

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CV No. 17-2511
)	
vs.)	Washington, D.C.
)	April 2, 2018
AT&T, INC., ET AL.,)	10:40 a.m.
)	
Defendants.)	Morning Session
)	
<hr/>		Day 6

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

APPEARANCES:

For the Government:	Craig W. Conrath
	Eric D. Welsh
	Donald G. Kempf, Jr.
	Curtis W. Strong
	Scott A. Scheele
	Dylan M. Carson
	U.S. DEPARTMENT OF JUSTICE
	Antitrust Division
	450 Fifth Street, NW
	Washington, D.C. 20530
	(202) 532-4560
	craig.conrath@usdoj.gov
	eric.welsh@usdoj.gov
	donald.kempf@usdoj.gov
	curtis.strong@usdoj.gov
	scott.scheele@usdoj.gov
	dylan.carson@usdoj.gov

APPEARANCES CONTINUED

For Defendant AT&T
and DirectTV Group
Holdings, LLC:

Katrina M. Robson
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, D.C. 20006
(202) 220-5052
krobson@omm.com

Daniel M. Petrocelli
M. Randall Oppenheimer
O'MELVENY & MYERS LLP
1999 Avenue of the Stars
8th Floor
Los Angeles, CA 90067
(310) 553-6700
dpetrocelli@omm.com
roppenheimer@omm.com

Michael L. Raiff
Robert C. Walters,
GIBSON, DUNN & CRUTCHER LLP
2100 McKinney Avenue
Suite 1100
Dallas, TX 75201
(214) 698-3350
mraiff@gibsondunn.com
rwalters@gibsondunn.com

For Defendant
Time Warner, Inc.:

Kevin J. Orsini
Peter T. Barbur
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1140
korsini@cravath.com
pbarbur@cravath.com

APPEARANCES CONTINUED

Court Reporter:

William P. Zaremba
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
U.S. Courthouse
333 Constitution Avenue, NW
Room 6511
Washington, D.C. 20001
(202) 354-3249

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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 Good morning, Your Honor. We have Civil
8 Action No. 17-2511, the United States of America v.
9 AT&T, Inc., et al.

10 Counsel for the parties, please approach the
11 lectern and identify yourselves for the record.

12 MR. CARSON: Good morning, Your Honor.
13 Dylan Carson for the United States.

14 THE COURT: Welcome.

15 MR. STRONG: Good morning, Your Honor.
16 Curtis Strong for the United States.

17 THE COURT: Welcome.

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

20 THE COURT: Welcome.

21 MR. WELSH: Thank you.

22 MR. CONRATH: Good morning, Your Honor.
23 Craig Conrath for the United States.

24 THE COURT: Welcome.

25 MR. CONRATH: Thank you.

1 MR. KEMPF: Good morning, Your Honor. Don Kempf
2 for the United States.

3 It's good to be back. A week ago yesterday, I was
4 doing some mock examinations, and I came down with a bad
5 case of the flu. So while everybody else was working last
6 week, I was home in bed sleeping mainly. But I'm back and
7 bad and coast to coast.

8 THE COURT: Good to have you back.

9 MR. KEMPF: Thank you.

10 MR. SCHEELE: Good morning, Your Honor.
11 Scott Scheele on behalf of the United States.

12 THE COURT: Welcome.

13 MR. PETROCELLI: Good morning, Your Honor.
14 Daniel Petrocelli for defendants.

15 THE COURT: Welcome.

16 MS. ROBSON: Good morning, Your Honor.
17 Katrina Robson for defendants.

18 THE COURT: Welcome.

19 MR. OPPENHEIMER: Good morning, Your Honor.
20 Randy Oppenheimer for the defendants.

21 THE COURT: Welcome.

22 MR. WALTERS: Good morning, Your Honor.
23 Rob Walters here for AT&T and DirectTV.

24 THE COURT: Welcome.

25 MR. BARBUR: Good morning, Your Honor.

1 Peter Barbur for Time Warner.

2 THE COURT: Welcome.

3 MR. ORSINI: Good morning, Your Honor.

4 Kevin Orsini for Time Warner.

5 THE COURT: Welcome.

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

8 THE COURT: Welcome.

9 All right, Counsel. Call your next witness.

10 MR. CONRATH: May I address something the Court
11 left us with last week, Your Honor?

12 THE COURT: At the bench or here?

13 MR. CONRATH: I have one item at the bench and one
14 that doesn't have to be.

15 THE COURT: Well, come on up.

16 (Sealed bench conference)

17 MR. CONRATH:
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MR. CONRATH :

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1 MR. CONRATH:

2 MR. PETROCELLI:

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5 MR. PETROCELLI:

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12 MR. PETROCELLI:

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21 MR. PETROCELLI:

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25 MR. PETROCELLI:

1 MR. CONRATH:

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16 MR. PETROCELLI:

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22 MR. CONRATH:

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24 MR. PETROCELLI:

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1 MR. CONRATH:

2 THE COURT:

3 (Open court)

4 MR. CONRATH: Your Honor, my colleague,
5 Dylan Carson, will be doing our first witness today?

6 THE COURT: All right. Call your witness.

7 MR. CARSON: Good morning, Your Honor. The
8 government calls Coleman Breland as an adverse witness.

9 THE COURT: All right. You may use leading
10 questions.

11 DEPUTY CLERK: Sir, please raise your right hand.

12 (Witness is placed under oath.)

13 DEPUTY CLERK: Please be seated. The chair will
14 swivel.

15 THE WITNESS: Thank you.

16 MR. CARSON: May I proceed?

17 THE COURT: You may when you're ready.

18 COLEMAN BRELAND, ADVERSE WITNESS FOR THE GOVERNMENT, HAVING
19 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. CARSON:

22 Q Please state your name for the record.

23 A Breece Coleman Breland.

24 Q Mr. Breland, you're a president at Turner?

25 A That's correct.

1 Q And you have three prejudicial titles?

2 A I do.

3 Q You're the president of Turner Classic Movies?

4 A Yes.

5 Q You're the president of Content Experiences?

6 A Correct.

7 Q And you're the President of FilmStruck?

8 A That's correct.

9 Q You're the corporate representative at this trial
10 for Time Warner, correct?

11 A Yes, that is correct as well.

12 Q You've been in the courtroom every day of trial,
13 correct?

14 A Yes, I have.

15 Q And you've worked at Turner for over 23 years?

16 A That's correct.

17 Q And for almost all of those 23 years, you've
18 worked in content distribution?

19 A That's correct.

20 Q You worked your way up. You were the president of
21 content distribution for three years, right?

22 A Yes.

23 Q From 2014 to 2017, true?

24 A Yes; June of 17'.

25 Q And you left the position of president of content

1 distribution and were succeeded by Mr. Rich Warren, correct?

2 A That is correct.

3 Q And so as president of content distribution, you
4 were the top negotiator for Turner's content deals, correct?

5 A That's correct.

6 Q But in your new position, you're no longer
7 involved in content distribution negotiations, true?

8 A That is true.

9 Q And you report to Turner president, David Levy,
10 today?

11 A Yes.

12 Q And we met when I took your deposition back in
13 January, right?

14 A Yes, we did.

15 Q Good to see you again, sir.

16 A And you.

17 MR. CARSON: Your Honor, we have some binders to
18 assist Mr. Breland in his testimony. May I approach?

19 THE COURT: Yes.

20 MR. CARSON: May I proceed, Your Honor?

21 THE COURT: When you're ready.

22 BY MR. CARSON:

23 Q Thank you, Your Honor.

24 Mr. Breland, let's talk about Turner's rate
25 strategy. Now, during your three years as president of

1 content distribution, you were responsible for the revenue
2 that Turner brought in for its cable networks, correct?

3 A Correct.

4 Q Now, the majority of Turner's affiliate fee
5 revenue comes from what you call the big four MVPDs,
6 correct?

7 A That's correct.

8 Q Can you please turn to PX127 in your binder.

9 MR. CARSON: Your Honor, PX127 is marked for
10 identification. It's been provided to defense counsel.

11 May I proceed?

12 THE COURT: Yes.

13 (Government's Exhibit PX127
14 was marked for identification.)

14 BY MR. CARSON:

15 Q Mr. Breland, PX127 is a May 2016 email from you,
16 Turner CEO and president, about Turner's rate strategy;
17 is that correct?

18 A Yes. I see that.

19 Q And you and your team put together some revenue
20 and rate information to deliver to Turner's chairman,
21 Mr. Martin, and Turner's president, Mr. Levy?

22 A Yes. Can I have a moment to look at the back
23 page?

24 Q The spreadsheet is the attachment on page 2 of
25 PX123 that you attached to your email, correct?

1 A Yes. This is an affiliate rate strategy page.

2 Q And the purpose of this attachment was to discuss
3 Turner's rate strategy with its various customers, correct?

4 A That's correct.

5 MR. CARSON: Your Honor, I move to admit PX127.

6 THE COURT: All right. Any objection?

7 MR. ORSINI: No, objection, Your Honor.

8 THE COURT: All right. It will admitted.

9 (Government's Exhibit PX127
10 received into evidence
under seal.)

11 BY MR. CARSON:

12 Q If you turn to page 2, Mr. Breland. On the top of
13 the table, there are two groups of affiliates.

14 Do you see those?

15 A I do.

16 Q The top group consists of different-sized MPVDs,
17 right?

18 A That is correct.

19 Q And the bottom group consists of virtual MVPDs?

20 A That is correct.

21 Different rate levels for virtual MVPDs.

22 MR. ORSINI: Your Honor, if I may for one second.

23 I apologize for interrupting. I should state we have no
24 objection as long as the document is under seal, because
25 there are confidential rates inside of them.

1 THE COURT: All right. It will be admitted under
2 seal.

3 Go ahead.

4 BY MR. CARSON:

5 Q Now, on the left side of the table, those are the
6 rates from 2016 to 2019?

7 A That is correct.

8 Q Now, the rates are listed as a per-scriber,
9 per-month rate, right?

10 A That is correct.

11 Q And that PSPM, that's what you call the net
12 effective rate?

13 A Correct.

14 Q And this net effective rate, that's the average
15 rate for a network spread across a distributor's
16 subscribers?

17 A Correct.

18 Q And the rates that are listed for all of the
19 Turner channels combined for those MVPDs, right?

20 A That is correct.

21 And all in total rate.

22 Q And it's the net rate, you see where it says, "Sum
23 of network rates after discounts," right?

24 A I do.

25 Q Now, in general, Turner's rate strategy is

1 proportional to size; is that true?

2 A There's a slight variance with the MVPDs. There
3 are four categories here. So there's a slight variance
4 between the small and the medium and the large.

5 Q So in general, the MVPDs or bigger MVPDs pay lower
6 rates than smaller MVPDs, true?

7 A That is true. There are values that being a large
8 distributor can bring to Turner so there are benefits there
9 in the rate.

10 Q And then on the right side of the top table, you
11 list the rate differential between the groups of MVPDs and
12 vMVPDs, correct?

13 A That's correct.

14 Q Now, as far as who's in the groups of MVPDs,
15 there's a guide halfway down on the left.

16 A Yes. I see that.

17 Q So, first, there's the big four.

18 Do you see that?

19 A Correct.

20 Q Those are Comcast, AT&T-DirecTV, Dish, and
21 Charter-Time Warner Cable?

22 A Yes.

23 Q And then in that middle column under
24 "Percentage '16 Rev," that's the percentage of annual
25 revenue for each of those groups of distributors for 2016?

1 A That is correct.

2 Q And then next below the big four are the
3 medium-sized MVPDs?

4 A Yes.

5 Q And that's Verizon, Cox -- it says Cablevision,
6 Cequel, and Mediacom.

7 Do you see that?

8 A Yes, I do.

9 Q And now, Cablevision, Cequel, that's now Altice?

10 A Yes, that's correct.

11 Q So Altice bought Cablevision and Cequel, another
12 firm called Suddenlink?

13 A That's correct.

14 Q The next below the medium is NCTC.

15 Do you see that?

16 A I do.

17 Q And the NCTC is the
18 National Cable Television Cooperative?

19 A That's correct.

20 Q And NCTC is a cooperative of smaller cable
21 companies who bargain collectively with Turner, true?

22 A True.

23 Q And you see their subscribers and percentage of
24 revenue on their row?

25 A I see that.

1 Q Next below them is the small/final line.

2 Do you see that?

3 A I do.

4 Q And those are the small MVPDs who are not a part
5 of NCTC right?

6 A That's correct.

7 Q And then you have the mid-row.

8 Do you see that?

9 A I do.

10 Q And that lists Sony.

11 Do you see where it says, "Sony min guarantee"?

12 A Yes, I see that, right.

13 Q Sony Vue, that's a virtual MVPD, right?

14 A Correct.

15 Q Now, looking at all these rates from 2016 to 2019,
16 all those prices are calculated out four decimal points,
17 right?

18 A That's correct.

19 Q And that's down to the hundredth of a penny, true?

20 A That's true.

21 Q And if you take those fractions of a penny and
22 multiply by the millions of subscribers that these MVPDs
23 have and you multiply that by 12 months, then you get
24 millions of dollars, right?

25 A That's fair, yes.

1 Q Or in this case, at least in 2016, if you multiply
2 all of these, you get about -- over \$5 billion, true?

3 A I believe that was about -- that's a good
4 approximate for affiliate revenue for that year.

5 Q And those pennies matter, true?

6 A In distribution, yes, all pennies matter.

7 Q Turner fights for every last penny, true?

8 A Yes, we do.

9 Q You spent 22 years in distribution fighting over
10 pennies, true?

11 A That is true.

12 Q You don't want to leave any pennies on the table,
13 do you?

14 A No, I do not.

15 Q Isn't it true that Turner almost went dark with a
16 distributor because of a one-penny price increase of a
17 single channel?

18 A Can you give me more definition of which -- in
19 distribution deals, you want to get a deal done. If you get
20 to an impasse, there's either an extension, and maybe
21 another extension, or else there is the unfortunate option
22 of going dark.

23 So I'm not sure exactly which one you're talking
24 about when you say "penny," so I just need more
25 clarification, please.

1 yes.

2 THE COURT: All right. It will be admitted under
3 seal.

4 (Government's Exhibit PX403
5 received into evidence
under seal.)

6 BY MR. CARSON:

7 Q Mr. Breland, if you look at the bottom email
8 under -- from you to Mr. Martin and Mr. Levy, you see
9 bullet 3 of your email, where it says "rates"?

10 A I see that.

11 Q Now, the end of the top line, you wrote that
12 Turner was looking for a large price increase for TruTV.

13 Do you see that?

14 A I do.

15 Q That Turner was looking to nearly trouble the
16 price of TruTV, right?

17 A At this time, Time Warner Cable had a very
18 deflated rate compared to the industry, so we were bringing
19 them up to industry standards.

20 Q And so as part of the bringing them up to industry
21 standards, you asked Time Warner Cable to almost double the
22 rate of TruTV, true?

23 A That is correct.

24 Q Now, the next line down, you write, "The TruTV
25 increase is likely to be the most problematic, given we

1 almost went dark over a one-penny increase in 2012."

2 Do you see that?

3 A I do.

4 Q So in 2012, you almost went dark with
5 Time Warner Cable over a single penny, true?

6 A There's always the threat of going dark. I would
7 only like to clarify, when you say, "You almost went dark,"
8 it sounds like that I'm driving to go dark, and that's just
9 an alt -- that's one of the options that could come, but
10 that's never our intention to drive it.

11 But, yes, I see what's written here.

12 Q So I appreciate your explanation. Your counsel
13 have plenty of opportunity to ask you questions. If you
14 could focus on my question, I'd appreciate it.

15 My question was: In 2012, Turner almost went dark
16 with Time Warner Cable over a single-penny increase for one
17 channel, true?

18 A Yes, true.

19 Q Now, in these 2015 negotiations with
20 Time Warner Cable, Turner got the large price increase it
21 was seeking, true?

22 A Yes, we did.

23 Q Now, TruTV is a Turner channel that used to be
24 Court TV, right?

25 A That's correct.

1 Q Its content was mainly live court proceedings,
2 right?

3 A That's correct.

4 Q Very exciting, true?

5 A To a lot of people.

6 Q And now TruTV carries two weekends of
7 March Madness, right?

8 A That's correct.

9 Q Now, let's talk more about price increases.

10 You can put that aside. Thank you.

11 As president of content distribution, you were
12 responsible for the price increases for Turner's networks,
13 true?

14 A That's correct.

15 Q And Turner has used its bargaining leverage over
16 the years to secure price increases, true?

17 A True.

18 Q Can you turn to PX123 in your binder.

19 A I'm sorry. Was that PX123?

20 Q 123, yes.

21 Let me know when you're there.

22 A I'm here.

23 MR. CARSON: May I proceed, Your Honor?

24 THE COURT: Yep, you may.

25

1 BY MR. CARSON:

2 Q Mr. Breland, this is an October 2016 email to you,
3 sending the 2017 forecast and budget presentation for a
4 meeting with your boss, Mr. Levy, correct?

5 A Correct.

6 Q And your team put the information together for a
7 meeting with Mr. Levy on the, what's called the long-range
8 plan, LRP, right?

9 A That's correct.

10 MR. CARSON: Your Honor, we move to admit PX123
11 under seal.

12 MR. ORSINI: No objection, Your Honor.

13 THE COURT: It will be admitted under seal.

14 (Government's Exhibit PX123
15 received into evidence
under seal.)

16 BY MR. CARSON:

17 Q If you can turn to PX123009. It's on the bottom
18 in the middle.

19 A I'm there.

20 Q All right. Now, this entire page has been
21 designated confidential, so I'll be careful with my
22 questions.

23 There's a bar chart here under "Executive Summary"
24 that shows Turner's content revenue growth, right?

25 A That's correct.

1 Q And this is the annual distribution revenue.
2 Those are the numbers that appear above each bar from 2015
3 to 2020, right?

4 A That is correct.

5 Q And do you see the revenue figure, where it says,
6 "Revenue growth, '16 and '17, driven by higher rates"?

7 A Yes, I see that.

8 Q And you're saying here that the price increases
9 were the cause of this projected revenue growth that's in
10 this kind of middle, colored block line that carries out?

11 A Yes, that's correct.

12 Q And on the right side, you say, "Rate resets in
13 '16 and '17 drive that number in incremental revenue, which
14 continues throughout the plan."

15 Do you see that?

16 A Yes, I do.

17 Q Can you go to page 19.

18 This page is about -- or this chart, there's two
19 tables here. This is about Turner's rate strategy again,
20 right?

21 A That's correct.

22 Q And the top table lists the average rate for
23 individual Turner channels, correct?

24 A That is correct.

25 Q So let's take an example. TNT, there in the

1 middle of the chart, the fifth row down, do you see that?

2 A I do.

3 Q And the rates for TNT grow from left to right for
4 the years 2015 to 2020, right?

5 A That's correct.

6 Q And in the last column on the right, you see where
7 it says NCAA in '16, NBA renewal in '17?

8 A Yes, I see that.

9 Q And those are references to the NBA and the NCAA
10 sports deals that show kind of why those rates are
11 increasing, right?

12 A That's correct.

13 Q And Turner secured rate increases to coincide with
14 the renewal of its sports licensing deals, right?

15 A That's correct.

16 Q And in the -- while we're here, the
17 Time Warner Cable column in the bottom, you see that large
18 price increase for TruTV, right?

19 A I do.

20 Q Now, in the past five years, Turner secured
21 significant rate increases from every major MVPD, true?

22 A We've done well, yes, in our rate increases.

23 Q Well, let's be specific.

24 There are significant increases for
25 Time Warner Cable in this row -- in this column, sorry, on

1 the right, for 2016.

2 Do you see that?

3 A I do.

4 Q And there are significant price increases for
5 Comcast and DirecTV in that last column.

6 Do you see those?

7 A The one for 2017, correct?

8 Q Correct.

9 A Yes, I see that.

10 Q Now, Turner has secured significant rate increases
11 for Dish in the past five years, true?

12 A That's true.

13 Q Turner has secured significant rate increases from
14 Cox in the past five years, correct?

15 A That's true.

16 Q Turner has secured significant rate increases from
17 Altice in the past five years, true?

18 A That's true.

19 Q Turner has secured significant rate increases from
20 Verizon in the past five years, true?

21 A True.

22 Q And Turner has secured significant rate increases
23 from Charter in the past five years, true?

24 A True.

25 Q Let's get a sense of some of those rate increases

1 for the MVPDs not listed here. If you can turn to PX140.

2 A I'm there.

3 MR. CARSON: Your Honor, PX140 has been provided
4 to counsel. May I proceed?

5 THE COURT: Yes, you may.

6 BY MR. CARSON:

7 Q Mr. Breland, this is an email from November of
8 2013 to one of your colleagues at Turner referencing fill
9 Phil's goals.

10 Do you see that?

11 A I do.

12 Q And that refers to Phil Kent, who was then the
13 president of content distribution before you?

14 A No. Phil Kent was the chairman of Turner.

15 Q Okay.

16 Did Phil Kent have the President of content
17 distribution title before you?

18 A No. There really wasn't a title for president of
19 content distribution. I believe Mr. Levy may have had a
20 title president of distribution. Titles sort of flow
21 sometimes, but --

22 Q So Mr. Kent preceded Mr. Martin as the chairman of
23 Turner?

24 A That's correct.

25 MR. CARSON: Your Honor, move to admit PX140 under

1 seal.

2 MR. ORSINI: No objection.

3 THE COURT: Admitted under seal.

4 MR. CARSON: Thank you, Your Honor.

5 (Government's Exhibit PX140
6 received into evidence
under seal.)

7 BY MR. CARSON:

8 Q At the top of your email, you write, "Affiliates
9 execute strategy for superior double-digit rate increase for
10 deals expiring in 2013.

11 Do you see that?

12 A I do.

13 Q And in this email, you are listing some of the
14 superior double-digit rate increases that you secured from
15 various MVPDs, correct?

16 A That is correct.

17 Q And you've got Dish, Verizon, and Cox, right?

18 A Yes.

19 Q And then there's a couple of the smaller ones,
20 NCTC and Cable ONE at the bottom, right?

21 A That is correct.

22 Q Isn't it true, sir, that Turner believes that
23 MVPDs will keep accepting the price increases that Turner
24 has secured because their businesses are very profitable?

25 A That the MVPD businesses are profitable?

1 Q Correct.

2 A I think they can bear cost to a certain level,
3 yes.

4 Q And that's why they will keep accepting Turner's
5 price increases, true?

6 A I don't know how they'll behave in the future.

7 Q You could put that aside.

8 If you could turn to PX78.

9 A I'm there.

10 Q PX78 is a May 2016 email from Turner's top
11 communications executive to you and other top executives
12 like Mr. Levy and Mr. Daniels.

13 Do you see that?

14 A I do.

15 Q And the email was sent to you and those other
16 executives to provide you with talking points to the media,
17 including the financial press at what are called the
18 up-fronts?

19 A I'm not sure if it's the financial press as much
20 as it's advertisers.

21 Q Do you know whether the Wall Street Journal and
22 CNBC attend the up-fronts?

23 A I do not know.

24 Q Well, the up-fronts are an industry gathering to
25 introduce Turner's lineup of programming, right?

1 A That's correct.

2 MR. CARSON: Your Honor, we move to admit PX78.

3 No objection, Your Honor.

4 THE COURT: It's already in? I guess it was
5 already admitted, then, under Mr. Martin.

6 MR. CARSON: It's been marked. And I believe we
7 used it with Mr. Martin, subject to linking, tying it up.
8 And I can tie it up with this witness as he was a recipient.

9 MR. ORSINI: No objection, Your Honor.

10 THE COURT: All right. It will be admitted under
11 seal.

12 MR. CARSON: I don't know that it needs to be
13 admitted under seal, Your Honor, in that there's nothing
14 designated confidential by the defendants in this document.

15 THE COURT: Okay.

16 MR. ORSINI: That's correct, Your Honor.

17 All right. It will just be admitted then.

18 (Government's Exhibit PX78
19 received into evidence.)

19 BY MR. CARSON:

20 Q If you turn to PX78, page 10 at the bottom, 010.

21 Let me know when you're there.

22 A I'm there.

23 Q Under "Sampling of Potential Q&A," the third
24 question down reads, "Can the industry distribution
25 ecosystem support higher affiliate fees near a tipping

1 point?"

2 Do you see that?

3 A I do.

4 Q And the first answer is in the top bullet below:

5 "Short answer is, yes, we think it can."

6 Do you see that?

7 A I do.

8 Q Then those answers continue on the top of page 11
9 if you go there.

10 Next answer is, "There are many options for
11 lower-priced packages, yet few consumers take them."

12 Do you see that?

13 A I do.

14 Q Then the next bullet says, "MVPDs' video
15 businesses are very profitable."

16 Do you see that?

17 A I do.

18 Q You received this document to prepare for meetings
19 with the press at the up-fronts, right?

20 A That's correct.

21 Q And after you received this document, you didn't
22 write back to Mr. Petruzzi, the top communications
23 executive, and tell him that these talking points were all
24 wrong, did you?

25 A No, I did not.

1 Q You didn't write back and say, MVPDs and consumers
2 are at a choking point; they're not going to accept higher
3 prices, did you?

4 A No, I did not say that.

5 Q Now, the next question on page 11 says, "Risk from
6 move to smaller bundles."

7 Do you see that?

8 A I do.

9 Q And then there's a couple bullets at the bottom
10 that one of the answers is, "Believe we're really
11 well-positioned if distributors move to smaller bundles."

12 Do you see that?

13 A I do.

14 Q And the final bullet reads, "Over time, a shift to
15 smaller bundles could actually benefit larger networks like
16 ours, allowing us to increase share and affiliate fees."

17 Do you see that?

18 A I do.

19 Q So you were armed by Turner's communications team
20 to tell the media that Turner could benefit from more skinny
21 bundles, right?

22 A Yes.

23 Q And if you -- I guess there are bullets above, but
24 they're in the shape of an arrow. Do you see right above
25 the question where it says, indented, "Second, some

1 rationalization of the bundle would arguably be good for
2 us."

3 Do you see that?

4 A I do.

5 Q And more -- right under that, "More money for the
6 biggest networks like ours."

7 A I do.

8 Q Do you see that?

9 And this was the message that Turner executives
10 were prepared to tell the press five months before the
11 merger announcement in this case, true?

12 A True.

13 Q All right. You can put that aside. Let's talk
14 about YouTube.

15 In 2016 YouTube TV wanted to license Turner
16 content for its virtual MVPD service, true?

17 A True.

18 Q Now, YouTube initially sought prices that were
19 lower than any other distributor in the industry, correct?

20 A That is my recollection, yes.

21 Q YouTube did not want to carry Turner's networks on
22 its basic package, right?

23 A There was lot of back-and-forth on how they would
24 package. But, yes, one of their proposals was that they
25 would not carry it there.

1 Q And the proposal that became kind of the sticking
2 point in the negotiation was they wanted to put Turner
3 channels on a second tier or an optional tier for
4 subscribers, right?

5 A As I recall, they were going to take some of the
6 networks and put in the basic package and others up. It was
7 really a price issue more than packaging. We never got past
8 the pricing.

9 Q Well, they wanted -- one of the proposals, was
10 they would break up Turner's networks, have some in the
11 basic package and then some on an optional package?

12 A Not uncommon in the industry today, yes.

13 Q And you told YouTube that agreeing to that
14 proposal would do irreparable harm to Turner's business
15 model, true?

16 A I don't recall if I said the model or the prices,
17 so I'm not quite sure there.

18 MR. CARSON: Your Honor, we've marked for
19 identification PX0531. May I approach?

20 THE COURT: Yes.

21 MR. CARSON: May I proceed, Your Honor?

22 THE COURT: Yes.

23 (Government's Exhibit PX0531
24 was marked for identification.)
24 BY MR. CARSON:

25 Q Mr. Breland, if you can read to yourself in your

1 email of September 16th, 2016, at the first bullet, kind of
2 halfway down, starting with the words "the precedent."

3 And let me know when you're done.

4 A Hold up. First bullet, correct?

5 Q Yes. About the fourth line down, "the precedent."

6 A Yes, I'm up now.

7 Q You told YouTube that agreeing to their proposal
8 would do irreparable harm to Turner's current business
9 model, correct?

10 A I see those words here, yes.

11 Q All right. You can put that aside.

12 Turner was trying to break the -- I'm sorry.
13 Strike that.

14 YouTube was trying to break the model of carrying
15 underperforming, weaker Cable Networks in order to get the
16 broadcast networks, but they didn't have the leverage, true?

17 A That is my recollection, yes.

18 Q And after receiving this position from YouTube,
19 you informed Time Warner's CEO, Jeff Bewkes, true?

20 A That is true.

21 Q And Mr. Bewkes instructed HBO to stop negotiations
22 with YouTube because of its position with respect to Turner,
23 correct?

24 A I know Mr. Bewkes was involved in discussions
25 regarding how to proceed with HBO but I was not in all of

1 those meetings. But my recollection is, yes, Jeff had
2 conversations with HBO.

3 Q And Mr. Bewkes instructed HBO to stop negotiating
4 with YouTube because of its position with respect to Turner
5 that would do the irreparable harm to Turner's business
6 model, correct?

7 A Correct.

8 Q Can you turn to PX481 in your binder.

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

10 THE COURT: Yes.

11 BY MR. CARSON:

12 Q PX481 is a September 16th -- I'm sorry,
13 September 2016 email chain with you and Turner's CEO,
14 Mr. Martin, about the YouTube negotiations, correct?

15 A I see that, yes.

16 MR. CARSON: Your Honor, we move to admit PX481.

17 THE COURT: Any objection?

18 MR. ORSINI: No objection, Your Honor.

19 All right. It will be admitted.

20 BY MR. CARSON:

21 Q You wrote to Mr. Martin that HBO, you see in the
22 top email, you wrote, "HBO delivered the message to YouTube
23 that it was ceasing negotiations with YouTube." True?

24 A This is 481?

25 Q Yes.

1 A You said the top email.

2 Q Top email from you to Mr. Martin. You see on the
3 last line --

4 A I do. I see three bullet points.

5 Q Yes. After those bullet points.

6 A Yes, I see it now.

7 Q You say, "On another note, just spoke with HBO,
8 and they delivered the message to YT on Friday."

9 Do you see that?

10 A Yes, I see that.

11 Q And that's a reference -- that YT is YouTube,
12 true?

13 A That's true.

14 Q And then if you go down to the bottom email,
15 before that, you wrote to Mr. Martin in the second line,
16 "Reached out to HBO this morning to see when they plan to
17 let YouTube know they are ceasing negotiations based on
18 YouTube position with Turner."

19 Do you see that?

20 A I do.

21 Q And HBO stopped negotiating with YouTube because
22 of this unacceptable Turner offer, correct?

23 A That is my recollection, yes.

24 Q Now, in the past, there was a Federal Trade
25 Commission Consent Decree that prevented Time Warner from

1 tying the negotiations of HBO and Turner together, true?

2 A That's correct.

3 Q And that consent decree was entered as part of the
4 merger of Turner and Time Warner back in 1997, correct?

5 A Yes, that's the timeline.

6 Q And when Time Warner bought Turner, the FTC said
7 that Time Warner could not make HBO available only if a
8 distributor carried Turner channels, correct?

9 A Could not make HBO available. I just want to make
10 sure I'm understanding the statement.

11 Q I'll try to rephrase.

12 A Thank you.

13 Q Time Warner could not condition the purchase of
14 HBO on the availability of Turner channels, right?

15 A That's correct.

16 Q And that affected your ability to sell Turner
17 channels during the length of that consent decree, true?

18 A I didn't consider that as a possibility at the
19 time because it wasn't an option.

20 Q Well, that decree expired after ten years,
21 correct?

22 A That's correct.

23 Q And now that there's no longer a decree,
24 Time Warner can tell a distributor, like YouTube: No,
25 Turner, no HBO, true?

1 A That's true.

2 Q Now, alignment of HBO and Turner is a corporate
3 goal of Time Warner today, true?

4 A I'm not sure if I would agree, respectfully, with
5 the word "goal," but I think there is open communication.

6 When I was there, I didn't have a goal for my --
7 in my plan of, you must communicate with HBO; you must align
8 your deal. So for clarity, thank you.

9 Q Fair.

10 So alignment of HBO and Turner is now part of the
11 bargaining strategy that Turner has for -- or Time Warner
12 has for those two sources of programming, right?

13 A Again, respectfully, I don't think it's a
14 strategy, we want to be aware when one side of the company
15 is also negotiating with a distributor.

16 Q Well, it's not just that you want to be aware.
17 You've gone out and taken steps to formally align the
18 contract expirations of Turner and HBO, true?

19 A Not in all instances, no.

20 Q But you've made a conscious effort to try to line
21 up the negotiations of HBO and Turner with major MVPDs,
22 true?

23 A In some situations when they've come up, yes.

24 Q If you can -- you can put that aside and turn to
25 PX90.

1 And PX90 is a May 2015 email from you to the
2 Turner CEO and president about aligning HBO and Turner in
3 negotiations with Time Warner Cable and Charter, correct?

4 A Yes, that's true.

5 MR. CARSON: Your Honor, we'd move to admit PX90.

6 THE COURT: Any objection?

7 MR. ORSINI: No objection, Your Honor.

8 It will be admitted.

9 (Government's Exhibit 90
received into evidence.)

10 BY MR. CARSON:

11 Q In that second sentence, Mr. Breland, at the top,
12 you wrote, "What I heard Jeff say was that he agrees with
13 coordination and alignment between HBO and Turner, and he
14 would convey that to HBO, which must have happened since HBO
15 reached out."

16 Do you see that?

17 A I do.

18 Q And so Time Warner's CEO, Jeff Bewkes, wanted
19 Turner to align its renewal negotiations with HBO with
20 respect to Time Warner Cable, Comcast, and Charter.

21 Do you see that subject of the email?

22 A I do.

23 In those instances, that's correct.

24 Q And down in the third line of the email, you
25 wrote, "The goal was to maximize leverage in each instance."

1 Do you see that?

2 A I do.

3 Q And those were the instructions that you received
4 from Time Warner's CEO, Jeff Bewkes, correct?

5 A That is correct.

6 Q And you worked on aligning negotiations with HBO
7 in a systematic way to increase Turner's bargaining
8 leverage, right?

9 A If that were possible in the situation, that's
10 correct.

11 Q And so you met with HBO and sat down to work
12 through when HBO's contracts expired and when Turner's
13 contracts expired, right?

14 A That's correct. We did not have any prior
15 knowledge on when contracts would expire between the two
16 companies.

17 Q And so you did what you called front-end alignment
18 and back-end alignment, right?

19 A Front-end alignment meaning the communication when
20 the deals are up. Back end on how we would use that
21 together.

22 Is that your definition?

23 Q Well, let me try to use your definition, I think.

24 A Okay.

25 Q Front-end alignment, you found out when deals were

1 expiring, and you would -- HBO and Turner would be somewhat
2 coterminous for existing deals, right?

3 A That's correct.

4 Q And on the back end, you looked out to see where
5 HBO and Turner's deals would expire in the future to see in
6 the next round of bargaining if you could line up those
7 expiration dates, right?

8 A Now I understand your definition, yes, that's
9 correct.

10 Q So you met with HBO, and you identified those
11 MVPDs where expiration dates could be moved closer together
12 to try to maximize bargaining leverage in each instance,
13 true?

14 A True.

15 Q Well, while we're on HBO, you are aware, sir, are
16 you not, of Turner's offer to distributors, if this merger
17 goes through, they can arbitrate, right?

18 A That's correct. I do know that.

19 Q Now, HBO is not included in any of the potential
20 offers to arbitrate, true?

21 A That is my understanding, true.

22 Q And that arbitration promise doesn't prevent
23 Turner from aligning its negotiations with HBO, correct?

24 A That is my understanding, correct.

25 Q Let's finish up on YouTube.

1 You can put that aside.

2 If you can turn to PX195 in your binder, sir.

3 PX195 is a November 2016 email to you about a
4 leadership meeting with Mr. Levy, just after the merger
5 announcement.

6 Do you see that?

7 A I do.

8 Q The subject says, "Breland's deck"?

9 A I see that.

10 Q And the attachment, is your presentation on
11 distribution strategies, right?

12 A That's correct.

13 Q And you see in that first line where it says, of
14 the email, "Attached is Coleman Breland's file."

15 A I see that.

16 Q And then down below, it says, "Mr. Adija was
17 included on this email because he was extremely helpful
18 putting this together."

19 Do you see that?

20 A I do.

21 MR. CARSON: Your Honor, we move to admit PX195.

22 MR. ORSINI: No objection under seal, Your Honor.

23 THE COURT: All right. Admitted under seal.

24 MR. CARSON: Thank you, Your Honor.

25

(Government's Exhibit PX195
received into evidence
under seal.)

1
2
3 BY MR. CARSON:

4 Q If you can turn to page 24, 024, Mr. Breland.

5 Let me know when you're there.

6 A 195024, I am there.

7 Q Correct.

8 And this is a chart that says vMVPD landscape.

9 Do you see that?

10 A I do.

11 Q And this was the competitive landscape for virtual
12 MVPDs, just after the merger announcement?

13 A That's correct.

14 Q And all of these vMVPDs -- well, only two of them
15 were in the market at the time, true?

16 A Can I look back at the date or will you give me
17 the date again, please.

18 Q Sure. This was November 2016 of your email, and
19 Sling and PlayStation Vue were already in the marketplace,
20 correct?

21 A That's correct.

22 Q DirectTV, Hulu, and YouTube had not launched yet,
23 true?

24 A I don't believe so.

25 Q And Amazon listed there has never launched, true?

1 A That's correct.

2 Q If you can flip forward to 26.

3 You see the heading that says Rubik's summary?

4 A I do.

5 Q Rubik's, that was a research initiative where
6 Turner did analysis of virtual MVPDs?

7 A Yes, I believe that's correct.

8 Q And you see that third bullet down that says,
9 "Turner networks drive significant value for vMVPDs. We
10 should position ourselves as anchor tenant"?

11 A I see that.

12 Q And "anchor tenant" meant that Turner wanted to be
13 part of the core programming of any virtual MVPD, right?

14 A That's correct.

15 Q If you can flip to page 30, 030, this slide says,
16 "Turner drives as much demand to the vMVPDs bundle as Fox
17 and NBCU.

18 Do you see that?

19 A I do.

20 Q And on the left side, removing Turner from the
21 base package causes demand to drop as much as Fox and NBCU
22 and more than every other network family except ABC-Disney.

23 Do you see that?

24 A I see those words, yes.

25 Q And this was the result of the Rubik's research

1 that your research department did, right?

2 A That's correct.

3 Q And you presented these research conclusions to
4 your boss in discussing whether Turner should seek to become
5 the anchor tenant of any new vMVPDs, right?

6 A That's correct.

7 Q Okay. You can put that aside.

8 Let's talk MVPD about another vMVPD called Hulu.
9 Hulu is partially owned by Time Warner, correct?

10 A That is correct.

11 Q Time Warner has a 10 percent passive investment in
12 Hulu?

13 A That's correct.

14 Q Despite that partial ownership, you dealt with
15 Hulu in an arm's-length transaction, right?

16 A That's correct.

17 Q And you were here in the courtroom last week to
18 hear Mr. Martin testify about Turner's seeking data from
19 distributors, but it has been told no.

20 Do you remember that testimony?

21 A I do.

22 Q Can you turn to PX211 in your binder.

23 A I'm there.

24 Q Okay. PX211 is an email to you, dated August
25 2016, attaching the Turner-Hulu affiliate agreement, right?

1 A That is correct.

2 Q And you received this as part of your
3 responsibilities as president of content distribution,
4 right?

5 A That's right.

6 Q And you signed this contract, true?

7 A That is correct.

8 MR. CARSON: Your Honor, we move to admit PX211.

9 THE COURT: All right.

10 MR. ORSINI: No objection under seal, Your Honor.

11 THE COURT: It will be admitted under seal.

12 (Government's Exhibit PX211
13 received into evidence
under seal.)

14 BY MR. CARSON:

15 Q If you go to page 16 of PX211, there's a
16 Section 15 there on data collection and reporting.

17 Do you see that?

18 A I do.

19 Q And this section gives Turner the right to receive
20 data about who is watching Turner content on Hulu, correct?

21 A That's correct.

22 Q And the specific data that Turner is entitled to
23 receive is on -- you flip to page 31. It's referenced in
24 Exhibit C.

25 Let me know when you're there.

1 A Okay. I'm there.

2 Q And this lists the form of customer information
3 that Turner will receive from Hulu, this Exhibit C on data.

4 Do you see that?

5 A I do.

6 Q If you go to Section 1.1.1, do you see where it
7 says "PII"?

8 A I do.

9 Q And that provides that Turner will receive
10 personally identifiable information, right?

11 A That's correct.

12 Q So Turner gets the first and last name of Hulu's
13 customers?

14 A My understanding, that is correct for those who
15 opt to give it.

16 Q And Turner gets, for those who opt, their email
17 address, correct?

18 A That is correct.

19 Q And Turner gets their physical address for
20 billing, right?

21 A That's correct.

22 Q You can put that aside.

23 Let's talk about Comcast data.

24 In 2015, you were negotiating with Comcast over an
25 affiliate renewal, right?

1 A That's correct.

2 Q And you had conversations about set-top box data
3 with Comcast, true?

4 A We did.

5 Q Comcast wanted Turner to purchase
6 Comcast-originated data, true?

7 A They offered us the opportunity to buy a certain
8 type of data; that's correct.

9 Q And you sent your team of data experts to
10 Philadelphia to check out the data that they were offering,
11 right?

12 A That's correct.

13 Q And you determined that Turner did not want to buy
14 Comcast data because it was already getting most of that
15 data from third parties, true?

16 A That is true.

17 Q And ultimately, when you renewed the Comcast deal,
18 that did not include purchasing any of the Comcast data,
19 true?

20 A That's true.

21 Q Let's talk about bargaining leverage.
22 What you have done for the last 20, 22 years,
23 before you moved into your current role, right?

24 A That's correct.

25 Q Affiliate renewal negotiations, those can be

1 tough, right?

2 A They can be very tough.

3 Q Almost every point in bargaining is contentious,
4 true?

5 A That is true.

6 Q You bargain over rates, right?

7 A Yes.

8 Q You bargain over penetration?

9 A Yes.

10 Q Rates and penetration, those are the two primary
11 economic components of any affiliate deal, right?

12 A I would say they are two of the primary, yes.

13 Q Now, penetration, that's the percentage of a
14 distributor's subscribers that receive a given channel,
15 right?

16 A That's correct.

17 Q So most pay-TV prescribers get CNN, true?

18 A Most do, yes, that's correct.

19 Q So the penetration rate around -- is very high,
20 true?

21 A The penetration rate?

22 Q For CNN is pretty high?

23 A Yes, that's correct.

24 Q And that's what you call highly penetrated,
25 correct?

1 A Correct. When you say "penetration rate,"
2 I thought you were talking dollars. You're talking about
3 number, correct?

4 Q Correct.

5 A Thank you.

6 Q And you bargain over what are called MFNs, right?

7 A Yes.

8 Q And those are most favored nations clauses?

9 A Correct.

10 Q An example of an MFN would be if you give a
11 distributor a lower price, then you have to give a lower
12 price to everyone who has an MFN against that distributor,
13 right?

14 A Fair.

15 Q So if DirecTV had an MFN against Dish, then
16 DirecTV gets whatever you give Dish, true?

17 A That's true.

18 Q So anytime you bargain with a distributor, you
19 have to consider how it affects all the other distributors
20 who have MFNs, right?

21 A That's right.

22 Q Now, on bargaining, both sides are trying to get
23 the best deal you can, right?

24 A That's correct.

25 Q You called it -- at a variety conference, you

1 called it arm wrestling, right?

2 A I could have said that.

3 I was at a variety conference. I just don't
4 recall my words.

5 Q I think it was about the launch of FilmStruck and
6 whether we should go over the top, direct to consumers, or
7 arm wrestle with distributors to add another linear channel.

8 Do you remember that?

9 A I remember variety. I'll, yes, take your words
10 that I said "arm wrestle."

11 Q In bargaining, both sides -- there's leverage on
12 both sides, true?

13 A Yes, that's true.

14 Q And Turner's bargaining leverage affects the terms
15 that it's able to secure from distributors, true?

16 A True.

17 Q And the distributor's bargaining leverage affects
18 the terms that it's able to secure from Turner, right?

19 A That's true.

20 Q So reaching a deal in the end can come down to a
21 battle of the competing bargaining leverages, fair?

22 A Fair.

23 Q So leverage matters in bargaining, right?

24 A That's correct.

25 Q You would agree, sir, that a programmer has to use

1 whatever leverage it has to protect its networks, right?

2 A I would say that's a fair statement.

3 Q Well, one of the pieces that -- of leverage that
4 Turner has is its ability to go dark, correct?

5 A Yes, that's correct. I only hesitate -- I'll just
6 say yes. Thank you.

7 Q So that network blackouts, that's going dark,
8 right?

9 A That's correct.

10 Q And you told me in your deposition, they are a
11 common occurrence in the vMVPD industry, correct?

12 A Yes.

13 Q You testified in your deposition that there's been
14 so many blackouts over the years, it's hard to keep track of
15 them, true?

16 A That's true.

17 Q Now -- and you also testified almost every
18 negotiation comes down to someone saying, Well, I think
19 I'm going to take you off the air, correct?

20 A That sounds common, yes.

21 Q So distributors threaten to go dark on Turner,
22 true?

23 A True.

24 Q And Turner threatens to go dark on distributors,
25 true?

1 A I'm not sure -- yes, true, that can happen.

2 Q And it has happened, true?

3 A It has happened, in rare occasions, yes.

4 Q And some blackouts can be long, correct?

5 A Some can. I think that's much more rare.

6 Usually, blackouts are temporary, temporary being days weeks
7 or maybe a month.

8 Q Let's go back to PX123.

9 If you flip to page 21.

10 Now, this was your October 2016 presentation to
11 Mr. Levy?

12 A Yes. Can you give me the page number again.

13 Q Yes. Page 021 at the bottom in the middle.

14 A Overview of deals/operators?

15 Q Yes.

16 So the page there, there's a number of MVPDs
17 listed at the top, and this is an overview of their M&A
18 activity, right?

19 A That's true.

20 Q And under the Altice column, do you see that
21 bottom bullet that says, "Viacom dark on Suddenlink since
22 October 2014"?

23 A I see that.

24 Q So this was in October 2016, and all of Viacom's
25 networks like MTV and Nickelodeon, they were off the air

1 with Suddenlink for over two years, right?

2 A That's true.

3 Q And the Viacom-Suddenlink blackout ended in 2017,
4 right?

5 A I'm not sure of the exact date, but I will go with
6 that.

7 Q Well, Turner produces what it calls a go-dark
8 analysis in the regular course of its business planning,
9 correct?

10 A That's correct.

11 Q You can put that aside -- not put it aside.
12 Sorry.

13 Can you turn to PX144.

14 A I'm there.

15 MR. CARSON: May I proceed, Your Honor?

16 THE COURT: Yes.

17 BY MR. CARSON:

18 Q All right. PX144, this is an October 11th, 2013
19 email to you, with the 2014 long-range plan attached.

20 Do you see that? The subject says "LRP."

21 A I'm sorry. Is it 141?

22 Q I'm sorry. 144.

23 A 144.

24 Okay. I've got the document. Yes, that's
25 correct.

1 Q And this was a strategy deck prepared for a
2 meeting with the chairman, Mr. Kent?

3 A That's correct.

4 MR. CARSON: Your Honor, we move to admit PX144.

5 MR. ORSINI: No objection under seal.

6 THE COURT: Okay. It will be admitted under seal.

7 (Government's Exhibit PX144
8 received into evidence
under seal.)

9 BY MR. CARSON:

10 Q If you turn to page 117, all the way in the
11 back --

12 A Got it.

13 Q -- where it says, "go-dark analysis"?

14 A Yes, I see that.

15 Q This is an example of a go-dark analysis that
16 Turner uses to prepare for potential blackouts, correct?

17 A Yes; to give us visibility into what the impact is
18 if we go dark.

19 Q And you see that go-dark date listed in the middle
20 column.

21 Do you see that?

22 A I see that.

23 Q And that's the date when a contract with a
24 distributor would expire; and without an extension or a
25 renewal, there would be a blackout, right?

1 A That's correct.

2 Q And then to the right in the table are the
3 financial consequences of going dark for Turner, right?

4 A That's correct.

5 Q And they're calculated by day, week, month,
6 quarter, and half year there?

7 A That's correct.

8 Q If you flip to -- and those are all calculated out
9 for each of the affiliates listed in the rows on the left
10 side, right?

11 A That is correct.

12 Q If you flip to 121, let me know when you're there.

13 A I'm there.

14 Q There's a table here that says "Past Network
15 Drops."

16 Do you see that?

17 A I do.

18 Q And this lists the past blackouts of cable
19 networks in the MVPD industry?

20 A It does.

21 Q And some of these blackouts are pretty long,
22 right?

23 A I see durations --

24 Q Let me be specific.

25 A Looks like 849 days may be the longest.

1 Q And it says 849-plus days.

2 Do you see that?

3 A I do.

4 Q And do you see in the rows where it says
5 "ongoing"?

6 A I do.

7 Q And "ongoing" means that at least those blackouts
8 are permanent as of this date, right?

9 A As of that date, correct.

10 Q And you do -- Turner does go-dark analysis in the
11 course of its business because it matters, right?

12 A Yes. You want to understand ramifications; that's
13 correct.

14 Q This isn't just some academic exercise, right?

15 A Well, I wanted to say an academic exercise if you
16 can, but it is a possibility.

17 Q And you do go-dark analysis to inform your
18 bargaining strategy, true?

19 A More to inform my bosses on the impact to our
20 budget long-range plan.

21 Q Well, you think about, how much is it going to
22 hurt if we go dark with someone and lose fees, right?

23 A That's correct.

24 THE COURT: Would this be a good time to take the
25 morning recess?

1 MR. CARSON: Yes, Your Honor.

2 THE COURT: All right. We're going to take a
3 15-minute recess. You're a witness under oath in the case,
4 which means do not discuss your testimony so far or what it
5 might be with anyone, your own counsel, even, nobody. Stay
6 independent of all others.

7 THE WITNESS: I understand, Your Honor.

8 THE COURT: You will have to be able to answer the
9 question that you haven't spoken to anyone while you're
10 under oath.

11 THE WITNESS: I understand.

12 THE COURT: See you in 15 minutes.

13 DEPUTY CLERK: All rise.

14 This Honorable Court now stands in recess until
15 the return of court.

16 (Recess from 11:53 a.m. to 12:18 p.m.)

17 DEPUTY CLERK: The United States District Court
18 for the District of Columbia is again in session, the
19 Honorable Richard J. Leon presiding. God save the United
20 States and this Honorable Court. Please be seated and come
21 to order.

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

24 THE COURT: All right. You may proceed.

25 You may main under oath.

1 MR. CARSON: Thank you, Your Honor.

2 THE COURT: Yes.

3 BY MR. CARSON:

4 Q Mr. Breland, we were talking about a go-dark
5 analysis that Turner does in the regular course of its
6 business, right?

7 A Correct.

8 Q Now, Turner does what you'd call go-dark analysis
9 because, in recent years, Turner has gotten close to going
10 dark with virtually every major distributor, correct?

11 A I think that's fair, yes.

12 Q Turner got close to going dark with
13 Time Warner Cable over that single penny in 2012, right?

14 A That's correct.

15 Q Turner got close to going dark with DirecTV in
16 2013?

17 A That's correct.

18 Q Turner went dark with Dish in 2014?

19 A Yes, that's correct.

20 Q Turner got close to going dark again with Dish in
21 2015?

22 A That's true.

23 Q Turner got close to going dark with Altice in
24 2016?

25 A True.

1 Q And Turner got close to going dark with Charter in
2 2016 as well?

3 A That's correct.

4 Q Let's talk about Charter.

5 In December 2016, Turner came within ten minutes
6 of going dark, correct?

7 A I think that's fair, yes.

8 Q Turner told Charter it would go dark if Charter
9 did not agree to higher rates, right?

10 A Yes, that's correct.

11 Q And to avoid going dark, Charter agreed to pay
12 those higher rates to Turner, right?

13 A That's correct.

14 Q Can you turn to PX146 in your binder, sir.

15 Let me know when you're there.

16 A I'm here.

17 MR. CARSON: May I proceed, Your Honor?

18 THE COURT: Yes, you may.

19 BY MR. CARSON:

20 Q PX146 is a December 2016 email from you to
21 Turner's CEO, John Martin, about a several-month extension
22 with Charter to avoid a blackout, true?

23 A True.

24 MR. CARSON: Your Honor, we'd move to admit PX146.

25 MR. ORSINI: No objection, Your Honor.

1 THE COURT: It will be admitted.

2 MR. CARSON: Thank you.

3 MR. ORSINI: I think it needs to be under seal,
4 Your Honor.

5 THE COURT: It does or it doesn't?

6 MR. ORSINI: I believe it does. I was trying to
7 check.

8 THE COURT: Take your time. Figure that out.

9 MR. ORSINI: I think this one does, Your Honor,
10 because it reflects termination dates of agreements.

11 THE COURT: All right. Any objection from the
12 government on that?

13 MR. CARSON: Yes, Your Honor.

14 THE COURT: Yes, you object?

15 MR. CARSON: Yes, we object.

16 THE COURT: All right. Come on up. We can
17 discuss it.

18 Sit down there, Mr. Breland.

19 (Sealed bench conference)

20 THE COURT:

21 MR. ORSINI:

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THE COURT:

THE WITNESS:

THE COURT:

MR. ORSINI:

MR. CARSON:

MR. ORSINI:

1 THE COURT:

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3 MR. CARSON:

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6 THE COURT:

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8 MR. CARSON:

9 THE COURT:

10 MR. CARSON:

11 (Open court)

12 THE COURT: I'm going to admit it but not under
13 seal.

14 (Government's Exhibit PX146
received into evidence.)

15 THE COURT: You may proceed.

16 BY MR. CARSON:

17 Q Mr. Breland, in this email string, you informed
18 Mr. Martin that Charter accepted our rates after insisting
19 they would only extend if they paid the 2016 rates in 2017.

20 Do you see that?

21 A Yes, I do.

22 Q And you wrote that the April 30, 2017, extension
23 date lines Turner up with some of our most powerful
24 programming, NBA playoffs.

25 Do you see that in the third hyphened line?

1 A Yes, I do.

2 Q And by "powerful programming" here, you're
3 referring to the leverage that Turner would have at the end
4 of April, because Charter would not want to go dark during
5 the NBA playoffs, true?

6 A That would be my hope, yes.

7 Q And that's why you wrote, in that next line down,
8 "While prepared to go dark today and we could find ourselves
9 in a similar place in April."

10 Do you see that?

11 A I do.

12 Q And you were referring to being ready to go dark
13 during the NBA playoffs in April, true?

14 A That's correct.

15 Q Put that aside.

16 If you can turn to -- well, actually, why don't
17 you flip to PX147.

18 A I'm there.

19 Q PX147 is an April 2017 email from Mr. Warren to
20 you and Mr. Levy.

21 Do you see that?

22 A I do.

23 Q And the subject is "Charter NBA Markets."

24 Do you see that?

25 A I do.

1 Q And Mr. Warren was sending you a spreadsheet of
2 NBA playoff team markets in Charter's footprint, right?

3 A That's correct.

4 MR. CARSON: Your Honor, I would move to admit
5 PX147.

6 MR. ORSINI: No objection, Your Honor.

7 THE COURT: It will be admitted.

8 (Government's Exhibit PX147
9 received into evidence.)
10 BY MR. CARSON:

11 Q Looking at the attached spreadsheet on page 3,
12 PX147003, this is an analysis of NBA playoff games in
13 Charter markets.

14 Do you see that?

15 A I do.

16 Q And this -- there's also -- so there's a list at
17 the top of playoff teams, teams that made the playoffs and
18 where the Charter Time Warner Cable markets had the -- where
19 those teams lined up with Charter and Time Warner Cable's
20 footprints.

21 Do you see that?

22 A I do.

23 Q And then there's a column of the penetration of
24 the DMA?

25 A Yes.

Q And the DMA is the term for the metropolitan area

1 where cable companies have their footprints?

2 A That's correct.

3 Q And then the standings down to who was leading who
4 in which playoff series for those teams in those markets,
5 right?

6 A That's correct.

7 Q And then there's a list below of the teams not
8 currently in the playoffs, where Charter also has their
9 footprint?

10 A That's correct.

11 Q And then the list at the bottom are other sizable
12 markets and/or high affinity for NBA.

13 Do you see that?

14 A I do.

15 Q And so those are places where NBA fans who have
16 Charter might want to watch the NBA playoffs, right?

17 A That's correct.

18 Q And you did this -- or at least Mr. Warren did
19 this analysis and sent it to you to help assess how powerful
20 the NBA playoffs would be as programming, if you needed to
21 go dark?

22 A That's correct.

23 Q And he writes in his email, in that last line in
24 the first paragraph: "Most notable is Cleveland, where
25 Charter has over 50 percent of the market."

1 Do you see that?

2 A I do.

3 Q And he sent it to you saying he thought
4 it would be helpful for us.

5 Do you see that?

6 A I do.

7 Q And so it would be helpful for your bargaining
8 negotiations with Charter in late April 2017 on the eve of a
9 potential blackout, to know where Charter has customers who
10 would -- might be watching the playoffs, right?

11 A That's correct.

12 Q All right. You can put that aside.

13 Let's talk about Altice.

14 In October 2016, Turner came very close to going
15 dark with Altice, true?

16 A True.

17 Q Turner was prepared to go dark with Altice because
18 Altice rejected the rate increases that Turner wanted right?

19 A That's correct.

20 Q Or put together way, Turner rejected Altice's
21 request to actually lower its rates, fair?

22 A That's fair.

23 Q And you informed Time Warner's CEO of the growing
24 likelihood that Turner would go dark with Altice, right?

25 A Time Warner, meaning Jeff Bewkes; is that correct?

1 Q Correct.

2 A Yes, likely he would be on any correspondence.

3 Q And you told Mr. Bewkes that Turner's CEO,
4 Mr. Martin, and Turner president, Mr. Levy, were supportive
5 of going dark.

6 Do you remember that?

7 A Yes, I do.

8 Q Now, you wouldn't tell Mr. Bewkes about the
9 likelihood of going dark, because Turner had made an empty
10 threat, would you?

11 A No.

12 Q That was part of your responsibilities, to inform
13 your superiors about the likelihood of a blackout with a
14 major distributor, true?

15 A True.

16 Q And now, to avoid going dark, Altice agreed to
17 Turner's rate increases, correct?

18 A That was one of the conditions, yes. They
19 accepted our rates.

20 Q Now, Turner has gone dark three times with a
21 distributor, correct?

22 A Actually, four if we reach way back into like
23 2006, I believe.

24 Q And that's -- the fourth was when Court TV was
25 called Court TV and not TruTV, right?

1 A That's correct. I think we were just taking over
2 the second half of the ownership of Court TV, so it was
3 transitioning into our portfolio somewhere in that window.

4 Q And by transitioning, when Turner was acquired by
5 Time Warner, Time Warner had Court TV and that became part
6 of Turner's stable of networks, true?

7 A My recollection was Court TV was jointly owned by
8 Viacom, and we bought the other half out somewhere in the --

9 Q But it wasn't a Turner network that came with the
10 merger to Time Warner, right?

11 A That's correct.

12 Q It was a Time Warner network --

13 A That's correct.

14 Q -- via --

15 A It was not in our portfolio.

16 Q Now, Turner went dark with Dish, 2014?

17 A Yes, we did.

18 Q And Turner had a blackout with Cable ONE in 2013,
19 correct?

20 A That's correct.

21 Q Now, the Cable ONE blackout was the first time
22 that all the Turner networks went off the air with the
23 distributor, true?

24 A That's true.

25 Q Cable ONE is a small distributor with less than a

1 million subscribers?

2 A Probably in the 700,000 sub range.

3 Q And before the blackout in 2013, Turner and
4 Cable ONE bargained down to where the difference between the
5 two deals was about \$200,000, right?

6 A That's correct.

7 Q And then at the last-minute curveball, Cable ONE
8 came in and said, we want to take less than all of Turner's
9 networks, right?

10 A That's what they said, yes.

11 Q And allowing a small MVPD with less than a million
12 subs to just take a subset of Turner's network would be a
13 very bad precedent for Turner, true?

14 A It could have ramifications, but there was a lot
15 more to this.

16 Q It could do irreparable harm to Turner's business
17 to allow a small distributor to take less than the full
18 suite of Turner networks, true?

19 A Not necessarily. Depends on what the conditions
20 are and the rates that they paid for those networks.

21 Q If another distributor had an MFN against a
22 smaller distributor like Cable ONE, your Cable ONE deal
23 could affect your other deals with distributors, right?

24 A I don't believe there are any conditions at that
25 time that restricted -- that basically said if you're

1 carrying eight networks and another distributor takes three,
2 that you can automatically take three. I don't recall any
3 restrictions like that.

4 Q Well, Turner pulled all of its channels from
5 Cable ONE, correct?

6 A No. Cable ONE dropped, I believe, five or six of
7 the networks.

8 Q And Cable ONE only wanted to carry three, right?

9 A We found that out on the last day; yes.

10 Q And as a result, Turner said, you can't have any
11 of them, can you?

12 A After they broke the relationship, we reconsidered
13 our business relationship going forward.

14 Q And you pulled all your channels from Cable ONE,
15 true?

16 A Only the three that were left after they dropped
17 the others.

18 Q So if you don't take all of them, you're not going
19 to have any of them, right?

20 A That's not true. That's not how we negotiated the
21 deal.

22 Q Well the Cable ONE blackout was ultimately
23 Turner's choice to have no channels on Cable ONE, true?

24 A We made the step, yes, of removing the other three
25 networks.

1 Q And the Cable ONE blackout lasted about a month,
2 correct?

3 A That's correct.

4 Q Now, in order to end the blackout, Cable ONE
5 agreed to take all of Turner's networks, right?

6 A I believe eight. I don't think they took
7 CNN International or maybe CNN en Español, but the majority
8 of the networks, yes.

9 Q Though CNN International and CNN en Español are
10 often included with CNN?

11 A They can be.

12 Q Now, Cable ONE agreed to price increases, true?

13 A That's correct.

14 Q And you reported to your boss, Mr. Levy, that the
15 new Cable ONE deal was a very good outcome for Turner,
16 correct?

17 A Anytime you can get a relationship back on track,
18 yes, I think that's a good outcome.

19 Q Why don't you turn to PX143.

20 And PX143 is an email string, including one with
21 you and Mr. Levy, about the resolution of the Cable ONE
22 blackout, right?

23 A That's correct.

24 MR. CARSON: Your Honor, we to move admit PX143.

25 MR. ORSINI: No objection, Your Honor.

1 THE COURT: It will be admitted.

2 (Government's Exhibit PX143
3 received into evidence.)

4 BY MR. CARSON:

5 Q Now, after the announcement of the end of the
6 blackout, Mr. Levy asked you if we, Turner, got what we
7 needed.

8 Do you see that on the 25th?

9 A I do.

10 Q And you responded, "Yes, got what we wanted,
11 three-year term, a very good outcome."

12 Do you see that?

13 A I do.

14 Q You can put that aside.

15 Now, can you turn to PX17.

16 MR. CARSON: May I proceed, Your Honor?

17 THE COURT: You may.

18 THE WITNESS: Okay. I'm there.

19 BY MR. CARSON:

20 Q PX17 is a September 2016 email to the Turner CEO
21 and president, where you mentioned how Turner prevailed
22 nicely over Cable ONE after going dark, correct?

23 A Correct.

24 MR. CARSON: Your Honor, we move to admit PX17.

25 MR. ORSINI: No objection, Your Honor.

THE COURT: It will be admitted.

(Government's Exhibit PX17
received into evidence.)

1
2 BY MR. CARSON:

3 Q In your bottom email, you're writing in 2016 about
4 the renewal of the Cable ONE deal from 2013, right?

5 A That's correct.

6 Q And in parentheses, you write there on the top
7 line, "You'll recall that in 2013 with a last-minute
8 sucker-punch by Cable ONE, we went dark for 25 days but
9 prevailed nicely.

10 Do you see that?

11 A I do.

12 Q And Mr. Levy, the Turner president, responded,
13 "Cable ONE, while small, is a big one to close for many
14 reasons."

15 Do you see that?

16 A I do.

17 Q Now, after the blackout with Cable ONE in 2013,
18 your team tracked Cable ONE's subscribers, right?

19 A I believe that's true.

20 Q You can put that side.

21 Thank you.

22 Mr. Warren sent you some information about how
23 Cable -- about Cable ONE's loss of subscribers after the
24 blackout, right?

25 A I don't recall the exact document, but that seems

1 like normal procedure, yes.

2 Q Let me show you your deposition.

3 MR. CARSON: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MR. CARSON:

6 Q Mr. Breland, do you have your deposition
7 transcript. If you turn to page, which has been marked as
8 PX530, for identification.

9 If you turn to page 262 of the second deposition
10 from January.

11 If you could read line 17 to 24 at the bottom.

12 THE COURT: To yourself.

13 BY MR. CARSON:

14 Q To yourself. Let me know when you're done.

15 A 17 to 24?

16 Q Yes. On 262.

17 A Yes, I've read that.

18 Q Let me ask you, again, Mr. Warren sent you
19 information about Cable ONE's loss of video subscribers
20 after the blackout, correct?

21 A I believe that's true. I just don't recall the
22 actual document.

23 Q All right. You can put that aside.

24 It is true, Mr. Breland, that video distributors
25 can lose subscribers if they go dark with Turner, correct?

1 A That is a possible outcome, yes.

2 Q Let's talk about DirecTV.

3 MR. CARSON: Can you pull up PX142.

4 May I proceed, Your Honor?

5 THE COURT: You may.

6 THE WITNESS: Okay. I'm there.

7 BY MR. CARSON:

8 Q PX142 is a November 2013 email string with you and
9 Mr. Warren about a Time Warner Cable blackout causing
10 subscribers to shift to DirecTV.

11 Do you see that?

12 A I do.

13 MR. CARSON: Your Honor, we'd move to admit PX142.

14 MR. ORSINI: No objection, Your Honor.

15 THE COURT: All right. It will be admitted.

16 (Government's Exhibit PX142
17 received into evidence.)

17 BY MR. CARSON:

18 Q Mr. Warren forwarded you some information about
19 the subscribers of Time Warner Cable being irritated by a
20 dispute and a consequent blackout, right?

21 A That's correct. I see the headline below. Is
22 this where it says DTV USA form? Am I correct? Am I
23 reading the right spot?

24 Q Right.

25 In the last line of the email or in the last

1 indented section, "With TV fans irritated by
2 Time Warner Cable's dispute with and consequent blackout,
3 many have shifted to DirecTV."

4 Do you see that?

5 A I do.

6 Q And Mr. Warren forwarded you this information, and
7 you responded in that November 9th, 5:11 p.m., email, right?

8 A That's correct.

9 Q And you wrote to Mr. Warren, "It would not be
10 smart for DirecTV to get into a dispute with Turner because
11 DirecTV could lose subscribers."

12 Correct?

13 A That's correct.

14 Q And your comment to Mr. Warren was that a Turner
15 blackout could cause DirecTV subscribers to shift to
16 Time Warner Cable, right?

17 A I don't see the reference to Time Warner Cable. I
18 see, "We should hope they're smart enough not to give them
19 back." So I understand your inference, then, to
20 Time Warner Cable.

21 Q "Giving them back" means the DirecTV subscribers
22 that they picked up during a blackout of Time Warner Cable
23 might shift back to Time Warner Cable, right?

24 A Yes. That's the banter, correct.

25 MR. CARSON: That's all we have, Your Honor.

1 THE COURT: All right.

2 MR. ORSINI: May I proceed, Your Honor?

3 THE COURT: You may.

4 CROSS-EXAMINATION

5 BY MR. ORSINI:

6 Q Mr. Breland, I just want to step back a little bit
7 and talk about your responsibilities briefly. You got into
8 that a little bit with the government's examination.

9 So you switched into your current role last year;
10 is that correct?

11 A June 17, correct.

12 Q Why did you make that change?

13 A Really, it was a succession plan I put in place at
14 the end of '15 talking to Mr. Levy and Mr. Martin. After
15 20-plus years, you look at the right time to hand off
16 something as important as distribution.

17 There was only one deal up in '17, and that seemed
18 like the perfect time to transition.

19 Q And in your current position, you were the
20 President of Turner Content Experiences, correct?

21 A That's correct.

22 Q Can you explain for the Court at a high level what
23 your responsibilities are in that position.

24 A Yes.

25 The -- it's important to look at what's taking

1 place in the market. We spent lot of time talking about how
2 networks are rated, and that is a metric. But that doesn't
3 really capture what's taking place right now.

4 And what I mean by that is, in 2016, Netflix
5 created 126 originals in films. This year, they'll spend
6 almost \$8 billion and create 700. We have to take that in
7 consideration, what that does to our content.

8 You have to look at Amazon. And if you sign up
9 for shipping service, you can now get free video and what
10 that means.

11 We have to look at the fact that every day over a
12 billion hours of content, video content, is consumed on
13 YouTube.

14 We have to look at the fact that Facebook bid over
15 \$600 million for sports rights for cricket. I don't think
16 they won but they bid, and they have singled -- they made
17 billions of dollars in play to spend more money on sports.
18 So you have to look at the entire marketplace and say,
19 what's transpiring here?

20 And what's taking place is that there are
21 formidable, very impressive competitors that want to pull
22 eyeballs away. So content experience, understand, is two
23 very important points.

24 There's only 24 hours in a day, and we compete
25 with anything and everything you can do with a screen.

1 We're actually in the engagement business. We're not
2 really -- as much as we talk about ratings, we're in the
3 engagement business. We want people who can now pick up a
4 device and they can spend time on movie services; they can
5 download music; they can check their emails, check eBay.
6 That's all competition for us.

7 So you have to find what is the best experience
8 you can create with your content to reach customers in a
9 time when technology has given them a tremendous amount of
10 power and voice to say what they want, and we have to be
11 responsive to that.

12 So gone are the days where you just think about
13 how you might want to schedule a linear network what comes
14 on at 7:00 and 8:00 and one show leads to another. That's
15 not what's happening now.

16 The disruption is like Mount Vesuvius on top of
17 Pompeii. These are massive changes to the marketplace.

18 Q Thank you. We'll come back to some of that later.

19 You're also president of FilmStruck, correct?

20 A That's correct.

21 Q What is exactly is FilmStruck?

22 A FilmStruck is the first direct-to-consumer product
23 that we've launched at Turner Broadcasting. It is -- it's
24 really an offshoot of the beginning of how we thought about,
25 how do we reach an audience?

1 So Turner Classic Movies, while last year a top-30
2 rated network, right now is scheduled, is on track between
3 2014, 2021, to lose over 22 million subscribers. That's
4 attrition out of the cable industry and being repackaged and
5 moved on tiers or dropped.

6 So if you're going to grow in the film business,
7 you have to say, what am I going to do differently?

8 We made it -- we weren't going to launch another
9 cable network and try to force that in. I do not have the
10 leverage to do that. And I think it's irresponsible at a
11 time when there are absolutely too many linear cable
12 networks.

13 So we said, we're going to launch a movie service.
14 We're going to take all the things we do right with
15 Turner Classic Movies, tremendous branding, promotion, the
16 programming, the way we put an experience together, and
17 we'll go direct to consumers.

18 A little bit different audience, however. This is
19 toward a younger audience. So we put together the largest
20 independent art house film library in the country, and we
21 launched in November of 2016.

22 Q How many subscribers do you currently have to
23 FilmStruck?

24 A We're closing in on about 100,000 and probably,
25 just so you have the full picture, good to mention that last

1 month, we also expanded the offering. The No. 1 request we
2 got from the FilmStruck fans and potential fans, for the
3 ones that would maybe reach out to our blog or Websites:
4 When you going to put Golden Age of Hollywood?

5 So we did a joint venture with our sister company,
6 Warner Brothers, and we added about 600 Golden Age of
7 Hollywood movies to the service last month.

8 Q What do you mean by Golden Age of Hollywood?

9 A 1920s to 2070s [sic].

10 Q What is Boomerang in terms of its, the DirecTV --
11 direct to consumer?

12 A Boomerang started as a linear network, which is a
13 Hanna-Barbera library. That's *Jonny Quest*, *Jetsons*,
14 *Flintstones*, those classics.

15 Started as a linear network, really was stimated in
16 its growth, I think. And at its best it probably got to
17 40 million subscribers.

18 It's easy to see in kids' behavior when you look
19 at consumption of linear television that it's going down,
20 linear. They want on-demand product.

21 So, once again, a joint venture with
22 Warner Brothers whereby we took the Hanna-Barbera library,
23 put it together with Looney Tunes, and made it a
24 direct-to-consumer product. So for 4.99, you can get access
25 to over 3,000 shows.

1 Q How many subscribers does Turner have for that
2 direct-to-consumer product?

3 A I believe it's around 150,000.

4 Q So let's go back to what you did for the preceding
5 25-or-so years, the content distribution negotiations.

6 A Okay.

7 Q Ballpark it. How many actual affiliate agreement
8 negotiations do you think you took part in during that time?

9 A Around 100 probably.

10 Q And which networks were you actually negotiating
11 contracts for?

12 A For all of the linear networks.

13 Q For the Turner networks too?

14 A For the Turner networks, only the Turner networks.

15 Q And which type of distributors were you
16 negotiating with?

17 A Well, it started out before I got there. Turner
18 had already started distributing to cable operators, then
19 direct broadcast satellite, direct dish to other satellite
20 providers were there. We did deals with them. We did deals
21 with the TelCos when they started to get into the business,
22 and we do deals with virtual MVPDs.

23 Q Which virtual MVPDs did you negotiate with?

24 A I was involved in the negotiations on Sony, on
25 Sling, on Hulu, and on DirecTV Now.

1 Q Now, when you're engaged in these affiliate
2 negotiations, were you typically negotiating for carriage of
3 all the Turner networks together?

4 A Yes.

5 Q Why?

6 A Efficiency. If you had to start every contract
7 over, every contract would not just be 100 pages; you'd have
8 800 pages of documents.

9 And there are a lot of similar terms: security,
10 force majeure, termination. There are different pieces in a
11 contract that are common. So it's really efficiencies is
12 why you do it.

13 Q What responsibilities did you have for negotiating
14 the carriage of HBO?

15 A None.

16 Q Was it typical to negotiate with a distributor
17 over the Turner networks at the same time that HBO was
18 negotiating?

19 A There were -- over the last few years, I remember
20 a conversation with Mr. Bewkes. And he said, Are you in
21 HBO? Do you even know what each other are doing? Probably
22 smart to have a conversation and see what you're involved
23 in.

24 But we've never sat down at the table. I've never
25 been at the table and had HBO next to me when I negotiate a

1 deal.

2 Q So I think the conversation you just referenced
3 was something that the government asked you about, the
4 conversation you had with HBO. Whatever came of that
5 exercise?

6 A Again, I look at it as -- that's why I said
7 I don't have a goal. It wasn't a mandate for Mr. Bewkes to
8 say, you must align all the deals; you must negotiate these
9 together; you must trade off terms.

10 I took it as a know what each other's doing; let's
11 communicate and see how this works.

12 So words like "strategy" and "goal" get mixed in.
13 I understand that. But I never had a set goal that that's
14 what you should do. I look at it as smart business. If I'm
15 Mr. Bewkes, I want to know what my different divisions are
16 doing.

17 Q What impact did that conversation with HBO have
18 upon your strategy going forward for negotiating the Turner
19 networks?

20 A It didn't. I only considered the Turner networks.

21 Q Generally speaking, what is your opinion based on
22 your experience as to whether or not it's helpful for Turner
23 to be negotiating simultaneously with HBO?

24 A Well, if you look from the outside, you would
25 always think more is better, correct? But if it were

1 15 years ago, that might help me.

2 But today, I don't believe that that helps me at
3 Turner, and here's why.

4 My understanding -- and I've never seen an HBO
5 contract. But my understanding is this is like a
6 consignment business. If someone, a subscriber subscribes
7 to HBO, they pay a certain amount of money. And what HBO
8 and distributor discuss is how do they split that money.
9 And that's how that works.

10 But if I had to take HBO into consideration in the
11 way I have to get my deals done, I have to already balance
12 up to 10 networks at any given time and what the tradeoffs
13 are for those networks.

14 And what concerns me about putting them together
15 is a distributor saying, you know what? I'm going to drop
16 HBO, because when I drop HBO, they can't turn the
17 subscribers back on, is my understanding. They have to
18 start from zero and build that sub base back up.

19 So the liability, they've now become more of a
20 liability to me as I look at the Turner portfolio because
21 now I have to take that into consideration. If they were to
22 do that and say, You've got to lower your rate by X or
23 I'm going to take action, I look at it as something else I
24 would now have to defend rather than the fact that that
25 might help me.

1 Q When you said they have to start at zero and build
2 their subscriber base back --

3 A Meaning HBO. So if they go, if I go dark, when I
4 come back on, my networks come back on.

5 And I bleed profusely during the period I'm dark.
6 But my understanding is with HBO, this type of premium
7 product, when you subscribe to it, if it were to be turned
8 off -- and I don't believe there's been a time HBO's turned
9 off. I'm not sure, but I don't believe they've ever been
10 turned off. But I've always heard HBO say, you know, I'm
11 nervous about getting close with you guys because at the end
12 of the day, if I go dark, I have to start over getting the
13 subscribers.

14 First of all, I don't have any of their core
15 information to contact them, but I start from square one.

16 Q We'll come back to YouTube in a moment.

17 But currently, the Turner networks are carried by
18 YouTube, correct?

19 A That's my understanding, yes.

20 Q And what's the status of HBO being carried by
21 YouTube?

22 A I do not know.

23 Q You were also shown an exhibit which set forth the
24 rate strategy that Turner has. Do you recall that, that it
25 had various different categories for rates?

1 A I do.

2 Q And you were here when Mr. Martin testified about
3 the notion that new entrants pay slightly higher fees when
4 they come into the markets.

5 Do you recall that?

6 A I do.

7 Q And has that been your general understanding?

8 A Yes. When direct broadcast satellite came on,
9 they paid a slight premium. Same thing when the TelCos came
10 on. And same thing with the virtual MVPDs.

11 Q What, if any, implications do your MFNs with large
12 distributors have on the prices you can offer to new
13 entrants?

14 A Well, if I were not shackled with MFNs, I could be
15 much more flexible in considering certain things. But right
16 now, a new entrant comes in. If I give them a rate that's
17 lower or above every distributor above them, that can trip
18 MFNs, which will cost hundreds of millions of dollars
19 potentially.

20 Q You were also asked a series of questions by
21 Mr. Carson about the rate increases that Turner was able to
22 negotiate in the 2013 to 2017 time frame.

23 Do you recall that?

24 A I do.

25 Q And what was the general reason for Turner's

1 strategy of seeking rate increases during that time period
2 with distributors?

3 A We had made investments in original programming of
4 sports, and we also looked at it as a catch-up period. For
5 example, Cartoon Network, to our understanding, was -- had a
6 big gap compared to a competitor like Nickelodeon. And CNN
7 was behind Fox News.

8 So we looked at these as this is catch-up period
9 for us to get back to where we should be. We had done
10 smaller increases, even CPI increases at certain times. And
11 we were way behind the market, so this was a catch-up tour
12 of duty.

13 Q Now, speaking on this issue of new entrants, you
14 were involved with the negotiations with PlayStation, Sony,
15 in 2015, right?

16 A That's correct.

17 Q What do you generally recall about those
18 negotiations, just at a high level?

19 A Look, we were excited. It was a new platform.
20 PlayStation has tens of millions of credit card. I think
21 I've got two PlayStations in my house.

22 So we were excited by that.

23 There were some limitations in the way they were
24 talking about rolling out. I believe they only started in
25 four markets, but we were glad to get in business with them.

1 Q And what do you recall about how their rate in
2 that original agreement compared to, without specifying the
3 numbers, rates paid by traditional MVPDs?

4 A There was a slight differential, as it had been in
5 the past, historically, with the new entrants.

6 Q Was there a later renegotiation with Sony?

7 A There was.

8 Q And, again, without revealing the specific
9 numbers, what happened with their rates at that point?

10 A Their rates were lower because they had achieved
11 sort of like a smaller cable operator level, so their rates
12 would mirror those. So they went down.

13 Q I'm sorry. Can you explain that last piece, they
14 would mirror a smaller cable company?

15 A Yes. When you start, you have zero subs. So the
16 way -- in the document that Mr. Carson showed me, it shows
17 sort of an opening offer if you're negotiating with a new
18 entrant, sort of a mid-point of where you could go. This is
19 for the negotiating team, really, so they know what their
20 limits are negotiating. So there's an open, there's a mid,
21 and there's a final.

22 The final is actually very close, I believe, to
23 where the small operator is. So when they re-negotiated,
24 they had subscribers, and we rewarded that performance.

25 Q Generally speaking, when you were the President of

1 Turner content development, what was your strategy with
2 respect to negotiating with the new entrant virtual MVPDs?

3 A I want to be on every platform that comes.
4 That's --

5 Q Why?

6 A Because you don't know who's going to be
7 successful, right? If we had been shortsighted -- we were
8 the first people to sign up Charlie Ergen. Can you imagine
9 if we hadn't gotten on Dish Network and you missed all of
10 that tremendous growth and what they have done with that
11 business? So you want to be on every platform.

12 Q There was a reference in one of the documents that
13 Mr. Carson showed you to the concept of an anchor tenant.
14 Do you recall that?

15 A I do.

16 Q And what do you understand that concept to mean?

17 A I think that means that this is a network that
18 would do well in a base package. Let's say a skinny bundle,
19 for example.

20 Q And what risks would Turner face if it were not
21 part of those skinny bundles when they were launched?

22 A Well, I think it's a question of, if a skinny
23 bundle has launched and we're not part of it, then we really
24 get left behind. You've got to find your way to get back
25 in, which is why you want to be in every, on every platform

1 and with every distributor that launches.

2 MR. ORSINI: Your Honor, I'm about to start a
3 specific negotiation topic. Might now be a good time, or
4 should I keep going?

5 THE COURT: Yeah, we'll take the luncheon recess.

6 So you remain a witness under oath in the case.
7 Refrain from discussing your testimony with anyone,
8 including your own counsel.

9 Stay independent of all others. We'll return at
10 2:30 for the afternoon session, okay?

11 THE WITNESS: I understand, Your Honor.

12 THE COURT: We'll see you then.

13 THE WITNESS: Thank you.

14 THE COURT: All right, Counsel. Do you have an
15 estimate of how long you'll be going this afternoon?

16 MR. ORSINI: Give or take 45 minutes to an hour.
17 I don't imagine it will be longer than that.

18 THE COURT: Okay. So the government will have to
19 have another witness ready?

20 MR. ORSINI: And we have the next witness here.
21 It's another Turner executive. He's here, Your Honor.

22 THE COURT: Oh, okay. Very good. We'll stand in
23 recess.

24 DEPUTY CLERK: All rise.

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

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: April 2, 2018 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR