

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :  
 :  
 : Plaintiff, : CV No. 17-2511  
 vs. :  
 : Washington, D.C.  
 : Thursday, March 29, 2018  
 AT&T, INC., ET AL., : 2:40 p.m.  
 :  
 : Day 5  
 Defendants. :  
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AFTERNOON SESSION  
TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE RICHARD J. LEON  
UNITED STATES DISTRICT SENIOR JUDGE

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1	Table of Contents				
2		Direct	Cross	Redirect	Recross
3	On behalf of the Plaintiff:				
4	John R. Hauser				
5	By Mr. Heipp			841	
6	By Mr. Barbur		834		
7	Gregory Rigdon				
8	By Ms. Bhat	858			
9					
10	By Mr. Orsini		881		
11					
12	E-X-H-I-B-I-T-S				
13			Marked	Received	
14	On behalf of the Plaintiff:				
15	Exhibit No. 384 under seal			871	
16	Exhibit No. 385 under seal			873	
17	Exhibit No. 306 under seal			875	
18	Exhibit No. 708 under seal			944	
19	Exhibit No. 709 under seal			953	
20					
21	On behalf of the Defendants:				
22	Exhibit No. 925 under seal		889		
23					
24					
25					

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

2 THE DEPUTY CLERK: Your Honor, recalling civil action  
3 number 17-2511, United States of America versus AT&T, Inc., et  
4 al.

5 THE COURT: Witness remains under oath.

6 THE WITNESS: Thank you.

7 GOVERNMENT WITNESS JOHN R. HAUSER PREVIOUSLY SWORN

8 CROSS EXAMINATION (continued)

9 MR. BARBUR: May I proceed, Your Honor?

10 THE COURT: You may.

11 BY MR. BARBUR:

12 Q. Back before the lunch break, Professor Hauser, we were  
13 looking at DX 095 C and the D versions.

14 Do you have that in front of you? These were the slides  
15 from the test and control groups?

16 A. 09?

17 Q. The one, the C and D the ones that are actually pictures  
18 of the slides?

19 A. Oh, these?

20 Q. Yes. Should be one ending in C and one ending in D in the  
21 lower right hand corner.

22 Do you see that?

23 A. Yes. Which ones?

24 Q. Just have them in front of you, I'll ask you questions  
25 about them?

1 A. Okay.

2 Q. I think we established that for C which is the control  
3 group there was one introductory question and then we walked  
4 through the first two introductory questions in D which was the  
5 test group; correct?

6 A. Yes.

7 Q. There was actually a third introductory slide for the test  
8 group as well, that's on page 145.

9 Do you see that?

10 A. Yes, that's correct.

11 Q. So once again, we have small font at the top text and then  
12 we have these large logos, correct?

13 A. That's correct.

14 Q. So whereas the test group had one page with no logos, the  
15 control group, where the control group had one page and no  
16 logos, the test group had three pages each with the logos for  
17 each of the Turner channels, correct?

18 A. Yes, I have two B C block out.

19 Q. Then you proceed to questions where you ask both the  
20 control group and the test group about their favorite TV  
21 program, right?

22 A. Yes.

23 Q. For the control group you simply say describe the ways  
24 that you watch your favorite TV programs, right?

25 A. Yes, that's correct.

1 Q. But for the test group which is on D, page 146, you say  
2 among other things, given that your TV provider has no current  
3 plans to resume airing the channel, what would you do to watch  
4 your favorite programs on these channels that were blacked out  
5 on your TV subscription, right?

6 A. Yes, that's correct.

7 Q. By this point in the survey you had not established that  
8 any survey respondent had any favorite programs on any Turner  
9 channel, had you?

10 A. No. They would be, if they didn't have any favorite  
11 channel they would say I, they would answer this truthfully.

12 Q. Well, you say what would you do to watch your favorite  
13 programs on these channels that have been blacked out, right?

14 A. That's right.

15 Q. And you're implying to these people that they have  
16 favorite programs on the Turner channels, right?

17 A. Not really. They would simply say I don't have any  
18 favorite channels.

19 We've got a very sufficient what you call priming what I  
20 call engagement.

21 Q. Let's go to the next slide on favorite programs for the  
22 control group on C, that's page 33. Again, you're asking what  
23 would they do to find other ways to watch their favorite  
24 programs, right?

25 A. That's correct.

1 Q. And for the test group you say you might have already said  
2 this, but what would you do, would you or would you not try to  
3 find another way to watch your favorite programs from TBS, CNN  
4 and Español, HLN, Bommerang, Turner Classics Movies, Cartoon  
5 Networks, CNN Adult Swim, TruTV and TNT that were blacked out  
6 on your TV subscription, right?

7 A. That's right. We reminded people of the Turner channels.

8 Q. Yes and you did it in bold so that for the Turner channels  
9 as opposed to the other fonts here, right?

10 A. Yes. I wanted them to be aware of the Turner channels.

11 Q. Yes, you wanted to emphasize the Turner channels, that's  
12 for sure.

13 Again, you say what would you do to watch your favorite  
14 programs from all of those various Turner networks, correct?

15 A. Yes.

16 Q. And again, you had not established by this point in time  
17 that the survey respondent had ever watched a single Turner  
18 show on a single Turner network, correct?

19 A. That's correct. They would answer no. If they had no  
20 favorite channels.

21 Q. So now we move on to the actual setting up for the choice  
22 slides, right? So let's flip to page 34 on the C slide and  
23 page 148 on the D slide.

24 And you're setting up the offers that are going to be made  
25 to them and the test, the control group gets text, the test

1 group gets text but they're now seeing for the fourth time all  
2 of the large representations of the logos for the Turner  
3 channels, correct?

4 A. Yes. This is the way I implemented keeping those logos up  
5 there.

6 Q. Yes, you sure do.

7 Then for, flip ahead to the next slide, this would be 35 C  
8 on the C version and 149 D.

9 Again, you're setting them up for getting competing offers  
10 from various distributors, right?

11 A. Yes.

12 Q. And for the control group they just get text, for the test  
13 group they see text but they also see the Turner logos for now  
14 the fifth time, correct?

15 A. Yes. By this point they're very aware that there's a  
16 Turner blackout.

17 Q. The next slide is where you describe switching costs,  
18 right?

19 A. Yes.

20 Q. For the control group they get just text describing  
21 switching costs, right?

22 A. That's correct.

23 Q. But for the test group they get the same test but again, a  
24 very large representation of the Turner logos, right?

25 A. That's correct.



1 Q. For the sixth time?

2 A. It's as if these logos stayed on the screen while we asked  
3 them questions.

4 Q. But they had to click from screen to screen to screen,  
5 right?

6 A. Yeah, but if you've ever been through a survey the  
7 questions change and the logos more or less stay the same. It  
8 could have been implemented the other way, we would have got  
9 the same results.

10 Q. By the way, focusing on the switching cost page, you  
11 describe in a textual form the kinds of switching costs you  
12 think that a subscriber would face if they wanted to change  
13 providers; is that correct?

14 A. No. We have some evidence that, what these are switching  
15 costs. But these are the switching costs that indicate the  
16 types of switching costs people would attain.

17 Now this one is of course I think it's for a traditional  
18 provider. It's a little different for a non-traditional  
19 provider.

20 Q. I understand that.

21 But it's text describing for the survey respondent the kind  
22 of switching costs they might face, correct?

23 A. That's correct.

24 Q. Wouldn't you agree with me that it's one thing to read  
25 about switching costs in a paragraph on a survey and another

1 thing to actually have to call up and cancel one provider, set  
2 up an appointment to have that equipment taken out, call  
3 another provider, set up an appointment to have that equipment  
4 brought in, all the time associated with that.

5       Isn't it a very different thing to actually go through this  
6 in real live as opposed to reading it on a page?

7 A.    I'm not sure it is.  People are aware of what these  
8 switching costs are.  I'm not sure there's any other way that  
9 could have introduced switching cost.

10 Q.   One switching cost is an information cost; that is, just  
11 figuring out what the competing offers are, right?

12 A.    Yes, that's correct.

13 Q.    Here you completely eliminated that switching cost because  
14 you actually just provided three offers to the survey  
15 respondents, right?

16 A.    Yes.  In both the test and control which lowers the  
17 control relative to the test.  Or I should say likely lowers  
18 the control.

19 Q.    So switching topics.  When you stated that there's a 12.2  
20 percent departure rate that you calculate, that rate was not  
21 stated without error, correct?

22 A.    Yes, I gave the confident intervals.  The later question  
23 that I was asked.

24 Q.    In your report though, you didn't provide confidence  
25 intervals, right?

1 A. Right. We provided standard errors. Anybody familiar  
2 with this knows you multiply the standard errors and you get  
3 the confidence intervals.

4 Q. But it was only during your deposition that you actually  
5 laid out what the range was on a 95 percent confidence level,  
6 right?

7 A. In most of the academic articles, it's standard to provide  
8 standard errors which is what I did here assuming that anybody  
9 could then quickly calculate the confidence intervals.

10 Q. And at a 95 percent competence level the range is 7.4  
11 percent to 17 percent, correct?

12 A. That's correct.

13 Q. You say that 12.2 percent is like the, is the most likely,  
14 but within a 95 percent confidence level you don't know if it's  
15 going to be 7.4 percent or 17 percent, right?

16 A. What that means is that there's a 2.5 percent chance, half  
17 of 95 from one and then divide by two. It's a 2.5 percent  
18 chance by random error that you might be below 74.4.

19 There's also a 2.5 percent chance that you would be above  
20 17. But it is about, well, it's roughly a bell shaped curve,  
21 you get to that in a little bit.

22 So most of the, the density is going to be much closer to  
23 12.2.

24 Q. Can you answer my question?

25 My question was within a 95 confidence level you can't say

1 whether it's 7.4 percent to 17 percent, correct?

2 A. I can give probabilities but I cannot give a 01 estimate,  
3 no.

4 Q. One of the things that leads to error in a survey like  
5 this is sample size, correct?

6 A. That's correct.

7 Q. And just so we're clear about the sample size here you  
8 referred to 1600 at some point in your prior testimony?

9 A. Yes, and those were split between four groups.

10 Q. But some of those people were screened out before the  
11 actual survey was administered, correct?

12 A. Not those 400 people.

13 Q. You started with 1600, but when you actually administered  
14 the survey less than 400 people were surveyed as part of the  
15 test group and less than 400 people were surveyed as part of  
16 the control group, correct?

17 A. Yeah. There's 400 in each group and then a few people  
18 eliminated from the analysis because they answered the question  
19 too fast. These again are standard quality control methods.

20 Q. You understand that Professor Shapiro is relying on your  
21 analysis to testify and support the Department of Justice's  
22 position, this hundred billion dollar merger should be blocked  
23 and you based your survey on two groups of 400 respondents; is  
24 that correct?

25 A. Yes, that's correct.

1 Q. You mentioned this morning that your testimony has never  
2 been thrown out of the Court case.

3 Do you remember that?

4 A. Not that I know of.

5 Q. You testified in the Apple versus Samsung litigation in  
6 California, didn't you?

7 A. Yes, I did.

8 Q. That was a patent case?

9 A. That's correct.

10 Q. It involved Apple devices, iPhones and tablets, right?

11 A. That's correct.

12 Q. And you did a conjoint survey in that case, right?

13 A. That's correct.

14 Q. You were trying to establish the relative value of certain  
15 features on the iPhone and the tablets, right?

16 A. Not quite. I was trying to determine consumer's  
17 willingness to pay which is different than the relative value.

18 It's up to an economist or an accountant to use the  
19 willingness to pay to come up with a relative value.

20 Q. So you were trying to determine consumer's willingness to  
21 pay for certain features on iPhones and Apple tablets?

22 A. That's correct.

23 Q. Judge Koh didn't agree with your analysis in that case,  
24 did she?

25 A. Actually, she did agree with me. If you look at that

1 opinion, I testified as I have now it wasn't a value, it was  
2 just willingness to pay.

3 She actually cited me in stating that it was not relative  
4 value, that it was willingness to pay.

5 Q. Well I'll just read you some of the quotes from Judge  
6 Koh's opinion.

7 "The Court finds Dr. Hauser's survey results are undermined  
8 because the survey appears to have failed to adequately account  
9 for non-infringing alternatives to the patented features."

10 She said that, right?

11 A. Yes.

12 Q. She similarly said, she said "similarly the survey  
13 highlights the patented features using various attention  
14 drawing graphic effects", right?

15 A. That's right.

16 Q. And she criticized you for that, didn't she?

17 A. It's a criticism. She ultimately accepted the testimony.  
18 I was allowed to testify and, in fact, she accepted the  
19 results.

20 There's criticisms just as there are now.

21 Q. The Court in that case also said: "The Court finds that  
22 the extra attention given to the patented feature in the survey  
23 through these various graphic effects and presentation methods  
24 likely inflated their price premiums. Consequently, the survey  
25 results likely overstate consumer's relative willingness to pay

1 for the patented features", correct?

2 A. I'm not familiar with that, but that could be there, yes.

3 Q. So you used certain graphics to call attention to certain  
4 features and you were criticized about that by Judge Koh,  
5 correct?

6 A. Yes, and I disagreed with the criticism then.

7 In fact, the other expert used a survey that was quite  
8 biased.

9 Q. Also speaking of graphics and presentation, I want to go  
10 back to the demonstrative exhibits that were handed to you at  
11 the beginning of your testimony.

12 Do you have those?

13 A. I'm not sure I do.

14 MR. BARBUR: Well, I've got extra copies here. May I  
15 approach, Your Honor?

16 THE COURT: You may.

17 BY MR. BARBUR:

18 Q. These are the demonstrative exhibits that Mr. Heipp took  
19 you through or at least some of them this morning when you  
20 began your testimony, right?

21 A. Yes, that's correct.

22 Q. And these are things that you prepared in conjunction with  
23 the Department of Justice, right?

24 A. That's correct.

25 Q. And I know you didn't get to this, but I want to go to the

1 slide that says examples of switching costs permanent blackout  
2 group, do you see that?

3 A. Yes, that's correct.

4 Q. And this was a slide that was presented to illustrate a  
5 slide that would have been in the survey, correct?

6 A. Yes, that's correct.

7 Q. I want you to compare that to DX 915, page 150 D in the D  
8 package.

9 Do you see that? Do you have both of those in front of  
10 you?

11 THE COURT: Which page in the D packet?

12 MR. BARBUR: Page 150 915-015D.

13 THE COURT: All right, 150D.

14 BY MR. BARBUR:

15 Q. Do you have that, Professor Hauser?

16 A. Yes, I have that.

17 Q. They're similar, the text is the same and the logos are  
18 the same, but in the illustration you picked for the Court you  
19 made the font on the question in the preceding description much  
20 larger than it was in the actual survey, didn't you?

21 A. I apologize. I have older eyes and I wanted to be able to  
22 read it from across the room.

23 Q. That had the affect of making the logos look less  
24 prominent relative to the text than they were in the actual  
25 survey; isn't that correct, sir?



1 A. That certainly wasn't my intent.

2 MR. BARBUR: I have no further questions, Your Honor.

3 THE COURT: All right. Redirect.

4 THE DEPUTY CLERK: Mr. Barbur, are you going to move  
5 any of A through D?

6 MR. BARBUR: No.

7 THE DEPUTY CLERK: Okay.

8 REDIRECT EXAMINATION

9 BY MR. HEIPP:

10 Q. Just a couple of topics to talk to you about, Professor  
11 Hauser.

12 At the beginning of Mr. Barbur's questioning of you, you  
13 were asked about a couple of prior blackout events involving  
14 Turner; do you remember that?

15 A. Yes, I do recall that.

16 Q. You were first asked about a blackout involving Dish.

17 Do you know how many channels were involved in that  
18 blackout?

19 A. I think he might have said it, but I don't recall.

20 Q. Then you were asked about Cable One Turner blackout. Are  
21 you aware of how Cable One responded publically to the Turner  
22 blackout in that instance?

23 A. No, I'm not.

24 Q. Are you aware of the basis for the churn estimates that  
25 Mr. Barbur provided you?

1 A. No, I'm not.

2 Q. Did you need to look at prior data from blackout events to  
3 construct or analyze your study?

4 A. No. I want to do an independent study and in an  
5 independent study I can do a test and control.

6 And furthermore, whatever happens in a real world there's a  
7 lot of things you have to control for and you normally can't do  
8 that.

9 In addition, this particular, you know, all the channels  
10 for a permanent blackout is in hypothetical.

11 Q. Is there a benefit to doing an experiment like yours  
12 versus looking at data like that?

13 A. Yes. You can isolate the effect, it gives you causality.

14 Q. Mr. Barbur asked a number of questions about the survey  
15 itself and walked you through some pages.

16 You were first asked about the list of content that you  
17 provided to respondents.

18 Do you remember that?

19 A. Yes, I recall that.

20 Q. There was some talk about priming. Is priming a term that  
21 you use in your academic and professional work?

22 A. Yes, it has multiple meanings.

23 In this case, what we're trying to do is we're trying to  
24 bring things out of memory to put people in a situation that's  
25 realistic to them.

1 Q. That's something that you have done before?

2 A. Yes.

3 Q. What is the purpose of doing that, what was the purpose of  
4 doing that in this case?

5 A. Well, I wanted to have these consumers in as realistic a  
6 situation as I possibly could within the confines of the  
7 survey.

8 So I wanted to have a series of questions about within each  
9 genre of which channels they watch. What television shows they  
10 watch, et cetera.

11 So they would start thinking about these. They would be  
12 aware of their favorite channels, their not favorite channels,  
13 basically be put in a frame of mind of essentially television  
14 watching. And hopefully in a frame of mind of things they  
15 would do for either getting a provider or switching providers  
16 if that's what they were going to do or staying with the  
17 provider.

18 Q. When respondents were shown that section of the lists of  
19 content, was that shown to both the control and the test  
20 groups?

21 A. Yes, it was.

22 Q. It was also quite a lot of talk about logos.

23 Do you recall about how many logos respondents would have  
24 seen in the survey?

25 A. Well, there were a 107 possible logos, but the average

1 respondent I think saw between 30 and 60 logos. Now some of  
2 those wouldn't be unique.

3 For example, CBS has both drama shows and comedy shows. If  
4 they had chosen drama and comedy, the two things they wanted to  
5 look at, they would have seen the CBS logo twice.

6 Q. But you did show respondents the logos for the Turner  
7 channels in the blackout questions?

8 A. Yes, I did.

9 Q. Was it important for respondents to understand the content  
10 they might be losing?

11 A. Yes, it is.

12 A lot of people are aware of channels, they might not  
13 associate the Cartoon Network and CNN are really both owned by  
14 Turner. I wanted to make sure that they were not assuming  
15 channels beyond Turner, but in fact just assuming the Turner  
16 channels. So I wanted to make sure that they understood that  
17 if it was a blackout, it was just in Turner channels.

18 Q. Would it have been possible to present respondents with a  
19 blackout of Turner channels without referring to the Turner  
20 channels?

21 A. No, it would be difficult and it would be difficult with  
22 text only.

23 Q. Why is that?

24 A. Well, people are familiar with logos, they see logos a  
25 lot. And that's how often they think of the channels, et

1 cetera.

2 I mean, we often forget what TNT actually stands for.

3 I could tell a story about TBS. MIT use to own the name so  
4 Turner bought MIT a long time ago.

5 Q. You were also asked about your work for the Apple Samsung  
6 case. It was a conjoint survey that you did in that case?

7 A. Yes. Two cases.

8 Q. Can you explain what a conjoint survey is?

9 A. Well, a conjoint survey is where there's a large number of  
10 features and you want to vary those features. And you  
11 basically want to find the value of one or a small number of  
12 those features and so you will still have a lot of distracter  
13 features in.

14 So it's the type of study you would do. It's not an  
15 experiment, it's just a question to people that you can do to  
16 measure willingness to pay.

17 Q. Was the study that you did for that case comparable to the  
18 study that you did for this case?

19 A. No. This was basically an experiment as opposed to just a  
20 conjoint survey. It included a test and control and rather  
21 than conjoint we used the juster scale after the filter  
22 question.

23 Q. In the blackout set of questions could respondents have  
24 been reminded of how little they watch the Turner channels?

25 A. Yes, that's certainly true. If they don't recognize these

1 logos or if they don't watch those channels or if they don't  
2 have any favorite channels on those shows, they would be  
3 reminded of that fact.

4 Q. Did you test in your survey to determine whether  
5 respondents improperly focused on the Turner channels?

6 A. Yes, we did. We tested it as I described earlier. We had  
7 a number of questions that the, at the end of the survey and if  
8 this type of bias came up they likely would have mentioned  
9 that.

10 Remember, only three of the 1600 people mentioned that this  
11 was about Turner channels. So if you do take those out you get  
12 basically the same result. Otherwise the remaining people.

13 Also, we did a pretest and a pretest is when you give the  
14 survey to someone, a set of people beforehand and you have an  
15 interviewer on the phone while they're doing it. These people  
16 think out loud as they're taking the survey, and the  
17 interviewer is noting what they say.

18 Then there are even stronger questions in that to pick up  
19 these effects that might be due to logos, et cetera. If they  
20 were, if they had come up, I would have changed the survey.

21 Q. Is there any evidence either from that pre test that you  
22 described or from the questions in the survey that your  
23 conclusions are affected by that kind of bias?

24 A. No, three out of 1600 is a small number. There's minimal,  
25 if any, focus on, extra focus on the Turner channels, beyond

1 the fact that we induce them for the blackout.

2 MR. BARBUR: I don't have any further questions, Your  
3 Honor.

4 THE COURT: Who had screened the 1600 for you?

5 THE WITNESS: Well, 1600 we got from the internet  
6 panel and we choose them randomly from their panel.

7 THE COURT: What's the internet panel?

8 THE WITNESS: Okay, Survey Sampling International  
9 they recruit people. In this case they have about ten million  
10 people, a little bit more than ten million people. And these  
11 people agree to take surveys because if you send out a random  
12 email you're not going to get very much response.

13 They get paid a minimal amount. They do take surveys.

14 THE COURT: What's a minimal amount, \$50, \$100?

15 THE WITNESS: I think it's less than that. I think  
16 it's less. I actually don't know the number.

17 THE COURT: They get paid by the survey?

18 THE WITNESS: They get paid by the survey. They get  
19 paid more for longer surveys. Ours was a moderately short  
20 survey.

21 THE COURT: Okay.

22 THE WITNESS: So survey sampling then balances this,  
23 balances their sample, in this case to the U.S. They also have  
24 international samples.

25 And they do a number of caller controls. They're always

1 checking to see if respondents go too quickly, if they answer  
2 all the same thing. If they're just doing it for pay, they get  
3 rid of them.

4 And back in 2000s, I had headed a project for the NSF,  
5 and we were just learning the panels by then.

6 By 2018 these panel companies provided a very good  
7 representative sample.

8 THE COURT: Did you give them contours where the 1600  
9 had to come from, what kind of TV systems they had in place,  
10 whether they are pay-TV or internet TV access? What kind of  
11 contours did you give them?

12 THE WITNESS: Well, the sample that we used was  
13 balanced in terms of demographics to U.S. Census, basically by  
14 location, by gender, by age. It might have been something else  
15 but at least those three. Then that's the inbound sample.

16 We then asked them questions to determine whether or not  
17 they have pay-TV, whether or not they are a key decision maker,  
18 and combined with --

19 THE COURT: What does that mean?

20 THE WITNESS: What?

21 THE COURT: What does that mean key decision maker?

22 THE WITNESS: Well, we don't want, you don't want  
23 someone in your sample who someone else makes a decision for.

24 THE COURT: So you want the wife of the house?

25 THE WITNESS: Well, I wouldn't go that far.



1 THE COURT: Most homes.

2 THE WITNESS: Yeah.

3 THE COURT: How do you know they're telling you the  
4 truth, they're the key decision maker? You have no way of  
5 knowing do you?

6 THE WITNESS: No, of course you don't.

7 THE COURT: And frankly, you have no way of knowing  
8 if any of the answers that they give on the survey are actually  
9 what they believe.

10 THE WITNESS: No.

11 THE COURT: They can just whip through it.

12 THE WITNESS: They can except that a survey sampling  
13 would be quickly out of business if you did, if you did a lot  
14 of the surveying with survey sampling and they didn't predict  
15 well. I think they have, I forget the number of clients like  
16 3500 or so market research companies and all of the Fortune 500  
17 companies. If you get bad results, like there were world panel  
18 companies that went out of business that paved (sic) bad  
19 results. Survey Sampling, Research Now, Prodigy MR, GFK,  
20 they're are all top panels.

21 THE COURT: Is there a difference between predicting  
22 what a person is like, what kind of automobile a person is  
23 likely to purchase or what kind of clothing they might be  
24 willing to purchase or likely to purchase in a given situation  
25 from what they would do to deal with or respond to a

1 situational problem, i.e. a blackout and given a situation.

2 Aren't those really very different things?

3 THE WITNESS: No, no, they're not. There's a few  
4 papers I've written on this.

5 THE COURT: Really. Where were they published?

6 THE WITNESS: Journal of Marketing Research, might  
7 have been one in Management & Science, but certainly Journal of  
8 Marketing Research. In fact, it won an award.

9 THE COURT: Oh good.

10 THE WITNESS: But then we academics give a lot of  
11 rewards to one another.

12 THE COURT: Of course you do.

13 THE WITNESS: But in that case we were dealing with a  
14 lot of things in the paper. Physicians dealing with blood  
15 analyzer checks. To get physicians, you have to go to a very  
16 special panel for that.

17 THE COURT: Yes.

18 THE WITNESS: Of course the automobile example. My  
19 memory there's a few others. But the key concept here is to  
20 accelerate people's information so that as they go through the  
21 survey, they're in the information state that they would be in  
22 when they're actually making that decision.

23 It's actually called information acceleration.

24 THE COURT: What if they're not sure they have enough  
25 information but they feel like they have to give an answer in

1 order to move forward and get the survey done?

2 THE WITNESS: That's one of the purposes of the  
3 filter question. They're, if they want to get through the  
4 survey as quickly as possible, but again, we're timing them,  
5 we're screening them out if they do that.

6 THE COURT: But what if they got a situation where  
7 they feel they need more information but they have no way to  
8 get it? They can't call anyone, they can't put it on pause,  
9 call you at MIT and say I need more information, right?

10 THE WITNESS: No.

11 THE COURT: They can't do that?

12 THE WITNESS: That's absolutely true. I think we  
13 have to rely on that we've done a good job in introducing the  
14 information.

15 Again, these filter questions are very important. And  
16 that's why they're in the federal guidelines that you don't  
17 want to ask the key question of anybody who basically wouldn't  
18 consider or feels they can't answer the survey.

19 It's actually a quicker way to get through the survey.  
20 But no, these are all issues that we have to worry about.

21 THE COURT: Excused.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 THE COURT: Call your next witness.

25 MR. CONRATH: Your Honor, my colleague Shobitha Bhat

1 will be presenting the witness.

2 THE COURT: How do you spell that?

3 MR. CONRATH: B-H-A-T.

4 THE COURT: B-H-A-T?

5 MS. BHAT: Yes.

6 THE COURT: First name?

7 MR. CONRATH: Shobitha.

8 THE COURT: How you spelling that?

9 MS. BHAT: S-H-O-B-I-T-H-A.

10 THE COURT: Who is the witness?

11 MS. BHAT: Gregory Rigdon of Comcast, R-I-G-D-O-N.

12 MR. HEIPP: Your Honor, may I approach to collect the  
13 books?

14 THE COURT: Yes.

15 MS. BHAT: Your Honor, we have exhibits for  
16 Mr. Rigdon. May we approach the well to give him the binders?

17 THE COURT: Not yet.

18 MS. BHAT: Not yet, okay.

19 GOVERNMENT WITNESS GREGORY RIGDON SWORN

20 MS. BHAT: Your Honor, may I proceed?

21 THE COURT: Yes.

22 DIRECT EXAMINATION

23 BY MS. BHAT:

24 Q. Mr. Rigdon, what company do you work for?

25 A. Comcast Corporation.

1 Q. What is your position?

2 A. Executive vice-president of content acquisition.

3 Q. How long have you held that position?

4 A. A little over seven years.

5 Q. In your position what are your general responsibilities?

6 A. General responsibilities are to negotiate and manage the  
7 relationships with our content providers.

8 Q. What do you mean by content providers?

9 A. So networks, studios, things of that nature, NBC, Fox.

10 Q. Would those also be programmers?

11 A. Yes.

12 Q. Are you personally involved in negotiation with  
13 programmers?

14 A. I am.

15 Q. Were you, were you personally involved in Comcast  
16 negotiations with Turner in 2015?

17 A. Yes.

18 Q. Were you personally involved in Comcast recent  
19 negotiations with Turner this year?

20 A. Yes, I was.

21 Q. Were you involved in Comcast negotiations with HBO in  
22 2017?

23 A. Yes.

24 Q. In your current role who do you report to?

25 A. I report to Dave Watts the CEO of Comcast Cable.

1 Q. What's the relationship between Comcast Cable and NBC  
2 Universal?

3 A. They're both part of the same corporation.

4 Q. Is there a common parent company?

5 A. Comcast Corporation.

6 Q. Currently what services does Comcast Cable offer?

7 A. We offer video, high speed internet, Telephony, Home  
8 Security are the primary services that we offer.

9 Q. Let's focus on the video services. How many video  
10 subscribers does Comcast Cable have in the United States today?

11 A. Approximately 20 million.

12 Q. Can you describe for the Court Comcast Cable's video  
13 footprints?

14 A. Yes. I mean, we're in many different states in the  
15 country. But we're not in every single state in the country.

16 Q. Do you know how many states you're in?

17 A. Off the top of my head, I don't know the number of states.

18 Q. Who does Comcast Cable compete with for video subscribers?

19 A. For video subscribers in terms of direct competition we  
20 compete with the satellite providers, Dish and DirecTV and we  
21 compete with the TelCos, AT&T and Verizon.

22 And more recently we compete with what we call the virtual  
23 MVPDs, groups like Hulu Live and YouTube TV.

24 Q. Does Comcast Cable compete with the SVODs for video  
25 subscribers?

1 A. They also operate in the video environment. You can call  
2 them competition. You can also call them complimentary. It  
3 depends on the situation.

4 Q. In what way would they be competition?

5 A. You know, an SVOD service like in Netflix provides a wide  
6 array of entertainment choices. So people have limited time in  
7 the day. So where they're going to spend their time for  
8 entertainment in that respect Netflix competes with traditional  
9 TV providers.

10 Q. In what way are SVODs complimentary?

11 A. It can be complimentary in that it doesn't mean that if  
12 you subscribe to Netflix you won't subscribe for example to  
13 Comcast Cable TV.

14 Q. How does Comcast Cable compare with other video  
15 distributors in terms of size?

16 A. One of the largest.

17 Q. Do you know who is larger?

18 A. AT&T, DirecTV together is larger.

19 Q. Is there anybody else who is larger than Comcast Cable  
20 today?

21 A. No.

22 Q. Let's talk a little bit about negotiations with  
23 programmers. Are you involved in formulating Comcast Cable's  
24 negotiation strategy?

25 A. Yes.

1 Q. Who besides you within Comcast Cable is involved in  
2 formulating that strategy?

3 A. I would say I'm the lead person for formulating strategy.

4 I have a team that I work with to develop that strategy.

5 And then I work with other various executives in the company to  
6 finalize strategy.

7 Q. Do you review information when you are preparing for  
8 negotiations?

9 A. I do.

10 Q. What kinds of information do you review?

11 A. I'll review contracts, I'll review things related to the  
12 market in general, the company with which I'm negotiating,  
13 things about that company.

14 And I'll review internal analyses of how valuable we think  
15 the content is that we're negotiating for.

16 Q. Can you explain for the Court what the internal analyses  
17 are that you are reviewing to figure out how valuable the  
18 content is?

19 A. Sure. So typically we call them drop analyses is sort of  
20 the colloquial term for it. And they are produced for us by  
21 the EBI group, Enterprise Business Intelligence, which looks at  
22 a variety of different data sets. Some that are publically  
23 available, some that are priority.

24 For example, viewership information from our set top boxes  
25 as well as information about the customers that are actually



1 doing the viewing. To then come up with some estimates on what  
2 we think the proper value is of the content that we're  
3 licensing.

4 Q. Who requested that Comcast start creating drop analyses?

5 A. I would say the general man in my group did, I did.

6 Q. Were you personally involved in that?

7 A. Yes.

8 Q. When did you make that request?

9 A. Well, we only had access to the set top box data for the  
10 last several years. So essentially as soon as that information  
11 became available and usable, we started asking for the drop  
12 analyses, you know, as soon as it was available.

13 Q. Why did you request that Comcast start creating drop  
14 analyses?

15 A. Well, any insight you can get into how your customers are  
16 engaging with content gives you better information to judge the  
17 value of that content to your customers.

18 Q. Over the last three years have you had discussions with  
19 EBI about the drop analyses?

20 A. Yes.

21 Q. Do you provide them with input on the drop analyses?

22 A. Yes.

23 Q. Do you ask them questions about the drop analyses?

24 A. Yes.

25 Q. Why engage them at all on the drop analyses?

1 A. Well, on the one hand you like to understand sort of what  
2 goes into the drop analyses. You know, it's a little bit of an  
3 art. It's a little bit of a science, because we don't have a  
4 lot of direct experience with dropping networks.

5 So it's a bit of a process to look at what data is being  
6 utilized, which data sets they are utilizing and whether or not  
7 we think we are looking at them all the right way to make sure  
8 that we're coming up with the most accurate assessments.

9 Q. Without disclosing the concept of any particular drop  
10 analysis can you describe to the Court what it is you are  
11 looking for when you review the drop analysis?

12 A. Sure. So at the highest level looking at all of the data  
13 sets combined with probably the most important being viewership  
14 information. What we're trying to get a sense of is if we  
15 don't carry the content that we're trying to price, what is the  
16 impact to Comcast Cable? How many subs might we lose and what  
17 might the financial impact be if we no longer have that  
18 content.

19 That's a good proxy for figuring out what is the value of  
20 that content for our video subscribers.

21 Q. In what way is it a good proxy?

22 A. Well, you would have a sense of what the business  
23 implications will be if you no longer have the content.

24 Q. Do you request drop analyses for all of the programmers  
25 you're negotiating with?

1 A. Not all of them.

2 Q. When do you make those requests?

3 A. You know, it's a little bit on an ad hock basis but if  
4 we're talking about licensing a substantial, or rather if the  
5 license fees are substantial in size, I will typically ask for  
6 a drop analysis.

7 Q. In any given year how often do you request a drop  
8 analyses?

9 A. I'm not sure what the, what the cadence would be. It  
10 really depends on what contracts are expiring or what kind of  
11 a, projections I'm trying to do looking forward into the  
12 future. So I'd say it varies.

13 Q. Do you share the results of drop analyses with your team?

14 A. I do.

15 Q. Do you share them with the CO Comcast Cable?

16 A. I do. I should say not in all circumstances but we  
17 absolutely review those kinds of things with Dave Watson.

18 Q. Let me talk a little bit about your interactions with the  
19 parent company, Comcast Corporate.

20 Do you ever speak to executives at Comcast Corporate about  
21 your negotiations?

22 A. I do.

23 Q. Why do you speak with them?

24 A. Well, the content acquisition budget is one of the larger  
25 expense items in the company. And some of these negotiations

1 involve large sums of money and, you know, can have a  
2 significant impact on our video business.

3       So I, for major negotiations I will often discuss those  
4 with executives of Comcast Corporation.

5 Q.   Do you ever share drop analyses results with executives  
6 from Comcast Corporate?

7 A.   I do.

8 Q.   Are there any restrictions on what you can tell executives  
9 at Comcast Corporate about your negotiations with programmers?

10 A.   No.

11 Q.   Are there any restrictions on what you can share about  
12 your contract terms?

13 A.   Not with Comcast Corporation's executives.

14 Q.   Do executives at Comcast Corporate provide you with input  
15 on the strategy?

16 A.   Sometimes.

17 Q.   Ultimately, whose decision is it whether to sign a deal  
18 with the programmer?

19 A.   At the end of the day it's the CEO and chairman of Comcast  
20 Corporation.

21 Q.   Who is that today?

22 A.   Brian Roberts.

23               MS. BHAT: Your Honor, at this point I would like to  
24 turn to the exhibits.

25               May I approach the witness with the binders?

1 THE COURT: Yes, you may.

2 MS. BHAT: Your Honor, may I also approach the bench?

3 (Counsel handed exhibits to the Deputy Clerk.)

4 BY MS. BHAT:

5 Q. Mr. Rigdon, I asked you about your 2015 negotiations with  
6 Turner.

7 As part of those negotiations did you request a drop  
8 analysis?

9 A. I did.

10 Q. If you wouldn't mind turning to tab PX 384 in your binder.  
11 That's been marked PX 384 for identification.

12 For the record, this document has been designated as  
13 confidential by Comcast.

14 Mr. Rigdon, do you recognize this document?

15 A. It looks familiar, yes.

16 Q. What is this document?

17 A. It's a, a document that's going over the upcoming  
18 negotiation that we're going to have with Turner.

19 Q. Who created this document?

20 A. This document was created I think by a number of different  
21 people, including people on my team and people from EBI.

22 Q. Was this document prepared at your direction?

23 A. Yes.

24 Q. Was it prepared in the ordinary course of your  
25 responsibilities?

1 A. Yes.

2 Q. Did you use this document in the ordinary course of your  
3 responsibilities?

4 A. Yes.

5 Q. How did you use it?

6 A. I used it as a means of understanding of what some of the  
7 issues were that we were going to be negotiating and  
8 communicating with other people in the company what some of  
9 those issues might be.

10 Q. Mr. Rigdon, are the contents of this document  
11 confidential?

12 A. Yes.

13 Q. Why are they confidential?

14 A. Well, there's proprietary information about how we look at  
15 negotiations and the kind of analyses that we do. The drop  
16 analysis in particular, those are all sort of proprietary tools  
17 that we use to prepare for negotiations.

18 Q. Have you shared with programmers you're negotiating with  
19 the content of PX 304?

20 A. No.

21 Q. Do you share it with your rivals?

22 A. No.

23 MS. BHAT: Your Honor, at this point we move to admit  
24 PX 384 under seal.

25 THE COURT: Any objection?

1 MR. ORSINI: Your Honor, we do object.

2 May I approach?

3 THE COURT: You may. Step down and sit in that chair  
4 there please.

5 (Witness leaves the stand.)

6 (Sealed Bench Conference.)

7 THE COURT:

8 MR. ORSINI:

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23 MS. BHAT:

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MR. ORSINI :



1 THE COURT:

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3 (Open court.)

4 (Witness resumes the stand.)

5 THE COURT: It will be admitted for the limited  
6 purpose of demonstrating what his state of mind was, but not  
7 for the proof of the matter asserted.

8 (Plaintiff's Exhibit Number PX 384 received into evidence  
9 under seal.)

10 BY MS. BHAT:

11 Q. Mr. Rigdon, we're going to -- well, I'm sorry.

12 I had asked you about negotiations with Turner in 2015.

13 Did you sign a new contract with them?

14 A. We did.

15 Q. And as part of that contract did you agree to new rates  
16 with Turner?

17 A. We did.

18 Q. Without disclosing any sensitive information, what did you  
19 agree to do to Turner's rates in the new contract?

20 A. To raise them.

21 Q. How did the increase compare to inflation for those years?

22 A. I'd probably say that gets into the realm of confidential  
23 information from our perspective.

24 Q. Okay.

25 Let's talk about your most recent negotiation with Turner

1 in 2017.

2 As part of those negotiations did you request a drop  
3 analysis?

4 A. I did.

5 Q. If you wouldn't mind turning to PX 385.

6 Do you recognize this document?

7 A. Yes.

8 Q. I should have said for the record this document is marked  
9 PX 385 for identification. And it is confidential.

10 THE COURT: All right.

11 BY MS. BHAT:

12 Q. What is this document?

13 A. This is also a document that my team and I put together to  
14 provide an overview of what was, what were the issues and  
15 economic analysis for the upcoming negotiations with Turner in  
16 2017.

17 Q. Where did you get the information in this document?

18 A. It was put together by my team with input from EBI.

19 Q. Was the document prepared at your direction?

20 A. Yes.

21 Q. Was it prepared in the ordinary course?

22 A. Yes.

23 Q. Did you use the document in the ordinary course?

24 A. Yes.

25 Q. Is the information in this document confidential?

1 A. Yes.

2 Q. Why is it confidential?

3 A. Same reasons I gave before.

4 MS. BHAT: Your Honor, we move to have this document,  
5 PX 385, admitted under seal.

6 THE COURT: All right.

7 Same objection?

8 MR. ORSINI: Yes.

9 THE COURT: Same ruling.

10 It will be admitted under seal but for the limited purpose  
11 of proving the state of mind of the negotiation team and this  
12 particular witness.

13 (Plaintiff's Exhibit Number 385 received into evidence  
14 under seal.)

15 MR. ORSINI: Thank you.

16 THE COURT: Not for the proof of the matter asserted.

17 Let me ask you what is PP it says in the cover email here.  
18 Updated PP, latest PP?

19 THE WITNESS: Powerpoint.

20 THE COURT: Powerpoint.

21 Those are slides, right?

22 (Laughter from audience.)

23 THE WITNESS: Yes.

24 THE COURT: Do you allow that over there at Comcast?

25 THE WITNESS: We try to do as little as possible but

1 it's a useful communication tool.

2 THE COURT: We don't do a lot of that here.

3 THE WITNESS: Okay.

4 THE COURT: You won't see a lot of that here.

5 BY MS. BHAT:

6 Q. Mr. Rigdon, as part of your negotiations with Turner did  
7 you sign a new deal this year?

8 A. Yes.

9 Q. Again, without disclosing any sensitive information, what  
10 did you agree to do with Turner's rates?

11 A. We agreed to raise their rates.

12 Q. Mr. Rigdon, final set of questions for the open portion or  
13 what can be discussed in open portion.

14 You renegotiated with HBO in 2017; is that right?

15 A. Yeah, yes.

16 Q. As part of those negotiations did you request a drop  
17 analysis?

18 A. Yes.

19 Q. If I could direct your attention to the final document, PX  
20 306, which has been marked as confidential.

21 Do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. This is a drop analysis.

25 Q. Who prepared the information in this document?

1 A. This would have been prepared primarily by EBI.

2 Q. Who requested the document?

3 A. I did.

4 Q. Was the document prepared at your direction?

5 A. Yes.

6 Q. Did you use the information in the ordinary course?

7 A. Yes.

8 Q. Was the document prepared in the ordinary course?

9 A. Yes.

10 MS. BHAT: Your Honor, at this point -- one more  
11 question.

12 BY MS. BHAT:

13 Q. Is this information confidential?

14 A. Yes.

15 Q. Is it for the same reason as the other documents?

16 A. Yes.

17 MS. BHAT: Your Honor, at this time we move to have  
18 PX 306 admitted under seal.

19 MR. ORSINI: That would be the same objection, Your  
20 Honor.

21 THE COURT: Same ruling.

22 Admitted under seal for limited purpose, not for the proof  
23 of the matter asserted.

24 (Plaintiff's Exhibit Number PX 306 received into evidence  
25 under seal.)

1 BY MS. BHAT:

2 Q. Again Mr. Rigdon, the same set of questions, did you sign  
3 a new account with HBO in 2017?

4 A. We did.

5 Q. Without disclosing any confidential information, what did  
6 you agree to do to HBO's rates?

7 A. I think that the answer to that, that question is too  
8 complicated and involves confidential information.

9 Q. Okay.

10 MS. BHAT: Your Honor, at this point we have asked  
11 all of the questions we can ask of him in the public record and  
12 we ask that the courtroom be sealed.

13 THE COURT: How much time do you need for a closed  
14 courtroom examination? What's your estimate?

15 MS. BHAT: Probably 20 to 25 minutes just running  
16 through fairly quickly the documents.

17 MR. PETROCELLI: Your Honor, may I approach?

18 THE COURT: You may. You can step down sir.

19 THE WITNESS: Okay.

20 (Witness leaves the stand.)

21 (Sealed Bench Conference.)

22 MR. PETROCELLI:

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MS. BHAT :



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MR. PETROCELLI :

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THE COURT :

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1 MR. PETROCELLI:

2 (Open court.)

3 THE COURT: All right, we're about to embark on a  
4 novel approach to putting on a it's a novel trial.

5 We're going to pass the witness to Mr. Orsini for cross  
6 examination on that which we have heard in open session. Then  
7 we're going to, we'll probably take the break and when we come  
8 back we're going to be in closed session for direct exam on the  
9 portions of the testimony of this witness that are confidential  
10 and have to be in closed session. Then Mr. Orsini will follow  
11 that up with his cross examination of the closed session  
12 portion of the testimony immediately thereafter.

13 So come on up and do your cross of the open session  
14 portion.

15 (Witness resumes the stand.)

16 MR. ORSINI: Thank you, Your Honor.

17 May I proceed, Your Honor?

18 THE COURT: You may.

19 CROSS EXAMINATION

20 Q. Good afternoon, Mr. Rigdon?

21 A. Good afternoon.

22 Q. I think you testified a few minutes ago that you've been  
23 negotiating carriage agreements for roughly a decade, correct?

24 A. I said I've been at Comcast for about seven years.

25 Q. Prior to that you were at Charter?

1 A. Correct.

2 Q. When you were at Charter you were also negotiating with  
3 programmers for distribution on Charter's cable system,  
4 correct?

5 A. That is correct.

6 Q. You were there for at least three or so years?

7 A. Yes.

8 Q. For about the last ten years you have been in the  
9 trenches, as has been described in this courtroom, negotiating  
10 carriage agreements, correct?

11 A. That is correct.

12 Q. And there was some questions that Ms. Bhat asked you about  
13 the corporate structure of Comcast.

14 You understand that Comcast is a vertically integrated  
15 company today, correct?

16 A. I do.

17 Q. And notwithstanding that, you have no reason to believe,  
18 do you sir, that the fact that NBC is owned by a company that  
19 also owns a cable company has had any impact on its negotiating  
20 strategy with other distributors?

21 A. That's correct.

22 Q. You haven't told NBC that they should go dark on one of  
23 your competitors because then you might pick up some  
24 subscribers, right?

25 A. I have not.

1 Q. You haven't suggested to them to hold out for a little bit  
2 more in affiliate fees because that will harm your competitors?

3 A. I have not.

4 Q. You have no reason to believe that NBC actually even  
5 thinks about those kind of issues in negotiating with your  
6 competitors do you?

7 A. Correct.

8 Q. You haven't seen any document suggesting they do?

9 A. No.

10 Q. No discussions with them suggesting they do?

11 A. No.

12 Q. You also understand, don't you sir, that the government's  
13 primary theory in this case is that if Time Warner and AT&T are  
14 vertically integrated now Turner's negotiating strategy will  
15 change.

16 Do you understand that generally?

17 A. Generally, yes.

18 Q. You understand generally that the theory is that Turner  
19 will suddenly have significantly increased leverage by virtue  
20 of being vertically integrated?

21 You understand that?

22 A. Generally, yes.

23 Q. And that they will have that leverage because they'll do  
24 all of the things that you just described Comcast doesn't do.

25 Do you understand that?

1 A. I do.

2 Q. Okay. Now as you sit here, you don't actually think  
3 that's going to happen, do you, sir?

4 A. I don't know how they're going to operate the company, but  
5 I don't have any reason to believe that it will impact my  
6 negotiations with Turner or HBO.

7 Q. And you just wrapped up a negotiation with Turner,  
8 correct?

9 A. I did.

10 Q. And you had no concerns that if you didn't do it now and  
11 you had to wait until after this merger closed, should the  
12 Court permit it to close, that suddenly your leverage position  
13 would be different, correct?

14 A. Correct.

15 Q. Now do you also understand, sir, that the government's  
16 alternative theory in this case is that if the Court permits  
17 this merger to close, your company will coordinate with AT&T  
18 and Time Warner to harm competition for virtual MVPDs?

19 A. I understand that generally, yes.

20 Q. Do you have any reason to believe that's true?

21 A. No.

22 Q. Have you discussed that with anyone within Comcast?

23 A. No.

24 Q. Have you discussed it with anyone from AT&T?

25 A. No.

1 Q. No one from Turner?

2 A. No.

3 Q. You've seen no document suggesting this is a plan?

4 A. No.

5 Q. You have no plans that have been put in place to think  
6 about how that might occur, correct?

7 A. Correct.

8 Q. In fact, you described earlier virtual MVPDs as  
9 competitors of Comcast, correct?

10 A. That is correct.

11 Q. There's some instances in which you also view them as  
12 compliments, right?

13 A. Yes.

14 Q. Sling is a virtual MVPD?

15 A. That is correct.

16 Q. The Court has heard from Warren Schlichting who works for  
17 Sling, he is actually the head of Sling, correct?

18 A. Correct.

19 Q. Notwithstanding the fact that you view them as a  
20 competitor, you've actually integrated Sling into your cable  
21 boxes, haven't you?

22 A. Correct.

23 Q. So that means if I'm a Comcast Cable subscriber, you have  
24 provided me with a mechanism to actually access the Sling  
25 virtual MVPD, correct?

1 A. That is correct.

2 Q. I believe you also described Netflix as a competitor of  
3 yours, correct?

4 A. In certain circumstances they can be characterized as a  
5 competitor, yes.

6 Q. And in others you viewed them as a compliment?

7 A. Yes.

8 Q. And as with Sling you have incorporated Netflix into your  
9 set top box, correct?

10 A. That is correct.

11 Q. You market Netflix to new subscribers, yes?

12 A. Yes.

13 Q. It's on your website as one of the benefits Comcast  
14 subscribers can have, correct?

15 A. Yes.

16 Q. Netflix is also a competitor to HBO isn't it?

17 A. It could be characterized as that, yes.

18 Q. You, sir, in fact, have characterized it as a competitor  
19 to HBO and a substitute for HBO in your negotiations with HBO  
20 haven't you?

21 A. Yes. It is another offering that you can give to  
22 consumers instead of HBO or Showtime, yes.

23 Q. Just sticking for a second with the virtual MVPD concept,  
24 Comcast recently announced something called Xfinity Instant TV,  
25 correct?



1 A. Correct.

2 Q. Xfinity Instant TV is an internet delivered television  
3 service, correct?

4 A. It's actually IP delivered over cable systems.

5 Q. Okay, so can you explain the difference between that and  
6 the internet just at the highest level?

7 A. At the highest level it's essentially the same service  
8 that we deliver to customers today known as Cable TV. It's  
9 just instead of using our qualm technology, we use our IP  
10 technology to deliver it.

11 Q. And that's something that's available only to people who  
12 subscribe to Comcast Broadband Services, correct?

13 A. That is correct.

14 Q. And you actually have a skinny base package for Xfinity  
15 Instant TV don't you?

16 A. We do.

17 Q. And that base package doesn't include a single one of the  
18 Turner networks?

19 A. That is correct.

20 Q. Now just stepping back to a little bit more macro level of  
21 the industry. You agree, sir, that programming has never been  
22 more competitive than it is right now, correct?

23 A. There are lots of choices for consumers, yes.

24 Q. You have Facebook, Amazon and Google all increasing  
25 significantly their investments in new content?

1 A. That's correct.

2 Q. And Netflix has been dramatically increasing its  
3 investments, correct?

4 A. Correct.

5 Q. You believe that this has put increased pressure on  
6 programmers like my client, Turner, correct?

7 A. Yes.

8 Q. And it's forced them to fight even harder for their  
9 position in the distribution market place, correct?

10 A. You know, I don't know that I would characterize it that  
11 way.

12 I would say all this competition is competition for  
13 consumer's time and attention.

14 Q. Okay. If I can provide you with a copy of your deposition  
15 transcript.

16 You recall, sir, that I took your deposition a few months  
17 ago?

18 A. I do.

19 MR. ORSINI: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 BY MR. ORSINI:

22 Q. And sir, if you could turn --

23 MR. ORSINI: We'll just pause for a moment so the  
24 Court has it.

25 THE COURT: All right.

1 BY MR. ORSINI:

2 Q. If you could turn to page 46 of your deposition?

3 THE COURT: You want to mark this for identification,  
4 Mr. Orsini?

5 MR. ORSINI: Sure, Your Honor.

6 We can mark it for identification as Defendant's Exhibit  
7 924.

8 THE COURT: For identification only?

9 MR. ORSINI: Sorry, Your Honor, 925.

10 THE COURT: All right, 925 for identification.

11 All right, proceed when you're ready.

12 MR. ORSINI: Thank you, Your Honor.

13 (Defendant's Exhibit Number 925 marked for  
14 identification.)

15 BY MR. ORSINI:

16 Q. Mr. Rigdon, if you look at page 46 of your deposition  
17 transcript line 17.

18 I asked you: "And that includes fighting for their  
19 position on distributor platforms?"

20 And you answered yes, correct?

21 A. Correct.

22 Q. And we were talking in that context about the competition  
23 in the programming market place, correct?

24 A. Correct.

25 Q. You can put that aside.

1 Thank you, sir.

2 THE COURT: What page was that on?

3 MR. ORSINI: Page 46, Your Honor, line 17 to 19.

4 THE COURT: All right, thank you.

5 BY MR. ORSINI:

6 Q. Now Mr. Rigdon, you also agree that the video distribution  
7 market place is as competitive as it has ever been, correct?

8 A. Yes.

9 Q. That includes not only the traditional satellites and  
10 TelCos, but the virtual MPVDs?

11 A. Yes.

12 Q. And in some instances the SVODs as you've described it?

13 A. Yes.

14 Q. Now you are currently I believe you listed AT&T is your  
15 largest competitor; is that fair?

16 A. Combined with DirecTV, yes.

17 Q. And you'll continue competing with them once this merger  
18 closes, correct?

19 A. Yes.

20 Q. While you are competitors you also have some differences  
21 in your business models, do you not?

22 A. We do.

23 Q. AT&T for example has quite a significant wireless  
24 business?

25 A. Correct.

1 Q. Somewhere north of a hundred million subscribers, correct?

2 A. I'll take your word for it.

3 Q. And Comcast has launched a wireless business, correct?

4 A. Correct.

5 Q. And you currently have what, about 300,000 subscribers?

6 A. I don't know the current numbers but a lot smaller than a  
7 hundred million.

8 Q. Does 300,000 sound about right?

9 A. It could be.

10 Q. You also offer phone services, correct?

11 A. We do.

12 Q. Over the last ten or 20 years you've seen a trend in  
13 cutting the phone cord haven't you?

14 A. Correct.

15 Q. Meaning people are not getting their home phones anymore.  
16 They're relying on their cell phones?

17 A. That is a general trend, yes.

18 Q. You are also seeing an increasing trend in cord cutting as  
19 it relates to cable, correct?

20 A. Cable TV services, yes.

21 Q. Pay-TV services?

22 A. Yes.

23 Q. You are also seeing an increasing trend in the consumption  
24 of video over mobile devices, correct?

25 A. Correct.

1 Q. So I want to be careful here, Mr. Rigdon. I do want to  
2 talk a little bit about these drop analyses but I don't want to  
3 run afoul of any confidentiality restrictions. So if I ask you  
4 a question and you believe that goes too far, please let me  
5 know?

6 A. Okay.

7 Q. Now you didn't personally develop the methodology used in  
8 those calculations did you?

9 A. I did not.

10 Q. That's the EBI team?

11 A. Correct.

12 Q. They don't report to you do they?

13 A. They do not.

14 Q. Report to some other executive in the Comcast  
15 organization?

16 A. They do.

17 Q. You're not familiar with all of the details as to how they  
18 actually did that analysis are you?

19 A. In terms of the actual functioning of the models, I'm not  
20 aware of all of the details, no.

21 Q. Have you actually seen the model itself?

22 A. No.

23 Q. Have you ever asked to see the model?

24 A. No.

25 Q. So you don't know for example precisely how that model

1 calculates departure rates, correct?

2 A. No, not precisely.

3 Q. You don't provide the actual data inputs for that model,  
4 correct?

5 A. I do not.

6 Q. You don't run the model itself?

7 A. I do not.

8 Q. You just get the results?

9 A. Correct.

10 Q. You would agree with me wouldn't you, sir, that generally  
11 speaking these are designed to be conservative; is that fair?

12 A. That is correct.

13 Q. And by conservative what I mean and I think you mean, but  
14 you'll confirm if I'm right, by conservative you mean if  
15 anything it would overstate the number of subscribers that you  
16 might lose in the event that you went dark with say the Turner  
17 networks?

18 A. That is how they're designed in their estimates, yes.

19 Q. You also testified earlier that you view these as a bit of  
20 art and bit of science, correct?

21 A. Correct.

22 Q. And that it's certainly possible given a lack of internal  
23 data that they could be materially off, correct?

24 A. It's possible.

25 Q. These analyses, I don't think this gets into confidential

1 information but you'll tell me if you're not comfortable  
2 answering.

3       These analyses don't actually have any calculation as to  
4 where the subscribers might go if they leave Comcast, correct?

5 A.    Why don't we keep that for the closed session.

6 Q.    Okay. Now these analyses that I'm not going to get into  
7 the specifics, but the analyses rely on a variety of different  
8 data inputs I think you described earlier, correct?

9 A.    Correct.

10 Q.    In your view some of those are more reliable than others  
11 are?

12 A.    Yes, that's correct.

13 Q.    And the truth isn't it, sir, that Comcast has never once  
14 gone dark with Turner?

15 A.    Not to my knowledge.

16 Q.    And Comcast has never once gone dark with HBO?

17 A.    Not to my knowledge.

18 Q.    So you haven't had an opportunity for example to test real  
19 world departure data against what these drop analyses might  
20 predict, correct?

21 A.    On Comcast systems that is correct.

22 Q.    And in fact, in Comcast history at least that you're aware  
23 of they've only been two go dark situations, correct?

24 A.    That I'm aware of recollecting right now, yes, that's  
25 correct.



1 Q. One was a Spanish language channel that you dropped in  
2 three markets, correct?

3 A. Correct.

4 Q. And the other was the YES Network?

5 A. Correct.

6 Q. The YES Network is the partially Yankee owned RSN,  
7 correct?

8 A. That is correct.

9 Q. It's a sports network on which you can see a significant  
10 portion of the Yankees regular season games, right?

11 A. That is correct.

12 Q. You actually dropped that for well over a year, correct?

13 A. That is correct.

14 Q. In the Yankees home markets?

15 A. That is correct.

16 Q. And that included a drop that covered an entire baseball  
17 season?

18 A. That is correct.

19 Q. Before you made the decision to drop the YES Network you  
20 had one of these drop analyses prepared, correct?

21 A. That is correct.

22 Q. Then after the drop was complete, after they had been off  
23 the air for a year and a full season of baseball, someone went  
24 back to look and see how the real world data actually compared  
25 with the projection of the front end, correct?

1 A. That is correct.

2 Q. I've been told that this is not a confidential number.

3 Before I say it, do you have a different view?

4 A. I'd say let's keep that to the closed session.

5 Q. So we'll talk about the number later, but suffice it to

6 say that what you determined was that the actual departures

7 were a fraction of what had been projected up front?

8 A. You know, I'd prefer to keep commentary on that until the

9 confidential session.

10 Q. Mr. Rigdon, the last witness who the Court heard from was

11 a survey expert brought in by the government to testify to the

12 results of a survey he did about potential departures.

13 I'll represent to you that he testified based upon his

14 survey that he was predicting an eight percent subscriber loss

15 from a one month blackout of Turner networks.

16 Is it fair to say that's inconsistent with anything you've

17 ever seen?

18 A. I'd say let's keep that to the confidential session.

19 THE COURT: I think that's one you can answer and you

20 should answer.

21 THE WITNESS: Okay, then I would say --

22 THE COURT: The answer is based generally on your

23 experience. Have you seen anything like that in your

24 experience generally?

25 He wasn't specifying at Comcast. He just said in your

1 general, your experience have you ever seen anything like that?

2 THE WITNESS: In one month that seems like a big  
3 number in one month.

4 BY MR. ORSINI:

5 Q. He also testified that he was projecting out for 12  
6 months, an over 12 percent departure rate.

7 Again, not just Comcast, anything you've seen in your  
8 experience in over a decade in this business, that's not  
9 consistent with what you've observed, correct?

10 A. You know, I don't think I've seen a major group off for 12  
11 months since I've been in the industry.

12 Q. We'll talk about your long term analyses more in the  
13 closed session.

14 Mr. Rigdon, are you aware that these drop analyses don't  
15 take into account certain steps that Comcast might take if it  
16 were to drop networks?

17 A. Sorry, could you repeat the question?

18 Q. Sure.

19 You understand don't you, sir, that these drop analyses  
20 which project potential subscriber losses don't take into  
21 account actions that Comcast might take in the event it decides  
22 to for instance go dark with the Turner networks?

23 A. Yeah, I'd rather keep all sort of discussion of how those  
24 drop analyses are constructed for the confidential session.

25 Just one thing to go back to my other answer in terms of

1 the, you know, over a year when I said not a major group. I  
2 really mean like sort of Turner caliber. So just to clarify.

3 Q. But in terms of any group you've ever seen dropped, have  
4 you ever seen anything approaching a 12 percent --

5 A. That seems like a big number.

6 Q. Okay, thank you.

7 Now in your ten years of negotiating with programmers, they  
8 use the possibility of a blackout as leverage with you don't  
9 they?

10 A. Yes.

11 Q. And you use the possibility of a blackout with them as  
12 leverage for you, right?

13 A. It depends on the circumstance, but yes, we can also use  
14 that.

15 Q. Okay. So as we sit here today, Mr. Breeland is here, you  
16 have had plenty of trench warfare with him, both sides use the  
17 possibility of a blackout as leverage depending upon the  
18 circumstance of a negotiation, fair?

19 A. Both sides can use it, yes.

20 Q. Both sides do use it?

21 A. Yes.

22 Q. You understand that Turner has sent to you and other  
23 distributors an Arbitration Agreement with a standstill in the  
24 event that this merger closes, correct?

25 A. Yes.

1 Q. You understand that that includes, the standstill  
2 effectively means if you invoke it, they can't go dark, you  
3 understand that?

4 A. I do.

5 Q. And so you understand that if you were to sign that  
6 arbitration clause it would take away that piece of leverage  
7 they've used before, correct?

8 A. That's correct.

9 Q. Now since your testimony generally relates to these drop  
10 analyses and your state of mind as to whether or not you need a  
11 particular network. The Court has heard a lot about the term  
12 must have and I'll only touch on it briefly.

13 But I believe you testified in your deposition that to you  
14 must have is just a term of art that means something is  
15 popular, right?

16 A. That's correct.

17 Q. So you think the Turner network is using that definition  
18 of popular, correct?

19 A. Yeah, yes, that's correct.

20 Q. But so are a whole lot of others, right?

21 A. Yes. At the end of the day what matters is the price for  
22 the value that you're getting. So nothing is must have if it's  
23 over charged for, you know, so yes, in general it's a term of  
24 art saying it's popular.

25 Q. Okay. Sir, a few years ago -- well, stepping back.

1           It's true as a general matter that Comcast markets HBO to  
2 its subscribers and potential new customers, correct?

3 A.     We do market HBO.

4 Q.     You use it as a device to at times attract new subscribers  
5 or retain existing subscribers?

6 A.     It can be used that way, yes.

7 Q.     We will try to be careful here because I understand some  
8 of this we can talk about and some of it we can't. So you tell  
9 me if I cross the line.

10           But back in 2016 and 2017 Comcast decided to stop marketing  
11 as much as HBO as much as it had been, correct?

12 A.     Yeah, I'd prefer to keep all that to the confidential  
13 session.

14           THE COURT: Are you close or should we take a break?

15           MR. ORSINI: I think we're at the end of the public  
16 piece given that, Your Honor.

17           THE COURT: All right, we're going to take a 15  
18 minute recess.

19           You're a witness under oath in the case which means you  
20 cannot discuss your testimony so far or what it might be when  
21 you return with anyone including your counsel, anyone from your  
22 company, anyone. You have to stay independent of all others,  
23 not discuss your testimony with anyone, be in a position to  
24 testify truthfully under oath that you've not discussed your  
25 testimony with anyone, okay.

1 THE WITNESS: Understood.

2 THE COURT: All right, so see you back in 15 minutes.

3 Now when we come back in 15 minutes, it's going to be a  
4 closed courtroom, witness, parties, and the counsel, that's it.  
5 So well actually, the parties won't be here for that.

6 So closed courtroom and closed overflow room too. So and  
7 hopefully, that can be done, direct and cross I'm hoping in  
8 about a half hour total, 15 minutes each. But it may take  
9 longer, I don't know.

10 We have to wait and see how it goes. The estimate from  
11 the government on the closed direct was about 15 minutes, 20  
12 minutes and usually cross is about the same but it doesn't have  
13 to be.

14 MR. ORSINI: I would not expect to go longer than  
15 that, Your Honor.

16 THE COURT: So I would guesstimate that we're back  
17 here in 15 minutes. We'll be able to open the courtroom back  
18 up in about a half hour later roughly and we'll be going until  
19 5:30. Stand in recess.

20 (Witness stands down.)

21 (Recess at 4:07 p.m.)

22 (Proceedings resumed at 4:30 p.m.)

23 (CONFIDENTIAL SESSION)

24 MR. PETROCELLI: Your Honor, may I approach?

25 THE COURT: Yes.

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BY MS. BHAT:

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(Proceedings adjourned at 6:02 p.m.)

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## CERTIFICATE

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the stenographic notes provided to me by the United States District Court, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

\_\_\_\_\_  
/s/Crystal M. Pilgrim, RPR, FCRR

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Date: March 29, 2018