page two of
8 12.

9 THE WITNESS: So within the - for
10 instance, within men 18 to 49, and this is not
11 my area of expertise, the mean age of that
12 audience would be 38.4, so that is within that
13 measurement; but again, one is an advertising
14 metric. The other as I read this anyway is
15 the actual viewers, from a sample.

16 BY MS. WALLMAN:

17 Q With respect to page three of
18 Wealth TV Exhibit No. 12, you see the headings
19 that appear - or the footers that appear at
20 the bottom of each stack of graphs. There is
21 a measurement with respect to the gender of
22 the audience; some age measurements; some

1 household income measurement and educational
2 level measurement.

3 Do you know why those would be
4 important to Mojo to measure?

5 A I can't speak to why specifically.
6 That is more for our research group to handle.
7 What I take away from this is that our
8 audience was male, it was fairly educated, and
9 it was fairly upscale.

10 Q With respect to paragraph 48 of
11 your written direct testimony - it appears on
12 page 14 - and I will be asking you about the
13 last sentence.

14 JUDGE SIPPEL: May I have that?

15 THE WITNESS: Is the sentence
16 that begins, we focused instead?

17 MS. WALLMAN: That's correct;
18 that is the one.

19 THE WITNESS: Okay.

20 JUDGE SIPPEL: Do you have a
21 question?

22 BY MS. WALLMAN:

1 Q My question is, what was your
2 reason for believing that that demographic
3 that you refer to here that it was
4 underserved?

5 A One second; I'm just reading the
6 rest of it.

7 JUDGE SIPPPEL: Go ahead; you read
8 that. I'm going to read for the record the
9 sentence that you are referring to.

10 It says: We focused instead on the
11 Mojo branding concept because it would appeal
12 to our existing brand and we believe
13 underserved, close parents, demographic of
14 younger males.

15 And the question as I recall it
16 was, what caused you to believe that that
17 defined group was underserved.

18 THE WITNESS: Okay. I think it's
19 important to note that the whole paragraph
20 needs to be taken into the context there.
21 Because we had two recommendations. One was
22 for a competition theme channel. The other

1 was for a lifestyle theme channel.

2 And when we focused on the
3 lifestyle theme channels, because we felt we
4 could compete more significantly there as
5 opposed to a competition or sports theme
6 channel, we felt it was underserved in the
7 marketplace because there were some younger
8 skewing networks that served a younger
9 audience; and then there were some other
10 networks that served an older audience. And
11 we felt there might be a sweet spot there
12 where there were not channels that served that
13 audience as well as we could.

14 BY MS. WALLMAN:

15 Q And now that NHD, NHD2 and Mojo
16 have gone off the air, do you believe that
17 that market - that that demographic is
18 underserved?

19 A I can't really comment on that. I
20 know our net is no longer there. But I would
21 need a little more context to that.

22 Q Do you know of anything that has

1 cropped up since Mojo went off the air in the
2 last quarter of 2008 that addresses the market
3 in the same way that Mojo intended to?

4 A I don't.

5 Q The rebranding process that you
6 discussed in your testimony, you've testified
7 that that was an incremental process. And
8 it's clear from your testimony that one thing
9 that In Demand did was it renamed the channel,
10 correct, from NHD to Mojo.

11 Did it also have a launch
12 campaign?

13 A Yes.

14 Q And what was involved in the
15 launch campaign?

16 A I can't speak to a lot of the
17 specifics there, but when we do a launch there
18 are some materials you might run as spots, but
19 that is headed up by our marketing and
20 creative services.

21 Q Is that area of responsibility not
22 under your purview as executive vice

1 president?

2 A It is not.

3 Q In the course of the rebranding,
4 in addition to renaming, retiring programing,
5 the launch campaign that you mentioned, the
6 development of additional programming, was
7 there anything else you did that you would
8 refer to as the rebranding?

9 A You mentioned renaming of retiring
10 programing; I didn't follow that.

11 Q I'm sorry. What I said or I meant
12 to say was, I was trying to list the things
13 that from your testimony that you indicated
14 you did. You renamed the channel. You
15 retired some programming.

16 A Yes.

17 Q You developed some new
18 programming, correct?

19 A Yes.

20 Q You had a launch campaign,
21 correct?

22 A Yes.

1 Q Was there anything else you did as
2 part of the rebranding?

3 A I don't know. The one thing I
4 would say, though, is that we were doing
5 almost all of those things - retiring
6 programing, developing new programing - all
7 along the way during the course of the
8 channel. We were always trying to make the
9 channel better. So other things - that is a
10 more general statement.

11 I'm not sure there were other
12 things we did in relation to the launch of a
13 block or the launch of a network.

14 MS. WALLMAN: Your Honor, may I
15 have one moment?

16 JUDGE SIPPEL: Okay.

17 (Pause)

18 MS. WALLMAN: Your Honor, I have
19 one additional exhibit I'd like to show the
20 witness.

21 JUDGE SIPPEL: Yes, ma'am, you may
22 approach.

1 MS. WALLMAN: This is in evidence
2 as Wealth TV Exhibit No. 133.

3 JUDGE SIPPEL: This is already in
4 evidence; is that right?

5 MS. WALLMAN: Yes, Your Honor.

6 JUDGE SIPPEL: Thank you.

7 MS. WALLMAN: And this has been
8 identified in the record as an advertising
9 supplement, an advertising supplement to
10 Television Week.

11 MR. MILLS: Ms. Wallman, I see on
12 the first page it says, Bates stamps page 139,
13 and then ending at 140. I only have 139.

14 MR. COHEN: This is one of the
15 documents where we felt the pages were the
16 same.

17 MR. MILLS: Okay, so it's only
18 one page. Okay, thank you.

19 BY MS. WALLMAN:

20 Q Mr. Asch, have you seen this
21 document before?

22 A Yes.

1 Q And this was an advertising
2 supplement to Television Week as part of a
3 trade show; is that correct?

4 A I don't know if it was for a trade
5 show. It might have been a specific issue of
6 a magazine's publishing cycle. I don't know.

7 Q Now, the - if you could juxtapose
8 this piece with Wealth TV Exhibit 12, page
9 two.

10 JUDGE SIPPEL: You are taking 133
11 and then 12 at page two?

12 MS. WALLMAN: Correct. There are
13 a couple of differences between the figures
14 that are reported. I'll point to one of them
15 for example. In the document that is marked
16 Wealth TV Exhibit No. 133, 58 percent are said
17 to have at least a college degree. In Wealth
18 TV Exhibit No. 12, page two, 52 are said to
19 have a college degree or higher.

20 Do you have any insight as to why
21 those figures are different?

22 THE WITNESS: I don't.

1 JUDGE SIPPPEL: Well, for starters
2 it seems that Wealth's 12 was - has a date of
3 September 27 when the Magid Associates did its
4 study, and that this one, 133, has a date up
5 here of 2008, original series; could that have
6 affected any variance?

7 THE WITNESS: I don't, I guess -
8 I would say two things. I can't speak to the
9 actual figures. This was handled by our
10 research group.

11 JUDGE SIPPPEL: This is 133 you are
12 talking about?

13 THE WITNESS: Well, I think, I'm
14 looking at both of these two, and you are
15 making a comment between a couple of specific
16 points. Where it says, male, both 70 percent,
17 and then the average age is slightly
18 different. But I don't know why they would be
19 different, other than - it might be an error.
20 It might be just what data was used. I can't
21 speak to it.

22 BY MS. WALLMAN:

1 Q I know this is difficult to read,
2 but below the figures in Wealth TV Exhibit No.
3 133 the source is identified as Mojo Attitudes
4 and Awareness Study, September, `07, correct?

5 A Where are you?

6 JUDGE SIPPEL: Yes, I see the
7 point. Right below in parens down below in
8 brackets down below that target.

9 THE WITNESS: On this one here?

10 JUDGE SIPPEL: Yes, that's correct.

11 THE WITNESS: Oh, okay, where it
12 says source.

13 JUDGE SIPPEL: Yes, it looks like
14 the same source.

15 THE WITNESS: Yes, it looks like
16 the same source. And again these figures
17 would have been generated by our research
18 group, so I can't speak to why they would be
19 different. They are fairly similar, though.
20 But again it's not for me to say as to why
21 they are slightly different.

22 MS. WALLMAN: Your Honor, I'd

1 like to show the witness - pardon me. Your
2 Honor, I have nothing further.

3 JUDGE SIPPEL: Thank you.

4 Mr. Schonman.

5 MR. SCHONMAN: My colleague, Ms.
6 Mumaw.

7 MR. MILLS: Ms. Mumaw, thank you,
8 we are ready for you to proceed.

9 CROSS EXAMINATION BY COUNSEL FOR THE FCC

10 BY MS. MUMAW:

11 Q I'm Elizabeth Mumaw. I'm co-
12 counsel for the enforcement bureau. And I
13 have a couple of questions for you.

14 Can you tell me when all the
15 children's programming had stopped if it ever
16 did?

17 A It did. I can't give an exact
18 date. My guess is -

19 JUDGE SIPPEL: That's all right;
20 don't guess.

21 THE WITNESS: I don't have an
22 exact date; sorry.

1 BY MS. MUMAW:

2 Q Can you ballpark the year?

3 A Late 2004, early 2005.

4 Q And there were some other types -
5 correct me if you don't like the term - but
6 filler programming that was going on. When
7 did all of that stop?

8 A I don't - I won't know the exact
9 date. I would almost need to know program by
10 program what you are talking about. And I
11 won't have exact dates.

12 Q Did you ever get to a point where
13 you weren't program - using programs that did
14 not go toward your target audience?

15 A What we would do is, we built our
16 catalog. We would always try and put our best
17 programming forward. We would try and retire
18 programming that didn't hit our demo. It was
19 a subjective decision, though, and so we might
20 have had some programming that was not as good
21 as our prime time programming, but as the
22 network grew, or as it evolved over time, we

1 certainly had what I would call better
2 programming and less of the filler
3 programming. But it is a more gradual process
4 than just saying we stopped on a specific
5 date.

6 Q So did that gradual process ever
7 stop?

8 A Did it -

9 Q Did you get to the point where you
10 didn't need to replace programming any longer?

11 A There were certain kinds of
12 programming we didn't air at all - kids
13 programming, especially when we were a network
14 targeting this other audience; that we
15 retired. There were always going to be some
16 programs that were not as - I don't know if
17 the word is superior.

18 JUDGE SIPPEL: It's on the
19 periphery? Is that a program that might be on
20 the periphery?

21 THE WITNESS: Yeah, programming a
22 24/7 network, some programming is always going

1 to be better than others. And we would focus
2 much of our attention on prime time. But that
3 would throughout the whole course of the
4 network.

5 So certain types of programming we
6 definitely did retire: kids programming; more
7 the family entertainment types of programming.
8 And that was in that `04 to `05 timeframe.

9 BY MS. MUMAW:

10 Q Are there other types of
11 programming that you have retired?

12 A Yes. We certainly would have
13 retired a lot of live event programming. So
14 for instance if we had aired a boxing match or
15 a tennis match, we certainly would have
16 retired that because it is not as what we call
17 evergreen. Once you know the result of a
18 match like that, the value of that is much
19 less to a viewer. So we would retire a lot of
20 that.

21 Q In the initial stages of the
22 programming early on before you retired some

1 of the children's programming, what percentage
2 of the programming was that type of
3 programming?

4 A I don't know. It was not a large
5 percentage. It also - it's hard for me to
6 comment without other information on how much
7 hard programming constituted that. The one
8 metric I can give is, that programming was not
9 what we spent the bulk of our programming
10 budget on. We spent it on a lot of sports; on
11 movies. Those kind of programs tend to be
12 much more expensive than a lot of the
13 programming we retired.

14 Q By the time of the rebranding was
15 all of the programming targeted to males 18 to
16 49?

17 A At the time of the rebranding?
18 Are you talking about in June of '06?

19 Q By the time of the launch of Mojo.

20 A Okay. Or when we changed the
21 name. So by that time much of what we had
22 done if not all of it was targeted to that

1 demographic. It's a little subjective.
2 Someone might say a certain movie would appeal
3 to men and women. But in my mind what we were
4 doing at that point in May of '07, it was all
5 targeted to that male demographic, that male
6 affluent educated demographic.

7 Q When you - when the launch took
8 place, what was different about the
9 programming immediately before the launch and
10 immediately after the launch?

11 A Not a whole lot was different in
12 the programming. In fact a lot of the
13 programming on the network was still carried
14 from before. When we rebranded the network it
15 was about trying to set a date that you could
16 market to and drive this audience, hopefully
17 to this destination with these new shows.

18 But if you look - we can come up
19 with - we can use any of these examples. We
20 didn't launch with a huge number of new shows.
21 There would generally be one or two or three
22 series we would launch, and a lot of the

1 programming would be exactly the same
2 programming we had aired before, movies or
3 sports or other catalog programming we had
4 licensed or developed.

5 Q I want to talk a little bit about
6 the target audience. And by target I mean who
7 are you directing the programming at. Is it
8 fair to say that you - that at all points in
9 time you were targeting men?

10 A Yes.

11 Q 18 to 49?

12 A Yes.

13 Q Educated?

14 A Yes.

15 Q Decision makers?

16 A That's more a term of art from our
17 research group. So when you talk about some
18 of these other things, men, 18 to 49, those
19 are more Nielsen metrics. When we talk about
20 decision makers, that is to some degree a term
21 of art used by our research group to come up
22 with that. Subjectively, I would say. But I

1 can't really comment on that specific.

2 Q But that was a part of your target
3 audience, correct?

4 A Yes.

5 Q And also early adopters of
6 technology?

7 A Yes, those are the folks that
8 would generally own high def TVs as well, so
9 it was part of the audience.

10 Q It was part of the target
11 audience, though?

12 A Yes.

13 Q And high end consumers were also
14 part of the target audience?

15 A Yes.

16 Q I want to move to a different
17 subject area and talk about your knowledge of
18 Wealth TV. When did you first hear about
19 Wealth TV?

20 A When this process started, this
21 trial or this - is that the right word? This
22 trial?

1 JUDGE SIPPEL: Close enough.

2 (Laughter)

3 THE WITNESS: Okay.

4 BY MS. MUMAW:

5 Q And so you never heard of Wealth
6 TV prior to the complainant at the Commission
7 being filed?

8 A I don't remember ever hearing
9 about them until this came up.

10 Q Have you ever looked at any of
11 their programming?

12 A I have not.

13 Q Their marketing materials?

14 A No.

15 Q The website?

16 A No.

17 Q Did you consider their programming
18 in any way in planning NHD or Mojo
19 programming?

20 A No.

21 Q Let's move on to another subject
22 area. You testified earlier about being

1 unsuccessful in getting Mojo's programming on
2 satellite providers; is that correct?

3 A Or having the networks carried by
4 satellite providers. I assume that is -

5 Q Yes, thank you.

6 A Yes, okay.

7 Q Do you know why they would not
8 carry Mojo or NHD or NHD2?

9 A I don't. Unfortunately I wasn't
10 part of those discussions or negotiations.

11 Q Do you have any understanding of
12 why they chose not to carry?

13 A Yeah, I don't really.

14 Q There was an area - moving on to
15 another subject area, I was a little confused
16 earlier, and I wanted to clear it up, when you
17 were talking about the owners not wanting to
18 develop Mojo into a network and you were
19 disappointed in that; did I understand that
20 correctly?

21 A I'll try and add a little bit of
22 clarity to that. When the networks were

1 launched from the start, it was very much a
2 temporary what I'll call a placeholder until
3 the networks would be in high definition.

4 However at the management level we
5 programmed this, and it resided at our company
6 and people were working on it. So while the
7 network may have outlived its usefulness when
8 it was ended, from our owners' perspective it
9 may have done its job. At the managerial
10 level it was a little disappointing in that we
11 never got to build into what it could have
12 been, or what we imagined it might have been.
13 But that is where I was talking about more the
14 subjective piece of it.

15 Q But it was a network?

16 A Yes, and maybe I don't understand
17 the question.

18 JUDGE SIPPPEL: Well, don't answer
19 something you don't understand.

20 THE WITNESS: Okay.

21 JUDGE SIPPPEL: Let me - I'll come
22 back to you, Ms. Mumaw. But I want to ask you

1 this. What is the "it" you were talking
2 about? The In Demand enterprise, did I follow
3 that? Or the IHD?

4 THE WITNESS: I was referring
5 specifically to the network, the NHD and then
6 Mojo.

7 JUDGE SIPPEL: That was - all
8 right, well, you answered that question.

9 THE WITNESS: Okay.

10 JUDGE SIPPEL: Do you understand
11 where the witness is right now?

12 MR. MILLS: I think so.

13 JUDGE SIPPEL: All right, go ahead.
14 Go ahead and ask a question.

15 MS. MUMAW: I'll ask for a little
16 bit of context for the question.

17 BY MS. MUMAW:

18 Q Was - were NHD and NHD2 carried by
19 systems other than the defendant?

20 A Yes.

21 Q And so is that part of why you
22 were disappointed when they pulled the plug on

1 it, what was then Mojo?

2 A Yeah, I was disappointed because
3 the network was being shut down, and at that
4 point it was only one network when it was shut
5 down. But I was more disappointed because it
6 was part of our business, and people worked on
7 it everyday, and it was something that we
8 lived and breathed at a management level.
9 That is a program that was separate from what
10 the board decided to do in their own strategic
11 vantage point.

12 MR. SCHONMAN: Your Honor, would
13 you mind if I asked a question?

14 JUDGE SIPPEL: Is there any
15 objection to that?

16 MR. MILLS: No.

17 JUDGE SIPPEL: Go ahead.

18 BY MR. SCHONMAN:

19 Q We've been talking about your
20 disappointment when the owners of In Demand
21 decided to pull the plug on Mojo. At that
22 time as I understand it Mojo was being carried

1 by distributors other than the defendants; or
2 in addition to the defendants I should say.

3 A Yes.

4 Q And other cable providers?

5 A Yes.

6 Q And was it your hope at that time
7 that you would continue to market - your
8 company would continue to market Mojo and try
9 to get it carried on yet additional systems?

10 A Yes.

11 Q And is that then the source of
12 your disappointment, that you wanted to keep
13 marketing it and have it carried on other
14 systems, but they decided to pull the plug
15 completely and just take it off the air?

16 A Yes.

17 MR. SCHONMAN: Thank you, Your
18 Honor.

19 JUDGE SIPPEL: Okay. Ms. Mumaw?

20 MS. MUMAW: That's all I have.

21 Thank you.

22 JUDGE SIPPEL: All right. Are

1 there any other questions? Mr. Beckner?

2 MR. MILLS: Just a couple of
3 questions on redirect, Your Honor.

4 JUDGE SIPPEL: See how careful I'm
5 getting? Go ahead, Mr. Mills.

6 MR. MILLS: Thank you. Really
7 just one area.

8 REDIRECT EXAMINATION

9 BY MR. MILLS:

10 Q The word, launch, was used a
11 number of times, mostly in the questions, but
12 also in some of the answers. Talked about
13 launch of a block, launch of a network, launch
14 of a series. And that term has - I want to
15 ask you what you mean by that.

16 Can you tell us whether the
17 rebranding as you describe it was a launch of
18 a network?

19 A Yes, when I talk about launch for
20 a series, that is when a series premiers.
21 With respect to our network, it was something
22 where we were just rebranding or choosing a

1 name. The network was always what it was. It
2 was carried by the exact same folks in the
3 exact same place.

4 Q So when you are using the term,
5 launch, you don't refer to a new channel or
6 new network?

7 A No, the launch is more a
8 rebranding or renaming.

9 Q Had the board of directors of In
10 Demand ever authorized a new channel as
11 opposed to a rebranding of a channel?

12 A No.

13 MR. MILLS: I have nothing
14 further, Your Honor.

15 JUDGE SIPPEL: Are you finished?

16 MS. WALLMAN: Yes, Your Honor.

17 JUDGE SIPPEL: Everybody finished?

18 MR. MILLS: Yes, Your Honor.

19 JUDGE SIPPEL: Very good. Okay,

20 Mr. Asch, you are excused as a witness.

21 Please do not discuss your testimony with any
22 of the witnesses.

1 Let's go off the record.

2 JUDGE SIPPEL: Please be seated.

3 Back on the record. Okay. Mr. Beckner.

4 MR. BECKNER: Good afternoon, Your
5 Honor.

6 JUDGE SIPPEL: Good afternoon,
7 sir.

8 MR. BECKNER: I just want to
9 introduce our witness. This is Anne Stith.

10 JUDGE SIPPEL: Ms. Stith.

11 MR. BECKNER: Steve Miron.

12 JUDGE SIPPEL: Mr. Miron.

13 MR. BECKNER: And between them,
14 Mr. Art Steinhauer, who is actually a lawyer
15 whose appearance is on the case.

16 JUDGE SIPPEL: Mr. Steinhauer.

17 MR. BECKNER: Who represents
18 Bright House Networks, also.

19 JUDGE SIPPEL: Thank you.

20 MR. BECKNER: I'm going to ask Mr.
21 Miron now, who's the second of my witnesses,
22 to excuse us to the witness room.

1 JUDGE SIPPEL: That would be good.

2 Thank you.

3 MR. BECKNER: And ask Ms. Stith to
4 take the stand.

5 JUDGE SIPPEL: Ma'am. Does she
6 have water?

7 MS. STITH: I do not, but I'll let
8 you know if it's needed.

9 JUDGE SIPPEL: Okay.

10 MS. STITH: Thank you very much.

11 JUDGE SIPPEL: Well, let somebody
12 else know. Don't let me -

13 (Laughter.)

14 MS. STITH: I should be good.
15 Thank you, though.

16 JUDGE SIPPEL: Okay. Please rise
17 and raise your right hand while I administer
18 the oath.

19 MS. STITH: Yes, sir.

20 WHEREUPON,

21 ANNE STITH

22 was called as a witness and, after having been

1 first duly sworn, was examined and testified
2 as follows:

3 JUDGE SIPPPEL: Please be seated.

4 Thank you very much.

5 MR. BECKNER: May I proceed, Your
6 Honor?

7 JUDGE SIPPPEL: Yes, certainly, Mr.
8 Beckner. Yes.

9 MR. BECKNER: Okay.

10 DIRECT EXAMINATION

11 BY MR. BECKNER:

12 Q Ms. Stith, who is your current
13 employer?

14 A Currently I'm employed at Comcast
15 Cable in Houston, Texas.

16 Q And what are the duties that you
17 have in your current role?

18 A In my current role, I am Director
19 of Product Management. It is where I just
20 meet with programmers. I just help manage
21 national campaigns, along with local and
22 corporate campaigns, and deal with additional

1 product development, and launches with the
2 engineering team.

3 Q Was there ever a time when you
4 were employed by Bright House Networks?

5 A Yes.

6 Q And what were the dates of that
7 employment?

8 A The dates of that employment were
9 from September 2002 to July of 2007.

10 Q During the time that you were
11 employed by Bright House Networks, what were
12 your duties?

13 A My duties, I had three roles while
14 at Bright House. Initially, I was hired on as
15 an Area Director of Marketing at Melbourne, in
16 their Melbourne facility. Followed in 2004 -
17 pardon me - I had two roles - pardon me. So
18 then I moved on in 2004 to Director of Product
19 Marketing in the Tampa Division.

20 Q And when you say Melbourne, is
21 that Melbourne, Florida?

22 A Melbourne, Florida.

1 Q All right. How many years have
2 you been employed in the cable television
3 industry?

4 A Since 1991.

5 Q Do you recall executing a
6 declaration in April of 2008 describing your
7 contacts with representatives of WealthTV?

8 A In 2008? Yes.

9 Q Okay.

10 MR. BECKNER: Your Honor, if I
11 might approach the witness.

12 JUDGE SIPPEL: You certainly may.

13 MR. BECKNER: This has already
14 been submitted. This is the declaration of
15 Anne Stith, which was pre-filed.

16 JUDGE SIPPEL: Fine. Thank you,
17 sir.

18 (WHEREUPON, THE DOCUMENT REFERRED
19 TO WAS MARKED AS BHN EXHIBIT 10
20 FOR IDENTIFICATION.)

21 BY MR. BECKNER:

22 Q Ms. Stith, I'm going to hand you a

1 copy of what's been marked as BHN Exhibit 10
2 entitled "Declaration of Anne Stith." I'd
3 like you to take a moment to look at it while
4 I hand the copies out.

5 MS. WALLMAN: That one is marked.

6 MR. BECKNER: Yes.

7 BY MR. BECKNER:

8 Q All right. Ms. Stith, have you
9 had a chance to look at BHN Exhibit 10?

10 A Yes, sir, I have.

11 Q And is that a copy of the
12 declaration that you signed in April of 2008?

13 A Yes, sir, it is.

14 Q And is that your signature on the
15 last page?

16 A Yes, sir, it is.

17 Q This declaration was executed
18 about a year ago. Is there any change in the
19 information that it presents that you would
20 like to make?

21 A My current occupation is no longer
22 with Comcast in Broward County, Florida. As

1 mentioned earlier, it is now with Comcast in
2 Houston, Texas. And one slight note on Point
3 10, I believe that date should be February 11,
4 2007.

5 MR. BECKNER: And just for the
6 record I'll note that it's typed as February
7 11th, 2009.

8 THE WITNESS: Yes.

9 BY MR. BECKNER:

10 Q With those changes, is BHN Exhibit
11 10 true and correct to the best of your
12 knowledge and belief?

13 A Yes, sir.

14 MR. BECKNER: Your Honor, I'd move
15 the admission of BHN Exhibit 10 into evidence.

16 JUDGE SIPPEL: Any objection?

17 MS. WALLMAN: No objection.

18 JUDGE SIPPEL: It's received as
19 BHN Exhibit 10.

20 (WHEREUPON, THE DOCUMENT REFERRED
21 TO, PREVIOUSLY MARKED BHN EXHIBIT
22 10 FOR IDENTIFICATION, WAS

1 RECEIVED IN EVIDENCE.)

2 JUDGE SIPPEL: Thank you.

3 MR. BECKNER: Thank you, Your

4 Honor.

5 BY MR. BECKNER:

6 Q To the best of your recollection,
7 Ms. Stith, does this declaration, BHN Exhibit
8 10, fully describe your contacts and
9 involvement with representatives of WealthTV
10 on behalf of Bright House Networks?

11 A It does.

12 Q During the time of your
13 employment, do you recall hearing or seeing
14 any communication among Bright House Network
15 employees considering possible carriage of
16 WealthTV that referred to Mojo?

17 A Not in that context.

18 Q Speaking personally, that is, for
19 you, yourself, was Bright House Networks 5
20 percent ownership in the company that produced
21 Mojo in any way a factor in your lack of
22 interest in carrying WealthTV?

1 A I was not aware at all, until
2 literally this morning there was an interest
3 at stake. I had no awareness of that at all.

4 JUDGE SIPPEL: You mean you didn't
5 know about the interest of -

6 THE WITNESS: No. I did not know
7 Bright House had any interest in Mojo. I know
8 that often cable operators have ownerships.
9 To what level Bright House had, was not part
10 of my job, I mean, knowledge base needed to
11 be.

12 JUDGE SIPPEL: Thank you.

13 BY MR. BECKNER:

14 Q Do you have any knowledge that
15 Bright House Networks' 5 percent ownership
16 interest in the company that produced Mojo was
17 in any way a factor in BHN's general lack of
18 interest? I'm speaking now not just of you
19 personally, but as the company.

20 A No. Again, not even aware that
21 there was an interest involved, so had
22 absolutely no correlation.

1 Q Okay. To your knowledge, did
2 WealthTV ever present you, or anyone at Bright
3 House Networks, a written proposal for
4 carriage?

5 A Never.

6 Q A draft affiliate agreement?

7 A Never.

8 Q Something called a "Letter of
9 Intent", or identified as a Letter of Intent?

10 A Never.

11 Q Any other legal document that
12 would provide for the carriage of WealthTV by
13 Bright House Networks?

14 A Never.

15 Q Okay. Paragraph 11 of your
16 declaration mentions an email from John, I
17 think it's Scaro, S-C-A-R-O, WealthTV, dated
18 March 6, 2007. I'm going to show you a copy
19 of what's been marked as BHN Exhibit 1, and
20 ask you to tell us whether or not that's the
21 email that's referenced in your declaration.

22 A Yes.

1 MR. BECKNER: And, just for the
2 record, Your Honor, I believe Exhibit 1
3 already is in evidence.

4 JUDGE SIPPEL: Thank you.

5 MR. BECKNER: And I'll just pass
6 out copies.

7 BY MR. BECKNER:

8 Q All right. Ms. Stith, can you
9 tell us whether or not BHN Exhibit 1 is, in
10 fact, a copy of the email that's mentioned in
11 your declaration?

12 A This is a copy they sent to my
13 boss at the time, the VP of Marketing, as well
14 as the same copy was basically sent to me in
15 an email, as well.

16 Q Okay. Can you tell us who Stephen
17 Colafrancesco was?

18 A Yes. He actually was my boss'
19 boss. I reported to Michelle Stuart, the
20 Senior Director of Marketing, and she reported
21 to Stephen Colafrancesco, who is the VP of
22 Marketing and Sales at Tampa, and still is

1 today.

2 Q All right. Paragraph 11 in your
3 declaration also mentions an email that you
4 wrote to Stephen Colafrancesco on March 6,
5 2007. I'm going to show you what's been
6 marked as Bright House Networks -

7 MR. COHEN: Your Honor, are you
8 looking for Exhibit 1?

9 MR. BECKNER: I have extras, Your
10 Honor.

11 JUDGE SIPPET: Do you have extra
12 copies?

13 MR. BECKNER: Sure.

14 JUDGE SIPPET: Thank you.

15 MR. BECKNER: Okay?

16 JUDGE SIPPET: We're all set.

17 MR. BECKNER: All right, Your
18 Honor. Let me just pick up where I was. I'll
19 just repeat the question.

20 BY MR. BECKNER:

21 Q Ms. Stith, Paragraph 11 of your
22 declaration also mentions an email that you

1 sent to Stephen Colafrancesco on March 6,
2 2007. I'm going to show you what's been
3 marked as BHN Exhibit 2. And after you've had
4 a chance to look at it, if you could tell us
5 whether or not that's a copy of that email?

6 MR. BECKNER: And, Your Honor,
7 just for the record, this is the exhibit which
8 is marked for identification and you reserved
9 ruling. If I might approach, Your Honor, I
10 have a more complete copy.

11 JUDGE SIPPEL: Thank you.

12 MR. BECKNER: If you recall in the
13 admission session, we were talking about the
14 apparent omission of part of the message in
15 the original exhibit.

16 JUDGE SIPPEL: Right. Right. It
17 didn't seem to be complete.

18 MR. BECKNER: Right. I think
19 we've fixed that.

20 JUDGE SIPPEL: Thank you. It
21 appears that you have.

22 MR. BECKNER: Would you like some

1 copies?

2 JUDGE SIPPEL: Please.

3 BY MR. BECKNER:

4 Q All right. Ms. Stith, is BHN
5 Exhibit 2 a copy of the email that your
6 declaration says you sent to Steve
7 Colafrancesco on March 6, 2007?

8 A It is a copy of that email. Yes,
9 sir.

10 Q Okay. And can you -- Exhibit 2
11 has sort of a series of messages.

12 A Yes.

13 Q Can you just explain for us kind
14 of the history that's reflected here?

15 A Absolutely. In Exhibit, I believe
16 it's 1, is the email that was very -- it was
17 sent to myself, and to Michelle Stuart, and to
18 Stephen Colafrancesco, just a general
19 statement about the status that Wealth was in
20 discussions. At that time, Cola sent,
21 obviously, my boss, and myself an email saying
22 is this the guy that -- did he send this to

1 you? And as you can see my reply, was yes,
2 this is the same guy that Michelle and I both
3 met with. And I knew Mr. Colafrancesco was
4 inquiring with this email by saying he wanted
5 to know what we thought. I knew my boss well
6 enough to know that he was asking our
7 thoughts. And you can see my thought was
8 bottom line, and then the opinion that I
9 stated below.

10 Q All right.

11 JUDGE SIPPPEL: Do you want to read
12 it into the record? Would that help?

13 BY MR. BECKNER:

14 Q Yes, why don't you just read what
15 the bottom line was as you wrote on March 6,
16 2007?

17 A "Bottom line, nice product, not
18 worth an HD channel spectrum when we can see
19 pretty videos of wealthy travel locations and
20 great restaurants on Travel and Food TV. And,
21 most importantly, no customer demand."

22 Q All right. And does that

1 statement accurately reflect your feelings
2 about the carriage of WealthTV on Bright House
3 Networks' Florida systems?

4 A It absolutely was, and as was told
5 and spoken to Mr. Scaro about, as well.

6 Q Okay. Moving to another area of
7 discussion, I'd like to ask you if Bright
8 House -- strike that.

9 MR. BECKNER: Your Honor, at this
10 time, I'd move Exhibit 2 in evidence.

11 JUDGE SIPPEL: Any objection?

12 MS. WALLMAN: No, Your Honor.

13 JUDGE SIPPEL: It's identified and
14 received, as modified, as Bright House -- as
15 extended, as Bright House Exhibit 2.

16 (WHEREUPON, THE DOCUMENT REFERRED
17 TO, PREVIOUSLY MARKED BHN EXHIBIT
18 2 FOR IDENTIFICATION, WAS RECEIVED
19 IN EVIDENCE.)

20 JUDGE SIPPEL: Thanks very much.

21 MR. BECKNER: All right. Now,
22 I'll just sort of proceed with this other area

1 of discussion.

2 BY MR. BECKNER:

3 Q I'd like to ask you if Bright
4 House Networks ever attempted to obtain its
5 customers' views on cable programming in any
6 kind of systematic or formal way?

7 A Bright House -- I've worked for
8 several MSOs, and it is absolutely one of the
9 best MSOs as far as gathering research, and
10 customer feedback on networks before
11 launching. And we did it on all channel
12 launches. And, yes, we certainly were
13 looking, due to the limited bandwidth, what
14 would be the best match for our customers.

15 Q And, precisely -- specifically,
16 what kind of things did you do to gather
17 information?

18 A Everything from focus groups that
19 were ongoing. Regularly, we did focus groups.
20 We also employed telemarketing surveys. We
21 also employed internet surveys. And as the
22 internet became more and more resourceful,

1 that was definitely an easy way to contact
2 customers, and get feedback relatively
3 quickly, and with efficiency, and with
4 confidence.

5 Q Let's focus on what you called
6 internet surveys. Do you know how they were
7 conducted?

8 A What we -- I believe Bright House
9 -- I know Bright House in early '07 started
10 recognizing the need for more research, so
11 they actually brought on board at their group
12 offices a research expert. And those -- he
13 had extensive consumer research background.
14 And this survey specifically was through the
15 internet process, and using consumer emails
16 that we had. And we do random samplings
17 pulled from an IT department, and survey our
18 customers on everything from Hispanic
19 channels. We also employ third-party research
20 firms to do independent research for us, and
21 so forth.

22 Q Was this person that you mentioned

1 who was brought on, was his name James Mead?

2 A Yes, sir.

3 Q Okay. And he was brought on staff
4 at Bright House?

5 A At the Group Office. Yes, sir.

6 Q Okay. And did Mr. Mead do surveys
7 only for the Florida systems, or did he do
8 surveys for other Bright House systems, as
9 well?

10 A No, Group Office's function, while
11 it was based in Orlando, Florida, was a
12 complete, separate, outside of the divisional
13 roles. They focused on Bakersfield,
14 Birmingham, Detroit, and Indianapolis, as well
15 as the Orlando, and Tampa Divisions. So his
16 role was to function as a group employee.

17 MR. BECKNER: I'm going to show
18 you what's been marked as Bright House
19 Networks Exhibit 3.

20 (WHEREUPON, THE DOCUMENT REFERRED
21 TO WAS MARKED AS BHN EXHIBIT 3 FOR
22 IDENTIFICATION.)

1 BY MR. BECKNER:

2 Q I'll ask if you can identify as to
3 whether or not it's one of these surveys that
4 you mentioned.

5 A Yes.

6 Q And, again, I'm asking you to
7 identify it as to type.

8 A Yes.

9 MR. BECKNER: Your Honor, I think
10 you -

11 JUDGE SIPPEL: I have one.

12 MR. BECKNER: -- should have one.
13 Would you like another one?

14 JUDGE SIPPEL: Yes. Is the stamp
15 up here?

16 BY MR. BECKNER:

17 Q Okay. Now that you've had a
18 chance to look at Bright House Network Exhibit
19 3, can you tell me whether or not this is an
20 example of the kind of surveys that you just
21 described in your answer to my previous
22 question?

1 A Absolutely. These would be very -
2 - this is an exact example of one that would
3 be run through the internet. Very quick, five
4 to six questions, then you quantify the
5 customer, very much this type.

6 Q Now, the -- what was the usual
7 custom and practice? You mentioned five or
8 six questions, who would write the questions?
9 Would they be written by Mr. Mead?

10 A Typically, yes. I mean, we hire
11 an expert who's an expert for research to be
12 that specific. He would, typically, of
13 course, share the questions, make sure that
14 the goal of our survey was being achieved in
15 the questions that were being asked.

16 Q And you mentioned earlier that
17 once the questions were formulated, did Mr.
18 Mead select the email addresses to send these
19 out, or was there someone else involved?

20 A Typically, it would be an email,
21 just as if we were doing a telemarketing, or
22 direct mail request to send to the IT Team.

1 Give me everybody who fits this demographic.
2 I need a random sampling of 2,500 customers,
3 or 5,000 that do have an HD TV in their home
4 that's Bright House, or that do not. Identify
5 what they are. IT, being IT, has absolutely
6 no understanding of whether -- except what
7 constraints they're told, so they pull it
8 randomly, and it could be as random as every
9 ten subscribers or whatever number fits in
10 their algorithm to give us 2,500 of the
11 necessary need.

12 Q Now, that would be a survey of
13 your subscribers.

14 A Yes.

15 Q Was there ever an occasion where
16 the survey extended outside of just Bright
17 House subscribers?

18 A Certainly. I don't know specific
19 -- this one was not specific to that, but
20 there were absolutely, as we talked to
21 competitive reasons, we would look to third-
22 parties to buy secondary -- to buy non-

1 subscriber databases, or go to them to obtain
2 research that was already conducted.

3 Q Now, you mentioned with respect to
4 this particular study, which is Exhibit 3, did
5 you have any involvement with this study
6 personally? Do you recall?

7 A My role was -- it was right before
8 I left. And, yes, I had a -- I recall the
9 request to actually gather the IT list, and so
10 forth.

11 Q And was this study, based on your
12 involvement, a study of existing Bright House
13 Networks subscribers, or of people who resided
14 in the service areas that Bright House
15 Networks served?

16 A I believe, because of the fact we
17 pulled it with our own IT team, it would be
18 our own customers.

19 Q Okay.

20 A And we defined it as them having
21 HD TV box in their home, or not.

22 Q Okay. And did -- again, as a

1 matter of customer practice, was it your
2 experience that the company relied on surveys
3 like this in making its decisions about
4 programs?

5 A We absolutely took a lot of faith
6 into the research that was provided back to us
7 in surveys, such as this.

8 Q Okay. Now, with respect to this
9 particular survey here, which is dated
10 7/20/07.

11 A Yes.

12 Q Did you see the final output of
13 this survey prior to your leaving employment
14 of Bright House?

15 A No. The survey was just being
16 completed at that time. So the actual results
17 had not been provided to me at that time.

18 Q Okay. So you were involved in
19 putting the survey together, but didn't get a
20 chance to see the results before you left.

21 A When you say "putting the survey
22 together", I would say I was pulling the leads

1 for them to call, or request IT, like IT,
2 please give me 10,000 HD TV leads, please give
3 me 10,000 non, that -- addresses. As far as
4 actually scripting the questions and so forth,
5 no, sir.

6 JUDGE SIPPEL: What's IT?

7 THE WITNESS: The team that would
8 go into the database, the billing system, to
9 identify here are some email addresses of
10 customers who have an HD TV. Here's an email
11 list of customers that don't. So, Information
12 Technology Department.

13 JUDGE SIPPEL: And that's a part
14 of the company, as opposed to being a
15 contractor outside of the company?

16 THE WITNESS: That would be
17 correct. It would be our in-house team.

18 JUDGE SIPPEL: Thank you.

19 BY MR. BECKNER:

20 Q Now, with respect to this
21 particular survey, do you know whether or not
22 the customers surveyed were confined to

1 Florida, or were they all the Bright House
2 systems?

3 A No. Again, James was doing this
4 as a group decision, as a group employee, so
5 he would have to survey all markets, because
6 all Bright House Networks markets were looking
7 to what HD product was out there, and what was
8 available, and what the customers wanted. It
9 was not just a Tampa issue, per se. It was a
10 -- it's an industry issue, what HD channels do
11 customers want? So, he would have spoken to
12 all our Bright House markets.

13 MR. BECKNER: All right. Your
14 Honor, that's my direct of this witness, and
15 I tender her for cross examination. I'll just
16 note for the record that my next witness is
17 also going to discuss Exhibit 3 and 4, and I
18 plan at that time to actually offer them in
19 evidence.

20 JUDGE SIPPEL: That's fine.

21 MR. BECKNER: You have reserved
22 your ruling on these at the preliminary

1 sessions. I just wanted to let you know where
2 I was going.

3 JUDGE SIPPPEL: Thank you. That's
4 where we are. All right. Cross examine, Ms.
5 Wallman?

6 MS. WALLMAN: Yes, Your Honor.
7 Ms. Stith, I'm Kathy Wallman. We met briefly
8 just a little bit ago. I represent WealthTV.

9 CROSS EXAMINATION

10 BY MS. WALLMAN:

11 Q How did you first hear about
12 WealthTV?

13 A I first heard about WealthTV in
14 2004. I believe it was December, it could
15 have been late November. I was given a phone
16 call by a gentleman. I don't recall his name,
17 a younger gentleman out of Los Angeles, I
18 believe, he was based, asking hey, I have a
19 new HD product. Would you like to see it?
20 Sure.

21 Q Okay. And did you have any
22 awareness that WealthTV was being offered in

1 any of the Florida markets by one of the
2 competitors to Bright House Networks?

3 A Absolutely, because Verizon FiOS
4 was in my home, I even had it in my home. So,
5 as part of my job, it is my job to know what
6 the competition has.

7 Q Now, you indicate in your
8 declaration that's been offered as your
9 written direct testimony marked as Bright
10 House Networks Exhibit 10, you indicate in
11 Paragraph 3 in the last sentence the
12 following: "I would estimate that 99 percent
13 of the national network programmers with whom
14 I dealt knew that BHN was covered by
15 programming agreements negotiated by Time
16 Warner Cable, Inc. (TWC)."

17 A Yes.

18 Q Could you please explain what you
19 mean by covered by programming agreements
20 negotiated by Time Warner Cable, Inc.?

21 A Absolutely. As it is most
22 customary, we usually work in tandem with Time

1 Warner on agreements. While it not
2 necessarily is required that we enter, or Time
3 Warner has an agreement before we go forward
4 with the programming, we typically do, out of
5 just business -- our business as usual
6 practice is usually tied in with Time Warner's
7 programming decisions. While be it we have
8 our own -- Bright House had its own
9 opportunity to go on beyond, it was tied -- I
10 typically did not even speak with them unless
11 they had an agreement, or at least understood
12 that they needed to be reaching out to Time
13 Warner, as well.

14 Q So, your testimony is that Bright
15 House Networks could have reached its own
16 agreements with programmers, but generally you
17 didn't. Is that correct?

18 A Could you please repeat -

19 Q Your testimony is that Bright
20 House Networks could, if it wanted to, reach
21 agreements, carriage agreements with
22 programmers, national programmers, but that

1 generally you did not.

2 A First part of your question is
3 yes, they could, if they chose to. Generally
4 did not? We typically would be working with
5 Time Warner - not working with Time Warner,
6 but typically our programming agreements were
7 the same as what was going on with Time
8 Warner.

9 Q Well, do you recall Bright House
10 Networks entering into any national carriage
11 deals in the year 2007, while you were still
12 employed with the company?

13 A In -

14 Q Pardon me. Without a Time Warner
15 agreement in place.

16 A I do not recall any offhand,
17 myself.

18 Q Do you recall any from 2006 while
19 you were employed with the company?

20 A No, I don't recall.

21 Q Do you recall any from 2005, while
22 you were with the company?

1 A I do not recall.

2 Q And you were with the company for
3 a few months in September, 2004. Do you
4 remember any from that period?

5 A No, ma'am.

6 Q You indicated in your summary of
7 direct testimony that you had not received any
8 draft agreements, nor any Letters of Intent,
9 nor similar documents from WealthTV. Did any
10 representative from WealthTV with whom you did
11 speak discuss rates for carriage, if an
12 agreement were to be reached?

13 A The question was legal, is the
14 last part of it, and my statement was I do not
15 see the legal, so that I did receive the one
16 email. But, no, rates were never discussed.

17 Q Did anyone from WealthTV describe
18 to you what the terms of carriage would be if
19 Bright House Networks decided to carry the
20 network?

21 A No. As far as terms of carriage,
22 if you're meaning time frames, contracts type?

1 No. Rates were not discussed. The only thing
2 that I recall being discussed was On Demand
3 opportunities, which, at that time, was very
4 much being tied in with contracts, was what
5 would be available through On Demand, if a
6 channel would be launched. So, that's really
7 not a term, but that's just a part of what
8 they would say they bring to the table.

9 MS. WALLMAN: I'd like to show the
10 witness a document. If I may approach, Your
11 Honor?

12 JUDGE SIPPEL: Please.

13 MS. WALLMAN: I've marked this
14 document, which is an email, the top one is
15 Anne Whitehouse to Nico Fasano. I've marked
16 it for identification as WealthTV Exhibit 189.

17 (WHEREUPON, THE DOCUMENT REFERRED
18 TO WAS MARKED AS WTV EXHIBIT 189
19 FOR IDENTIFICATION.)

20 JUDGE SIPPEL: WealthTV 189 for
21 identification, or is it in?

22 (Off mic comments.)

1 BY MS. WALLMAN:

2 Q Now, Ms. Stith, is Anne Whitehouse
3 a name that you used to be known by?

4 A Yes, I was Anne Whitehouse, my
5 maiden name.

6 Q May I direct your attention,
7 please, to the email that originates from you.
8 It's at the bottom of the page, and it
9 continues over to a second page just a little
10 bit. This is an email dated Thursday,
11 February 17th, 2005 from
12 AnneWhitehouse@BrightHouse.com, to Nico
13 Fasano@WealthTV.net. And it reads: "Good
14 afternoon. My name is Anne Whitehouse. I was
15 referred to you by Stephen Colafrancesco to
16 discuss WealthTV with you. I am the Director
17 of Product Marketing; therefore, possibly
18 provide you with some insight into our current
19 digital channel structure in the Tampa Bay
20 Division market. At the same time, learn a
21 bit about your network. Please feel free to
22 contact me at the number below to schedule a

1 time to meet or chat on the phone."

2 Do you recall this email?

3 A I do not recall this specific one,
4 but I smile because the fact, this type of
5 email exchange would occur with programmers
6 quite frequently.

7 Q Do you recall whether you
8 eventually did have a conversation with Nico
9 Fasano?

10 A I don't even recall the name
11 "Nico". I apologize. But I can assure you
12 what happened, has happened quite frequently,
13 and as it does still in my current role. A
14 programmer reaches out to a Vice President.
15 The Vice President is, due to time
16 constraints, has a person such as me on his
17 staff, and asks me to speak to them. So, I'm
18 sure that's exactly what this is contrived of.
19 A phone call was given to Cola, or Stephen
20 Colafrancesco. He asked me to possibly return
21 the phone call, or email, and that is where it
22 is. So, I'm being very courteous to my boss,

1 and to the network itself, saying I'd like to
2 tell you about our Tampa Division, as well as
3 learn about your channel.

4 Q With respect to WealthTV's
5 carriage on Verizon in the Tampa market, do
6 you have a recollection as to whether it was
7 carried on the digital lineup?

8 A WealthTV on Verizon? I don't
9 recall the tier, per se. No.

10 Q Do you recall whether it was
11 carried on the high definition lineup?

12 A I don't recall. I don't recall
13 the entire Verizon scheme at this time, so
14 it's difficult for me to say if there is a
15 service charge for the product.

16 Q You indicated in earlier testimony
17 that Bright House Networks was covered by
18 programming agreements negotiated by Time
19 Warner Cable, but that Bright House Networks
20 could reach agreements on its own, if it
21 wanted to.

22 A Yes.

1 Q In that event, who was the proper
2 contact person?

3 A Well, it certainly wasn't my
4 position. But if it was at that point, I
5 would say possibly speak to either someone in
6 Syracuse, or someone at a VP level to initiate
7 those discussions.

8 Q During the time that you were at
9 Bright House, who would that person be?

10 A At the time, it would probably be
11 to reach out to Mr. Colafrancesco, or Mr.
12 Kevin Hyman to have discussions that would
13 probably go on to Syracuse.

14 Q And where was Mr. Colafrancesco
15 located?

16 A He was in the Tampa market, along
17 with his boss, Kevin Hyman, in the Tampa
18 market.

19 Q Do you know if they were empowered
20 to make national carriage deals?

21 A They would not have done so. I
22 certainly can't speak for them, but I would

1 assume that they would go to their boss, Steve
2 Miron, or, actually, Mr. John Rigsby, to ask
3 for that discussion.

4 Q Ms. Stith, with respect to Bright
5 House Exhibit 3, which is the HD programming
6 study, "Interest, Use, and Perceptions" with
7 James Mead's name on the cover.

8 A Yes.

9 Q You were not involved in
10 tabulating the results of the study. Right?

11 A Actually, the tabulation process
12 would typically be done by the internet
13 provider. I think, and I apologize for not
14 knowing the exact name of this internet, it's
15 like Monkey Surveys, or something. There's
16 many firms out there that actually provide
17 this. What you do is, you, as the company,
18 provide to them the questions you need asked,
19 the email distribution lists, and they
20 actually conduct it. So, you have the
21 opportunity whether you wanted to represent
22 yourself, or it gives -- it definitely gives

1 a sense of it's not being managed by Bright
2 House, because it is not. It's given to a
3 third-party to manage and tabulate.

4 Q Could that service that you're
5 thinking of be Survey Monkey?

6 A That would be it, yes.

7 Q You don't have the underlying
8 forms that were counted to create these
9 tables, do you?

10 A I do not.

11 Q Did you have access to them at the
12 time -

13 A I would not.

14 Q -- you were -

15 A No.

16 Q Just so I can get a clear record
17 here, just give me -- I speak more slowly, I
18 think, than you do, so if I could just finish
19 the question.

20 A I apologize.

21 Q No apology needed. I just want to
22 make sure we're clear.

1 Do you know who did the
2 tabulation?

3 A I do not know that as a 100
4 percent on this survey. I do know, when we
5 were presented Survey Monkey as one of the
6 vendors, as James Mead back many months
7 before, that this is a service we may use at
8 Bright House going forward, that is a benefit
9 that they would provide, as it would certainly
10 make sense that the person who's conducting
11 it, receiving responses, would provide back
12 tabulations.

13 Q Do you know what the margin of
14 error was in this survey?

15 A I do not know the statistical
16 significance on this.

17 Q Do you know how the networks that
18 are listed on page 2 of the exhibit, the ones
19 that run down the side of the table, do you
20 know how those were selected for inclusion in
21 the survey?

22 A Absolutely. They were tabulated

1 based on our time, and our understanding at
2 the time the survey was being conducted,
3 because I did have input on this, is what
4 networks were currently offered in HD, or
5 would be within the next three to six months.

6 And that was basically to all of our
7 research, our knowledge that we had from
8 independent programmers, including, you see we
9 knew Wealth was out there, as well as all the
10 other networks out there, and what was offered
11 on competition, competitive lineups.

12 Q So, anything that was currently
13 offered on Bright House in HD, would not have
14 been a candidate for -

15 A That's correct. That is correct.

16 Q So, for example, Mojo, which was
17 already carried on Bright House Networks,
18 wouldn't have been included, because they were
19 already carried on Bright House Networks.

20 A Correct. We're speaking to
21 customers as to what product would you like.
22 It was not an awareness questionnaire.

1 Q Do you know whether these
2 questions were presented in a rotating order?

3 A I do not know the answer.

4 Q Do you know why the sample number
5 given at the bottom of page 2 is different
6 from the sample number given at the bottom of
7 page 3?

8 A Yes, I do; because the 2400 number
9 is the entire all customers. If you look at
10 the smaller number, subset, I believe it is
11 1420, of those customers that had an HD TV.

12 JUDGE SIPPPEL: That's the number
13 at the bottom of the page. It's 2434 on page
14 2, and 1420 on page 3?

15 THE WITNESS: Yes, sir.

16 JUDGE SIPPPEL: Okay. Would you
17 repeat that again. Why is there different
18 numbers?

19 THE WITNESS: Yes, sir. We sent
20 to the survey, to Survey Monkey, 2,434 leads.
21 Actually, we probably sent them more knowing
22 that some of the response would not respond,

1 but we received back 2,434 leads, of which
2 1,420 would have an HD TV in their home.

3 BY MS. WALLMAN:

4 Q So, is it correct that you had
5 left the company by the time this document was
6 put together?

7 A Yes. By the time it was delivered
8 on July 20th, I was no longer then with Bright
9 House in Tampa.

10 Q So, you didn't rely on it in any
11 fashion for any decision that you made.
12 Correct?

13 A There were no decisions that were
14 made related to an HD launch at this time.

15 Q Do you recall speaking to Mr.
16 Charles Herring of WealthTV in July of 2006?

17 A Speaking to him? I don't,
18 necessarily -- I recall a phone call with him
19 briefly, just more of a conversational phone
20 call.

21 Q What do you remember about that
22 phone call?

1 A It was more of just where are you
2 at, I believe, as far as launching? It was a
3 very -- there wasn't a lot of content to the
4 call. I don't recall anything of
5 significance, that one.

6 Q At the time that you spoke with
7 Mr. Herring, did you have any understanding of
8 whether WealthTV had an agreement with Time
9 Warner?

10 A No. I did not think there had
11 been any progress made, or I would have
12 probably heard from him quite more frequently,
13 more than the phone call. And it probably
14 would not have been just from me, I probably
15 would have heard from several other people, or
16 just from him. Pardon me.

17 MS. WALLMAN: Just a moment, Your
18 Honor?

19 JUDGE SIPPEL: Sure.

20 MS. WALLMAN: I have nothing
21 further, Your Honor.

22 JUDGE SIPPEL: Mr. Schonman?

1 MR. SCHONMAN: Yes, just a few.
2 Hi. Good afternoon. My name is Gary
3 Schonman. I'm co-counsel for the Enforcement
4 Bureau.

5 CROSS EXAMINATION

6 BY MR. SCHONMAN:

7 Q Could you turn, you probably have
8 it before you already, Bright House Exhibit 3.
9 That's the chart we've been looking at.

10 A Yes, sir.

11 Q Yes. And it's -- at the risk of
12 asking you to repeat an answer, and I
13 apologize if I'm inquiring into an area we've
14 already gone into, but was this analysis of
15 Bright House subscribers?

16 A Yes, sir, that would have been,
17 because I did request it from our database.
18 And it would have to have been active email
19 addresses in order for us to reach them.

20 Q In July of `07, when this report
21 was prepared, WealthTV was not being carried
22 by Bright House' system. Is that correct?

1 A That is a correct statement.

2 Q Share with me, if you know, how
3 you would conduct a study of Bright House
4 subscribers, and ask them about WealthTV, if
5 WealthTV was not being carried on the system?

6 A Absolutely.

7 Q How would they know?

8 A Verizon had launched in that
9 market. It was on possibly at their
10 neighbor's home. Maybe their neighbor had
11 spoken highly of WealthTV. Was it something
12 compelling enough on our competitor's lineup
13 that would drive their neighbor to say hey, I
14 saw this in my neighbor's house. I'm curious
15 about it.

16 Q So you would expect, would you
17 not, that the numbers for WealthTV would be
18 substantially less than the numbers for
19 programs or channels that were already being
20 carried by Bright House.

21 A Well, none of the channels here
22 that were listed were carried in HD on Bright

1 House's network.

2 Q Were they carried at all by Bright
3 House?

4 A In HD format?

5 Q No, at all.

6 A At all?

7 Q In any format?

8 A In SD format, yes. They
9 absolutely were carried in SD format, and some
10 were not, as well. An example would be NFL
11 Network. National Geographic was also one
12 that was not carried.

13 Q Not carried in any format on
14 Bright House.

15 A That's correct.

16 Q At this time.

17 A That is -- and NAT GEO SD, pardon
18 me, the SD signal was, but NFL Network was
19 not.

20 Q Just so we're clear, because we're
21 jumping around here. You mentioned the NFL
22 Network. Was the NFL Network, in July of

1 2007, carried in any format whatsoever on
2 Bright House's system?

3 A No.

4 Q Any other networks that were not
5 carried at all at the time, that is 2007,
6 July, on any Bright House systems?

7 A I believe Big Ten was not. I
8 can't speak to it today. I know it was not in
9 2007. Big Ten would be 5 percent, about 7, 8
10 from the bottom.

11 Q I see.

12 A What is in the other category, I
13 cannot speak to.

14 Q How do you explain, if you know,
15 why NFL would get such large numbers among
16 Bright House subscribers when the NFL Network
17 was not being carried at all on Bright House's
18 system?

19 A Brand recognition, national media,
20 of course, around the situation at that time.

21 Q I'd like to turn to -

22 JUDGE SIPPEL: Before you do, you

1 mentioned SD. What is SD?

2 THE WITNESS: SD is the Standard
3 Digital feed.

4 JUDGE SIPPEN: Thank you.

5 BY MR. SCHONMAN:

6 Q I'd like to direct your attention
7 to Bright House Exhibit 10. That's your
8 direct written testimony.

9 A Yes, sir.

10 Q Specifically, Paragraphs 5 and 6.

11 A Yes.

12 Q And there, you're explaining about
13 establishing a dialogue with WealthTV.

14 A Yes.

15 Q Paragraph 5 talks about -- the
16 time frame is mid-July 2006, and you state
17 that you reached out to WealthTV. And did
18 WealthTV respond when you reached out?

19 A Yes, they did.

20 Q And how did WealthTV respond?

21 A Favorably, with a, we'd like to
22 have a phone conversation. We'd like to come

1 out to do a visit.

2 Q And did they have a phone
3 conversation, or did they come out to visit?

4 A The time frames of the actual
5 visit would have been several months later in
6 February of `07, but an email exchange. I
7 think they asked if I was going that year to
8 a cable conference, and I declined, saying I
9 was not. And they continually asked well, can
10 we set the phone call at this time, and we
11 eventually got around to February 2007 to
12 actually have a physical meeting.

13 Q Share with me, if you recall. You
14 reached out in July 2006, but not until
15 February 2007 did you get a substantive
16 response from WealthTV. Is that correct?

17 A As far as a physical visit. Now,
18 I will not say they necessarily didn't try to
19 reach out to someone and say I'd like to come
20 down, but I don't have any recollection of
21 that.

22 Q What type of information did you

1 ask WealthTV to provide in July 2006?

2 A Basically, I'd like to have seen
3 their product. I saw it in 2004, and I
4 believe back in 2004, and please don't -- the
5 numbers are not quantitatively correct, but I
6 would say it was less than 25 percent of their
7 -- well, all their product was HD. It was a
8 lot of repetition. They didn't have a lot of
9 material. So, my response was, I saw you all
10 about two years ago. I'd like to see you all
11 again, and see what improvements have been
12 made, to see if it is something that we'd like
13 to carry.

14 Q After receiving your expression of
15 interest in July 2006, did they rush a package
16 to you? Did they provide you immediately with
17 something?

18 A I don't recall that.

19 Q I'm trying to -

20 A I'm sorry.

21 Q Please, let me finish.

22 A Excuse me.

1 Q I'm trying to get a picture of the
2 level of excitement hearing from a prospective
3 distributor who has expressed an interest in
4 their product. I would think that they would
5 have rushed you something immediately. We've
6 got a live one on the end of the phone. What
7 was their level, that you perceived, of their
8 interest in speaking with you, and getting you
9 information as soon as possible?

10 A That is interesting, because I
11 don't recall a package being mailed to me.
12 Now, I'm not going to say it was not mailed to
13 me. Mine was just really a very -- just
14 seeing what improvements had been made. I do
15 recall making the phone call to the person's
16 phone number that was left with me in 2004,
17 and that person no longer being there. I did
18 leave several messages on their voicemail, and
19 finally it was returned. So, I do recall, it
20 took almost three to four weeks for a return
21 phone call. And, at that time, it was a very
22 happy phone call that was returned to me. I

1 don't recall if it was Mr. Herring or Mr.
2 Scaro. I cannot recall.

3 Q And the only meeting that you had
4 with representatives from WealthTV was in
5 February 2007?

6 A Outside of the 2004 visit, that
7 would be correct.

8 Q Is it fair to say that you
9 underwhelmed with the product following your
10 meeting in 2007?

11 A I would not say that is correct,
12 because it was 100 percent HD product. It was
13 very pretty.

14 Q Can you -- what do you mean by
15 that?

16 A It's an HD product. HD is a very
17 nice looking product. However -

18 Q Well, you could say that for all
19 HD products.

20 A You absolutely could.

21 Q The quality is outstanding.

22 A And that's what I was speaking to,

1 the quality was outstanding.

2 Q Was there -

3 A Worked very nicely.

4 Q What else did -- what other

5 impressions did you have of the WealthTV

6 product following your February 2007 meeting?

7 A I wasn't impressed that it would
8 deserve the bandwidth that it needed. It was
9 something that, knowing our consumers wanted
10 movies, and sports, just from focus groups
11 discussions, I didn't think it warranted the
12 bandwidth necessary to carry an HD channel.
13 And, most importantly, pardon me - was that it
14 did not have brand recognition where we knew
15 that there were other channels coming in the
16 future, such as Home and Garden, History,
17 National Geographic, other channels, Food
18 Network, that were very similar, that we felt
19 would be better for brand recognition, to say
20 that Bright House offered these, when we had
21 to go out and talk about our HD products.

22 Q Did they provide you with all the

1 information you needed at the February 2000
2 meeting, that is, all the information you
3 needed to make a decision, of was there
4 information that you felt you still needed
5 following that meeting?

6 A There was no decision for me to
7 make. I didn't make decisions. What they
8 were able to provide me was a DVD of their
9 product. They continuously spoke very
10 aggressively to us about their plans in the
11 Time Warner market, and wanted to speak to us
12 about how we could get -- Bright House could
13 get coverage. I explained very nice,
14 specifically stated that their product was
15 pretty, but it did not have the brand
16 recognition. It was very difficult for me to
17 make a recommendation based on if we had to
18 get consumer awareness of our HD product, that
19 WealthTV would be the one to place in that
20 spot.

21 Q Now, I understand you didn't make
22 any decisions, but you had the capacity to

1 make recommendations.

2 A Correct.

3 Q Was there any information missing
4 from their presentation that would have helped
5 you make a different recommendation?

6 A No. Mine was more to see -- mine
7 was more just to see what the product was, see
8 where they were as far as their library of HD
9 products. Had it improved since the last time
10 I'd seen it, which was, like I said, probably
11 25 percent, and a lot of it was being rotated.
12 They had improved, but it still wasn't to the
13 point where I felt WealthTV would garner us
14 additional or save, or retain subscribers.

15 Q At the time of the February 2000
16 meeting, did the Bright House system have the
17 capacity to carry WealthTV, if you made the
18 recommendation that it was appropriate to
19 carry WealthTV?

20 A I cannot answer that question
21 fairly, because I don't recall at that day
22 what was happening in the engineering

1 spectrum. I knew that we were looking to
2 launch three to four channels. Now, would
3 that be physically that day we could have done
4 that, or was it something that would mean next
5 60-day through engineering grooming could be
6 done? So that day, I don't know. But as far
7 as our three to six month plan, that's what we
8 were looking for.

9 Q So, was this meeting in February
10 2007 with representatives from WealthTV more
11 than exploratory?

12 A It was only exploratory, and
13 that's how the invitation was positioned.

14 Q You told them that?

15 A Absolutely.

16 Q You told them that before they
17 came, or you told them at the meeting, itself?

18 A Absolutely at both points.

19 Q And did you share with them at the
20 meeting your perception of the WealthTV
21 network, or was it after the meeting?

22 A No, sir. I can recall specifically

1 looking at Mr. Scaro, saying your product is
2 very pretty, and I like all of the HD, that is
3 100 percent HD. How do I justify it, though,
4 when it was no brand recognition? That is
5 when he tried to tell me that putting it On
6 Demand would create customer demand;
7 therefore, garnering him brand recognition in
8 our market, or within our Tampa Bright House
9 customers.

10 Q That didn't sell you?

11 A That did not sell, because of the
12 fact, I had never heard of an On Demand
13 service being provided to us without a linear
14 commitment.

15 MR. SCHONMAN: No further
16 questions, Your Honor.

17 JUDGE SIPPEL: From what I've
18 heard, it sounds like your -- using that term,
19 "the bottom line" again, it was this absence
20 of brand recognition that was what really
21 tilted it away from a positive decision on
22 your part.

1 THE WITNESS: Absolutely.

2 JUDGE SIPPEL: And would you again
3 explain what brand recognition means to you?

4 THE WITNESS: Certainly. In 2007,
5 a lot of the cable networks had limited
6 capacity to launch HD products. Most cable
7 networks were limited to 12 HD channels. It's
8 just their bandwidth constraints. We had the
9 same issues at Bright House at that time. We
10 were losing -- we were not losing, but we were
11 not retaining all of our customers. Some were
12 leaving to Verizon, because Verizon was adding
13 additional HD content. Our concern was with
14 the limited amount of channels that we could
15 launch HD, we need to make sure we launched
16 whatever we choose in HD, with services that
17 would keep our customers, or, possibly, even
18 gain back. And it was decided that WealthTV
19 with its -- by sending an advertising campaign
20 out to the customers saying we have WealthTV,
21 would not be as effective as saying we have
22 Home and Garden TV HD. The customers would be

1 more cognizant of HGTV in HD, than they would
2 WealthTV. Likelihood to either come back,
3 because they know we have HG, or another
4 service, would be higher.

5 JUDGE SIPPEL: What is HG?

6 THE WITNESS: Home and Garden.

7 I'm just -

8 JUDGE SIPPEL: Oh, okay.

9 THE WITNESS: Yes, or Spike, or
10 TBS, or any of the networks that had more --
11 Discovery Channel would be another example.

12 JUDGE SIPPEL: All right. Thank
13 you. Any other questions? No cross, but
14 redirect, of course.

15 MR. BECKNER: Yes.

16 JUDGE SIPPEL: Mr. Beckner.

17 MR. BECKNER: A couple of follow-
18 up questions on BHN Exhibit 3.

19 REDIRECT EXAMINATION

20 BY MR. BECKNER:

21 Q Ms. Wallman asked you some
22 questions about Survey Monkey, and who did the

1 tabulation process, and did you have the
2 underlying responses, and so on. And my
3 question is really simple. For the purposes
4 that Bright House Networks used for this
5 survey, and other surveys like it, were they
6 satisfied that the tabulation was sufficiently
7 accurate to serve their purposes?

8 A Certainly.

9 Q Okay. And, again, just to repeat,
10 their purpose for these surveys was to assist
11 them in making programming decisions. Is that
12 correct?

13 A Programming, customer service. It
14 was a sundry. We used the tool for many
15 purposes in our operation.

16 Q I'd like you just to take a look
17 at the second page of Exhibit 3, the small
18 type at the bottom. Is this, by the way, is
19 this format one that's familiar to you from
20 seeing other surveys of this type?

21 A Yes.

22 Q Okay. The bottom line, there's

1 the word "Base: Total". Do you know what that
2 means?

3 A Yes. Of the total respondents, so
4 the 2434.

5 Q So, in other words, this first --
6 page 2 of the exhibit, which is the first bar
7 graph, that represents -- the Base:Total means
8 the basis of the bar graph is the total number
9 of responses?

10 A That is correct.

11 Q And that would be, according to
12 this one, 2434?

13 A Yes, sir.

14 Q All right. Now, if you turn to
15 the second page of the exhibit, there it says,
16 "Base:HD TV owners." Do you know what that
17 means?

18 A Yes, that means that what is
19 represented here are the 1,420 people that
20 responded that they were HD TV owners.

21 MR. BECKNER: All right. Nothing
22 further, Your Honor. Thank you.

1 JUDGE SIPPEL: Let me just pick up
2 on that a little bit. I have in my notes that
3 2434 leads were given to Monkey to conduct the
4 survey, but that's not right, is it? Go
5 ahead.

6 THE WITNESS: There's usually a
7 few more leads than what's represented.
8 That's how many responded back.

9 JUDGE SIPPEL: Oh, thank you. So
10 there were, obviously -- well, not obviously,
11 but probably more than 2434 leads that were
12 given.

13 THE WITNESS: Certainly.

14 JUDGE SIPPEL: Yes. Thank you.
15 That's all I have.

16 MS. WALLMAN: Your Honor, brief
17 recross.

18 JUDGE SIPPEL: Sure. Yes, ma'am.

19 RECROSS EXAMINATION

20 BY MS. WALLMAN:

21 Q Ms. Stith, it's not your
22 testimony, is it, that between your attempt to

1 contact WealthTV in mid-July of 2006, and the
2 meeting that occurred in February of 2007,
3 that WealthTV failed to respond to your
4 inquiry, is it?

5 A It was not a failure to respond.
6 They did respond once the voicemails were
7 returned.

8 Q You said in earlier testimony that
9 you recalled a conversation with the president
10 of the company, which Charles Herring. Is
11 that correct?

12 A That is correct.

13 Q In July of 2006. Correct?

14 A Yes.

15 Q Was that a call that he was
16 returning to you?

17 A Most likely it was. He did not
18 reach out to me, initially, no. Except in
19 2004, when his other representative did.

20 Q In the course of your contacts
21 with WealthTV, you made it clear to them that
22 you were not the decision maker on whether

1 they could be carried on Bright House
2 Networks. Correct?

3 A Very clear.

4 Q And you also clarified for them
5 that there wasn't really anything that could
6 be done about carriage on Bright House
7 Networks until there was an agreement with
8 Time Warner Cable. Correct?

9 MR. BECKNER: Objection; misstates
10 the witness' testimony.

11 THE WITNESS: Could you repeat the
12 question?

13 MS. WALLMAN: Well, let me
14 rephrase it.

15 BY MS. WALLMAN:

16 Q Did you indicate to WealthTV that
17 it was difficult for Bright House Networks to
18 carry WealthTV until they had an agreement
19 with Time Warner Cable?

20 A I would have told them -- if I
21 recall, I told them to -- they needed to speak
22 with -- that I was not the decision maker,

1 that a presentation at this level without an
2 agreement with Time Warner, probably needed to
3 go speak to other people, including
4 Colafrancesco, Kevin Hyman, and then take that
5 to Syracuse.

6 MS. WALLMAN: Thank you. Nothing
7 further.

8 JUDGE SIPPEL: Do you have
9 something, Mr. Schonman?

10 MR. SCHONMAN: Just to clarify
11 something.

12 RECROSS EXAMINATION

13 BY MR. SCHONMAN:

14 Q In response to the very last
15 question, you started your statement by
16 saying, "I would have told them if I recall".

17 A Well, I'm trying to -

18 Q Do you recall, or don't you
19 recall?

20 A I do recall. The specific
21 statement to Mr. Scaro was, you need to -- we
22 are not the decision makers. He was very

1 adamant. He was asking for almost essentially
2 a commitment from me at that meeting. It was
3 a very aggressive presentation, probably one
4 of the most aggressive presentations I've ever
5 had from a programmer. Left a very negative
6 feeling, in fact, when he left. He asked me,
7 "What do I need to do? Time Warner is doing
8 some On Demand stuff, are you interested?" I
9 said, "Sir, we do not have the authority at
10 the local level here in Tampa to make" -- we
11 look at programs from a recommendation
12 standpoint, and what is on the competitor's
13 lineup, which is where he stood. I said,
14 "Actually, carriage decisions are made, either
15 you need to have a presentation with Mr. Cola
16 and Kevin Hyman, and then possibly even with
17 the Mirons in Syracuse."

18 MR. BECKNER: I have no further
19 questions, Your Honor.

20 JUDGE SIPPEL: Is that it?

21 MR. BECKNER: That's it, sir.

22 JUDGE SIPPEL: Okay. Nothing

1 further. Thank you very much, Ms. Stith.

2 THE WITNESS: Thank you very much,
3 Your Honor.

4 JUDGE SIPPEL: You're excused as a
5 witness, and released from your oath.

6 THE WITNESS: Thank you.

7 JUDGE SIPPEL: Please do not
8 discuss your testimony with any other
9 witnesses until all this testimony is
10 completed.

11 THE WITNESS: Thank you.

12 JUDGE SIPPEL: Okay. Any
13 questions, contact your counsel.

14 THE WITNESS: Thank you.

15 JUDGE SIPPEL: Okay, Mr. Beckner.
16 Do we have another witness?

17 MR. BECKNER: Yes, sir. Can we
18 have like a five-minute break?

19 JUDGE SIPPEL: Well, we're going
20 to do 10 minutes, because five doesn't work.

21 MR. BECKNER: Okay. A ten-minute
22 break then.

1 JUDGE SIPPEL: Fine. Ten-minute
2 break. Fine. Thank you. Is this the only
3 one?

4 MR. BECKNER: Yes. There's no
5 question we're going to finish up today with
6 this witness.

7 JUDGE SIPPEL: Thank you.

8 (Whereupon, the proceedings went
9 off the record at 3:05 p.m., and went back on
10 the record at 3:20 p.m.)

11 JUDGE SIPPEL: All right, let's go
12 on the record. Mr. Beckner.

13 MR. BECKNER: Your Honor, we have
14 Mr. Steve Miron as my next witness.

15 JUDGE SIPPEL: Mr. Miron, please
16 raise your right hand.

17 Whereupon,

18 STEVE MIRON
19 was called as a witness and, having been first
20 duly sworn, was examined and testified as
21 follows:

22 JUDGE SIPPEL: And you're here

1 from Syracuse?

2 THE WITNESS: I am.

3 JUDGE SIPPEL: Is it snowing
4 there?

5 THE WITNESS: Within 10 days we've
6 had snow, but it's warmed up now but not too
7 long ago.

8 JUDGE SIPPEL: Well, welcome to
9 the southern clim here

10 MR. BECKNER: We have arranged for
11 some nice summer says.

12 DIRECT EXAMINATION

13 BY MR. BECKNER:

14 Q Mr. Miron, who is your employer at
15 the moment?

16 A Bright House Networks.

17 Q And what's your job title at
18 Bright House Networks?

19 A I'm the CEO of Bright House.

20 Q Why is Bright House Networks?
21 What kind of business is it?

22 A Sure. We're a cable multiple

1 system operator.

2 Q And how owns Bright House
3 Networks?

4 A Bright House is owned by TWE-AN,
5 Time Warner Entertainment - Advance/Newhouse
6 Partnership.

7 Q And can you just tell us who the
8 names of the -- who the partners are in that
9 partnership?

10 A Sure.

11 Q Obviously, Time Warner is one but
12 --

13 A Time Warner Entertainment is --
14 Time Warner is one of the partners and
15 Advance/Newhouse is the other partner.

16 Q All right.

17 JUDGE SIPPEL: Was it
18 Advance/Newhouse?

19 THE WITNESS: Advance/Newhouse,
20 right.

21 JUDGE SIPPEL: Thank you.

22 BY MR. BECKNER:

1 Q Does --

2 JUDGE SIPPEL: Excuse me, are they
3 50/50 or something like that? What are the
4 percentages?

5 THE WITNESS: Yeah, we're one-
6 third and Time Warner is two-thirds, we're
7 one-third.

8 JUDGE SIPPEL: Okay, so two-thirds
9 Time Warner and one-third Advance/Newhouse.

10 THE WITNESS: Right.

11 JUDGE SIPPEL: Thank you. Go
12 ahead, Mr. Beckner, I'm sorry.

13 MR. BECKNER: Thank you.

14 BY MR. BECKNER:

15 Q Does Bright House Networks buy its
16 programming through Time Warner's contracts
17 with program services?

18 A Yes, we do.

19 Q And how did that come about?

20 A We -- with our Time Warner -- with
21 our partnership there are certain
22 responsibilities that Time Warner takes the

1 lead for in the partnership. For example,
2 programming would be one of them. Time Warner
3 is in the lead role in programming,
4 engineering as well. We use a similar
5 engineering platform for our high speed data
6 product. We're a Road Runner affiliate for
7 example and Time Warner Cable sells Road
8 Runner service.

9 Bright House is also a Road Runner
10 affiliate. We make Road Runner available to
11 our customers as well. So we -- Time Warner
12 is in the lead on the programming role and our
13 programming arrangement fall under their
14 contracts.

15 Q Now, having said that, is it
16 Bright House Networks' decision as to what
17 program services to carry on the Bright House
18 Network cable systems?

19 A Yes.

20 Q And what are the factors that
21 Bright House Networks considers in deciding
22 whether or not to carry a particular program

1 service?

2 A Sure. Well, we -- I would say it
3 starts with our customers and, you know, what
4 our customers are interested in and what our
5 customers are asking us for. You know, they -
6 - you know, through our divisions we have
7 8,000 employees, so we have a pretty good idea
8 of what our customers are asking us for and
9 what they're interested in.

10 Our capacity has a lot to do with
11 what kind of services that we carry. We have
12 a limited amount of capacity and we can carry
13 services of an analogue fashion or a digital
14 fashion or a high definition fashion. So
15 depending what the service is, our capacity
16 would have something to do with it. The
17 economic arrangement would certainly have
18 something to do with what kind of services we
19 carry, what it would cost, what tier we could
20 carry it on, how we could package it.

21 So our competitors, we're in a
22 time of increasing competition and we have --

1 we complete with satellite companies for video
2 customers. We compete with -- we're now
3 increasingly competing with the telephone
4 companies. So, you know, we're looking at
5 what our competitors have and what our
6 customers are asking us for and it's, you
7 know, somewhat of a balancing act there.

8 Q Did Bright House Networks consider
9 whether or not to carry WealthTV?

10 A We did.

11 Q And what was the decision about
12 that?

13 A We decided not to carry WealthTV.

14 Q In deciding not to carry WealthTV,
15 did Bright House Network consider any factors
16 different from the ones that you enumerated in
17 your previous answer?

18 A No.

19 Q Was Bright House Networks'
20 ownership interest in the company that
21 produced Mojo factor at all in Bright House
22 Networks' lack of interest in carriage of

1 WealthTV?

2 A No.

3 Q I'm going to show you what's been
4 marked as Bright House Exhibit 9 in this case,
5 which is a copy of your pre-trial testimony.
6 If you would please take a look at it while
7 I'm passing the copies around and then I'll
8 ask you to identify it. Mr. Miron, is this
9 Bright House Networks Exhibit 9 appear to you
10 to be a true copy of a declaration that you
11 executed on April 14th, 2008?

12 (The document referred to was
13 marked as Bright House Exhibit
14 Number 9 for identification.)

15 (Witness proffered document.)

16 A Yes.

17 Q Okay. Now, as of the date that
18 this declaration was executed, that is about
19 a year ago, was it true and correct to the
20 best of your knowledge and belief?

21 A Yes.

22 Q Okay, now, a year has passed since

1 when you executed this. Is there any
2 information that you need to change as a
3 result of the passage of time in this
4 declaration?

5 A Yeah, I mean, there are a few
6 things I would update depending on how much
7 detail you want. My title has changed. The
8 amount of customers we had, how many customers
9 are digital services, how many receive high
10 definition services, those numbers have
11 changed. They're slightly up. Our -- you
12 know, the number of HD channels that we carry
13 have changed. We don't carry Mojo any longer.
14 So I could go into more detail if you want,
15 but those are -- it's generally correct.

16 Q Okay. Let me just direct your
17 attention to -- we'll just go through this on
18 a couple of these paragraphs. Paragraph 6 on
19 page 2, is that still a correct statement?

20 A Yeah, it is. We carry -- we're
21 carrying more of the Discovery, high
22 definition networks now, so that would be an

1 update. HD theater isn't really offered any
2 more. Discovery is now offering their service
3 as a simulcast of Discovery but yes, outside
4 of that, it's correct.

5 Q Is paragraph 7 of your declaration
6 still true now or does it need any updating?

7 A No, that's still accurate.

8 Q And the same question for
9 paragraph 8.

10 A That's still accurate.

11 Q And the same question for
12 paragraph 9.

13 A That's still accurate.

14 Q And the same question for
15 paragraph 10; is that still accurate?

16 A Yeah, other than the end of it
17 which says which services that we've added,
18 we've added more services since then and I'm
19 not -- outside of that, it's accurate.

20 Q Okay. Well, we'll get to some of
21 those services later. Paragraph 11, is that
22 still accurate as of today?

1 A Yes, it's very accurate. Even
2 more so. The competitive environment I'd say
3 even in the last year, year and a half, has
4 intensified, so very accurate paragraph.

5 Q Okay, and the same question with
6 respect to paragraph 12; is that still
7 accurate today as far as you know?

8 A Yes.

9 Q All right.

10 JUDGE SIPPPEL: Can I ask why this
11 was executed way back in -- well, not way back
12 in, but in April 2008? Well, let me ask in
13 this context. In the context of this hearing,
14 which was roughly speaking this is a January
15 2009 hearing.

16 MR. BECKNER: These -- this
17 declaration and this declaration were executed
18 as part of the answer that Bright House
19 Networks filed to the complaint, in this case,
20 the WealthTV and since these two documents
21 were, you know, part of that answer and, of
22 course, were supplied to WealthTV at that

1 time, you know, assuming as we've established,
2 that the witnesses still stand by their
3 stories, there's -- it sort of tells the
4 story.

5 JUDGE SIPPEL: Okay, so WealthTV
6 basically is -- counsel have had this
7 testimony since about April 2008.

8 MR. BECKNER: That's correct.

9 JUDGE SIPPEL: And has he been
10 examined on it either in deposition or any
11 other form?

12 MR. BECKNER: No, no deposition.
13 There were no depositions of fact witnesses in
14 this case, your Honor.

15 JUDGE SIPPEL: And there were no -
16 - in terms of the other proceeding, was there
17 any examination or anything like that? I
18 guess I should put it this way; has -- has
19 WealthTV tested Mr. Miron with respect to this
20 statement at any time?

21 MR. BECKNER: Well, no. They
22 could have asked for an opportunity to do so

1 if they wanted to.

2 JUDGE SIPPEL: All right, no, I'm
3 not pressing it. I'm just -- I just want to
4 know what end is. Okay, go ahead.

5 MR. BECKNER: Yeah. As you know,
6 there was an agreement among the parties in
7 this case in the interest of making it happen
8 quickly, that the depositions will be limited
9 only to experts and there would be no
10 depositions of fact witnesses. So none of the
11 fact witnesses who have testified or who will
12 testify you know, have been examined
13 previously by the parties.

14 JUDGE SIPPEL: Okay, okay, I hear
15 you.

16 MR. BECKNER: I'd like to offer
17 Exhibit 9 into evidence at this time.

18 JUDGE SIPPEL: Any objection?

19 MS. WALLMAN: A question, your
20 Honor. Maybe a objection. Mr. Miron had
21 indicated that there were a few paragraphs
22 that needed to be updated. How is that going

1 to be handled?

2 JUDGE SIPPEL: Well, you can ask -
3 - well, there's a lot -- well, what's your
4 response, Mr. Beckner?

5 MR. BECKNER: I mean, I was -- in
6 the interest of expedition, I wasn't going to
7 go through. I don't think the updates are
8 material to his testimony but if counsel for
9 WealthTV feels differently, then we can go
10 through one-by-one and update them.

11 JUDGE SIPPEL: Well, I'm not going
12 to put you to the burden. I mean, the witness
13 has basically satisfied, you basically
14 satisfied it's substantially correct. If you
15 want to test it, you're certainly welcome to
16 do that, Ms. Wallman, but I'd sooner let it go
17 till cross examination.

18 MR. BECKNER: Yeah, the witness
19 has indicated for example, paragraph 4 which
20 has some subscriber numbers that, you know,
21 those would need to be updated, but I don't
22 know if that's material at all to the case.

1 JUDGE SIPPPEL: That's my feeling,
2 too, but I'll see how Ms. Wallman wants to
3 treat it. But I'll certainly give you the
4 opportunity to cross examine on it as much as
5 you want, as much as you reasonably want. But
6 I don't see any reason to go through voir dire
7 or any things like that. He's told us what it
8 is. I mean, it's not -- well, anyway the
9 witness has testified to what it is. He said
10 that he's comfortable with it. He signed it.
11 And Mr. Beckner is comfortable with it. So
12 unless you have a specific objection, I'm
13 about to receive it. You've had it since
14 2008.

15 MS. WALLMAN: Well, my objection
16 doesn't go to anything that we'd correct as of
17 2008. My concern is that there are things
18 that are relevant, at least relevant and
19 possibly material, that Mr. Miron has
20 indicated need to be updated. There was a
21 date, as I've been reminded, for the filing of
22 written direct testimony. If the changes have

1 occurred since April 6th, 2009, then that's
2 certainly understandable, but otherwise it's
3 just -- I'll do the cross examination but it
4 would have been good to know that there had
5 been changes.

6 JUDGE SIPPEL: Well, he just told
7 you that. I mean, you're not getting -- well,
8 I understand, you didn't know till just now,
9 but --

10 MS. WALLMAN: Correct.

11 JUDGE SIPPEL: -- I'm led to
12 believe at this point anyway that the changes
13 are, you know, non -- they are not dispositive
14 of any issue in the case. It's simply
15 updating a couple of numbers. If it goes
16 beyond that and you want to strike something,
17 you know how to ask for that relief. But
18 right now, I'd just like to get it in and move
19 on.

20 MS. WALLMAN: Well, then I don't
21 object to admission of the document.

22 JUDGE SIPPEL: Thank you. It's

1 received as BHN exhibit, all right, identified
2 and received. You may proceed, Mr. Beckner.

3 (The document referred to having
4 been marked as Bright House
5 Exhibit Number 9 for
6 identification was received in
7 evidence.)

8 MR. BECKNER: All right. Thank
9 you, sir.

10 BY MR. BECKNER:

11 Q Mr. Miron, in paragraph 10 of your
12 declaration, you mentioned a customer survey.
13 I'm going to show you what's been marked as
14 BHN Exhibit 3.

15 MR. BECKNER: And, your Honor, can
16 I have the witness shown Exhibit 3 again? I
17 think I have another copy of it.

18 JUDGE SIPPEL: Well, those numbers
19 I have.

20 MR. BECKNER: That's all right, I
21 have another copy of it.

22 JUDGE SIPPEL: Okay.

1 MR. BECKNER: Thank you. And, you
2 know, I've already had this exhibit around in
3 conjunction with Ms. Stith. So --

4 JUDGE SIPPEL: That's correct.
5 That's correct. I understand.

6 MR. BECKNER: Okay.

7 BY MR. BECKNER:

8 Q And Mr. Miron, after you've had a
9 chance to look at Exhibit 3, could you tell us
10 whether or not this is a copy of the survey
11 that you mentioned in your declaration at
12 paragraph 10.

13 A Yes, yes, it is.

14 Q Okay. And is this survey of a
15 type that -- well, let me just strike that.

16 Was this survey, which is Exhibit
17 3, was that a one-time event or does the
18 company do surveys like this as a regular part
19 of its business?

20 A Yeah, we do surveys like this from
21 time to time.

22 Q Okay. And what's the purpose that

1 you make of these surveys, generally?

2 A Of this survey or --

3 Q Just generally.

4 A -- surveys in general?

5 Q Surveys in general.

6 A I mean, generally to help measure
7 customer interest, customer reaction, so, you
8 know, typically when we're you know -- it can
9 be about a program service. It could be
10 about, you know, interest in having a more
11 narrow appointment window for somebody to come
12 visit your house. We're always -- to seek
13 customer input.

14 Q Okay, and now I'll ask the same
15 question with respect to this specific survey
16 here; what was the purpose that you had in
17 mind for this survey that we're looking at?

18 A Well, we have -- at the time we
19 had a limited amount of HD capacity and so --
20 and we wanted to add more HD services to our
21 channel lineup to be competitive. So we
22 wanted to -- we did this survey to help

1 measure which services customers were
2 interested in.

3 Q And --

4 A We -- go ahead, I'm sorry.

5 Q With respect to -- let's just turn
6 to page -- the second page of the exhibit
7 which has the list of a number of services.
8 Were any of these services listed here by the
9 bar chart, were any of them currently carried
10 by Bright House Networks at the time this
11 service (sic) was done in HD format?

12 A They were not.

13 Q Okay. Now, subsequent to the time
14 this survey was done, which was July of 2007,
15 have you added carriage of any of these
16 services in HD format?

17 A We have.

18 Q Are you able to tell me some of
19 the ones that you've added?

20 A Yeah, I don't know if I could --
21 and it could be -- we have six different
22 divisions so we carry some different services

1 in different divisions, so I probably can't
2 nail it totally but I can get pretty close.

3 Q All right.

4 A We carry National Geographic,
5 History Channel, SciFi, USA, HD TV, Fox ,
6 Food, Animal Planet, TLC, TBS, FX, Fox News.
7 I think we have -- in some places, we are
8 carrying Cinemax in some places, AMC, Disney,
9 SPEED, I think we're carrying in some places,
10 CNN, MTV-HD, it's now called Palladium, we
11 carry that one. That's probably mostly --
12 that's pretty close to being it. I think we
13 may carry Big 10 HD on a couple systems also.

14 Q Are you carrying NFL Network?

15 A We are not.

16 Q Okay. Was this survey that is
17 Exhibit 3, an input into your decision about
18 carriage or non-carriage of WealthTV?

19 A Yes. Yes, it was.

20 Q And in what way did you use this
21 survey as part of your decision process?

22 A Yeah, I think it was just a

1 factor. So I mean, it helped us to gauge
2 customer -- it helped us to gauge customer
3 interest. It was, you know, one of many
4 factors. I think it helped validate for us
5 that what customers are -- customers are
6 interested in is they're interested in brands
7 they're familiar with and I think that was
8 something that was very clear to me. I think
9 there's certain kinds of programming that
10 translates very well to HD, like National
11 Geographic being the top on the list. You
12 know, it was not a surprise to me. I think so
13 it was a factor.

14 Q And what did the survey tell you
15 about -- how do you interpret this survey with
16 respect to customer interest in WealthTV?

17 A It -- we never really seriously
18 considered it. It was not something our
19 customers were asking us for and the survey,
20 you know, validated that.

21 Q Okay. Paragraph 12 of your
22 declaration mentions a telephone conversation

1 you had with John Scaro of WealthTV some time
2 after February 12th, 2007. Do you see that,
3 sir? Was that the last communication that you
4 had with anyone at WealthTV?

5 A Yes.

6 Q Okay. And subsequent to that
7 conversation do you know whether or not
8 WealthTV reached an agreement, a carriage
9 agreement, with Time Warner Cable?

10 A I know that they did not reach a
11 carriage agreement with Time Warner Cable.

12 Q Okay. To your knowledge, did
13 WealthTV ever contact anyone at Bright House
14 Networks to attempt to negotiate a carriage
15 agreement directly with Bright House after
16 having failed to do so with Time Warner Cable?

17 A No.

18 MR. BECKNER: Your Honor, I'll
19 tender the witness for cross examination.

20 JUDGE SIPPEL: Okay. Mr. --

21 MR. COHEN: Can I have one moment?

22 MR. BECKNER: Counsel reminded me

1 that I had not moved Exhibit 3 into evidence
2 when Ms. Stith was on the stand which was
3 deliberate and now with Mr. Miron's testimony
4 about Exhibit 3, I'm moving it into evidence.

5 JUDGE SIPPEL: Is there any
6 objection?

7 MS. WALLMAN: Yes, your Honor,
8 WealthTV does object.

9 JUDGE SIPPEL: On what grounds?

10 MS. WALLMAN: We've not had an
11 opportunity to examine the underlying survey
12 data. Mr. Miron didn't conduct the
13 tabulation. I don't believe he has the
14 material with him.

15 JUDGE SIPPEL: Well, did you --
16 when was this tendered to you as an exhibit,
17 as a proposed exhibit in this case, according
18 to the schedule that I issued or earlier than
19 that even?

20 MS. WALLMAN: Yes, your Honor, it
21 was given to us according to the schedule that
22 you suggested, that you ordered.

1 JUDGE SIPPET: Okay, I'm sorry,
2 are you finished or --

3 MS. WALLMAN: Yes, I am.

4 JUDGE SIPPET: -- on that point?
5 Yes, Mr. Beckner.

6 MR. BECKNER: This exhibit was
7 attached to the answer the Bright House
8 Networks filed to WealthTV's complaint in
9 2008. So they've had it for a long time. And
10 as you know, your Honor, from our prior
11 discussions about this exhibit at the document
12 admission day, we're not offering it for the
13 purpose of -- we're not offering it for the
14 truth of what it says. We're not offering it
15 to show that three percent or one percent of
16 Bright House subscribers are interested in
17 WealthTV. We're offering it as -- for the use
18 that we made of it in our decision about
19 carriage of WealthTV. And that's the
20 distinction between this kind of survey and
21 the survey that WealthTV's witness who was
22 sent home on Friday was going to offer.

1 JUDGE SIPPEL: All right, well --

2 MS. WALLMAN: If that's the
3 purpose for which it's offered, we have no
4 objection.

5 JUDGE SIPPEL: Thank you. Having
6 -- after that exchange, I'm going to receive
7 BHN Exhibit 3 for the purposes for which it
8 has been tendered as an exhibit by Mr. Beckner
9 and it's in evidence as BHN Exhibit 3.

10 (The document referred to having
11 been marked as Bright House
12 Exhibit Number 3 for
13 identification was received in
14 evidence.)

15 JUDGE SIPPEL: And are you ready
16 now to tender?

17 MR. BECKNER: Yeah, just one other
18 housekeeping matter, your Honor, just to sort
19 of clear up things.

20 JUDGE SIPPEL: Sure.

21 MR. BECKNER: In the document
22 admission session, we had a Bright House

1 Network Exhibit 4, which I withdraw. We're
2 not going to use it.

3 JUDGE SIPPEL: Thank you. We'll
4 make a note of that. BHN Exhibit 4 is
5 identified, I guess it was on admission day
6 will be withdrawn as of today. Thank you,
7 sir. Okay. And is he ready now for cross?

8 MR. BECKNER: Yes.

9 JUDGE SIPPEL: Ms. Wallman?

10 CROSS EXAMINATION

11 BY MS. WALLMAN:

12 Q Good afternoon, Mr. Miron. We met
13 very briefly a few minutes before your
14 colleague's testimony. I represent WealthTV.
15 My name is Kathy Wallman. May I ask you,
16 please to focus on Paragraph 12 of your
17 declaration that has been marked as Bright
18 House Network's Exhibit 9?

19 A Okay.

20 Q The last sentence of that
21 paragraph reads, "I subsequently spoke to Mr.
22 Scaro on the telephone and explained to him

1 that BHN is covered by TWC's national
2 programming agreements and that it would not
3 be an efficient use of WealthTV's time to
4 continue to pursue carriage directly with
5 BHN". Do you see that?

6 A I do.

7 Q In what sense did you mean that
8 BHN is covered by TWC's national programming
9 agreements?

10 A With -- because of the ownership
11 with TWE-A/N, we -- our programming contracts
12 fall under the Time Warner Cable programming
13 agreements, so I encouraged John to try to
14 negotiate an agreement with Time Warner.

15 Q And in what sense would it not be
16 the efficient use of WealthTV's time to
17 continue to pursue carriage directly with BHN?

18 A Well, we weren't interested. We
19 weren't really interested in the service, so
20 I gue3ss it was probably a nice way of me
21 telling him that it wasn't really a good use
22 of my time either because it really wasn't

1 something our customers were interested in.

2 Q So what was the actual reason that
3 you declined to carry WealthTV?

4 A Lack of interest.

5 Q What role, if any, did the absence
6 of a carriage agreement between WealthTV and
7 Time Warner Cable actually play in your
8 decision to decline carriage?

9 A Not a major role. I think if Time
10 Warner had -- if Time Warner had a programming
11 agreement with WealthTV we would have had the
12 option to consider carrying it and falling
13 under that agreement as well. So I would say
14 a very minor role.

15 Q Did you have the option to
16 negotiate directly with WealthTV for carriage?

17 A Sure.

18 Q Does Bright House Networks, from
19 time to time, exercise that option it has, if
20 I may call it that, to negotiate directly with
21 the National Programming Service?

22 A We do.

1 Q How many times have you done that
2 so far in 2009?

3 A I can't -- once, I think it was
4 towards the end of 2008, beginning of 2009, we
5 did a retransmission consent agreement,
6 negotiated it directly. So, you know,
7 typically the way programming agreements work,
8 a lot of them come up usually at the end of
9 the year so I would -- you know, maybe we
10 haven't done it in 2009.

11 Q Do you recall any others from
12 2008?

13 A Well, I recall one. I don't
14 remember the date. I can tell you a couple.
15 I don't know if I can pin down the date for
16 you but they were probably in the 2007/2008
17 window.

18 Q Yes, please.

19 A Do you want me to tell you about a
20 couple of those? One was History Channel and
21 A&E and where -- and I think actually some of
22 it had to do with the survey. History Channel

1 finished so high on our survey that we knew
2 customers wanted the History Channel in HD and
3 Time Warner was actually in the midst of their
4 renewal with A&E, A&E also owns HD. So Time
5 Warner really had discouraged their divisions
6 from you know, doing anything with History,
7 with A&E, with Crime and Investigation, with
8 any of the A&E products, but because the
9 History Channel finished so high on our
10 customer survey, I negotiated directly with
11 A&E and we went ahead and carried the History
12 Channel, so in HD. That would be one.

13 Another one that we did was there
14 was a service called Reac TV which was an
15 interactive service and our Tampa Division was
16 very excited about Reac TV. Time Warner
17 didn't have a national agreement with them.
18 So we went ahead and cut our own deal with
19 Reac TV locally in Tampa. So that would be
20 another one. And we've done -- you know,
21 we've done several on the retransmission
22 consent side of your -- you know, I could go

1 through some of them if you would like to know
2 them.

3 Q Well, I ask you to confine your
4 answer to non-broadcast carriage.

5 A Okay.

6 Q Of the channels that you carry in
7 any division that comes to mind readily to
8 you, what percentage would you say are
9 agreements that were negotiated directly with
10 BHN?

11 A Very small.

12 Q Would you say under five percent?

13 A Yes.

14 Q Would it be fair to say that it's
15 unusual to be able to get carriage on Bright
16 House Networks or a network that doesn't have
17 an agreement with Time Warner Cable?

18 A Yeah, I would think it's -- I
19 mean, I would think it's -- probably the way
20 it would pan out if there was a service --
21 I'll give you an example in 2009 actually.
22 This is where we wanted to carry the YES

1 Network in Tampa. So that's pretty unusual
2 and Time Warner didn't have an agreement for
3 that. So we went -- we went to Time Warner
4 and we were able to negotiate an agreement
5 actually that covered all the out of market
6 New York area across Time Warner and Bright
7 House. So -- and that was an example of where
8 I didn't have to negotiate it directly with
9 YES, but it was something that Time Warner
10 really wasn't looking at but they facilitated
11 it for us. And I twas something that we just
12 launched in the Florida markets. I don't know
13 if it was launched in any other Time Warner
14 market. So that was one we launched within
15 that last couple of weeks.

16 Q When you spoke to Mr. Scaro in
17 February of 2007 and you indicated to him
18 that it would not be an efficient use of
19 WealthTV's time to continue to pursue carriage
20 with BHN, I take it in view of the fact that
21 BHN was covered by TWC's national programming
22 agreements, did you intend to discourage him

1 from seeking further direct negotiations with
2 Bright House Networks?

3 A No. No, no, I was -- I mean, I
4 was really not interested in talking with him
5 much further, you know, so I passed him off to
6 Time Warner.

7 Q Did you decline carriage on behalf
8 of Bright House Networks at that time or did
9 you leave it open for some future date when
10 Time Warner might --

11 A No, we didn't decline carriage. I
12 would say I was not very encouraging to him
13 but we didn't decline carriage.

14 Q Bright House Networks operates
15 cable systems in Tampa, Florida and Orlando,
16 Florida, correct?

17 A And in addition to some others,
18 but that's correct.

19 Q Yes. And Tampa and Orlando are
20 among the top 25 markets referred to in the
21 cable industry sometimes as DMAs; is that
22 correct?

1 A Yes.

2 Q What is a DMA, please?

3 A It's a market -- it's an
4 advertising term and focuses on an advertising
5 market.

6 Q Do you know what it stands for?

7 A Dominant market area, I believe.
8 I'm not certain of that.

9 Q And do you know whether Verizon
10 has launched in either the Tampa or Orlando
11 market?

12 A Verizon has launched in Tampa.

13 Q And do you know whether Bright
14 House Networks has a majority of MMPT subs in
15 those two markets, meaning Tampa and Orlando?

16 MR. BECKNER: Objection as to the
17 form of the question. It's not clear to
18 what's being counted in terms of majority.

19 JUDGE SIPPEL: Can you rephrase
20 and get a foundation on that, please?

21 MS. WALLMAN: Yes, yes, your
22 Honor.

1 JUDGE SIPPEL: Sustained.

2 BY MS. WALLMAN:

3 Q Would you regard Tampa as a major
4 market for BHN?

5 A Yes.

6 Q Would you regard Orlando as a
7 major market for BHN?

8 A Yes.

9 Q Do you believe you're doing better
10 in Tampa than Verizon?

11 A I -- you know, are you talking
12 just on the video side or --

13 Q Subscribers.

14 A Well, I mean, video subscribers or
15 data subscribers or --

16 Q Yes.

17 A -- wireless subscribers or
18 telephone subscribers?

19 Q You're right. I should clarify,
20 video subscribers.

21 A We have more video subscribers in
22 Tampa than Verizon, yes.

1 Q Do you know whether you'd have
2 more video subscribers than Direct TV?

3 A Yes, we do. I could give you some
4 rough ideas of what the penetrations are, you
5 know, to the best of my knowledge if you want,
6 but we have more video subscribers than Direct
7 TV.

8 Q It's not necessary that I press
9 you for numbers.

10 A Okay.

11 Q I'm just trying to get an idea of
12 the relative position.

13 A Sure.

14 Q Do you know whether you have more
15 video subscribers in Tampa than the Dish
16 Network?

17 A We do.

18 Q With respect to one of the
19 paragraphs in your declaration that you
20 indicated might be updated, you'd indicated
21 that you had added more networks and you
22 identified some of those that you had added

1 since the date of the declaration.

2 A Yes.

3 JUDGE SIPPEL: Is that paragraph
4 10?

5 MS. WALLMAN: Yes, it is paragraph
6 10.

7 JUDGE SIPPEL: Do you want to take
8 another look at that, Mr. Miron?

9 THE WITNESS: Okay, I have it. So
10 what was the question, I'm sorry?

11 BY MS. WALLMAN:

12 Q I'm just first directing your
13 attention to the paragraph.

14 A Okay.

15 Q You had indicated in answer to a
16 prior question from Mr. Beckner that one of
17 the factors that Bright House Networks takes
18 into account in deciding whether to offer
19 carriage to a channel is capacity issues.

20 A Yes.

21 Q Having added several networks as
22 you recounted in a prior answer, has there

1 been an alleviation of band width capacity in
2 some sense?

3 A There has been.

4 Q And to what do you attribute that?

5 A Really two or three things. In
6 Tampa we did an upgrade of our cable system,
7 so we added capacity to our cable system. It
8 was a couple-year project that was going on
9 while some of this was going on. So that
10 would be in Tampa. We also reclaimed some of
11 our analogue capacity, so the trend in the
12 industry in the cable industry today is for
13 cable companies to try to reclaim analogue
14 capacity and as more and more customers are
15 buying digital services, it's not necessary to
16 carry so many services in analogue. And as we
17 reclaim that capacity, we're using to toward
18 high definition services to that's a trend
19 you're seeing in Bright House and across the
20 cable industry.

21 We've also rolled out a really new
22 exciting technology called switch digital

1 video which enables us to switch channels to
2 customers when they watch them and it
3 essentially allows you to reuse capacity, so
4 if we offer services to a group of 500 homes,
5 we only need to use the capacity that the
6 customers in those areas are using and so
7 really, I'd say those three things; our
8 upgrade in Tampa, our switch digital video,
9 reclaim the analogue band have been the three
10 things that have helped add to the supply side
11 of the capacity equation.

12 I might also add that we're
13 stretching our system also, so we stretched
14 the system some and in terms of the capacity
15 of our amplifiers and that's helped us some,
16 too.

17 Q Are you able to say with respect
18 to the Tampa system lineup that's referred to
19 here in paragraph 10 how many new HD services
20 have been added to the Tampa system since the
21 date of the declaration in 2008?

22 A Well, I don't know that I -- I

1 could tell you about how many HD services we
2 have in Tampa today. I don't know if I could
3 tell you exactly how many we had when this
4 declaration was done. But we do have, you
5 know, creeping up on 50 HD services in Tampa
6 right now.

7 Q With respect to paragraph 6 which
8 is on page 2 of your declaration --

9 A Yes.

10 Q With respect to this paragraph,
11 are there particular changes that would need
12 to be made in light of the passage of time?

13 A I would say the first sentence is
14 still, you know, on the mark, that the
15 overwhelming majority of services we carry we
16 have no economic interest. We do carry more
17 Discovery services today than we did whe this
18 was written, so that would be the only change.

19 Q And in paragraph 5, right above
20 that, you refer to Mojo. Mojo is no longer
21 offered as a linear programming service,
22 correct?

1 A That's correct.

2 Q And it was offered as part of your
3 separately priced HD pack?

4 A That's right.

5 Q Since you have -- since Mojo has
6 been made unavailable to Bright House
7 Networks, has another HD service been added to
8 the HD pack?

9 A Yeah, it varies by system. I'm
10 not sure if I can tell you for sure. I think
11 we carry -- let me think for a minute. Yeah,
12 I think we're on the cusp of adding
13 Smithsonian HD to our HD tier. I'm not sure
14 if it happened like within the last couple of
15 weeks or if it's going to happen in the next
16 couple weeks and it may vary by location. But
17 we're about to add Smithsonian to our package
18 of services.

19 We're also strongly considering a
20 service called MavTV and that's another one
21 that is probably going to be added in the very
22 near future. I'm not sure if it's going to be

1 in Tampa or Central Florida or Indianapolis,
 2 but it's going to be in several of our
 3 locations. So both of those are going in the
 4 HD tier.

5 I'm not recalling anything that
 6 went on as Mojo came off, but I'm not 100
 7 percent certain of that.

8 Q Would it be fair to say that --

9 A We have so many services, it's
 10 hard to keep track of them all, which ones are
 11 out.

12 Q Well, you've spoken about perhaps
 13 as many as 50 HD channels being added.

14 A Uh-huh.

15 JUDGE SIPPEL: You have to say --
 16 that's okay, go ahead.

17 BY MR. DOLAN:

18 Q With respect to this HD pack,
 19 would it be fair to say that during the
 20 interval between when Mojo was no longer
 21 available for distribution and whatever
 22 decision may be -- may have been made or

1 perhaps shortly will be made, about adding a
2 service to the HD pack, there was additional
3 capacity available in the HD pack?

4 A Well, capacity is not -- capacity
5 is not available in different packages of
6 services. Capacity -- there's a certain
7 amount of capacity that is on the network and
8 then how we decide to package services, you
9 know, really doesn't have as much to do with -
10 - that doesn't have anything to do with
11 capacity. So if we add something to the HD
12 pack, or if we add something that's just a
13 basic HD service, it takes the same amount of
14 capacity. It takes the same amount of space
15 on the cable system. So you know, I would
16 say, you know, in reference to our capacity,
17 we're still -- you know, we still really
18 struggle with capacity. It's -- I would --
19 you know, it's -- you know, as soon as we get
20 a little bit more capacity, we keep feeding it
21 and so it's definitely a struggle for us and
22 it's -- and the ways that we gain capacity are

1 the ways I told you.

2 We're continuing to reclaim
3 analogue channels, so I think for example, in
4 Tampa, you know, in probably the next couple
5 of weeks, we're going to reclaim an analogue
6 channel. That's going to allow us to add
7 another two or three HD services the way that
8 we combine those services on our networks.
9 We're also in the process of rolling out
10 switching in Tampa, so the more channels that
11 we can switch, we might be able to add one or
12 two more and it's just kind of -- it's a
13 process, but we go -- we continue to press
14 right up to the edge. Did I answer your
15 question?

16 Q Yes, you did. So it's important
17 to Bright House Network to continue to find
18 additional capacity and expand the ability of
19 systems to offer services on extended
20 capacity, correct?

21 A You mean -- I think it is so -- I
22 mean, it is so important to us, if we want to

1 be competitive, we have to keep adding the
2 kinds of services that customers are wanting.
3 And customers are wanting the more and more HD
4 services and our competitors are offering more
5 HD services. So, you know, it's important for
6 us to -- it's important for us to keep adding,
7 but it's also important for us to choose
8 wisely because we don't have -- it's a limited
9 resource.

10 Q So with respect to the question I
11 was asking you about HD pack and capacity of
12 HD pack, is it fair to say that the capacity
13 is fungible and it's a business decision as to
14 how you offer the service?

15 A Yes. Yes, that's accurate.

16 Q You indicated when you were
17 talking -- when you were answering my
18 questions about paragraph 12, that in your
19 conversation with Mr. Scaro, you conveyed that
20 Bright House Networks was not interested in
21 carrying WealthTV; is that correct?

22 A I don't know if I told him that --

1 I don't know if I did tell him that. I think
2 I pointed him to Time Warner. I don't recall
3 telling him that we weren't interested in
4 carrying it, no.

5 Q So did you, in fact, do anything
6 to evaluate whether WealthTV was a suitable
7 offering for Bright House Networks?

8 A Not very much, no.

9 Q Do you recall what you did?

10 A I included it in the survey.

11 MS. WALLMAN: If I may just have a
12 moment.

13 (Pause)

14 JUDGE SIPPPEL: You're talking
15 about the survey at Exhibit 3?

16 THE WITNESS: Yes.

17 JUDGE SIPPPEL: So WealthTV was one
18 of the -- one of those --

19 THE WITNESS: We threw it on the
20 list. We threw it on the list of, you know,
21 it was a brand we weren't familiar with. We
22 threw it on the list. We'd ask our customers

1 what they thought. You know, we didn't get --
2 you know, when services are in demand in our
3 area, I've been in the cable business for 20
4 years and when customers want services, you
5 know, they -- our employees find us and they
6 put pressure on us because our employees want
7 to satisfy our customers. So you know, when
8 customers want the SciFi Network or they want
9 the NFL Network, we hear about it. So
10 WealthTV, we were not hearing about.

11 BY MS. WALLMAN:

12 Q Mr. Miron, in the conversation
13 that you had with Mr. Scaro in February of
14 2007, did he ask to meet with you?

15 A Yes.

16 Q And did you decline to meet with
17 him?

18 A I did.

19 MS. WALLMAN: Thank you, Mr.
20 Miron. I don't have anything further, your
21 Honor.

22 JUDGE SIPPEL: You don't have any

1 questions Ms. Mumaw?

2 MS. MUMAW: I do have a handful of
3 questions, your Honor.

4 JUDGE SIPPPEL: All right, just a
5 handful, that's good.

6 MS. MUMAW: Thank you.

7 JUDGE SIPPPEL: Are you okay, are
8 you comfortable, sir?

9 THE WITNESS: Yeah, yeah, very
10 good?

11 JUDGE SIPPPEL: Need water and --

12 THE WITNESS: Thank you, I
13 appreciate it.

14 JUDGE SIPPPEL: You bet.

15 MS. MUMAW: Good afternoon, Mr.
16 Miron. I'm Elizabeth Mumaw. I'm co-counsel
17 for the Enforcement Bureau.

18 CROSS EXAMINATION

19 BY MS. MUMAW:

20 Q Can we take a look at paragraph 8
21 of your direct testimony?

22 A Sure.

1 Q There are several factors here
2 that you list that you consider when talking
3 to programmers about carriage. And one of
4 them is input from Division management. At
5 what stage of the process do you get input
6 from Division management?

7 A I would say I don't have to find
8 it. It finds me. So for example, we have --
9 I have a call every two -- I have a call --
10 let's see, we meet with Time Warner every
11 month where we review everything that's going
12 on in the programming front and we give them
13 input. We give them input that we're
14 interested in, yes, or when are you going to
15 get a deal done for this or where do we stand
16 with that and then we then also meet with our
17 -- we have a conference call once a month with
18 all of our Division management where we review
19 the status of programming agreements and where
20 things stand and we ask for questions and
21 input and we'll get -- you know, we'll hear
22 it.

1 I mean, we hear that we need more
2 HD programming or our customers really want
3 the History Channel in HD. So we get lots of
4 feedback and so it finds us.

5 Q Was there ever a -- was WealthTV
6 ever the discussion of the --

7 A Yeah, you know, I think it was --
8 you know, of -- I don't remember. I think of
9 the services that our customers that our
10 customers were asking about, interested in, if
11 you were to put them on a scale from one to
12 10, WealthTV was somewhere between probably a
13 zero and a one. I almost never got asked
14 about it from anybody. And usually it would
15 start by customers putting pressure on the
16 Division to add a service. It just never came
17 up. That's as best I remember.

18 Q Okay, thank you. Does the -- is
19 the Division management, are those discussion
20 solely based on what the customers are
21 driving?

22 A No, no. I think so you know, I

1 would say for -- I'm sorry to say but I would
2 say for example C-SPAN is probably an example
3 of a service that, you know, doesn't tend to
4 rate very high on customer surveys but it's a
5 service that, you know, we've decided as a
6 cable industry that we want to carry. And we
7 carry C-SPAN I, C-SPAN II and C-SPAN III in
8 our -- and we carry that because we think it's
9 a good public service and it's something that
10 we should be -- so that's an example, I think,
11 outside of customer demand of a service that
12 we carry. But there are other examples.

13 We try to, you know, fill in the
14 right kind of product mix and so there are
15 other factors outside of customer demand. I
16 think you know, brand recognition is another
17 example. If customers are familiar with
18 brands, they have a lot of power and, you
19 know, if our competitor carries a service in
20 HD that we don't carry and our customers are
21 very familiar with those brands, we're going
22 to get pressure to add that service.

1 If our competitor adds WealthTV,
2 and our -- you know, we're not going to get
3 pressure or we haven't received pressure to
4 add WealthTV because it's not a brand, I think
5 customers are familiar with.

6 Q How is a customer -- how would
7 customer demand be gauged or thought about for
8 what would be considered a fledgling network?

9 A I'm not sure if I'm following.
10 I'm sorry.

11 Q If it --

12 JUDGE SIPPEL: You can ask the
13 witness if he has an understanding as to what
14 a fledgling -- or what his understanding is of
15 a fledgling network and then take it from
16 there.

17 BY MS. MUMAW:

18 Q What would you consider a
19 fledgling network?

20 A Okay, well, I would call the Big
21 Ten Network fledgling. I would call the Big
22 Ten Network a fledgling network. They

1 couldn't get distribution and we were getting
2 a lot of pressure to carry the Big Ten Network
3 in our Big Ten markets, Indiana and Detroit,
4 and you know, even -- and so I would say it
5 was fledgling and we got beat up pretty good
6 for a year by not carrying the service and we
7 ended up doing a deal. So is that an example?

8 JUDGE SIPPPEL: I'm going to take a
9 big leap here but are you thinking of Big Ten
10 Football.

11 THE WITNESS: Big Ten Football and
12 Big Ten Basketball and Indiana -- Big Ten
13 Football in Indiana is bad news. They only
14 care about basketball in Indiana as I learned.

15 JUDGE SIPPPEL: Thank you.

16 BY MS. MUMAW:

17 Q I want to go back to paragraph 8.
18 And one of the other items that you said are
19 a factor are terms.

20 A Yes. By that I mean, price. So
21 if a service is free or if a service is
22 charging a dollar a month, or if a service

1 allows it to be packaged in a certain way,
2 what are the terms of -- what's the offer,
3 what's -- does that make sense?

4 Q Yes, it does. Did you get to the
5 point in any discussions you had with Wealth
6 where you even discussed terms?

7 A We never got that far.

8 Q And do you want to briefly explain
9 why you didn't get that far?

10 A I mean, I never saw a proposal
11 from them. I never saw an offer and I wasn't
12 very encouraging to John when he called. You
13 know, I didn't express a lot of interest, so -
14 -

15 JUDGE SIPPEL: John being who,
16 John Scaro?

17 THE WITNESS: John, yeah. So I
18 wasn't very encouraging to him when he called.
19 I think -- I do -- another thing about the
20 phone call I remember was that you know, John
21 told me that the Division was really
22 interested in this service and when I went to

1 the Division to gauge interest, there really
2 wasn't any interest, so that's not an uncommon
3 tactic that a programmer will use to try to
4 get a meeting. They'll let you know that,
5 "Gee, your Division people really want this",
6 and so you know, I didn't really like that
7 very much either and so we really never got
8 that far. He didn't make a proposal and I
9 didn't take the meeting.

10 JUDGE SIPPEL: What Division was
11 he referring to?

12 THE WITNESS: He had -- Central
13 Florida. Not Tampa but Central Florida,
14 Orlando.

15 MS. MUMAW: Thank you. I have no
16 further questions.

17 JUDGE SIPPEL: I just have -- I
18 only have one question in that area and that
19 is that you were getting any pressure -- the
20 way you described it from your subscribers for
21 new programming. What about that NFL Network?

22 THE WITNESS: Yeah, we do get

1 pressure from our subscribers and still to
2 this day to add the NFL Network. But, you
3 know, the flip side of that argument is that
4 you know, they have -- is the terms and the
5 price that they're asking for it. I would say
6 that's really what kind of kept us -- you
7 know, they wanted sports -- I mean, what
8 happens with sports programming is sports
9 programming is very -- and it's not just
10 unique to the NFL Network, but sports
11 programming is very expensive and the way a
12 lot of the sports programmers are offering
13 their services, they want it carried on the
14 lowest level of programming on CPST. So what
15 ends up happening is that every customer has
16 to pay.

17 You know, I definitely have gone
18 through a lot of sports channel fights in my
19 career. We've actually had sports channels
20 come off and you know, the sports channels are
21 fighting very hard to maintain carriage on
22 that lowest level service when in my opinion

1 where they belong is on a higher level. They
2 ask for so much money, I think they belong on
3 a higher level of service where customers
4 would have more input as to whether or not
5 they want to pay or subscribe. And so that's
6 a tug of war that's still going on to this
7 day. NFL Network is one example of it, but
8 there are other examples as well.

9 JUDGE SIPPPEL: Well, what about
10 the Big Ten, do you have the same experience?

11 THE WITNESS: Same -- that was the
12 same main issue with the Big Ten. They were
13 looking for distribution on the most widely
14 distributed network and they wanted a big
15 dollar amount for it as well. And we have
16 customers -- well, we have customers who want
17 the Big Ten programming. We have customers
18 who also don't want their bills to go up. And
19 so that's the balancing act.

20 JUDGE SIPPPEL: Who usually wins?

21 THE WITNESS: I would say -- I
22 would say the sports guys are winning, you

1 know, but we're -- you know, we're doing a
2 little bit better. I think we did a little --
3 you know, I probably shouldn't go into the
4 exact terms of the Big Ten deal --

5 JUDGE SIPPEL: No, no.

6 THE WITNESS: -- but I would say
7 we're moving in the right direction, but not
8 as fast as I would like.

9 JUDGE SIPPEL: Okay, all right.

10 That's -- I just wondered. Thank you. I have
11 nothing more on that. Ms. Wallman?

12 MS. WALLMAN: Nothing further,
13 your Honor.

14 JUDGE SIPPEL: Mr. Beckner?

15 MR. BECKNER: No redirect.

16 JUDGE SIPPEL: Okay, thank you,
17 sir. Nice to see you.

18 MR. BECKNER: Thank you.

19 JUDGE SIPPEL: And you're released
20 but please -- are there any more witnesses for
21 Bright House? You're free to go. Thank you.
22 Okay, why don't we go off the record and just

1 see where we are?

2 (Discussion held off the record.)

3 JUDGE SIPPEL: We're back on the
4 record. In an off the record, discussion and
5 it was quickly acknowledge that Mr. Bond and
6 Mr. Dannenbaum will be with witnesses tomorrow
7 morning. And then there will be an expert,
8 Mr. Homonoff in the afternoon and then the
9 other witnesses we'll announce as we're
10 getting to them, but we know who they are.
11 And so we are in recess now until 9:30
12 tomorrow morning. Thank you very much. Off
13 the record.

14 (Whereupon, at 4:19 p.m., the
15 above-entitled matter recessed, to reconvene
16 at 9:30 a.m. on April 29, 2009.)

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