

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CV No. 17-2511
)	
)	Washington, D.C.
vs.)	March 29, 2018
)	10:40 a.m.
AT&T, INC., ET AL.,)	
)	Morning Session
Defendants.)	
<hr/>		Day 5

TRANSCRIPT OF BENCH TRIAL PROCEEDINGS
BEFORE THE HONORABLE RICHARD J. LEON
UNITED STATES SENIOR DISTRICT JUDGE

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JOHN R. HAUSER, Sc.D. 755 795

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

2 DEPUTY CLERK: All rise. The United States
3 District Court for the District of Columbia is now in
4 session, the Honorable Richard J. Leon presiding. God save
5 the United States and this Honorable Court. Please be
6 seated and come to order.

7 Your Honor, we have Civil Action No. 17-2511,
8 United States of America v. AT&T, Incorporated, et al.

9 Will counsel for the parties please approach the
10 lectern and identify yourself for the record.

11 MR. HEIPP: Good morning, Your Honor.
12 Justin Heipp for the United States.

13 THE COURT: Welcome.

14 MS. LINDGRENSAVAGE: Good morning, Your Honor.
15 Cerin Lindgrensavage for the United States.

16 THE COURT: Welcome.

17 MR. WELSH: Good morning, Your Honor. Eric Welsh
18 for the United States.

19 THE COURT: Welcome.

20 MR. CONRATH: Good morning, Your Honor.
21 Craig Conrath for the United States.

22 THE COURT: Welcome.

23 MR. CONRATH: Thank you.

24 MR. FINCH: Good morning, Your Honor.
25 Andrew Finch for the United States.

1 THE COURT: Welcome.

2 MR. WALTHALL: Good morning, Your Honor.

3 Tim Walthall for the United States.

4 THE COURT: Welcome.

5 MR. PETROCELLI: Good morning, Your Honor,

6 Daniel Petrocelli for defendants.

7 THE COURT: Welcome.

8 MS. ROBSON: Good morning, Your Honor.

9 Katrina Robson for defendants.

10 THE COURT: Welcome.

11 MR. OPPENHEIMER: Good morning, Your Honor.

12 Randy Oppenheimer for the defendants.

13 THE COURT: Welcome.

14 MR. WALTERS: Good morning, Your Honor.

15 Rob Walters here for AT&T and DirecTV.

16 THE COURT: Welcome.

17 MR. BARBUR: Good morning, Your Honor.

18 Peter Barbur representing Time Warner.

19 THE COURT: Welcome.

20 MR. ORSINI: Good morning, Your Honor.

21 Kevin Orsini for Time Warner.

22 THE COURT: Welcome.

23 MR. RAIFF: Good morning, Your Honor. Mike Raiff
24 for AT&T and DirecTV.

25 THE COURT: Welcome.

1 Well, which had one of your 29 lawyers are going
2 to call this witness?

3 MR. CONRATH: Your Honor, the first witness is
4 going to be presented by my colleague, Mr. Heipp.

5 THE COURT: "Heipp"?

6 MR. CONRATH: "Heipp," H-e-i-p-p.

7 THE COURT: Okay.

8 MR. CONRATH: Your Honor had said yesterday --
9 I told you there was a confidentiality issue. You raised
10 the question of discussing it in advance. I want to know if
11 you meant now or just prior to the witness coming on.

12 THE COURT: You can approach.

13 (Sealed bench conference)

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(Open court)

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THE COURT: All right. Call your next witness.

20

MR. HEIPP: Good morning, Your Honor.

21

Justin Heipp for the United States.

22

The government calls Professor John Hauser as an
23 expert witness.

24

THE COURT: All right.

25

MR. HEIPP: I also have some binders. May I

1 approach to distribute those?

2 THE COURT: My Deputy Clerk.

3 MR. HEIPP: Your Honor, Professor Hauser has also
4 prepared demonstratives. May we present those as we did
5 during the opening statements?

6 Set up the easel over there to the left side.

7 THE COURT: I want to see them.

8 MR. HEIPP: Sure.

9 THE COURT: Do you have a paper rendition of them?

10 MR. HEIPP: Yes. Actually, they are the first tab
11 in your binder.

12 THE COURT: All right. Has the defense seen them?

13 MR. HEIPP: Yes. They were disclosed to the
14 defendants 48 hours ago.

15 Do you have any issues with them?

16 MR. BARBUR: I'm certainly going to cross-examine,
17 but I don't have any issue with them being used.

18 THE COURT: No. Okay. Very good.

19 All right. You can set these all up over here.

20 MR. HEIPP: Thank you, Your Honor. May my
21 colleague, Ms. Roschen, move the board around during the
22 examination?

23 THE COURT: Yeah; just don't block the view of the
24 parties.

25 MR. HEIPP: Thank you, Your Honor.

1 THE COURT: Stand up, please, sir.

2 DEPUTY CLERK: Raise your right hand.

3 (Witness is placed under oath.)

4 DEPUTY CLERK: Please be seated. The chair will
5 swivel.

6 MR. HEIPP: May I proceed, Your Honor?

7 THE COURT: You may.

8 JOHN R. HAUSER, Sc.D., WITNESS FOR THE GOVERNMENT, HAVING
9 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. HEIPP:

12 Q Good morning, Professor Hauser.

13 A Good morning.

14 Q Do you please introduce yourself to the Court.

15 A My name is John Hauser.

16 Q And what do you do for a living, Professor Hauser?

17 A I'm the Kirin Professor of Marketing at the
18 Massachusetts Institute of Technology.

19 Q Have you been retained by the United States to
20 provide expert testimony in this case?

21 A Yes, I have.

22 Q We'll get into more details on this in a moment,
23 but can you briefly describe what you were asked to do.

24 A Yes. I was asked to estimate what would happen in
25 the event of a Turner blackout of either permanent or

1 short-term.

2 Q And how did you conduct that research?

3 A I used an experiment-based or survey-based
4 experiments.

5 Q Before we get to the details about that, I'd like
6 to ask you just a few questions briefly about your
7 qualifications as they relate to the work that you did for
8 this case.

9 You said that you were a professor of marketing at
10 MIT?

11 A Yes, that's correct.

12 Q You're also the head of the marketing department
13 there?

14 A Yes, that's correct.

15 Q Do you also have academic degrees from MIT?

16 A Yes. I have four degrees. My highest degree is a
17 doctor of science from operations research.

18 I studied with Professor John Little, who's
19 considered the founder of marketing science.

20 Q Have you designed and implemented surveys as part
21 of your academic work?

22 A Yes, I have.

23 Q About how many would you say?

24 A Well, it's hard to count. Probably about 5 to 10
25 for per year for the last 40 years or so.

1 Q And were any of those surveys similar to the one
2 that you designed for this case?

3 A Yes, they were.

4 Q Have you published peer-reviewed articles
5 involving surveys?

6 A Yes, I have. I've published approximately
7 80 peer-reviewed articles.

8 Q And did any of those papers involve surveys or
9 methodologies similar to the ones you used in this case?

10 A Yes, most of them did, and very similar to
11 methodologies I used that I'll be talking about today.

12 Q Have you been retained by businesses to conduct
13 marketing research?

14 A Yes, I have.

15 Q Were any of the surveys or market research studies
16 that you've done for businesses similar to the one that you
17 designed for this case?

18 A Yes, they have. I've done forecasting for a large
19 number of businesses.

20 Q What are some of the businesses that you've worked
21 for?

22 A Well, certainly the auto industry, General Motors.
23 I've worked with Chrysler and Ford as well. I've worked
24 with IBM.

25 I've done work on laundry with Procter & Gamble.

1 And there's a few others.

2 Q Have you been retained as an expert in litigation
3 before?

4 A Yes, I have.

5 Q Have you ever been retained in litigation related
6 to the pay-TV industry?

7 A Yes, I have.

8 Q Can you give me an example of a case involving the
9 pay-TV industry.

10 A Well, in one case, I was involved for the
11 Dish Network, and we were trying to understand the impact of
12 commercial skipping in terms of their particular product.
13 It was called the Hopper and PrimeTime All the Time [sic].

14 Q Did your work for that case involve a survey?

15 A Yes, it did.

16 And we also analyzed set-top box data. Both the
17 survey and the set-top box data gave roughly the same
18 answer.

19 Q Have you been retained an as expert in antitrust
20 litigation?

21 A Yes, I have.

22 Q Have you ever been excluded from testifying as an
23 expert?

24 A No, I have not.

25 MR. HEIPP: Your Honor, at this time the

1 United States offers Professor Hauser as an expert in the
2 fields of marketing science, marketing research, and survey
3 design.

4 MR. BARBUR: No objection, Your Honor.

5 THE COURT: Give me those three again, please.

6 Marketing science --

7 MR. HEIPP: Marketing science, marketing research,
8 and survey design.

9 BY MR. HEIPP:

10 Q Professor Hauser, you said at the outset that you
11 designed a --

12 THE COURT: Sir --

13 MR. HEIPP: I'm sorry, Your Honor.

14 THE COURT: Do you want to hear the ruling?

15 MR. HEIPP: Oh, yes, Your Honor. I apologize.

16 THE COURT: Have you done this before?

17 MR. HEIPP: Not with an expert, no, Your Honor.

18 THE COURT: That's why you're not waiting.

19 It's kind of important to have the ruling, isn't
20 it?

21 MR. HEIPP: Yes.

22 THE COURT: If you don't have the ruling, you
23 can't do what?

24 MR. HEIPP: Continue questioning, Your Honor.

25 THE COURT: There's also something else you can't

1 do in your questioning.

2 You can't ask hypotheticals.

3 Your request is granted.

4 MR. HEIPP: Thank you, Your Honor. May I proceed?

5 THE COURT: Yes.

6 BY MR. HEIPP:

7 Q Professor Hauser, you said at the outset that you
8 designed a survey to assess consumers' choices in the event
9 of a blackout?

10 A Yes, I did.

11 Q Did your survey ask consumers about their future
12 choices in the event of a Turner blackout?

13 A Yes, it did.

14 There was a potential Turner blackout, and I asked
15 them what their likelihood of switching to other providers
16 would be.

17 Q Can surveys accurately predict consumers' future
18 choices?

19 A Yes. We use them all the time, and I've certainly
20 used them in both my academic work and in my business
21 consulting.

22 Q Did you reach an opinion about what consumers
23 would do in the event of a Turner blackout?

24 A Yes, I did.

25 In the event of a permanent Turner blackout,

1 consumers, roughly about 12 percent, would switch their
2 providers, if that provider was blacked out and the others
3 were not.

4 Q So you found that for a permanent blackout of
5 Turner channels, about 12 percent of subscribers would
6 switch?

7 A Yeah, roughly 12 percent.

8 THE COURT: Sir, you don't need to repeat his
9 answer. He gives the answer; you ask the questions.

10 MR. HEIPP: Yes, Your Honor.

11 THE COURT: We don't have time for both you and he
12 to give the answers.

13 MR. HEIPP: I will be careful, Your Honor.

14 THE COURT: Proceed.

15 MR. HEIPP: Thank you.

16 BY MR. HEIPP:

17 Q Now I would like to ask you about how you reached
18 your conclusion. Generally speaking, is there a term for
19 the methodology that you used?

20 A Yes, an experiment.

21 Q Can you explain what the term "experiment" means?

22 A Well, the important part of an experiment is to
23 both have a test and control. And in this case, I had three
24 test cells and one control cell. And in the test cell --

25 Q I'm sorry. What do you mean by the term "cell"?

1 A Okay. In this case, some people are randomly
2 assigned to experience the Turner blackout or experience the
3 potential of a Turner blackout, and other people are
4 assigned to a set of questions that were basically pretty
5 general about just television watching in general.

6 Q Is an experiment a way to isolate a variable that
7 you're looking at?

8 A Oh, absolutely.

9 An experiment, you can control many things. For
10 example, if you were testing the effect of aspirin on heart
11 attacks, you would assign some people to receive the small
12 aspirin; and other people in the control group would receive
13 the sugar pill or a placebo. It's known what a sugar pill
14 is.

15 And, therefore, you would then measure the number
16 of people who avoided heart attacks in the test cell and the
17 number of people who avoided heart attacks in the control
18 cell. Recognize there will be some heart attacks for other
19 reasons in the control cell.

20 So the causal effect of the aspirin would be the
21 difference between the number of heart attacks avoided in
22 the test and in the control cell.

23 Q Did you consider looking at data from past
24 blackouts?

25 A Yes, I did.

1 Q Did you look at any of that data?

2 A No, I did not. A blackout is inherently -- a
3 permanent blackout is inherently hypothetical.

4 Q So why did you use an experiment instead?

5 A With an experiment, I can control what I'm telling
6 the respondents.

7 I tell the respondents about the blackout in one
8 cell and not in the other. And to the best of my ability, I
9 then keep everything else constant.

10 So I can tease out that the blackout is causing
11 the switching, rather than all the other things that you
12 would have -- you observed that might cause switching, sort
13 of normal churn or just the fact that there's an experiment.

14 Q Is an experiment like yours an appropriate tool to
15 measure the effect of a blackout that hasn't happened yet?

16 A Yes, it is.

17 Q So after deciding to do an experiment, what was
18 the next step that you took?

19 A Well, the next step is I did qualitative research.

20 Q What does qualitative research mean?

21 A Well, qualitative research is really just talking
22 to consumers to understand how they make decisions.

23 Now, I had experience in the category, but
24 I wanted to confirm that experience and make sure I
25 understood how they thought about television viewing, how

1 they thought about pay providers, et cetera.

2 So it's a set of open-ended interviews, where the
3 respondent is reacting to the consumer to more or less
4 experience the experience of the consumer.

5 Q And what did you learn from the consumers in these
6 interviews?

7 A Well, one thing we learned is people don't
8 necessarily think of channels. Sometimes, they think of
9 shows. So, for example, I'm an NCIS fan. When I think of
10 NCIS, I don't think of the fact that it's on CBS.

11 So some people think of shows.

12 Other people, for example, do think of channels.
13 For a sports fan may say, I watch ESPN.

14 And still other people think in terms of special
15 events, like I watch the *Oscars*; I watch the NCAA Final
16 Four; or I watch a political debate.

17 Q Did you ask interview subjects about programming
18 blackouts?

19 A Yes, I did.

20 They're generally aware of blackouts, although
21 none of them, of course, experienced a permanent blackout.

22 And they were generally aware of what happens in
23 terms of blackouts.

24 Q So now that we've talked about the overall design
25 of the survey and the interviews?

1 THE COURT: Hold on.

2 How many people did you interview?

3 THE WITNESS: Well, in the experiment, 1600.

4 In the qualitative data, we just talked to eight.

5 And then we had another 20 in the pre-test --

6 THE COURT: So you interviewed eight people?

7 THE WITNESS: What?

8 THE COURT: You interviewed eight people?

9 THE WITNESS: Just qualitatively to confirm my own
10 experience.

11 But the experiment itself was 1600.

12 THE COURT: Did you interview 1600 people
13 personally?

14 THE WITNESS: No. It was an Internet survey.

15 THE COURT: It was an Internet survey?

16 THE WITNESS: Yes.

17 THE COURT: So you only personally interviewed
18 eight people?

19 THE WITNESS: Initially, yes, before the
20 experiment.

21 THE COURT: Thank you. Go ahead.

22 MR. HEIPP:

23 BY MR. HEIPP:

24 Q You just mentioned an Internet survey,
25 Professor Hauser. Can you describe how you got the

1 respondents that you got for your actual survey?

2 A Yes.

3 I used a professional panel, in this case,
4 Survey Sampling International. It's a very well-respected
5 panel.

6 These panels have literally tens of millions of
7 people who have agreed to take surveys. They're
8 prescreened. Lot of quality control with IP fingerprinting
9 and other quality controls. They're balanced.

10 By and large, an Internet panel is the way one
11 does marketing research these days.

12 Q Do Internet panels provide representative samples?

13 A Yes, they do.

14 Q And what does it mean for a sample to be
15 representative?

16 A Well, "representative" means that if I ask
17 questions of the panel or sample of the panel, I'll get the
18 same answers as I would if I asked them randomly in the
19 population.

20 So if I'm trying to forecast a blackout or, say,
21 the sales of a General Motors vehicle, I can use a panel
22 that's, again, been highly screened to ask these Internet
23 questions.

24 Q And I think you say you started with 1600 of
25 those --

1 A Yes, I did.

2 Q -- people?

3 Did you start with a representative sample of the
4 U.S. population?

5 A Yes.

6 The sample was -- the inbound sample was balanced
7 to the U.S. population.

8 Q What do you mean with the term "inbound sample"?

9 A Well, the inbound sample are the people coming
10 into the survey before the screener.

11 MR. HEIPP: Ms. Roschen, if we could put up the
12 first demonstrative, please.

13 BY MR. HEIPP:

14 Q Professor Hauser, can you tell us what's depicted
15 on this board?

16 A Yes.

17 This is the general flow of the survey and the
18 experimental design, which you can see on the fourth line.

19 Q So a moment ago you mentioned the inbound sample,
20 which is the group of people who starts the survey.

21 What's the first thing that they experience in
22 this survey?

23 A Well, not everybody in the sample will be pay-TV
24 prescribers. So one of the questions we asked are whether
25 people are pay-TV prescribers. That includes both online

1 and traditional.

2 Another question we asked is we made sure that
3 they were decision-makers or decision-influencers in the
4 household, and so they could answer these questions.

5 And, finally, we made sure that they were likely
6 to be in an area or subscribe to a package that would have
7 Turner channels.

8 Q The questions that you just described, are those
9 the screener questions that are listed in the first box on
10 the report?

11 A Right. The first part of the questionnaire are
12 the screener questions, and that gets us from the inbound
13 sample to the final sample.

14 Q And why did you screen down to that population?

15 A Well, these are the people who are going to be
16 affected by it, a blackout. If they don't subscribe to
17 pay TV, they're not going to be affected.

18 So I want random; and then within that, the people
19 who are first randomly are chosen, who are affected by the
20 blackout.

21 Q Are you familiar with the concept of a probability
22 sample?

23 A Yes, I am.

24 Q What is that?

25 A A probability sample is a technical definition.

1 What it says is that each respondent in the U.S.
2 population has an equal probability of being in the sample.

3 Q Do you need to have a probability sample in order
4 to have a sample that's representative?

5 A Well, I don't know of anybody who has a real
6 probability sample.

7 We used to do random-digit dialing, but these
8 days, nobody picks up their phone -- many people don't pick
9 up their phone; they're out of the household, et cetera. So
10 random-digit dialing is no longer what it once was.

11 Random emails are just as bad.

12 A long time ago, we would go door to door. But
13 that's even getting more difficult. And, at this point,
14 probably an Internet sample from a good panel is probably
15 the closest you're going to get to a probability sample.

16 Q Did you do any checks to ensure that your sample
17 was representative?

18 A Yes, I did.

19 I mean, I have confidence in these panels. I've
20 used them before.

21 But I certainly looked at things like, do we get
22 the percent of virtual providers right? Do we get the
23 percent of sort of the main providers, the market shares,
24 roughly correct? We're actually within two share points,
25 which is about all you're going to expect by both random

1 sampling and the fact that any data we would base upon that
2 is also, will have some caveats, might be a different
3 snapshot time frame, et cetera.

4 So within two share points is really quite good.

5 So it matches up to what we would expect on the
6 questions we know the answers to.

7 Q Just to make sure I understand what you were
8 saying there, did the sample that you ended up with, the
9 market shares of the pay-TV providers, match the market
10 shares in the real world with the two share points?

11 A That's right. Yes. In the screener, we asked
12 people, of course, what their provider was. So we have a
13 statement of that.

14 And then we have publicly available data, again,
15 which is itself an estimate, but we have public available
16 data of what the shares are of the various providers. And
17 the two of those match up, they match up within two share
18 points.

19 Q Let's talk about the second category of questions
20 listed on the board.

21 Can you describe what that section of questions
22 means?

23 A The second question, set of questions were what
24 would be called distractor questions.

25 Q What is a distractor question?

1 A A distractor question -- well, let me back up a
2 little bit.

3 One of the things we worry about in a survey is
4 something called a demand artifact, and I realize that's a
5 technical term.

6 What that means is that sometimes the people
7 answering the questions will try and please the interviewer,
8 in this case, please the survey designer, or sometimes
9 displease. Usually it's please, but you never know.

10 So you don't want them to guess the purpose of the
11 survey. You certainly don't want them to guess your
12 hypotheses.

13 So you have a series of questions, in this case,
14 about general television watching. We were asking them what
15 televisions they would buy from a certain set. And we are
16 also introducing them to the scales, our measurement methods
17 that we're going to be using later in the survey.

18 Q Is a --

19 A Go ahead.

20 Q Is a demand artifact a type of bias?

21 A Well, you don't know which way it would go,
22 whether it's positive or negative. But it's noise, and it
23 could be considered a bias.

24 You definitely want to do everything you can to
25 minimize demand artifacts.

1 Q Is there a way to test for demand artifacts?

2 A Yes.

3 In both the pretest -- these were the people who
4 sort of took the survey while we listened to them and
5 monitored them.

6 And, also, in the survey itself, we asked
7 questions, having them try to guess the purpose of the
8 survey or having guessed a hypotheses. And so we're able to
9 examine whether or not we were successful in eliminating or
10 almost completely eliminating demand artifacts.

11 Q Did you do those tests for your survey in this
12 case?

13 A Yes, I did.

14 Q What did those tests show?

15 A Well, of the 1600 respondents, there were three
16 that said, well, this survey is about the Turner networks.
17 That's 3 out of 1600, which is a fairly low number.

18 And also, the survey is about Turner blackouts,
19 but they didn't guess either our hypotheses or the direction
20 that we were looking for in terms of switching.

21 Q Let's look back at the board to the third category
22 of questions. It's labeled "TV Content Section." What was
23 that section about?

24 A Well, at this point, I very much want people to be
25 engaged in the survey. And so we asked a series of general

1 questions: What are your favorite programs? Actually,
2 programs within each genre. We also talked to them about
3 what channels they would watch, what special events they
4 would watch, basically, a series of questions, because we
5 want these consumers to be in roughly the same situation,
6 same set of mind they would be were they to be making a
7 decision about, to either subscribe or switch from their
8 current provider.

9 So you can think of them as essentially setting
10 the stage for the experiment that's coming.

11 Q You mentioned earlier having conducted open-ended
12 interviews with eight individuals. What was the purpose of
13 doing those interviews?

14 A Well, again, the purpose was so that when I could
15 phrase these questions, they were in the words and phrases
16 that people would normally use, and that I felt that I could
17 capture what it takes to get people engaged.

18 Now, of course, it's not just the eight people;
19 it's the fact that I've done surveys in this category before
20 and was fairly familiar with this industry.

21 Q And did those open-ended interviews inform how you
22 constructed the section, the TV content section?

23 A Yes. It said that I had to get them thinking
24 about television shows, about special events, about
25 channels, when that made sense.

1 And, also, I basically had to get them thinking
2 both forward and backwards; that sometimes you think of the
3 coming season -- television season, the coming season or the
4 season behind. So I prompted them to think forward and
5 backwards.

6 So the whole purpose of this -- and it's given to
7 everybody, both to test and control -- is really to get them
8 engaged in the survey and the scenario that they're going to
9 be in.

10 Q Was it important to put people in the same frame
11 of mind that they would be in during an actual blackout?

12 A Absolutely. That was my goal.

13 Q And why is that important?

14 A Well, that's going to -- I think it's
15 self-explanatory. But if I'm going to make good forecasts,
16 I want the forecast to be relevant to the decisions that
17 consumers are going to be faced with.

18 Q In this section, the TV content section, did you
19 include the logos of different channels?

20 A Oh, yes.

21 People are used to seeing logos. If I just say
22 something like "the Turner channels," they don't know what
23 that means. They not necessarily distinguish the TNT and
24 the Cartoon Network would be on Turner, so we have to prime
25 these logos, but also for all the networks.

1 So they could possibly have seen up to 107
2 different logos. The average person saw about 30 to 60
3 logos.

4 And so the whole point is they're familiar with
5 logos; they're thinking about television. And, in general,
6 it's all the networks' logos.

7 Q And so after this section, the TV content section,
8 what came next?

9 A Well, now we come to the actual experiment.

10 And so now, the 1600 people go through the first
11 three steps.

12 In this step, we put 400 people randomly selected
13 into the control, and 400 people randomly selected into each
14 of the test groups.

15 MR. HEIPP: Ms. Roschen, can you please put up the
16 next demonstrative.

17 BY MR. HEIPP:

18 Q Professor Hauser, what does this board show?

19 A This shows, in general, the scenario that was
20 given to the people who were to experience the potential of
21 a Turner blackout.

22 Q Looking at the first box there, it's labeled
23 "scenario description controller blackout." What was the
24 scenario given to the blackout groups?

25 A Well, in this case, they're told that the Turner

1 channels would be blacked out. Some of them were told,
2 would be for -- it's been a week, and we expect it to end
3 pretty quickly. The other it's been a month and we expect
4 it to end quickly.

5 "Others" is a statement that the blackout is
6 expected to be permanent.

7 So they're described, again, just to test people,
8 that there's a blackout coming.

9 And in this case, we actually do show them the
10 Turner logos because we want them to know what the Turner
11 channels are, because that's the way they think.

12 Q And what was the scenario that was presented to
13 the control group?

14 A Well, in the control group, we have questions of
15 roughly the same length, but they're really just general
16 television-watching questions. So they're both getting
17 essentially a scenario. But the one case, there's a
18 blackout; in the other case, there's no blackout.

19 Q Let's look at the next two boxes there labeled
20 "two initial offers and one counteroffer." What were those
21 boxes?

22 A Well, again, I'm trying to stimulate -- yeah,
23 simulate a scenario that would be real to consumers.

24 And what normally happens, even in a short
25 blackout, is the other competitors get fairly aggressive and

1 they make offers. And, as a result, if I now call up or if
2 I try and switch away from my provider, the provider itself
3 is going to make a counter-offer.

4 So I'm really, again, being -- making the
5 scenarios as rich and as realistic as possible by having
6 offers from one traditional provider and one online
7 provider.

8 Q Why did you provide those two offers, one
9 traditional and one online?

10 A Well, I certainly want to be sensitive to what the
11 marketplace would be.

12 I should point out here that we knew what their
13 provider was, and we also knew their ZIP code. So we know
14 exactly what providers would be in the ZIP code.

15 So this would be not their provider but
16 competitive providers.

17 And in almost every ZIP code, there's at least one
18 traditional and, of course, the online providers for most
19 people who have Internet.

20 Q And why did you show respondents the providers
21 that were available in their ZIP code?

22 A Well, again, I wanted to make it realistic. It's
23 something that most people know.

24 And these would be the providers they'd be
25 choosing among, if they got off -- if a blackout occurred

1 and if they got those counteroffers -- those offers and the
2 counteroffer.

3 Q How did you decide what details of the different
4 offers to provide to respondents?

5 A Well, we did some research. This is publicly
6 available. You can see what happens in a blackout. There
7 is offers that are made.

8 Now, we can't have every possible offer, so we
9 choose the ones that are more likely and the ones that
10 essentially are going to be representative of the type of
11 offers that are made.

12 We do this both for the initial providers and for
13 the counteroffer, there's these scripts that are sort of
14 save scripts that tell you what -- tells what happens when
15 someone calls up and tries to cancel their traditional
16 provider, and then they get essentially a counteroffer, and
17 how you so-call save that person and keep them from
18 switching.

19 Now, of course, it's a little bit different for
20 you online, but we made sure we were tailored to the
21 particular provider that the consumer had.

22 Q You mentioned the idea of needing to call your
23 provider to cancel. Did you tell respondents about the
24 things that they would need to do to switch providers?

25 A Yes.

1 This is very important. Again, people in this
2 situation would experience some cost of switching providers.
3 Some are monetary. Some are the fact that you have to call
4 up the provider. Some of them are you may have to arrange
5 to get a new cable box, and you have to schedule an
6 appointment.

7 So we made all of those salient so that people are
8 at least reminded of the switching costs that they actually
9 have in the environment.

10 Q And other than the scenario description of the
11 blackout, were the offers and the switching costs the same
12 in the control and blackout groups?

13 A As near as possible.

14 There were some offers in the blackout group that
15 are specific to blackouts. So sometimes you say, we're
16 going to give you \$5 off for the length of the blackout.
17 That, of course, made no sense in the control group.

18 But other than those minor changes, by and large,
19 what the test group got is exactly what the control group
20 got so that each one would be affected by the same types of
21 offers.

22 And, again, these are representative of the
23 offers, not totally complete. If I had every offer that's
24 available out there, it would take two to three hours to get
25 through the survey.

1 So I had to have a reasonable survey, but, again,
2 I did my best to make sure they were representative of what
3 people get in the marketplace.

4 Q Was it a conservative or a cautious choice to
5 present them with similar offers and counteroffers in the
6 control and the blackout groups?

7 A Yes, it was, because we know in a blackout
8 scenario, they're very likely to get offers and
9 counteroffers. That's a little bit less likely when you're
10 not getting a blackout.

11 So that would make the control a little bit
12 higher. The switching would be lower in the control, which
13 would mean the difference between the test and the control
14 would be higher. So there's a subtraction there.

15 So even though we're essentially -- the goal here
16 is to put people in exact, pretty much, as best as I could,
17 the exact information state that they would be in the test
18 and in the control, and, therefore --

19 Q What do you mean by "information state"?

20 A Well, the information state they would have in the
21 marketplace.

22 So we're providing information. Again, it's
23 typical in a blackout situation; it's less typical in the
24 control. But it would be inappropriate to not give them
25 information and control, because then I couldn't do the

1 subtraction. I couldn't compare the test to the control.

2 MR. HEIPP: Let's move on to the next section.

3 Ms. Roschen, if you could put up the next
4 demonstrative, please.

5 BY MR. HEIPP:

6 Q Professor Hauser, the title of this board is
7 "Integrated Two-Step Filter Process." Can you explain what
8 that means?

9 A Yes. This is now getting to the key questions
10 that were asked of all respondents.

11 Q What was the first question?

12 A Well, the first question, which is labeled the
13 filter question here, it's basically, would you consider
14 switching?

15 Q What is a filter question?

16 A Well, it's recommended both in the Federal
17 Guidelines and also in standard experimental design. We've
18 been using it, oh, for about 30 to 40 years, in terms of
19 forecasting.

20 Basically, I don't want to ask questions of people
21 and say, you know, "How likely are you to switch?" if they
22 have already told me, "I wouldn't even consider switching."

23 So, as a result, we first have this question,
24 would consider switching. And then this reduces the noise,
25 particularly among the people who would not consider

1 switching.

2 Q So what was the question that respondents were
3 asked in that step one, the filter question?

4 A Well, paraphrasing, there's actually a question in
5 the survey, but paraphrasing, it's basically, would you
6 consider switching providers?

7 Q So looking at the left-hand side of the board
8 there, what happened to respondents who said that they would
9 consider switching?

10 A Okay. So these are now people who themselves
11 select and say, I would consider switching.

12 So now I can ask them a question, which is, how
13 likely are you to switch?

14 And so now we come down to the bottom over here.
15 And the bottom we have, it's known as a Juster Scale. It's
16 also known as intention scale. It measures people's
17 intention to switch, the probability that they're going to
18 switch.

19 Q The Juster Scale, is that the sliding scale there
20 on the bottom of the demonstrative?

21 A Yeah. That's a sliding scale on the bottom. It
22 sort of looks like a thermometer laying on its side.

23 But this is an established scale. It's been used,
24 actually, almost 60 years now.

25 Q I'll ask you a few more questions about that in a

1 moment, but let's go back to the board.

2 What happened on the right side to the people who
3 said that they would not consider switching?

4 A Okay. On the right now side now, this is someone
5 who's now told me they wouldn't even consider switching. So
6 I know it would be totally inappropriate to do anything
7 other than to say they're not going to switch, because I
8 definitely don't want to overestimate switching.

9 And the other thing we know from both the academic
10 research and business practice is very often, a lot of the
11 effect is in the consideration. So what happens here is a
12 lot of people who sort of get the test blackout scenario,
13 they're going to be more likely to consider switching. And
14 so we get more people who are considering switching in the
15 blackout scenario and less people in the control situation.
16 So those are real data.

17 So it's essentially important to assign them no
18 likelihood of switching.

19 Q Was it the case in your study that in the blackout
20 groups, more people said that they would consider switching?

21 A Yes. I think it was approximately 60 people.

22 Q So why not look only at the people who said that
23 they would consider switching?

24 A Well, you no longer have a random or
25 representative sample. Those people have already said, I

1 would consider switching.

2 And so when you measure the probability, they're
3 now -- you're really measuring how likely they are to act on
4 the statement that they're willing to consider switching.

5 So, again, it's very important that I not count
6 the people who say they would not consider switching. So
7 think of it is as consider, then choose.

8 Q Let's talk more about that second step, the choose
9 step. You described it as an intention scale or the Juster
10 Scale.

11 Can you explain what that is.

12 A Yes.

13 Dr. Juster managed to get a scale named after him
14 based on an article he published. That was in 1966. He was
15 working for the U.S. Census at the time, and they were
16 trying to develop ways to measure purchase intentions.

17 So the scale that you see here has been modified
18 slightly, because over, essentially, 60 years, we've
19 learned, 50-some years, we've learned how to ask the scale
20 in a much better manner.

21 Q Are these kinds of scales, these intention scales,
22 used by businesses?

23 A Yes.

24 There's published reports that somewhere between
25 70 and 90 percent of the market research companies use

1 these. If you look at some of the academic articles, they
2 talk about one of the most-used scales.

3 I've certainly used it in my own research, and
4 they're just used quite widely.

5 Q Do you know whether AT&T has used intention scales
6 in its business?

7 A Yes. AT&T has used it when they're trying to, for
8 example, decide if actions are going to hold on to
9 subscribers.

10 They use a slightly different scale but it's
11 called an intention scale.

12 Q Are these keeps of scales, the Juster Scale, the
13 intention scale, are they good at predicting consumer
14 behavior?

15 A In 2018, they are.

16 Unfortunately, I've been in this business for a
17 while. Back in the sort of '60s and '70s, people knew that
18 they worked sometimes, but they didn't work all the time.

19 And in the late 1970s, early 1980s, there were a
20 few authors that put them on a firm scientific basis.

21 But even up until the '90, we were talking about
22 adjustment factors.

23 Q What's an adjustment factor in this context?

24 A Well, for example, when I was forecasting for
25 General Motors, we used a 10 percent adjustment for the

1 electric vehicle, which was new in the early 1990s. It was
2 a really new product; we felt we had to adjust the scale
3 slightly.

4 Now, in 2018, we're fortunate that researchers in
5 peer-reviewed journals have looked across a large number of
6 applications and they've determined the conditions where
7 these intention scales predict well and situations where
8 they don't predict well.

9 And so now when we use them, we can essentially
10 use them when they work, and we have to use other methods or
11 use adjustments when they don't work.

12 MR. HEIPP: Ms. Roschen, can you please put up the
13 next board.

14 BY MR. HEIPP:

15 Q Professor Hauser, you were just talking about the
16 conditions when these scales work. What does this
17 demonstrative depict.

18 A Well, this demonstrative indicates five conditions
19 when the scales work well, when they're both highly
20 correlated and do actually predict consumer behavior.

21 Q I'd like to ask you just to a couple questions
22 about each one of the conditions. The first one listed
23 there is existing products. Can you explain that.

24 A Yes.

25 If you think of a sort of forecasting for an

1 established nameplate of automobiles, it's going to be an
2 existing product, and people are familiar with the
3 nameplate, et cetera.

4 Back when we were doing the electric vehicle, it
5 was then called the EV and it was very new. People weren't
6 familiar with the electric vehicle.

7 So it's sort of the difference between a product
8 that's existing on the marketplace and a new or really new
9 product.

10 So people, by and large, when it's something
11 they're familiar with, they can make a good decision.

12 Q Did your survey in this case involve existing
13 products?

14 A Yes, it did.

15 The existing providers and the providers that were
16 available and the respondent ZIP code.

17 Q The second condition listed there is durable
18 goods. Can you define a durable good.

19 A Yeah.

20 In this case, it means something that's high
21 involvement, involved, heavily involved in making a
22 decision. It's important to you. It's moderately
23 expensive. And it's not something you're sort of making
24 day-to-day repeat purchases of, repeat decisions on.

25 Pay TV is certainly, in this, by those

1 definitions, a durable good, as would be automobiles, as
2 would be smartphones or computers.

3 Q What would be the opposite of a durable good?

4 A Well, a durable good is frequently purchased good;
5 for example, when we're doing laundry detergents, laundry is
6 you make an initial decision, then you make a series of
7 buy/rebuy decisions. So if you're a Tide user, you continue
8 to use Tide. And so people are familiar with just a
9 relatively small set of these products.

10 And there are other forecasting systems, other
11 intent scales that one would have to use for frequently
12 purchased goods.

13 THE COURT: I'll take the morning recess. We'll
14 take a 15-minute recess.

15 You are a witness under oath in the case, which
16 means you're not allowed to discuss your testimony with
17 anyone, including your counsel --

18 THE WITNESS: Thank you.

19 THE COURT: -- or anyone else.

20 THE WITNESS: Okay.

21 THE COURT: Be back in 15 minutes.

22 DEPUTY CLERK: All rise.

23 This Honorable Court will stand in recess until
24 the return of court.

25 (Recess from 11:46 a.m. to 12:08 p.m.)

1 DEPUTY CLERK: The United States District Court
2 for the District of Columbia is again in session, the
3 Honorable Richard J. Leon presiding. God save the United
4 States and this Honorable Court. Please be seated and come
5 to order.

6 Your Honor, re-calling Civil Action No. 17-2511,
7 United States of America v. AT&T, Inc., et al.

8 THE COURT: You may proceed.

9 MR. HEIPP: Thank you, Your Honor. I have just a
10 few more minutes of questions.

11 THE COURT: Good.

12 BY MR. HEIPP:

13 Q Before the break, you were describing the
14 conditions in which the intention scale or the Juster Scale
15 is correlated with actual behavior. You talked about the
16 first two on the board. Can you describe what the third one
17 is that says "shorter elapsed time."

18 A Well, basically, if you ask questions of
19 respondents, so they're making a decision soon after you've
20 introduced the scenario, it's going to be fairly accurate or
21 accurate, actually.

22 If you, say, delay that decision or you're asking
23 about what are you going to do in the next year or next two
24 years, it's not going to be as accurate.

25 Q Did your survey for this case ask respondents to

1 make a decision shortly after giving them the relevant
2 information?

3 A Yes, it did.

4 Q Moving down to the fourth condition, it says
5 "specific brands." What does that mean?

6 A Basically, when these questions were first
7 designed, they would ask general questions, such as, how
8 likely you are to buy an appliance in the next year.

9 What the academic literature I've discovered,
10 actually, has been that it's much better if you're asking
11 for a very specific brand, like a brand of laundry
12 detergent, a specific brand of automobile, or, in this case,
13 the specific providers.

14 Again, the general theme here is that people are
15 familiar with the situation you're asking about.

16 Q And if people are familiar with the situation
17 you're asking about, are they better able to predict their
18 own behavior?

19 A Yes, they are.

20 Q The final condition listed on this demonstrative,
21 it's multiple product options. Did your survey in this case
22 present respondents with multiple product options?

23 A Yes, it did. They were presented with the current
24 provider, as well as two additional providers in the ZIP
25 code.

1 Q So given the five conditions that you've
2 described, can you give an example of a situation where a
3 scale like the one you used would poorly predict consumer
4 behavior?

5 A Well, if you're asking about, "Would you buy a
6 laundry detergent in the next year?" well, that would be
7 almost certain, for many people. But if you were asking,
8 "Would you buy a cell phone in the neck year?" that would be
9 more a more difficult question to predict.

10 Q How about an example where it would work in
11 predicting consumer behavior?

12 A Well, certainly used for predicting existing
13 brands of automobiles. So how likely am I to buy a
14 particular nameplate within the Chevrolet line, particularly
15 if I've already said I would consider buying in the next
16 three months.

17 Q What about pay-TV services?

18 A It would definitely be -- predict quite well for
19 pay TV. They fit all five of these conditions. And it's
20 the type of situation where I'd expect them to predict quite
21 well.

22 Q And how do you know that these conditions are
23 correlated with actual behavior?

24 A Well, as I've indicated before, there's some
25 excellent academic research in the top peer-reviewed

1 journals. And that is looked across a number of different
2 categories, a number of different applications. And they've
3 come up with these five situations, these five scenarios, so
4 that -- well, not scenarios, but these five characteristics
5 of the questions.

6 And we know that in these situations, they predict
7 well. They're highly correlated with actual behavior, and
8 no adjustment factors are needed.

9 Q So finally, looking at the statement on the bottom
10 of this slide, is it your opinion that your survey meets the
11 criteria for accurate prediction of consumer reactions?

12 A Yes, it does.

13 Of course, it's predicting what would happen in a
14 blackout, whether the blackout happens with a merger or not.
15 But it's -- if the merger were to effect a blackout, and I
16 have no opinion on that, this is how people would react in a
17 blackout.

18 Q And would you expect these five conditions to
19 exist after the merger as they do before it?

20 A Yes, that's true.

21 Q So, Professor Hauser, after you collected the
22 survey responses, did you analyze those results?

23 A Yes, I did.

24 Q And those results were for both people who said
25 that they would consider switching and people who said that

1 they would not consider switching, right?

2 A Yes, that's true. Both were included in the
3 analysis.

4 MR. HEIPP: Ms. Roschen, could you please put up
5 the final demonstrative.

6 BY MR. HEIPP:

7 Q Professor Hauser, what does this slide depict?

8 A Well, this indicates how the actual numbers were
9 calculated.

10 If you look at the top, the top talks about the
11 control group. And it indicates that 16.4 percent of the
12 people would switch just under normal situations.

13 Now, again, this is the full information in making
14 that decision.

15 And if you look at the bottom, you see it's
16 28.6 percent say they would switch into permanent blackout
17 scenario. So if I subtract those two numbers, 28.6 minus
18 16.4, I get the 12.2 percent.

19 And that's the best, most likely estimate of what
20 people would do.

21 Q So you compared the control group and the blackout
22 groups?

23 A Yes; just in the aspirin example. Like earlier,
24 some people would have heart attacks in the normal course of
25 happening, so we want to look at the difference between what

1 the control group does and what the test group does.

2 And it allows me to control for other noise and
3 other things in the survey that I couldn't fully control.

4 So, again, it's the difference that matters
5 between what happens in the test and what happened in the
6 control.

7 Q Is your conclusion of 12.2 percent switching
8 statistically significant?

9 A Yes. There is a statistical range on this. It's
10 called a confidence interval. And although 12.2 is by far
11 the most likely outcome, there's a 2-point, very small
12 chance that it can be lower, say, 7.4 percent and a very
13 small chance that it could be higher, as high as 17 percent.

14 Q But I think you said the 12.2 percent is the most
15 likely in that range?

16 A Yes, that's correct.

17 Q Can you explain to the Court how you know that
18 respondents saying they will switch means that they will
19 actually switch.

20 A In this case, I have to rely on both my experience
21 and experience of the literature that when these scales are
22 used well, within the right situations, they have been shown
23 to predict well.

24 Q In your opinion, is this methodology one that
25 would pass peer review if you were to submit it to an

1 academic journal?

2 A Yes.

3 And, in fact, I've published a number of
4 peer-reviewed articles that use this methodology.

5 Q And is this methodology one that you would use
6 with your business clients?

7 A Yes, it is.

8 I've used it to forecast for General Motors and
9 others as well.

10 Generally, forecasts based upon this methodology
11 are quite accurate, within confidence intervals.

12 Q And your conclusion for a permanent blackout of
13 Turner channels is that 12.2 percent of subscribers would
14 switch?

15 A Yes, approximately 12.2 percent of subscribers
16 would switch in the event of a permanent blackout.

17 MR. HEIPP: No further questions at this time,
18 Your Honor.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MR. BARBUR:

22 Q Good morning, Professor Hauser.

23 A Good morning.

24 Q We have met once before in a different case.

25 A Oh, okay.

1 Q I'm going to begin by handing out what's been
2 marked as Defendant's Exhibit 0915. What this is, it's
3 appendix M from your expert report. It's the pictures of
4 the actual slides that were used in your survey.

5 MR. BARBUR: May I approach, Your Honor?

6 THE COURT: Uh-huh, you may.

7 THE WITNESS: Thank you.

8 (Defendant's Exhibit 0915
9 was marked for identification.)

9 BY MR. BARBUR:

10 Q Could you take a look at what we've marked as
11 Defendant's Exhibit 915.

12 A Yes.

13 Q And do you recognize this as the screenshots from
14 the survey that were attached to your expert report?

15 A These are the screenshots.

16 Now, it's important to recognize that not
17 everybody saw every one of these, that there's different
18 conditions, and they were tailored to many characteristics.
19 The actual survey was much shorter than this would
20 imply.

21 Q Yes, I understand that, and we'll go through that
22 in just a moment.

23 MR. BARBUR: And, Your Honor, I'd move for
24 admission into evidence of Defendants' Exhibit 915.

25 MR. HEIPP: Objection, Your Honor. This is just

1 part of the report.

2 MR. BARBUR: Should we approach, Your Honor?

3 THE COURT: Yeah.

4 You can step down, sir, and sit in that chair on
5 the side there.

6 (Sealed bench conference)

7 MR. BARBUR:

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9 THE COURT:

10 MR. BARBUR:

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22 MR. HEIPP:

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THE COURT:

MR. BARBUR:

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MR. HEIPP:

THE COURT:

(Open court)

THE COURT: Come on back up.

You may proceed, consistent with the discussion at the bench.

MR. BARBUR: Thank you, Your Honor.

BY MR. BARBUR:

Q Just before we get into the main part of your survey, just a few follow-up questions from some of the testimony you provided in response to Mr. Heipp's questions.

First, you mentioned that there were some qualitative interviews done of eight interviewees; is that correct?

A Yes. That was to supplement my understanding in the category.

Q But the beginning, before you designed the survey.

A Yeah, before I ever designed the survey.

Q But those interviews were not done by you, were they?

1 A No, they were not.

2 Q They were done by some consulting firm that you
3 hired?

4 A They were done at my direction. I was fully
5 briefed on these interviews.

6 Q And you mentioned that this is an Internet survey
7 and that you used an Internet panel, correct?

8 A Yes, that's correct.

9 Q And you mentioned a company called SSI?

10 A Yeah. It's actually now SSI Research Now.

11 Q And SSI Research Now recruits people who become
12 basically professional survey takers; they sign up to take
13 surveys and they take multiple surveys after they have
14 signed up, right?

15 A Yes. They've taken -- some can take multiple
16 surveys. There's like every 10 million people in this
17 sample.

18 It's the way it's done, things now, yes.

19 Q And when, just so we're clear and the Court is
20 clear, this survey, what -- is administered on a computer.
21 People had a screen. They got various screens that you
22 designed, and then they responded, correct?

23 A Yes, that's correct.

24 Q And how much are these survey respondents paid?

25 A They're given standard incentives. Basically,

1 it's sort of -- it's not actual money. It's points towards
2 what they get for taking the survey.

3 Q It's de minimis?

4 A What?

5 Q It's de minimis, the amount that they're paid?

6 A "De minimis"?

7 Q The compensation that they get is very small; is
8 that correct?

9 A It's moderately small; that's correct.

10 Q So I think you mentioned, in response to some of
11 Mr. Heipp's questions, that you did not examine the results
12 of actual past blackouts; is that correct?

13 A That's correct.

14 Q But you mention in your report that you were aware
15 that there are and have been blackouts in the past, correct?

16 A Yes, that's correct.

17 Q You mention an AT&T U-verse blackout with
18 Univision, for example, in your report, right?

19 A Yes, that's correct.

20 Q You mention a Viacom-Cable ONE blackout, a
21 Viacom-Suddenlink blackout, correct?

22 A Yes. These were all temporary blackouts.

23 Q And you didn't calculate how many actual
24 subscribers were lost in any of those blackouts, correct?

25 A No. They were, for example, Viacom, short-term

1 blackouts, different scenarios.

2 In this case, I felt that an experiment was the
3 best way to do it, to actually get the estimates.

4 Q You predict results for short-term blackouts as
5 well as long-term blackouts, don't you?

6 A Yes, that's correct.

7 Q But you didn't look at the results of any of these
8 actual blackouts that were short-term, correct?

9 A That's correct. I wanted to get an independent
10 estimate.

11 Q And are you aware that there have been two
12 blackouts of Turner content in the last ten years, five to
13 ten years?

14 A Well, this was content. Was this all of the
15 Turner channels?

16 Q Well, I'm going to go through that.

17 Are you aware that there was a blackout of certain
18 Turner content on Dish in 2014?

19 A Yes, I'm aware of that.

20 Q And that was a blackout of seven of the nine
21 Turner channels on Dish, correct?

22 A I don't know the exact number, but I'll gladly
23 accept seven.

24 Q And are you aware that Mr. Schlichting from Dish,
25 your former client, that he came here and testified in

1 court?

2 A Oh, you mean, he works for Dish, okay.

3 Q Right.

4 A I don't know if he was my client, but he worked
5 for Dish.

6 Q He worked for Dish, which is your former client,
7 right?

8 A Yes.

9 Q And he came to court and testified. Are you aware
10 of that?

11 A Actually, no, I'm not.

12 Q And he testified that during this one-month
13 blackout on Turner with Dish, that they lost 30,000
14 subscribers. Are you aware of that?

15 A I'll accept those numbers, yes.

16 Q And you know that Dish has well over 12 million
17 subscribers, right?

18 A Yes. Well, I accept that as well, but --

19 Q So in his estimate, they lost .25 percent of their
20 subscribers during this Turner blackout.

21 Do you understand that?

22 A Yes, some of the Turner channels, correct.

23 Q And you can't reconcile that with your estimate
24 that there would be an 8.2 percent blackout -- departure for
25 a one-month blackout of Turner, can you?

1 A Different situations, different channels,
2 short-term blackouts, no, I can't. I believe my numbers are
3 accurate.

4 Q And are you aware that there was a blackout of all
5 Turner channels on Cable ONE, which is another distributor,
6 in 2013? Are you aware of that?

7 A I knew there was a blackout. I'm accepting that
8 it's all the Turner channels.

9 Q It was about a month long. Are you aware of that?

10 A I'm accepting that as well.

11 Q And are you aware that Cable ONE has given both
12 testimony in this case and provided documents and they're
13 going to produce a witness to testify in court.

14 Are you aware of that?

15 A No, I'm not aware of the witness list.

16 THE COURT: Well, hold on now.

17 If you answer, "I'll accept that," that means you
18 don't know, right?

19 THE WITNESS: That's correct. If that's how you
20 want me to answer, I will.

21 THE COURT: Well, I'd like you to answer it
22 whether you know or you don't know. And if you don't know,
23 then say if you want to accept it or if you're willing to
24 accept it.

25 THE WITNESS: Thank you.

1 THE COURT: I want the record to be clear on this.

2 THE WITNESS: Thank you.

3 THE COURT: Go ahead.

4 BY MR. BARBUR:

5 Q And are you aware that Cable ONE, in its testimony
6 and documents, says that they lost less than 1 percent of
7 subscribers and that they described the losses as
8 insignificant? Are you aware of that?

9 A No, I'm not aware of that.

10 Q Assuming that those facts are true, that can't be
11 squared with your estimate that a one-month blackout of
12 Turner would result in an 8.2 percent departure rate,
13 correct?

14 A I don't know all the situation -- yeah, everything
15 that you're describing, all the situations. I was careful
16 in my situation, so I'm not going to say that they can't be
17 reconciled.

18 You also may be picking and choosing, so I just --
19 I don't know. I can't answer that.

20 Q Picking and choosing what, sir?

21 A You're giving me a scenario; you're not describing
22 the entire scenario to me.

23 I have not made that reconciliation. I believe my
24 numbers are accurate.

25 Q Are you aware of any blackouts of Turner content

1 other than on Cable ONE and on Dish?

2 A Not that I'm aware of.

3 Q So instead of looking at real-world data on
4 blackouts, you were retained by the Department of Justice to
5 do a survey, right?

6 A I was retained by the Department of Justice to do
7 a survey, correct.

8 Q And you knew that the departure rate that they
9 wanted you to calculate, was a very important input into
10 their case, correct?

11 A I knew it was an input to their case and the fact
12 that they hired me, I assumed it was important.

13 Q And you understand that the Department of Justice
14 has an expert, Professor Shapiro, who has a model to predict
15 harm from the merger? Are you aware of that?

16 A I'm aware that Dr. Shapiro is going to be
17 testifying. I have not seen his model.

18 Q And are you aware that one of the key inputs into
19 Dr. Shapiro's study is the departure rate from a distributor
20 in the event of a Turner blackout?

21 A I would assume that he would be using those
22 numbers, yes.

23 Q And are you aware that he, in fact, relies, among
24 other things, on your survey results?

25 A I'm generally aware of that, but I haven't seen

1 Dr. Shapiro's report.

2 Q And so you knew, when you designed the survey,
3 that the Department of Justice was looking for a substantial
4 departure rate in order to support its theory of the case,
5 right?

6 A No, I certainly did not know that.

7 Q You thought that if you came up with the 1 percent
8 departure rate, that would be just fine with the Department
9 of Justice?

10 A I do the survey to my best of ability.

11 I get the answers. The facts are the facts.
12 I believe I'm an independent witness. If they didn't like
13 the numbers, they wouldn't call me to the stand.

14 Q And your testimony is you didn't have any idea
15 whether they -- it would be better for the Department of
16 Justice and Dr. Shapiro to have a high departure rate or a
17 low departure rate from your survey?

18 A I have to go on my academic integrity. I've been
19 doing -- been an academic for about 45 years. I am going to
20 stick to the science to the best of my ability. If the
21 client doesn't like the answer, then they don't call me.

22 Q You could have done a conjoint survey in this
23 case, correct?

24 A A conjoint survey would be another way of getting
25 the data. It's not an experiment.

1 In this case, I felt the need for a control group,
2 so I felt that the experiment would be the better
3 methodology.

4 Q You have done conjoint surveys in other litigation
5 matters, haven't you?

6 A Yes. When they're appropriate, I do conjoint
7 studies.

8 Very often, if you're trying to partial-out, say,
9 the effect of a patent, a conjoint study is an excellent way
10 to do it, to actually get an estimate of the impact of that
11 patent.

12 Q But you decided to do your experiment, as you call
13 it, in this case, right?

14 A Well, it is an experiment; but, yes, I decided
15 that would be the best way to get an unbiased estimate.

16 Q And you designed the entire structure of the
17 survey as it was presented to respondents, correct?

18 A Well, I also had a support team, who was helping
19 me -- could feed off -- I mean, I would give them ideas;
20 they'd feed off. These are people I've trained, many of
21 them. They know the language I speak. It's people I work
22 with, yes, but I certainly had a support team.

23 Q You were in charge of deciding how this survey was
24 going to be designed and administered, correct?

25 A Oh, absolutely.

1 Q And you got to design the types of questions that
2 were going to be asked of survey respondents, correct?

3 A Yes, I did.

4 Q And you had various sections, as you described in
5 your prior testimony. One of them was sort of a priming
6 section, right?

7 A Well, it's really trying to engage the
8 respondents, a better description.

9 Q You did use the word "priming."

10 A What?

11 Q You did use the word "priming" in your prior
12 testimony this morning.

13 A Did I?

14 Q Yes.

15 A Okay. Describing that? Okay.

16 Q In any event, you also testified in your
17 deposition about priming, didn't you?

18 A Yeah, I testified about priming a lot. I've done
19 research on it. I'm well-aware of what priming does.

20 This is sort of an unbiased engagement. If you
21 want to call it priming, that's an acceptable word.

22 Q But you got to decide which slides were going to
23 be used to prime the survey respondents, right?

24 A Yes; however, it's certainly led by experience, by
25 looking at what's relevant in the marketplace and what's --

1 Q Sir, perhaps you can just answer my questions and
2 let your counsel at the Department of Justice follow that
3 up.

4 A Okay. I'll do my best.

5 Q You got to decide which channels would be shown in
6 these priming slides, right?

7 A Yes; however, it was, again, based on research.

8 Q And you got to decide what kind of font and what
9 logos would be shown in the priming slides, right?

10 A I think we showed most of the logos; but, yes, of
11 course.

12 Q And then you had various test scenarios that you
13 walk through in your prior testimony, where you showed
14 slides to people to set up the decision as to whether to
15 switch providers, right?

16 A Yeah. I had both test and control, correct.

17 Q And you got to design the structure of all of
18 those slides as well, correct?

19 A Yes. I made it as realistic as possible based
20 upon the information that was available to me.

21 Q Again, sir, if you could just answer my questions,
22 this will go a lot more quickly.

23 And you got to decide how the questions were
24 phrased in that part of the survey, correct?

25 A Yes, as based upon listening to respondents.

1 Q And you got to decide what size font would be used
2 for the questions and for the logos in these various slides
3 that were shown to the test respondents, right?

4 A That's part of survey design, correct.

5 Q And you got to decide how the competing offers
6 would be presented to the survey respondents, right?

7 A Well, you keep saying I got to decide.

8 I did research to develop those offers, which
9 I think is a more accurate description. I didn't just
10 decide.

11 Q Somebody had to decide at the end of the day which
12 slides would be shown to the survey respondents and which
13 ones wouldn't be, right, sir?

14 A Yes, but it didn't come out of my head, you know,
15 like Athena came out of -- well, I won't do Greek analogies.

16 But it was based upon scripts and everything
17 else -- yes.

18 Q And there was a slide on switching costs, which
19 I think you described earlier as well, right?

20 A Yes, again, based on research.

21 Q And you got to decide how those switching costs
22 were described to the survey respondents, right?

23 A Yes, that's correct. And all of these were
24 pretested.

25 Q I'm going to hand you what we've marked as

1 Defendant's Exhibit 9115A, and this is just two pages that
2 come from DX915.

3 We printed these out from the actual survey
4 Website, because some of the items were not terribly
5 legible, but I'm going to hand that out now.

6 MR. BARBUR: May I approach, Your Honor?

7 THE COURT: Uh-huh.

8 MR. BARBUR: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. BARBUR:

11 Q Do you recognize Defendant's Exhibit 9115A as two
12 of the pages?

13 A I do recognize this. Just give me a second to --

14 Q And this is one of the blackout scenario test
15 groups. You're presenting the choices that the survey
16 respondent would have, and then there's the slider scale
17 that you talked about earlier, right?

18 A Yes.

19 These are what one respondent would have seen.
20 Remember, these were customized.

21 Q So I understand they're customized and randomized.

22 But this is an accurate example of slides that
23 would have been seen.

24 A Yes, this is definitely an accurate example.

25 Q So on the first page, as we discussed before, the

1 question that's presented is: Would the respondent consider
2 switching, correct?

3 A Yes. That's down at the bottom of the page.

4 Q You could have said, "Would you switch?" on this
5 slide. But, instead, you said, you -- "Would you consider
6 switching?" Right?

7 A That's correct. And there's -- I can provide
8 reasons if you would like.

9 Q And then if someone said that they would consider
10 switching, they go on to the next page, which is this slider
11 scale that I think you've called the Juster Scale, right?

12 A Yes. Do you want to go over how it works or not?

13 Q No. I think you've explained that in your prior
14 testimony. I just want to ask you some questions about it.

15 There are numbers presented here as percentages,
16 and then there are verbal descriptions as well, such as very
17 slight possibility, slight possibility, some possibility,
18 correct?

19 A Yes, that's correct.

20 And, also, it's -- there's a third description.
21 As you move that slider back and forth, that number changes.

22 Q Correct.

23 You're not asking people on this page to say
24 whether they would actually switch, right?

25 A No. They're forecasting their own actions.

1 Q So instead of asking them whether they would
2 switch, you asked them to calculate the likelihood of
3 switching on a 1 to 99 scale, correct?

4 A Yes. That's proven far more accurate. And it's
5 also a much more reliable scale.

6 Q And when people were looking at this, you don't
7 know whether they were focusing on those numbers or on the
8 verbal descriptions or both or any combination, right?

9 A Oh, that certainly correct.

10 All we know is the scale has been developed over
11 time and that it's an accurate predictor.

12 But we don't know what they mean by those phrases,
13 whether there might be better phrases.

14 But we just know that in certain situations, it
15 predicts quite well.

16 Q So some of these descriptions are very slight
17 possibility, slight possibility, some possibility, fair
18 possibility.

19 A Yes.

20 But, remember, it's encoded numerically as well.

21 Q But you don't know whether people were looking at
22 the numbers or the verbal distributions, right?

23 A No. All we know is the scale predicts well.

24 Q And you didn't provide a definition of this. Do
25 you think there's a common understood definitional

1 difference between slight possibility and some possibility?

2 A Again, I can just rely on experience here in
3 academic research that these are the words that are standard
4 in the scale. The scale works well.

5 And maybe I should explain that. What that means
6 is if --

7 Q Why don't you wait and save your explanations for
8 when the Department of Justice is asking you. I'm just
9 asking you some simple yes-or-no questions.

10 A Okay.

11 Q This will go a lot faster if you answer yes or no
12 to my yes-or-no questions.

13 Do you understand that?

14 A I understand that.

15 Q Do you understand that it's possible that
16 different people might have different understandings of what
17 slight possibility means versus some possibility?

18 A Oh, that's true. That's true. This scale is a
19 good aggregate predictor.

20 Q And so let's assume, hypothetically, that every
21 survey respondent had said "very slight possibility."

22 A Okay.

23 Q You would then have concluded that 10 percent of
24 them would actually switch, correct?

25 A Yes, and that's exactly what it means. It means

1 if 10 percent of the people -- well, if everybody says
2 10 percent, then 10 percent, in general, will switch. So
3 they don't have to know what the actual words mean. It's
4 just a scale works well.

5 Q So if they said "very slight possibility," it's
6 10 percent of them would switch. But if they said "slight
7 possibility," 20 percent of them would switch in your
8 analysis, correct?

9 A Well, they could also be looking at the numbers.
10 But if they put 20 -- if they said 20 percent,
11 then basically it's a good estimate that 20 percent would
12 switch.

13 Q And if everyone had said "some possibility" as
14 opposed to "slight possibility" and "very slight
15 possibility," you would assume that 30 percent of them would
16 actually switch in the real world, right?

17 A Yes. If they put the scale at 30, then I would
18 expect that a roughly 30 percent would switch.

19 Q So a lot is riding on these words, "very slight
20 possibility," "slight possibility," and "some possibility,"
21 right?

22 A No. A lot is riding on the scale.

23 Again, if they put it at 30 percent, some people
24 think numerically, we actually -- this is cognitive -- you
25 don't explanations. Okay. Sorry.

1 Q So I want to switch topics and talk about priming.
2 You mentioned that you did these eight interviews or you
3 actually had these eight interviews done and that one of the
4 things you learned is that people tend to think in terms of
5 shows and programs as opposed to channels or networks,
6 right?

7 A No. Some people think in terms of channels. Some
8 people think in terms of shows and programs.

9 Q But you were concerned that some people were
10 thinking in terms of programs or shows rather than networks
11 or channels; and, therefore, you wanted to prime them to get
12 them thinking about channels and networks, right?

13 A I wanted to get them thinking in the way that was
14 most natural to them. So the people were asking -- were
15 asked questions about shows and channels and also special
16 events.

17 Q You said in your expert report, "Therefore, in
18 order to get respondents in a frame of mind to think about
19 the effect of a channel-specific blackout, it was important
20 first to guide them from thinking about content to thinking
21 about the intersection between content and channels."

22 Correct?

23 A Yes. If that's the way they think about things,
24 that's the way I want them to think about things.

25 Again, people don't always know networks. If I

1 say I'm on NCIS, people may not know that's CBS. Or people
2 may not know that the NCAA Final Four is on a Turner
3 channel.

4 So, yes, we do have to make some of those
5 connections in order to ask the blackout questions.

6 Q And so you're seeking to prime or guide people to
7 think in a particular way in order to facilitate your
8 survey, correct?

9 A I'm trying to guide them in a way that -- yes,
10 I am. I mean, I have to do a blackout, so I have to make
11 sure they understand what a blackout is.

12 But, otherwise, the majority of the survey is
13 really just trying to get them thinking, get the juices
14 running so they're in the right situation.

15 Q And as you testified in your deposition, you did a
16 lot of priming in this particular survey, right?

17 A Yes. We -- that's a fairly long section.

18 Q I mean, the idea of priming is to get people to
19 change the way that they're thinking without understanding
20 that they're changing the way they're thinking, right?

21 A Oh, I certainly don't accept that definition.

22 Q Well, you could have just said, why don't you try
23 to -- to the survey respondents: I understand some of you
24 focus on programs or shows rather than networks or channels.
25 I want you to focus on networks or channels.

1 You didn't do that?

2 A Well, that certainly would be less natural, and
3 that might induce a demand artifact.

4 Q So let's go through some of your priming slides.
5 I'm going to hand up what's been marked as
6 Defendant's Exhibit 915B.

7 MR. BARBUR: May I approach, Your Honor?

8 THE COURT: Uh-huh.

9 BY MR. BARBUR:

10 Q And do you recognize Defendant's Exhibit 915B as
11 an example of the priming slides that would have been shown
12 to some survey respondents?

13 A Yes, and we can go through these if you would
14 like.

15 Q Yeah. We're going to go through some of these,
16 indeed.

17 Why don't we start with DX095021B. There's a few
18 pages in. And this is the special events priming slide that
19 I think you referenced in your prior testimony.

20 Do you see that?

21 A This is an engagement slide, correct.

22 Q It says "Special Events" at the top, doesn't it?

23 A Yes. We're engaging respondents, that's correct.

24 Well -- yep, special events.

25 Q And this list of special events was taken from a

1 list of the top 100 prime-time telecasts of 2016 among
2 adults, according to Nielsen, and aggregated according to
3 broadcast type, correct?

4 A Yes, that's correct.

5 Q And then in appendix h to your expert report,
6 which you have in front of you --

7 A Yes.

8 Q -- there's an actual copy of this Nielsen survey,
9 right?

10 A Yes, there should be.

11 Q Why don't you take a look at appendix H to your
12 report.

13 It's -- the page is H7. It's appendix H,
14 Exhibit 1.

15 A Are you sure it's here?

16 Q Well, I'm pretty sure it's here. If not, I have
17 another copy I can provide.

18 This one has a tab. It might be a little easier
19 to use.

20 MR. BARBUR: May I approach, Your Honor?

21 THE COURT: Uh-huh.

22 THE WITNESS: Okay. What page again?

23 BY MR. BARBUR:

24 Q Page H7 of appendix H.

25 A Okay.

1 Q And this is the Nielsen study on which your
2 special events slide was based, correct?

3 A Yes, that's correct.

4 Q And there are 100 events shown on here, the
5 top 100 special events in 2016, according to Nielsen, and
6 there's only one Turner event on this chart, correct? If
7 you read No. 84, the NBA Western Conference finals game,
8 which is on TNT?

9 A Yes, I see that.

10 Q That's the only one on this chart that was on
11 Turner network, correct?

12 A Yes, that's correct.

13 Q So now, let's go back to Defendant's Exhibit 915B
14 at page 21.

15 You do, in fact, include the NBA playoffs, and you
16 mention if it's on ABC and TNT, but you also added
17 March Madness, correct?

18 A Yes, that's correct.

19 Q And March Madness was not on the top 100 list from
20 the Nielsen study that you had, right?

21 A Well, this was a list that guided us. There were
22 other programs, yes, that we added.

23 Q Yes.

24 And so you decided to add March Madness so you
25 could add three more Turner logos to this priming slide;

1 isn't that correct, sir?

2 A That's certainly not the reason I did it. I was
3 trying to be as representative as possible. But I guess
4 that's the net effect. This is actually the first time I
5 counted the Turner logos on this slide.

6 Q Do you understand that over the last week in
7 court, we've heard endless testimony from government
8 witnesses about the alleged importance of March Madness?

9 A I'm sorry. I wasn't in court.

10 Q But in any event, you independently decided to add
11 March Madness to this chart?

12 A Yes, it's added. I tried to do this as randomly
13 as possible. There's other special events, such as
14 political events, we -- I added.

15 But I certainly had no intent, one way or the
16 other, in adding Turner stations here.

17 Q And on the Nielsen top 100 list, the only
18 presidential debate was a Republican presidential debate on
19 Fox, correct?

20 A Yes, that's correct.

21 Q But, instead, you decided to include all of the
22 Republican and Democratic party primary debates and general
23 election debates, correct?

24 A Well, the last thing I wanted to do was choose one
25 party over the other.

1 Q Well, you could have just gone off the top 100
2 list, which is what you said you were going to do, right?

3 A Well, this and I believe there was also another
4 list, but -- although that might have been another part of
5 the survey.

6 I just -- certainly, I tried to get this
7 represent -- random -- not random, but this would be
8 reasonable. I was not picking Turner events here, per se,
9 no.

10 Q But in any event, as a result of changing that
11 part of the Nielsen study, you were able to add a CNN logo,
12 right?

13 A That wasn't my intent.

14 Q Okay.

15 So if you'd gone just strictly based on the
16 Nielsen survey, there would have been one Turner event on
17 this slide and one Turner logo.

18 But through the changes that you made, we now have
19 five Turner logos over three events, correct?

20 A Well, again, I was doing my best here. That
21 certainly was not my intent.

22 Q Let's move ahead to the news and talk part of
23 these priming slides, page 24 here.

24 Do you have that?

25 A Yes, I have that.

1 Q And you include TBS, which is a Turner network,
2 CNN, Headline News, and you even have CNN en Español, right?

3 A Yes, that's correct.

4 Q So 4 of the 10 or 12 here are Turner networks,
5 correct?

6 A Yes, that's correct.

7 And this happens to both the test and the control.

8 Q And, for example, you show NBC here, but you don't
9 show CNBC or MSNBC, which are also in the talk category,
10 aren't they, or the news or talk category?

11 A Yes, they are.

12 Q And you show Fox, but you don't show the Fox
13 business channel, right?

14 A That's correct.

15 Q So let's skip ahead to the -- the sports page that
16 you have, which is on -- towards the back. It's maybe the
17 last one. It's page 30.

18 Do you have that?

19 A Yes, I do.

20 Q And you included on here TBS, TNT, and TruTV,
21 which are all Turner networks, right?

22 A Yes. Those are on there, correct.

23 Q Do you understand that those are general
24 entertainment networks? They have some sports, but they
25 have all kinds of other programming as well.

1 Do you understand that?

2 A Yes, but they definitely have sports.

3 Q Okay.

4 Other than those three, every other network listed
5 here only has sports programming, correct?

6 A Yes, that's correct.

7 Q And you didn't include in here the broadcast
8 networks: ABC, NBC, Fox, and CBS, right?

9 A They are not here.

10 Q And they also have sports, don't they?

11 A Yes, they do.

12 Q And for TBS, you have them down for March Madness.
13 Do you see that?

14 A Yes, I see that.

15 Q And do you understand that March Madness is
16 actually split between TBS and CBS?

17 A Yes, that's correct.

18 Q But you've only got TBS down here, right?

19 A Yes.

20 Q And you have the NBA playoffs under TNT, right, on
21 this chart?

22 A Yes.

23 Q And the NBA playoffs are actually split by ABC and
24 TNT, aren't they?

25 A I didn't know that.

1 Q Well, you didn't include it?

2 A No, it's not included. But, remember, both the
3 test and control are seeing these.

4 Q So now I want to walk through some of the actual
5 choice slides, the test group and the control group. So
6 I'm going to hand up what's been marked as 915C, which is
7 the test group, and 915D, which is -- or, excuse me.

8 915C is the control group, and 915D is the test
9 group.

10 MR. BARBUR: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. BARBUR:

13 Q So take a look at DX915C. This is a
14 representative sample of the choice questions that would
15 have been presented to the test group, correct?

16 A That's correct.

17 Q And DX915T is representative slides that would
18 have been shown to the test group, correct?

19 A That's correct.

20 Q So I just wanted to compare the two. The first
21 slide of each is an introductory slide, right?

22 A That's correct.

23 Q And the test group sees just three lines of text
24 in the introductory slide, right?

25 A That's correct.

1 Q And the test group sees a few more lines of text,
2 and then it sees ten extremely large logos for the Turner
3 networks, right?

4 A Yes. I think I've explained why these are here,
5 but I could do that for you.

6 Q And you actually have down ten networks here.
7 There's really only nine, right?

8 A No. I think this slide is accurate.

9 Q Cartoon Network and Adult Swim are on the same
10 network, aren't they, sir?

11 A Well, they're really targeted to two different
12 groups. Not everybody understands that Adult Swim is the
13 same at Cartoon Network.

14 Q Adult Swim is a certain programming segment in the
15 evening on the Cartoon Network, is it not, sir?

16 A Yes, and it has its own image.

17 Q But you -- in your preface, you say, the following
18 channels. Adult Swim isn't a channel, is it?

19 A Some people think of Adult Swim; some people think
20 of Cartoon Network. It was appropriate to have both.

21 Q But, anyway, you thought it was appropriate to
22 have some small type at the top and then these extremely
23 large logos. The font is probably ten-times larger in the
24 logos than it is in the text, right?

25 A People read the text, and they really need to be

1 reminded of what are the Turner channels, and so I use
2 logos.

3 Q And the test, the control group got only one
4 introductory slide, but the test group got additional
5 introductory slides, right?

6 A Yes. I had to -- I absolutely had to tell the
7 test group about the blackout. I had to make sure they
8 understood what was being blacked out and that there would
9 be a blackout.

10 Q And so if we look at DX915144, that's the next
11 introductory slide for the test group. And, again, we see
12 two small lines of text and ten enormous logos for the
13 Turner networks, right?

14 A Yes. It's as if the -- it's just a way of
15 implementing as if the logo stayed on the screen while we
16 changed the text. And so people saw the logos, and I think
17 it was effective in terms of making them aware that it
18 was -- what was being blacked out.

19 THE COURT: Would this be a good time to take the
20 luncheon recess?

21 MR. BARBUR: That's fine, Your Honor.

22 THE COURT: Okay. We're going to take the
23 luncheon recess, sir. You remain a witness under oath in
24 the case, which means you're not at liberty to discuss your
25 testimony so far or what it might be when you return with

1 anyone, including the counsel in the case.

2 THE WITNESS: Thank you.

3 THE COURT: So stay independent of all others and
4 be able to answer honestly the questions you haven't spoken
5 with anyone about your testimony.

6 THE WITNESS: No, no, I haven't.

7 THE COURT: No. When you return, I mean, you'll
8 be able to say that. Okay?

9 THE WITNESS: Oh, I'm able to say that, yes.

10 THE COURT: You will be able to say that when you
11 return; that's what you want to be able to do.

12 All right. So you can step down. You're excused.
13 Be back at 2:30.

14 And we'll see counsel at 2:30.

15 DEPUTY CLERK: All rise.

16 This Honorable Court will stand in recess until
17 the return of court.

18 (Proceedings concluded at 1:00 p.m.)

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C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: March 29, 2018 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR