

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	CV No. 17-2511
vs.	:	
	:	Washington, D.C.
	:	Tuesday, April 3, 2018
AT&T, INC., ET AL.,	:	2:40 p.m.
	:	
	:	Day 7
	:	
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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THE COURT: Remain under oath. All right.

MR. CONRATH: Your Honor, may I approach one more
time?

THE COURT: Sure.

(Sealed Bench Conference.)

MR. CONRATH:

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MR. PETROCELLI:

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4 MR. PETROCELLI:

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7 MR. PETROCELLI:

8 MR. CONRATH:

9 (Open court.)

10 GOVERNMENT WITNESS STEFAN BEWLEY PREVIOUSLY SWORN

11 DIRECT EXAMINATION (Continued)

12 BY MR. CONRATH:

13 Q. Mr. Bewley, would you turn to PX 79, page 5 of the PX 79?

14 If you would.

15 A. Yes.

16 Q. Does page 5 of PX 79 describe the methodology that you
17 used in the project for Charter?

18 A. Yes.

19 Q. And are you able to discuss in more detail the methodology
20 that you used in the Charter project without disclosing
21 confidential information?

22 A. Yes. So what I can describe is the key objective as the
23 page states is to understand the value of programming content.

24 We have a couple of different methods to do that. One
25 method is through a survey.

1 Another method is through set top box analysis. Both of
2 these methods have their strengths and weaknesses, so using
3 both of them can help triangulate a correct answer.

4 And then we have a third method which is called a hybrid
5 where we take data from each of those two methods to help
6 further provide an additional data point.

7 Q. Can you describe IN more detail than that without
8 disclosing confidential information?

9 A. Sure. So for the survey broadly what we're trying to do
10 is we're trying to understand what people perceive to be the
11 value of different programming.

12 And we do this by being able, the benefit of the survey is
13 that you can ask them directly. However, what we and other
14 people that practice surveys have found it's very hard for
15 somebody to understand exactly what the value of one component
16 is when they're buying an overall service that includes brand,
17 price, broadband speed and a variety of television networks.

18 So we use instruments in the survey called a channel
19 chooser, a Max stiff and a conjoint. And the ultimate goal
20 there is to be able to truly understand the customer's
21 underlying preferences for the individual cable networks.

22 Q. Are all of those standard tools used in survey research?

23 A. The Max stiff and the conjoint is. The channel chooser is
24 just a specific way of asking a very standard question which is
25 how much of a priority is a given cable network. I think the

1 confidential aspect is how we combine those.

2 Q. All right. That was your explanation of a survey?

3 A. Right.

4 Q. Have I exhausted what you feel you can tell us without
5 disclosing confidential information about the survey?

6 A. One final piece of information that's not confidential
7 which is that after we have the survey done and we analyze the
8 results of the survey, fundamentally what you're getting is the
9 individual utility or the value of these different components.
10 Not only the cable networks but also like I mentioned before, a
11 brand prize, broadband speed and others.

12 The benefit of this beside that information itself is that
13 you can put that into a simulator and then you can simulate
14 potential changes to the current market place. Such as what
15 would happen if a particular set of cable networks were not
16 available or if somebody changed their price or if they changed
17 their broadband speed or a variety of different simulations and
18 so that's part of how we got to the findings in our report.

19 Q. All right?

20 A. And then the final piece is that we evaluated both
21 existing customers and prospective customers call prospects.

22 Q. Have you now told us what you can tell us without
23 revealing confidential information?

24 A. Yes.

25 Q. All right. Is there more that you could tell us if you

1 could reveal confidential information?

2 A. Yes.

3 Q. I'm not going to ask you TO do that at this point.

4 You said the second topic or the second methodology
5 involved a set top box?

6 A. Right.

7 Q. Can you explain more about what that is without revealing
8 confidential information?

9 A. Yes. So one of the benefits of the survey is that you get
10 to ask people directly what they, how much they value these
11 different components of a telecom offer.

12 One of the challenges though is that stated preferences and
13 sometimes despite the best methods that we just described,
14 those preferences are not perfectly reflecting of exactly
15 people's actions.

16 So the set top box data measures people's true actions and
17 what this is it's really just the viewing data to which the TV
18 was tuned to.

19 So for example, if you're watching ABC or NBC, then the set
20 top box data will record that and record how long you're
21 watching that.

22 The client provided us that information for individual
23 existing customers anonymized and then we could evaluate that
24 to understand how much viewing time was spent on a given cable
25 network and we used that plus some confidential analysis to

1 infer how important a cable network was by inference on how
2 much time they spent viewing it.

3 Q. So the idea is if I watch it more, it's more important to
4 me?

5 A. Correct.

6 Q. That's the basic idea?

7 A. Right.

8 Q. Have you told us what you can tell us about the set top
9 box data without revealing confidential information?

10 A. Yes.

11 Q. Is there more that you could tell us if you could reveal
12 confidential information?

13 A. Yes.

14 Q. I'm not going to ask you that.

15 But you said the third was a hybrid methodology. Can you
16 explain that without revealing confidential information?

17 A. Yes. The, both the set top box and the survey method have
18 their strengths and their draw backs. One of the draw backs to
19 the set top box method is that you understand how much people
20 have viewed. You don't really understand how much value they
21 got out of it. Maybe they were viewing that because that was
22 just what was on the background or maybe they really cared
23 about it.

24 So we can take set top box data, but we can also know from
25 the survey how much they've stated they actually care about it.

1 And what we've noticed in our data analysis is that channels
2 that are more niche where a smaller percentage of the people
3 care about it, actually those people that do care about it view
4 it for a higher percentage of their time. So not as many
5 people care about it but they really care about it.

6 And so that plus combining the survey data where people
7 supposedly state where they care about it and the set top box
8 data where you understand how much they view it in the hybrid
9 method, we combine those, took into account the observation
10 that we understood from the regressions and modified the point
11 at which we thought a cable network being absent would cause
12 somebody to churn or leave.

13 THE COURT: Are you saying that the people that
14 you're surveying are the same people who set top box data you
15 have or are they different people?

16 THE WITNESS: We can't do a one to one match because
17 a set top box data is anonymized. But generally we know when
18 we are doing a survey the broad geography i.e. the Washington
19 D.C. area and we know if they are a customer or not. So we
20 have that but we're not trying to do a one to one
21 identification.

22 BY MR. CONRATH:

23 Q. Would explaining more about the hybrid methodology require
24 you to reveal confidentiality information?

25 A. Yes.

1 Q. Is there more you could explain?

2 A. Yes.

3 Q. I'm not going to ask.

4 Would you turn to page 6 of PX 79?

5 Does this page describe the results that you delivered to
6 Charter about loss estimates?

7 A. That's correct.

8 Q. So are you able to discuss in detail the results that you
9 report in Charter without disclosing confidential information?

10 A. I can describe what's on the page.

11 Q. Why don't you describe it at a level that in your view
12 does not disclose confidential information?

13 THE COURT: Well, hold on now.

14 Let's keep straight the distinction between what your
15 company views as confidential and what your clients view as
16 confidential. Because there, there might be some situations
17 where there isn't an overlap.

18 For example, you may have proprietary analytics. Your
19 client doesn't care if you reveal those or not, that's your
20 business.

21 THE WITNESS: Right.

22 THE COURT: There may be some information that your
23 study yielded that they view as confidential but you don't
24 particularly.

25 THE WITNESS: There could be.

1 THE COURT: There could be.

2 So let's keep clear the distinction between what your
3 company views as confidential.

4 THE WITNESS: Right.

5 THE COURT: What your client views as confidential or
6 what both view as confidential.

7 THE WITNESS: Okay.

8 THE COURT: All right, go ahead.

9 THE WITNESS: This is with respect to my company's
10 confidentiality.

11 THE COURT: Right.

12 BY MR. CONRATH:

13 Q. So could you describe at a high level what is the
14 information contained on page 6 of page PX 79?

15 A. Yes. So there are a number of different contract groups
16 that we evaluated. The points above each contract group
17 represent the estimated video customer loss.

18 If that contract group was not available in the client's
19 pay-TV line up, so the three methods that we just discussed are
20 there. Survey, set top box and hybrid.

21 There's a diamond over the recommended one for each of the
22 different, three different methods. For one of the contract
23 groups there was also some, and this is public information,
24 that a cable company several years ago dropped Viacom
25 programming and so the external bench mark is an estimate of

1 the customer losses on that, not from our analysis, but from
2 data reviewing that customer information from someone dropped
3 Viacom.

4 Q. Was that from media reports from public sources?

5 A. We were, that's public information to my knowledge. We
6 were provided it by our client.

7 I just wanted to explain that external bench mark point.

8 Then below that chart you see individual cable networks
9 that are associated as part of that contract group that we
10 believe are in some cases potentially causing the survey value
11 to be higher than the set top box data or not.

12 And without naming it, the way to think about this is that
13 sometimes for example you have content that is what we call
14 highly substitutable. So an example is sometimes children's
15 programming there's widely available beyond pay-TV on the
16 internet and elsewhere.

17 And so although that might have a high percentage of
18 viewing on a set top box data, what you find in the survey data
19 is that it's not as valuable. And so that's one example of
20 these different cable networks that are here to help explain
21 some of the deviants from the three methods.

22 Q. Could I keeping in mind the Court's direction to focus on
23 all of the Viandrie's confidential information. If I ask you
24 a question that you believe focuses on something that is
25 Charter confidential or that your contract with Charter

1 requires, would you tell us and we'll resolve it, but if you
2 know that I ask a question like that, please let me know and
3 then I'll think of whether I can rephrase it?

4 A. Okay.

5 Q. So the recommended approach, can you explain what that
6 means?

7 A. Yes. So we have three different answers from our three
8 different methodologies. And we, the recommended is the one
9 where we thought it was most likely to actually take place.

10 Q. That's recommended to Charter as what they should use?

11 A. Right. They're going to take into account a variety of
12 factors in their negotiations and this is what we recommended
13 they use in terms of the economic analysis.

14 Q. All right. I'd like to focus you on the column for Turner
15 Broadcasting System One.

16 Do you see that?

17 A. I do.

18 Q. All right. I'm going to ask you about the numbers in this
19 and I want you to understand the Court has ruled that we can
20 talk about these numbers?

21 A. Okay.

22 Q. Ms. Wood confirmed that for me earlier.

23 So there are three numbers, these are loss estimates for
24 Turner, correct?

25 A. For Charter if Turner is dropped.

1 Q. Sure, sure. Thank you.

2 The top two really they are very close are 14 percent; is
3 that right?

4 A. That's correct.

5 Q. And those represent which methodologies?

6 A. Those represent the survey and the set top box.

7 Q. All right. And the third one represents 9 percent; is
8 that right?

9 A. That's correct.

10 Q. And what methodology is that?

11 A. That's the hybrid methodology.

12 Q. And which is the recommended meth -- which is the
13 recommended loss estimate for Charter to use? The one that
14 Altman Vilandrie recommended?

15 A. The hybrid methodology.

16 Q. That's the 9 percent, right?

17 A. Correct.

18 Q. So there was an earlier hybrid estimate for Turner that
19 was lower than 9 percent; is that right?

20 A. That's correct.

21 Q. And that was around 5 percent?

22 A. That's correct.

23 Q. And at the time that the hybrid, the stage of the process
24 when the hybrid estimate was 5 percent, what was the
25 recommended number, the recommended loss estimate for Charter

1 to use?

2 A. Fourteen percent.

3 Q. So when the adjustment was made from 5 to 9, the
4 recommendation, the recommendation from Altman Vilandrie went
5 up or down?

6 A. The recommendation went down from 14 to 9 percent.

7 Q. Now when you made the change from 5 to 9, was that Altman
8 Vilandrie or Charter who decided to make that change?

9 A. We decided to make the change, Altman Vilandrie.

10 Q. Was that Altman Vilandrie's decision based on a
11 quantitative analysis?

12 A. It was. Would you like me to explain that?

13 Q. Explain as much as you can without revealing confidential
14 information. Yes, please do?

15 A. The hybrid methodology had forced cable networks into
16 three groups and the rationale for that was because of not the
17 analysis, but because of the financial model required it to fit
18 into three groups.

19 Because of that then you would as opposed to getting the
20 underlying weighted average of a given cable contract group,
21 you instead push it into one of these three categories.

22 And for Turner the, it was right in the middle between
23 group two and group three. We pushed it into group three
24 because we had to given that constraint that caused the earlier
25 estimate. Turner was the only one on this page where the

1 hybrid was significantly far away and not either close to or in
2 between the other two methodologies.

3 So because of both the fact that it was between group two
4 and group three and because it was a deviation from the other
5 methodologies, we went back and used the actual weighted
6 average as opposed to forcing it into those groups.

7 THE COURT: What do those groups represent?

8 THE WITNESS: Broadly they were different categories
9 of how popular content was. So there was extremely popular
10 mass market content. There was kind of broadly popular but not
11 mass market and then there was niche content like --

12 THE COURT: Is that 1, 2 and 3?

13 THE WITNESS: Yeah.

14 THE COURT: So the first one was what, broadly
15 popular?

16 THE WITNESS: Broadly popular as quantitatively
17 measured by the percent must have from our survey.

18 Just as a rough example a cable network like ABC.

19 THE COURT: Okay and the second one was what?

20 THE WITNESS: Moderately popular. Again,
21 quantitatively measured by percent must have.

22 THE COURT: The last one is niche?

23 THE WITNESS: Niche, less popular.

24 THE COURT: Specialty?

25 THE WITNESS: Yeah, specialty. MTV, Univision.

1 THE COURT: TCM?

2 THE WITNESS: Perhaps. I can't remember exactly.

3 But yes.

4 THE COURT: All right.

5 BY MR. CONRATH:

6 Q. In this document, PX 79, did you make that same change to
7 a weighted average hybrid method for other networks than
8 Turner?

9 A. Not in this document.

10 Q. That's for the reason that you just explained?

11 A. Correct.

12 Q. It was the only one with the deviation and close to the
13 line?

14 A. The combination of those two factors.

15 Q. All right. Did you subsequently make that same adjustment
16 to a weighted average method for other networks?

17 A. We did and we refined it for all of the networks even
18 further in October.

19 Q. Charter paid you to apply the adjusted methodology to all
20 of the networks in October?

21 A. That's right. It was one part of a statement of work.

22 Q. Why didn't you do it in this document, this April PX 79?

23 A. Two reasons. One, it wasn't part of our scope.

24 And two, we were at the end of the project.

25 Q. Time to deliver your report?

1 A. Correct.

2 Q. Did anyone tell you what the number had to be for Turner?

3 A. No.

4 Q. Did anyone tell you to change the Turner number, anyone
5 from outside of Altman Vilandrie?

6 A. No.

7 Q. Now at the time of delivering this project to Charter, did
8 you deliver them a tool?

9 A. We delivered a couple of tools.

10 You want me to explain that?

11 Q. Explain that again within the question of confidentiality?

12 A. One was a simulator. A simulator so that they could run
13 their own scenarios about different cable TV lineups.

14 And another one was an Excel financial model that they can
15 understand the financial implications of different scenarios.

16 Q. This was for them to do the kind of analysis that you had
17 done for future scenarios?

18 A. Right. The point being that they were going to be, they
19 would want to run their own scenarios.

20 Q. They paid you to deliver this tool?

21 A. Correct.

22 Q. And that was delivered around the time of this April 27th
23 presentation?

24 A. Shortly thereafter.

25 Q. And when you delivered that did you have to hard code

1 something into that tool?

2 A. Into the financial Excel model we had to.

3 Q. And can you explain why you had to?

4 A. Sure.

5 Q. Tell me what you hard coded?

6 A. So we hard coded the weighted average value from the
7 hybrid method for Turner. And the reason why we did that was
8 as I mentioned before, the whole reason why we forced the
9 contract groups into group one, group two, group three was
10 because the Excel model couldn't accommodate all of the custom
11 results for each of the contract groups.

12 So the Excel model still functioned as accepting either
13 group one, group two or group three for Turner because we had
14 made that adjustment, we had to hard code that value. But that
15 was only within the financial model.

16 Q. Did you do later an updated version of the spread sheet in
17 the second project that you did for Charter?

18 A. Right. We, this financial model which just takes the
19 output of the customer loss, it doesn't do that analysis.

20 We made a larger and more flexible such that for each
21 contract group they had their own customized hybrid weighted
22 average value.

23 Q. And you delivered that to Charter?

24 A. In October.

25 Q. And it didn't have any, it implemented the weighted

1 average methodology for all of the channels?

2 A. That's correct.

3 Q. So if we would look back again at the page 6 that we were
4 looking at of PX 79 just to be clear, the result of doing this
5 adjusted methodology, the weighted average methodology was that
6 Altman Vilandrie's hybrid estimation went from 5 to 9; is that
7 correct?

8 A. That's correct.

9 Q. The Altman Vilandrie recommendation of Charter went from
10 14 to 9?

11 A. That's correct.

12 Q. It went down?

13 A. The recommendation went down.

14 MR. CONRATH: No further questions, Your Honor.

15 THE COURT: All right. Let me ask you a question
16 before we turn to cross.

17 Who did you meet with at the company to explain all of
18 this to you?

19 THE WITNESS: So our working team that we met with
20 would be Julie Unrue and Julya Friedman.

21 Then we had a select number of presentations to David
22 Ellen.

23 THE COURT: David who?

24 THE WITNESS: David Ellen.

25 THE COURT: How do you spell that?

1 THE WITNESS: E-L-L-E-N.

2 THE COURT: Oh, David Ellen.

3 What was his position if you remember?

4 THE WITNESS: He's EVP. I think he has a couple of
5 responsibilities but one of them is programming.

6 THE COURT: And the two ladies you mentioned, what
7 were their jobs?

8 THE WITNESS: Julie Unrue is a GVP group
9 vice-president and I couldn't give you the exact title but she
10 generally is in charge of programming, or analyzing
11 programming.

12 THE COURT: Analytics?

13 THE WITNESS: Yep.

14 THE COURT: Were any of these negotiating people,
15 people who do negotiations?

16 THE WITNESS: No, they're part of that team. But I
17 don't, to my knowledge I couldn't say for sure, but I don't
18 believe that they're the negotiators.

19 THE COURT: They're analysts?

20 THE WITNESS: To my knowledge.

21 THE COURT: Okay.

22 You can step down a second.

23 (Witness leaves the stand.)

24 Counsel.

25 (Sealed Bench Conference.)

1 THE COURT:

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3 MR. CONRATH:

4 THE COURT:

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7 MR. PETROCELLI:

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10 THE COURT:

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12 MR. PETROCELLI:

13 THE COURT:

14 MR. CONRATH:

15 THE COURT:

16 MR. PETROCELLI:

17 THE COURT:

18 MR. PETROCELLI:

19 THE COURT:

20 (Open court.)

21 (Witness resumes the stand.)

22 THE COURT: Going to take a ten minute recess.

23 You're a witness under oath in the case. You know the
24 rules. Don't talk to anyone, even your own lawyers, don't talk
25 to anyone about your testimony so far or what it might be when

1 you return, all right.

2 You can step down.

3 (Witness excused.)

4 (Recess at 3:22 p.m.)

5 (Proceedings resumed at 3:35 p.m.)

6 (Witness resumes the stand.)

7 THE COURT: All right, you remain under oath.

8 THE WITNESS: Your Honor, just one clarification.

9 I was helping the Court Reporter spell Julie Unrue's
10 last name and saw that her title in the contract was GVP
11 programming finance.

12 THE COURT: Okay.

13 THE WITNESS: So I wouldn't know all of her
14 responsibilities beyond what I told you.

15 THE COURT: That's fine.

16 Thank you. Appreciate the clarification.

17 All right, Mr. Petrocelli, when you're ready.

18 MR. PETROCELLI: Thank you.

19 CROSS EXAMINATION

20 BY MR. PETROCELLI:

21 Q. Mr. Bewley, Mr. Conrath asked you if your company is
22 opposing the merger.

23 Do you recall that?

24 A. I recall the question being if I had an opinion on the
25 merger.

1 Q. Now you do know that your client Charter was opposing the
2 merger and is opposing the merger, correct?

3 A. I don't know what Charter's position is other than what I
4 have read in the newspapers.

5 Q. Well, you do know that they turned over your materials to
6 the Department of Justice, correct?

7 A. I do know that.

8 Q. Do you know the answer to that question, it's a simple
9 question.

10 Do you know whether or not they turned over your materials
11 to the Department of Justice, yes or no?

12 A. I know they gave them the materials.

13 Q. Okay. And in fact, you yourself spoke to the Department
14 of Justice in a couple of lengthy phone calls, right?

15 A. We had two phone calls. Yes. We had two phone calls.

16 Q. And they lasted at least an hour or so, right?

17 A. That's correct.

18 Q. And you discussed these materials in the phone call,
19 correct?

20 A. We discussed the materials for reporting in the phone
21 calls, correct.

22 Q. And you also discussed in the phone call that you made a
23 change to the Turner number, correct?

24 A. That was one of the topics, correct.

25 Q. That you discussed with the Department of Justice back in

1 August of 2017, true?

2 A. Correct.

3 Q. Okay. Now you know, you are aware that your materials
4 have been provided to the government's chief expert in this
5 case Professor Kaul Shapiro, correct? You are aware of that,
6 right?

7 A. I wasn't aware of that until your lawyer told me during my
8 deposition.

9 Q. Okay. And let me put up the first demonstrative.

10 MR. PETROCELLI: This is the demonstrative 102, Your
11 Honor.

12 THE COURT: Okay.

13 BY MR. PETROCELLI:

14 Q. You are aware that Mr. Shapiro, referring to Plaintiff's
15 Exhibit 79 which Mr. Conrath went over with you, said that it
16 was the single best document for these purposes? He said the
17 single best document for these purposes is an analysis by
18 Charter that considers the impact of losing all of the Turner
19 content.

20 And I'll represent to you that he was discussing the
21 subject of the subscriber loss rate.

22 You came out with conclusions about the subscriber loss
23 rate for Turner. Mr. Conrath went over those with you,
24 correct?

25 A. This is the first time that I'm reading that text, but

1 it's correct that I definitely came out with conclusions around
2 subscriber loss rate.

3 Q. And you see that Mr. Shapiro goes on to say using the
4 lower end of the range, now that's the lower end of your range,
5 using the lower end of the range for both the loss of existing
6 and prospecting subscribers from the Altman Vilandrie studies,
7 I estimate the long term subscriber loss rate to be 10 percent.

8 Now the lower end of the range for Exhibit, in Exhibit 79
9 after you made the change was 9 percent, correct?

10 A. Correct.

11 Q. The lower end of the range before you made the change was
12 5 percent, correct?

13 A. Correct.

14 Q. Let me show you the next demonstrative, Demonstrative 103.

15 Professor Shapiro was deposed and asked the following
16 question: Were you aware that the only adjustment in the
17 Altman Vilandrie study from April of 2017 that was hard coded
18 in was an increase in the departure rate for Turner and Turner
19 only?

20 Answer, I don't know what you're referring to there.

21 No, I'm not familiar with such a thing.

22 Now in your conversation with the Department of Justice you
23 are certain that you described to them the fact of the change
24 and the reason for it, correct?

25 A. To the best of my recollection.

1 Q. Who were the lawyers or people on the phone? Was it a
2 phone interview?

3 A. It was a phone call.

4 Q. Both of them, right?

5 A. Both.

6 Q. Who did you speak to at the Department of Justice?

7 A. I don't remember the names.

8 Q. Do you remember a single one of them?

9 A. No.

10 Q. Did they introduce themselves to you?

11 A. I suppose so. Honestly, the effort was to try to minimize
12 our involvement in this proceeding.

13 Q. Was there any economist on the phone call?

14 A. I can understand that.

15 Sorry.

16 Q. Let's try to stay with my questions, okay?

17 A. Sorry.

18 What was your question?

19 Q. Were there any economist on the phone?

20 A. In the first one, no.

21 In the second one there were people other than lawyers. I
22 believe they may have been economists, but I don't remember the
23 specifics.

24 Q. Did they tell you that they were going to give your report
25 with the new low range, the 9 percent low range, not the 5

1 percent low range? Did they tell you that they were going to
2 give that slide show presentation to their, for use in the
3 merger case or the merger review, did they tell you that?

4 A. They were asking questions for the merger review, but they
5 didn't tell me how they were going to use materials.

6 Q. Did they tell you that they were going to give it to their
7 chief expert in this case?

8 A. No.

9 Q. Did you ask them what they were going to do with it?

10 A. No.

11 Q. Did you tell them they couldn't use it?

12 A. We -- no. I know that our lawyers had conversations with
13 them about trying to minimize the amount of materials that we
14 handed over which resulted in those phone calls, but.

15 Q. Are you aware that Professor Shapiro used the second of
16 your low ranges 9 percent to predict a 45 percent per sub per
17 month price increase?

18 A. I wasn't aware of that.

19 Q. Are you aware that Professor Shapiro received your first
20 low end of the range, 5 percent, there would have been a price
21 increase of zero? Are you aware of that?

22 A. I wasn't aware of that.

23 Q. In preparation for your testimony today, you didn't come
24 in here cold. By the way, I noticed that Mr. Conrath said that
25 you and he never met before.

1 But you had some idea of what you were going to be asked,
2 right?

3 A. I had the deposition that your team took of me.

4 Q. Now you, I'm going to take you through a chronology here,
5 okay. And in fact, I'm going to mark first of all the second.
6 The first slide or the first demonstrative was Defendant's 102.

7 The second one with the Shapiro deposition testimony was
8 Defendant's 103, and this next one is a timeline which I will
9 mark as Defendant's 104. If I could put that up as I walk
10 through the events here. I don't know that I'm going over all
11 of them.

12 Now you were, your firm received approximately \$700,000 for
13 doing this work for Charter, correct?

14 A. Yes.

15 Q. And Charter, Charter is a big client of your firm, right?

16 A. Certainly not our largest client.

17 Q. But a significant client, right?

18 A. It is an important client to us, but it's not, it's not in
19 our top three clients.

20 Q. And you're an equity partner in the firm?

21 A. Correct.

22 Q. And you've done other assignments for Charter beside this
23 one, right?

24 A. I have.

25 Q. But this is the first assignment that you did in the video

1 dealing with the video eco system, correct?

2 A. For Charter?

3 Q. For Charter?

4 A. (Nodding.)

5 Q. Correct?

6 A. Yes.

7 Q. You have to answer audibly. The Court Reporter cannot
8 take down nods of the head.

9 Now I think you testified that the purpose of this
10 engagement was to provide information to assist in contract
11 negotiations with programmers, correct?

12 A. Right. To quantify.

13 Sorry, would you like me to explain further?

14 Q. Is that correct what I just said?

15 A. That's correct.

16 Q. Okay. Now do you know who the head of programming
17 negotiations, or do you know who Tom Montemagno is?

18 A. I learned of him in the deposition.

19 Q. But all during your work on this project designed to
20 inform negotiators dealing with programmers, you never met the
21 head negotiator Tom Montemagno?

22 A. I never met Tom.

23 Q. Never spoke to him, correct?

24 A. Correct.

25 Q. And to your teams's knowledge he had nothing to do with

1 this assignment, correct?

2 A. I wasn't aware of anything.

3 Q. You didn't deal with him and your team members didn't deal
4 with him, right?

5 A. That's correct.

6 Q. You dealt with who?

7 A. Julie Unrue, Julya Friedman and David Ellen.

8 Q. Now David Ellen is like the number two person in the
9 company like Tom Rutledge?

10 A. Very senior.

11 Q. Very senior guy. He's a lawyer isn't he?

12 A. Could be.

13 Q. He use to work at the FCC. Did you know that?

14 A. No.

15 Q. And then at Cablevision?

16 A. I knew he use to work at Cablevision.

17 Q. And now he's at Charter. And he was the top person with
18 whom you dealt, right?

19 A. Correct. Our day to day person was Julie Unrue but we
20 presented to Ellen.

21 Q. Were you aware during your work on this assignment that
22 David Ellen was meeting with the DOJ to oppose this merger?

23 A. I was not aware.

24 Q. You were not aware that the very day that you met to go
25 over your slide show presentation, that was on April 26th,

1 right?

2 A. I don't remember the exact date, but yes, roughly.

3 Q. Do you know that on that same day that Mr. Ellen was
4 meeting with the DOJ to oppose this merger?

5 A. I wasn't aware of that.

6 Q. And are you aware that immediately after the meeting a
7 request was made for your materials?

8 A. I wasn't aware of that.

9 Q. And you were not aware that your materials were then
10 promptly sent to the DOJ?

11 A. I know the only time I learned of the DOJ having our
12 materials is when they submitted a request to us for in August
13 of 2017.

14 Q. Did you ever, given the purpose of this assignment,
15 didn't you think it was odd to meet with the mediator
16 Mr. Montemagno?

17 A. No. Our purpose was to try to understand the quantitative
18 value and as we heard from our clients, that information was
19 being used in preparation for negotiations.

20 Q. But you saw no reason to talk to Mr. Montemagno about how
21 he might use it in the preparations for negotiations?

22 A. No, we were still -- remember, this is a phased approach.
23 And we still had more phases to do after April.

24 Q. But you did meet with Mr. Ellen, deep into work on March
25 21st, correct?

1 A. Roughly that time frame.

2 Q. And did Mr. Ellen tell you that he would then be using
3 your material and giving it to the DOJ to block this merger?

4 A. No.

5 Q. Now Mr. Conrath showed you the second slide show
6 presentation. I want to talk about the first one, okay?

7 A. Okay.

8 MR. PETROCELLI: And that's exhibit, it's in the
9 binder, Your Honor. Your Clerk and you have binders, so does
10 the witness and so does Mr. Conrath.

11 BY MR. PETROCELLI:

12 Q. I think we're going to be looking at Exhibit 681, Defense
13 Exhibit 681. Now before I go to Defense Exhibit 681, you
14 transmitted this document to Charter on Friday, April 21st,
15 correct?

16 A. Do you want me to look to confirm that?

17 Q. I'll tell you, I'll make it a little bit easier on you.
18 Take a look at Defense Exhibit 365 in your binder.

19 THE DEPUTY CLERK: Is that defense or plaintiff?

20 BY MR. PETROCELLI:

21 Q. Excuse me, that's actually a Plaintiff's Exhibit 365.

22 A. I see it.

23 Q. Do you have that?

24 A. I do.

25 Q. Okay. Now this is an email chain and Kate Rodriguez was

1 the number two person who worked with you, correct?

2 A. Correct.

3 Q. At Altman Vilandrie and then Julya Friedman and Christine
4 Edmonds and Stefan Bewley also received a copy, that's you,
5 right?

6 A. Yes.

7 Q. And so if you go down to the bottom half of this chain,
8 April 21st at 9:03 p.m, okay?

9 A. Yes.

10 Q. Julie, Julya, those are the two women at Charter, right?

11 A. Correct.

12 Q. And this is coming from your team, right?

13 A. Correct.

14 Q. As discussed we wanted to share the final, you see the
15 word final?

16 A. I do.

17 Q. The final read out deck for Wednesday's meeting.

18 I'll recommend to you that April 21 is a Friday. That
19 would mean Wednesday is April 26th, the date you met with the
20 Charter people to go over this, correct?

21 A. Okay.

22 Q. Now you also see in the Re line, if you go up to the next
23 email it says from Julya Friedman to you and your team and
24 Julya is asking a question which I will go over in a minute.

25 But you see the subject line, half co (sic) content

1 evaluation project, final read out materials.

2 Do you see that?

3 A. I do.

4 Q. So when this was presented, this was presented as labeled
5 as a final read out document, correct?

6 A. Correct.

7 Q. The document that you sent was exhibit, Defense Exhibit
8 681, correct?

9 If you need to turn to page 20, it would be page 23,
10 681.0023, you'll see the numbers there. You can confirm that
11 that's the final document that has the 5 percent as the low
12 range.

13 Do you see that?

14 A. Yes.

15 Q. In this email you will agree with me that you did not
16 indicate in the email of the 21st that this was preliminary,
17 that there was a problem with the Turner assessment or anything
18 like that, correct? The email, the transmittal email makes no
19 such statement, correct?

20 A. The email doesn't say that.

21 Q. Now Julya Friedman of Charter writes on April 25th, that's
22 the day of your meeting, going through the deck it appears that
23 you've identified pure STB data methodology. That's set top
24 box data methodology as the recommended methodology for Turner
25 at 14 percent loss. Could you explain why?

1 Now 14 percent loss means the loss subscriber rate or the
2 churn rate or the departure rate; however, those terms are
3 synonomous, correct?

4 A. Correct.

5 Q. Okay. And that was the recommended loss subscriber rate
6 that appeared in this, in this final read out that was sent on
7 the 21st?

8 A. Right.

9 Q. Now a member of your team then responds to Julya at
10 Charter.

11 MR. PETROCELLI: And by the way, that Julya is
12 J-U-L-Y-A, Ms. Reporter.

13 BY MR. PETROCELLI:

14 Q. Julya responds -- Kate of your team responds to Julya
15 explaining how you got to the 14 percent loss subscriber rate,
16 correct?

17 A. Correct.

18 Q. And it is explained in the email that the Turner group
19 based on your analysis and your methodology that you applied
20 equally and even handily to all of the networks that you were
21 reviewing in the contract groups, meaning the families that
22 owned the networks, the Turner group ended up in what you
23 called group three, correct?

24 A. Correct.

25 Q. And you explained why the Turner group ended up in group

1 three, correct?

2 A. We didn't give the full explanation, but we do highlight
3 that it's falling between group two and group three.

4 Q. Well, we'll get to that.

5 But to be clear you said, you said that Turner was assigned
6 to group three in our mapping of regression results.

7 Do you see that?

8 A. I do.

9 Q. Due to a handful of niche i.e, lower percentage must have
10 networks within the group.

11 Do you see that?

12 A. I do.

13 Q. What you were telling Julya of Charter is that the reason
14 why Turner ended up in group three is because it had a number
15 of these lower percentage must have networks, right?

16 A. Correct. We go on to explain.

17 Q. We'll get there.

18 The lower percentage must have networks were all the Turner
19 networks except for TNT, TBS and CNN, correct?

20 A. I don't remember the specific ones.

21 Q. But if your document were to so state, I can refresh your
22 recollection in it in a bit, does that ring a bell that it was
23 a, but those three that were in the so-called lowest percentage
24 of must have networks?

25 A. It's possible. It would be helpful to look at a document.

1 Q. We'll get there.

2 Now and by the way, when you say lower percentage must
3 have, what it is you're referring to is this consumer survey
4 that you did, right?

5 A. That's correct.

6 Q. And one part of the, by the way, this was an internet
7 survey?

8 A. It was.

9 Q. So like what 10,000 people?

10 A. Yeah, close to 10,000 people.

11 Q. And you don't know who they are, right, they're anonymous?

12 A. They're anonymous, they're a demographic profile in terms
13 of income and geography.

14 Q. One of the things they were asked was whether for a 150
15 networks whether somebody answering this internet thing thought
16 they were a must have network, right?

17 A. We asked them to categorize the networks, that's true,
18 between must have, somewhat interested and not interested.

19 Q. But to be clear, in putting those three choices to the
20 10,000 people on their computer, you never once defined what
21 must have meant, correct?

22 A. Correct. That was a prelude to the more detailed
23 instruments that we talked about earlier today.

24 Q. I'm talking about when they had to answer one of those
25 three things, what did you say, must have was one?

1 A. Somewhat interested.

2 Q. Somewhat interested?

3 A. Not interested.

4 Q. Not interested. When they were filling that out there was
5 nowhere where they could find a definition of what must have
6 meant; is that correct?

7 A. That's correct.

8 Q. And they couldn't call you up, right?

9 A. No, they could not.

10 Q. There's nobody to talk to to say what do you mean must
11 have, what does that mean? There was no ability to do that,
12 right --

13 A. Correct.

14 Q. -- in these internet surveys?

15 Now you indicate further on in your email that the group
16 three assignment, now you're talking about the decision that
17 your company made to put Turner in group three after all things
18 were considered, correct?

19 A. At this point, yes.

20 Q. Yes. The group three assignment results in an adjustment
21 of the churn floor to 14.7 percent viewing concentration in the
22 hybrid method. That 14.7 percent viewing concentration under
23 your modeling converted to a 5 percent churn rate, correct?

24 A. For the customers, correct.

25 Q. That meant that if the Turner channels were no longer

1 available, you estimate 5 percent of the Charter subscribers
2 would leave, right?

3 A. Correct.

4 Q. Okay. Now you add in here that you do think the answer
5 falls somewhere between 14 percent and the 5 percent. The 14
6 percent was the much higher churn rate that you derived from
7 the other two methods, the survey method and the pure set top
8 box method, right?

9 A. Right. Which we were recommending at this point.

10 Q. You indicated what the range was, it was 5 to 14 and you
11 go on to say you felt going all the way down to the lower end
12 of the range was too extreme.

13 Do you see that?

14 A. I do.

15 Q. And you say in here we do think the answer falls somewhere
16 in between, right?

17 A. Correct.

18 Q. But to be clear, you designed this methodology, it was a
19 result of a lot of work that went back to January, right?

20 A. Correct.

21 Q. You came up with an approach that put all these network
22 groups into three buckets, group one, group two, group three,
23 correct?

24 A. Correct.

25 Q. You made the judgment that Turner belonged in group three,

1 might have been close, should have been in group two, but you
2 made the ultimate determination that Turner belonged in group
3 three when you sent this final document to your client on April
4 21st, correct?

5 A. Correct.

6 Q. Now let's go to Exhibit 681 which is the document.

7 MR. PETROCELLI: And Your Honor, because this
8 document is so -- I have, I think what I'll do is I have the
9 key page but just one page from the original final document.

10 And then I have the key page from the second one that
11 they did when they made the change and it's just easier to
12 compare having these two side by side.

13 THE COURT: Is it marked?

14 MR. PETROCELLI: I will mark the Defense Exhibit 681
15 page as I'll call it a demonstrative, what's the next one,
16 Katy?

17 THE DEPUTY CLERK: 106.

18 MR. PETROCELLI: 106. And the page from Exhibit 75
19 will be 107.

20 (Defendant's Exhibit Numbers 106 and 107 marked for
21 identification under seal.)

22 This is for the Court.

23 This is for the Clerk.

24 May I approach, Your Honor?

25 THE COURT: You may.

1 MR. PETROCELLI: Did I do that right? Do you have
2 one from Exhibit 79 and one from Exhibit 681?

3 THE COURT: 681, PX 79.

4 MR. PETROCELLI: Okay, good.

5 BY MR. PETROCELLI:

6 Q. Now focusing on Exhibit 681 which is the original one.
7 Could you turn to what was page 23. And you'll see there the
8 14 percent subscriber loss rate for the survey, right?

9 A. Correct.

10 Q. You came out with the same number for the set top box,
11 right?

12 A. Correct.

13 Q. And you came out with 5 percent for the hybrid analysis,
14 right?

15 A. Correct.

16 Q. And you'll see all of the Turner stations there at the
17 bottom of the document?

18 A. Correct.

19 Q. And does that refresh your recollection that all but TNT,
20 TBS and CNN were the niche lower percentage must haves
21 identified in the consumer survey?

22 A. There's also a page later on that would specifically
23 categorize those.

24 Q. You want to identify it for the record what that page is?
25 If you can't find it, maybe we'll come back to it?

1 A. I believe it's page 79.

2 Q. 79 of 681?

3 A. Yep, and you're correct. Those other than the TBS, TNT
4 and CNN. The rest fall into group three on page 79.

5 Q. Indeed, when you submitted your final document on April
6 21, under commentary, you said in the second bullet lower churn
7 estimates in the hybrid approach are a result of adjusting the
8 churn propensity floor to 14.7 percent group 3. From 4 percent
9 Turner assigned to group three due to long tail of niche, i.e.
10 lower percentage must have networks within the group.

11 And those are the ones that you've just identified. All of
12 them except CNN, TBS and TNT?

13 A. Correct.

14 Q. Okay. Now you went to the meeting then on the 26th,
15 correct?

16 A. Correct.

17 Q. And at that meeting there was discussion specifically
18 about this Turner issue, correct?

19 A. It was one of the topics, yes.

20 Q. Okay. And after the meeting -- you flew in for the
21 meeting, right?

22 A. I did.

23 Q. And after the meeting you e-mailed your team that they
24 should make a change to the Turner number, correct?

25 A. Correct.

1 Q. Okay. And let's look at that email. It is Defense
2 Exhibit 684.

3 Rob, can you put it up.

4 To be clear, when you left the meeting with the Charter
5 people had you made the decision that you would be changing the
6 low end of the Turner analysis?

7 A. I had and I can I recap why.

8 Q. Not there yet. But you had made that decision, correct?
9 In agreement and in consultation with the Charter executives
10 who were there?

11 A. No. They gave us permission to extend the project so that
12 we had the time to do this extra analysis.

13 Q. Well, let me talk about that. They gave you permission to
14 extend the analysis just to change the Turner number, correct?

15 A. Correct.

16 Q. Okay?

17 A. We --

18 Q. You didn't change any?

19 MR. CONRATH: Objection, objection, he interrupted
20 the witness.

21 THE COURT: He can finish his answer.

22 Go ahead.

23 BY MR. PETROCELLI:

24 Q. Finish your answer.

25 A. As I mentioned before, that was the only one that we felt

1 needed to be changed before we revised the entire methodology
2 in October for the reasons that --

3 Q. You didn't feel that it needed to be changed as of April
4 21 when you sent a final document to your client?

5 A. We didn't feel that we had the time within that phase to
6 do that.

7 Q. So you send a document to your client, called it final,
8 thought it was erroneous, and on a key set of networks and
9 didn't ask for more time before you could send the final
10 document, is that what you're testifying to?

11 A. I'm saying that we submitted the final within the three
12 categories. We had a recommendation for the 14 percent. When
13 we decided that we had more time, then we went and improved
14 that methodology.

15 Q. Your email doesn't ask for more time?

16 A. That's true.

17 Q. Your email doesn't say hey, I need more time, we have a
18 problem with Turner. We don't know what to do with it, we
19 might want to do something different.

20 Nothing like that in the email, correct?

21 A. That's true.

22 Q. So you discussed all of this and they gave you -- well,
23 how much time did it take to make this one change, an hour, two
24 hours?

25 A. Something less than a couple of days. It was within a day

1 that we were able to turn this around.

2 Q. Didn't you suggest to them at the time if you're going to
3 change Turner and do it in a different way, you should do all
4 of them in a different way?

5 A. That would have taken a lot more time.

6 Q. How much time would that have taken?

7 A. I did that in October and it took a couple of weeks.

8 Q. Why didn't you just ask for a two week extension back in
9 April, and do them all at once?

10 A. We were on a fixed fee contract.

11 Q. You're saying that you wouldn't have been paid for it?
12 You got paid for the October additional work didn't you? In
13 fact, it was another 70 grand wasn't it?

14 A. It was initially.

15 Q. Yeah, did you ask them, let us do all of them? Because
16 that would be the proper way to do it, not just make an
17 exception for one.

18 Did you suggest that to the client in the April 26th
19 meeting?

20 A. We didn't think that we needed to make an exception for
21 everything else because as we talked about before, the hybrid
22 methodology fell in between a set top box and survey
23 methodology for all of the other contract groups.

24 Q. But you included Turner in group three rather than remove
25 it entirely in group three and indicate that you were unable to

1 place it?

2 A. That's true we did.

3 Q. Okay. Now was there some time emergency that you had to
4 get this done by? Was it just a money issue, is that what
5 you're saying?

6 A. We had, I mean, it was a, we had a deadline to finish the
7 project. So it was a deadline and a resource issue.

8 Q. You didn't get permission to redo the rest of the networks
9 the same way you made the exception for Turner until October;
10 is that right?

11 A. Well, we talked about at the time there was going to be a
12 refresh later on.

13 Q. But you didn't do it until late October, right?

14 A. Correct.

15 Q. By that time you had already spoken to the DOJ?

16 A. We talked to them in August.

17 Q. You already spoke to the DOJ about the fact that you had
18 made the change for Turner and only Turner, correct?

19 A. We told them that, correct.

20 Q. It was after you told that to DOJ that you then went back
21 and did the additional work in October for the additional
22 \$70,000, correct?

23 A. Yes, we did that in October.

24 Q. Now I want to go to the email. After you leave the
25 meeting, you're standing in line waiting to get on an airplane.

1 And that's Exhibit 684.

2 Do you have that in front of you?

3 A. I do.

4 MR. PETROCELLI: By the way, Your Honor, I move
5 Defense Exhibit 3, Defense Exhibit 681 into evidence. There's
6 no objection to it.

7 THE COURT: 681? What's the other one?

8 MR. PETROCELLI: The other one was Plaintiff's 79,
9 that was already in evidence and I also referred to the April
10 21 document.

11 THE COURT: So what exhibit number was that?

12 MR. PETROCELLI: The other one is 684, Your Honor. I
13 move that into evidence as well. No objection to that.

14 MR. CONRATH: Your Honor, no objection, but we ask
15 these be admitted under seal. So other related documents
16 should be under seal as well.

17 THE COURT: All right, 684 and?

18 MR. PETROCELLI: 681.

19 THE COURT: 681 will be admitted under seal.

20 (Defendant's Exhibit Numbers 681 and 684 received into
21 evidence under seal.)

22 BY MR. PETROCELLI:

23 Q. I'm showing you your email exchange with your team at the
24 meeting the same day as the meeting, Defense Exhibit 684.

25 Do you have that?

1 A. I do.

2 Q. If you go to the second page, S B, that's you, making
3 notes on an email that your team sent you following the
4 meeting, correct?

5 A. Correct.

6 Q. SB is Stefan Bewley, correct?

7 A. Correct.

8 Q. Now you'll see down here, you said we are also going to
9 edit Turner that the hybrid threshold is 9.5 percent viewership
10 concentration. Kate has a recommended approach here. Run
11 Turner at 9.5 percent viewer concentration threshold in pure
12 STB and determine that loss percentage. Do you see that?

13 A. I do.

14 Q. So instead of using the group three viewership
15 concentration threshold which was 14.7, you used 9.5 percent to
16 make this change, correct?

17 A. Correct.

18 Q. And when you made the change to 9.5 percent, that yielded
19 a subscriber loss percentage of 9 percent, correct?

20 A. Correct. That doesn't state it here, but you're right,
21 that's what it turned out to be.

22 Q. That's what it turned out to be.

23 Then you say hard code that loss percentage, do you see
24 that?

25 A. I do.

1 Q. Hard code that loss percentage into the override. So your
2 macros are still valid.

3 Do you see that?

4 A. I do.

5 Do you want me to explain that? Sorry.

6 Q. The thing you wanted hard coded into the override was the
7 loss percentage of 9 percent, correct?

8 A. Correct.

9 Q. Okay. Mr. Conrath asked you a question about whether you
10 just hard coded the 9.5 viewership concentration and you
11 answered yes, but that wasn't correct.

12 What you hard coded was the actual 9 percent departure
13 rate, correct, and you hard coded it into a financial
14 evaluation model?

15 A. Correct.

16 Q. You had to hard code it because the methodology that you
17 had designed going back to January had room for the three
18 buckets but not this new one you were creating, correct?

19 A. Correct, not until October.

20 Q. Well, we're in April right now, that's true. We'll get to
21 October.

22 So after, so you decided then to do this hard coding and
23 that resulted in the new number of 9 percent in Exhibit 79 that
24 Mr. Conrath showed you, right?

25 A. That's correct.

1 Q. So if you look at Exhibit 79 and compare it to Exhibit 681
2 for one moment, please. Look at the short version that you
3 pulled out.

4 You'll see that what has now vanished is the lower range of
5 5 percent and the newest lowest range is 9 percent, correct?

6 A. That's correct.

7 Q. Okay. And you decided at this point in time in
8 consultation with Charter to make an exception to Turner,
9 correct?

10 A. We proposed the exception. They said that it was okay to
11 take the time to make that.

12 Q. Okay. Now after you made the exception for Turner but no
13 one else, you then got a phone call or an email wanting
14 clarification the day before Charter was meeting with the DOJ,
15 correct?

16 A. I don't know when Charter met with the DOJ.

17 Q. Okay, let's take a look. Let's take a look at Exhibit
18 687, please. In your binder.

19 MR. PETROCELLI: Your Honor, the prior exhibit is
20 that already, did we move that already? What's the exhibit
21 number, 684.

22 I'd like to move 684 into evidence, Your Honor. There's
23 no objection to it.

24 THE COURT: I moved into evidence 681 and 684.

25 MR. PETROCELLI: Okay, now I'm going to move in 687.

1 THE COURT: Under seal.

2 MR. PETROCELLI: That's the one I'm looking at now.

3 And Mr. Bewley, there's also no objection to this one.

4 THE COURT: All right.

5 687 will be admitted under seal as well.

6 (Defendant's Exhibit Number 687 received into evidence
7 under seal.)

8 BY MR. PETROCELLI:

9 Q. You see that this is an email from Charter to Kate and
10 you, right?

11 A. I do.

12 Q. Now go back to the second page of the email and it's
13 referring to the exchange that occurred on June 2, 2017 at 2:53
14 p.m.

15 Do you see that?

16 A. Yes.

17 Q. And Charter is asking once again for clarification on what
18 caused the change, right, that you had made in April?

19 A. It's asking how do we come up with the hybrid methodology
20 for the prospects. Is that the email?

21 Q. Let me direct you to the paragraph. The end of the email
22 that I just identified, the very last sentence starts with the
23 word however.

24 Are you there?

25 A. Yes.

1 Q. However.

2 MR. CONRATH: What page are you on? I'm sorry.

3 MR. PETROCELLI: I'm on page 2 of Defense Exhibit
4 681.

5 MR. CONRATH: I don't see a paragraph.

6 MR. PETROCELLI: It's at the end of the -- look right
7 here.

8 BY MR. PETROCELLI:

9 Q. You got it now. Are you with me?

10 A. I'm with you.

11 Q. However, based on our prior discussions, meaning the
12 discussions between Altman Vilandrie and Charter, correct?

13 A. (No response.)

14 Q. Correct, sir?

15 A. This is saying --

16 Q. I'm just asking you if this refers to the discussions that
17 you had with Charter?

18 A. Not to, yes.

19 Q. Okay?

20 A. There's further detail if you want to discuss that.

21 Q. I'm coming to it.

22 However, based on our prior discussions we made an
23 exception for Turner, we used the weighted average 9.5 percent
24 rather than the group three floor, 15 percent as we felt the
25 group three assignment was resulting in too low of a churn

1 estimate.

2 Do you see that?

3 A. I do.

4 Q. And the too low of the churn estimate was your original 5
5 percent, correct?

6 A. That's correct.

7 Q. Now you also made one other adjustment unrelated to Turner
8 that I think you mentioned in your examination with
9 Mr. Conrath. That concerned Viacom, right?

10 A. The external bench mark.

11 Q. Yeah. Could you turn to page, could you turn to page --
12 first go to the original document, Defense Exhibit 681 at page
13 6.

14 Tell me when you have Defense Exhibit 681 at page 6, where
15 you have your recommendations.

16 Do you see that?

17 A. I do.

18 Q. And you see that you have a recommendation for Viacom,
19 right?

20 A. Yes.

21 Q. I won't say the number, but I'm now going to have you
22 compare that number in Exhibit 79 which is at page 6 also.

23 A. I see that.

24 Q. Do you see that the number for Viacom that you recommended
25 has also been changed, right?

1 A. Yes, I see that.

2 Q. But that change was based on the fact as you mentioned
3 during your direct examination that you had been given some
4 pricing data from Charter about a sudden link Viacom blackout
5 which you then used as a reference point, correct?

6 A. It wasn't pricing data, it was subscriber data.

7 Q. Excuse me, you're right, subscriber loss data?

8 A. Correct.

9 Q. When you saw the actual subscriber loss data that was
10 provided, you lowered, you lowered your recommended departure
11 rate, correct?

12 A. That's correct.

13 Q. And the reason you lowered it is because the subscriber
14 loss data for the actual blackout suggested that your number
15 was too high and had to be lowered, right?

16 A. For Viacom, yes.

17 Q. Now did Charter provide you any of the similar subscriber
18 loss data for the Turner Dish blackout, so that you could use
19 that as a reference point?

20 A. We discussed it, but they didn't have it available.

21 Q. Did you try to find it publicly?

22 A. We made a cursory but not exhaustive review.

23 Q. What did you do, did you look up the Kagan data? What did
24 you do to find the actual reported figures if there were any
25 for that Turner Dish departure loss?

1 A. I didn't do it myself so I couldn't describe what a team
2 member did.

3 Q. So there has been testimony in this case that it's less
4 than 2 percent, maybe even less than 1 percent, blackout for
5 one month of all stations except TBS and TNT.

6 Would you have benefited from having access to that
7 information?

8 A. All information is useful.

9 Q. Now were you provided any blackout information, subscriber
10 loss information for the Cable One Turner blackout which was
11 all Turner networks for some 21 days?

12 A. No. Again, the information that we had and we did have
13 some Cable One information as well, but 21 days with public
14 information doesn't give you much time to actually evaluate
15 something.

16 Q. Well, but I'm asking whether it was made available or you
17 made any attempt to identify, locate it and consider it?

18 A. We had subscriber data from Charter about Cable One. I
19 don't remember if it was specific with respect to the Turner
20 blackout.

21 Q. To be clear then, you didn't take into account either of
22 the actual Turner blackouts, correct?

23 A. Not with respect to the Turner recommendations here, no.

24 Q. And were you aware that with the Cable One the 21 day
25 blackout for all Turner channels was less than 1 percent?

1 A. We didn't have that data.

2 Q. Okay. Now you met with the DOJ.

3 Rob, can you take that down.

4 On August 31, you met with the DOJ about the hard coding.

5 It was a telephone interview you said, right?

6 A. We had a call with them.

7 Q. Do you know whether they had a copy of your original final
8 document, the one with the low end, the 5 percent?

9 A. We gave them our project folder, so I don't remember the
10 exact date that they got that project folder, but in that
11 project folder it would have had a number of files including
12 both of these that we've been discussing.

13 Q. Both Plaintiff's Exhibit 79 and Defense Exhibit 681?

14 A. Correct.

15 Q. Was there any discussion about any further work that you
16 would do?

17 A. I don't recall whether or not we discussed that.

18 Q. But it wasn't long thereafter when you got the permission
19 to go ahead and make all of the other networks go through the
20 same revised process that you did for Turner, right?

21 A. Correct.

22 MR. PETROCELLI: That's all I have right now.

23 THE COURT: All right.

24 Redirect.

25 MR. CONRATH: May I proceed, Your Honor?

1 THE COURT: You may.

2 REDIRECT EXAMINATION

3 BY MR. CONRATH:

4 Q. Mr. Bewley, would you turn to 18 of PX 79?

5 A. I'm there.

6 Q. All right. Without -- there are two boxes up there. One
7 for customers and one for prospects?

8 A. Correct.

9 Q. Would you remind us what the difference is?

10 A. Customers are existing Charter customers and prospects are
11 currently not customers but could become customers in the
12 future.

13 Q. And it's important to evaluate both of those?

14 A. Correct.

15 Q. And over time does the affect on prospects become more
16 important?

17 A. Yes. What happens is if you drop a cable contract group
18 the customer impacts happens in the relatively near term
19 substantially all within the first year.

20 Whereas the prospect affect goes into perpetuity because
21 every year there were gross ads that you don't get because of
22 the reduced programming.

23 Q. So does that mean that estimating a 21 day blackout or a
24 one month blackout is useful for estimating what would happen
25 if you had a permanent removal of a particular contract group?

1 A. I've never had that data, so it's hard for me to comment
2 specifically, but I do think it's important that you look at
3 longer periods to fully evaluate the impact.

4 Q. So you use the word there gross ads which I think we may
5 not have defined yet.

6 Could you explain what that means?

7 A. So out of the prospects the non customers, when they
8 become a customer at that point they're called a gross ad or
9 that's often what we refer to them as. It's a new customer.

10 Q. And the upshot of that how useful is a 21 day blackout to
11 telling you what's going to happen if ever there's a permanent
12 removal of one contract group from video service?

13 A. Again, I haven't had that data so I can't comment
14 definitively. But it is important to be able to look at both
15 the impact on existing customers and the impact on prospects or
16 new customers.

17 Q. You were asked some questions about whether you had met
18 with Mr. Montemagno.

19 Do you recall those?

20 A. Yes.

21 Q. The people that you were working with or people who work
22 with Mr. Montemagno?

23 A. They all report to David Ellen. I wouldn't comment on how
24 they interact.

25 Q. But you understood the purpose of your project was to

1 assist in content negotiations?

2 A. Yes, and we received some feedback that was helpful in
3 that I don't know to what extent it was used.

4 Q. Your project proceeded in some phases from January through
5 April?

6 A. Correct.

7 Q. And the earlier version of the slide was sent on Friday in
8 advance of a Wednesday meeting. What's the reason for sending
9 it on Friday in advance of a Wednesday meeting?

10 A. We wanted to share it with Julya and Julie, ahead of the
11 meeting with David Ellen.

12 Q. All right. Did you get some feedback in the course of
13 that process?

14 A. We got the email, the question on the methodology for
15 Turner.

16 Q. And after you had the meeting you sent the email that is,
17 or you participated in the email that is at DX 684. That's in
18 our binder or the other binder?

19 A. Correct.

20 Q. And the S B comment there. Comments are from you?

21 A. Correct.

22 Q. And there are three items under model updates. Three,
23 four items under slide updates and three items under handoff.

24 Do you see that?

25 A. I do.

1 Q. Are those all things that came out of the meeting?

2 A. Yes.

3 Q. They're all things that were, that were all except one of
4 those involved something other than Turner?

5 A. That's correct.

6 Q. You were responding to the meeting and making those other
7 changes as well?

8 A. Correct.

9 Q. In your note on DX 684 on the second page, the one that
10 was up on the board?

11 A. Correct.

12 Q. Do you see that? It says, the second sentence is Kate has
13 a recommended approach here?

14 A. Correct.

15 Q. Do you see that? Who is Kate?

16 A. Kate's a member of my team.

17 Q. So that's somebody within Altman Vilandrie?

18 A. Correct.

19 Q. Someone within Altman Vilandrie came up with the
20 recommended approach?

21 A. Correct.

22 Q. And recommended approach is what you described earlier as
23 the weighted average?

24 A. That's correct.

25 Q. That idea came from Altman Vilandrie?

1 A. Correct.

2 Q. Who proposed making an exception for Turner, was that
3 Charter or Altman Vilandrie?

4 A. We did.

5 Would you like me to explain further?

6 Q. Please do?

7 A. As I mentioned earlier, during the meeting we described
8 how we felt Charter had the hybrid methodology was the only one
9 -- sorry -- for Turner the hybrid methodology was the only one
10 that fell outside of the survey or the set top box.

11 Because it fell way outside and because it was on the
12 borderline between the group two and group three, that it was
13 warranted for an update and they said Charter said that it
14 would be fine to take the time to make that change.

15 Q. You were asked some questions about the hard coding.

16 Do you recall that?

17 A. I do.

18 Q. The thing that you had hard coded was that the product of
19 your weighted average method?

20 A. The analysis to get to that weight average method was not
21 hard coded at all. The financial model which then took that
22 and ran through the financial implications as I mentioned
23 before only accepted group one, group two or group three.

24 So we had to hard code that financial model, not the loss
25 analysis.

1 Q. So the analysis, the weighted average analysis that you
2 did was there any hard coding in that?

3 A. No. And in fact, there's a page even from the earlier
4 final version, the one sent on April 21st that already has that
5 9.5 percent in it.

6 Q. What page is that?

7 A. It's page, this is Exhibit 681.

8 Q. And if you go to page 80. 8-0.

9 A. 8-0. This page shows for different contract groups what
10 the weighted average analysis that I described earlier would
11 result and so you can see in Turner System One is that 9.5
12 percent that we've been discussing.

13 And then the last column there, the most closely matched is
14 how we forced each of these contract groups into group one, two
15 or three. And so coming up with that 9.5 percent as I
16 mentioned earlier was already done even in this earlier version
17 of the final report.

18 It was the work to adjust that Excel financial model to
19 accommodate something other than group one, two or three. That
20 was the work that we did in the second financial report.

21 Q. All right. So just so we get that Turner Broadcasting
22 System One is in the left-hand column about halfway down,
23 right?

24 A. That's correct.

25 Q. And then the 9.5 percent is what value?

1 A. That's the weighted average result of the churn threshold,
2 not the subscriber loss, but the churn threshold.

3 That was the more nuanced result, but because of the way I
4 described it before, we had to force groups into one, two and
5 three. What you see in that third column how we forced groups
6 into one, two or three.

7 So right above Turner AMC was pushed into group two and
8 right below, Turner System One was pushed into group three.

9 Q. This work was done at the time you said DX 681?

10 A. Yeah, this was the one that was mailed on April 21st.

11 MR. CONRATH: May I consult with my colleague for a
12 moment?

13 THE COURT: Yes.

14 (Pause.)

15 MR. CONRATH: Few more questions.

16 BY MR. CONRATH:

17 Q. Who's decision, was it yours or Charter, Altman Vilandrie
18 or Charter to use the weighted average method for Turner in PX
19 79?

20 A. It was our methodology.

21 Q. Did anyone tell you that you had to make a change in
22 Turner?

23 A. No.

24 Q. The upshot of the change that you made from the hybrid
25 methodology from the prior report to the second report, what

1 was the change in the recommended number for Turner channels to
2 Charter, the recommended number?

3 A. The recommended churn loss changed from 14 percent to 9
4 percent.

5 MR. CONRATH: No further questions, Your Honor.

6 THE COURT: All right.

7 Do you have any recross limited to redirect?

8 RECROSS EXAMINATION

9 BY MR. PETROCELLI:

10 Q. Let's be clear. This 9.5 percent weighted average, that
11 already had been part of your methodology was used for the
12 purposes of identifying which bucket the various network groups
13 would belong; 9.5 percent weighted average was what was
14 computed for Turner, correct?

15 A. Correct.

16 Q. And based on that just like you did with all of the other
17 changes, you put Turner in group three, correct?

18 A. Correct.

19 Q. Now you also -- could you take a look at Exhibit 79 for
20 example at page 6?

21 In addition to the 5 percent that was changed to 9 percent
22 for Turner, there were other networks, I won't say the numbers,
23 but there were other networks that had some significant gaps
24 between the different methodologies, correct?

25 Can you see that?

1 A. I can. No other group had the hybrid method fall outside
2 of the other two.

3 Q. But you do have some big gaps between the others, correct?

4 A. That's correct.

5 Q. And there was no changing of any of the other networks or
6 channels, only Turner, right?

7 A. That's correct.

8 Q. The other thing that your company concluded based on all
9 of this was that Charter would save money by canceling Turner?

10 A. That's true.

11 MR. CONRATH: Beyond the scope, Your Honor.

12 MR. PETROCELLI: Just have one follow up question or
13 two.

14 THE COURT: I want to hear argument on this.

15 (Witness leaves the stand.)

16 (Sealed Bench Conference.)

17 THE COURT:

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19 MR. CONRATH:

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MR. PETROCELLI :

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THE COURT :

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MR. PETROCELLI :

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MR. PETROCELLI:

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MR. CONRATH:

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THE COURT:

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4 (Open court.)

5 (Witness resumes the stand.)

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7 THE COURT: You may proceed consistent with the
8 discussion at the bench and limited to the discussion at the
9 bench.

10 BY MR. PETROCELLI:

11 Q. Your analysis concluded that Charter would be better off
12 and would save a lot of money canceling Turner; is that true?

13 A. From my perspective, yes.

14 MR. PETROCELLI: Thank you, Your Honor.

15 THE COURT: Let me ask you a question.

16 THE WITNESS: Yes.

17 THE COURT: I think you said the survey was 10,000
18 people.

19 THE WITNESS: Roughly.

20 THE COURT: Roughly.

21 The survey was done on computer, right?

22 THE WITNESS: Correct.

23 THE COURT: Who was it that you had to identify who
24 these 10,000 people that would be selected to participate?

25 THE WITNESS: Right.

THE COURT: Who did that?

1 THE WITNESS: So redirected a third party company so
2 they have panels of people that are, that are already
3 identified. Then we give them criteria in terms of the number
4 of people by geography and age and income to make sure that
5 it's representative.

6 THE COURT: What's their incentive to participate in
7 this? What are they getting as an incentive to answer these
8 questions?

9 THE WITNESS: They get, I don't know the exact
10 amount. They get some type of financial or point basis item
11 that then they redeem for prizes. So there's some type of
12 reward for them to participate.

13 THE COURT: So you have been involved in picking what
14 the reward was or not?

15 THE WITNESS: No.

16 THE COURT: That's what they do?

17 THE WITNESS: No. We just pay them to deliver an
18 email link to these panelists that goes to the survey that
19 we've designed and created.

20 THE COURT: How do you know that they give an answer,
21 that they actually believe what the answer is? How do you know
22 they actually believe it?

23 Obviously, they're trying to get through it to get their
24 reward. How do you know that any answer they give along the
25 way is an answer they really believe?

1 THE WITNESS: That's a good question.

2 THE COURT: That's why I asked it.

3 THE WITNESS: We have a number of quality control
4 checks. So we check for a couple of things, broadly speed. So
5 if you finish it in ten seconds, you probably didn't answer
6 everything.

7 THE COURT: That's for sure.

8 THE WITNESS: It's more lengthy than ten seconds.

9 We also check for consistency of answers. So earlier in
10 the survey you mentioned that you were an AT&T subscriber, then
11 later on, so anyway, consistency of answers.

12 And then the third one is that we also are trying to
13 make sure that we're getting just the representative sample
14 sides so to that point, you have large numbers we can accept
15 that even if you get one or two people who may be answering
16 truthfully but aren't representative of say a certain age
17 demographic or income statement. Then as long as you get
18 enough of them then we think we're getting a right answer.

19 But I do think what you're fundamentally highlighting is
20 why we do multiple methodologies. So we thought it was very
21 important to have both the survey but also the set top box data
22 to compare and contrast.

23 Not that we have, we don't know the same individual, but
24 we know how a population responded to the survey, and we know
25 how a population responded to or behaved with respect to set

1 top box data.

2 THE COURT: But that data is anonymous.

3 THE WITNESS: Both data is anonymous.

4 THE COURT: You can step down.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 THE COURT: We're going to take a ten minute recess
8 before we call the next witness. You have your next witness
9 ready to go?

10 MR. CONRATH: Yes, Your Honor.

11 THE COURT: All right.

12 So we'll take a ten minute recess. When we return we'll
13 be going until 5:30.

14 (Recess at 4:53 p.m.)

15 (Proceedings resumed at 5:11 p.m.)

16 THE DEPUTY CLERK: Your Honor, recalling Civil Action
17 Number 17-2511, the United States of America versus AT&T, Inc.,
18 et al.

19 THE COURT: Call your next witness.

20 MS. SCANLON: Good afternoon, Your Honor, Lisa
21 Scanlon for the United States. The United States calls Tom
22 Montemagno.

23 THE COURT: All right.

24 THE DEPUTY CLERK: Would you please raise your right
25 hand?

1 TOM MONTEMAGNO, GOVERNMENT WITNESS, SWORN

2 MS. SCANLON: May I proceed, Your Honor?

3 THE COURT: You may.

4 DIRECT EXAMINATION

5 BY MS. SCANLON:

6 Q. Good afternoon, Mr. Montemagno.

7 A. Good afternoon.

8 Q. Where do you work, sir?

9 A. Charter Communications.

10 Q. What does Charter do?

11 A. Charter, our primary products are Internet, phone and
12 cable television service.

13 Q. Where does Charter offer those services?

14 A. We offer our services across 41 states in the United
15 States.

16 Q. What is your job at Charter?

17 A. I am executive vice-president of programming acquisition,
18 I negotiate all of our relationships with content providers.

19 Q. How long have you been with the company?

20 A. About a year and a half.

21 Q. Where were you before you came to Charter?

22 A. Cablevision Systems Corporation.

23 Q. What was your job when you were at Cablevision?

24 A. Similarly, I was executive vice-president of programming.

25 Q. You negotiated carriage agreements there as well?

1 A. I did.

2 Q. And how long were you at Cablevision?

3 A. Twenty-seven years.

4 Q. So in total, how long have you been working in the cable
5 TV business?

6 A. About 28 years negotiating agreements for probably 25
7 years of that.

8 Q. Sir, three topics I want to cover with you today,
9 Mr. Montemagno. First, I want to talk to you about getting
10 ready for those contract negotiations and the folks at Charter
11 who help you do that. So, do you prepare for your contract
12 negotiations?

13 A. We do.

14 Q. And are there people at Charter who help you get ready for
15 that?

16 A. Yes, I've got a staff of negotiators and an analytical
17 team.

18 Q. First I should ask you, who do you report to?

19 A. Charter senior executive vice-president David Ellen.

20 Q. And you mentioned you have a staff of negotiators, how
21 many people work on that team?

22 A. It's about fourteen on my team.

23 Q. And I think you also mentioned an analytics group; is that
24 right?

25 A. Correct, they support my team.

1 Q. And how big is that analytics group?

2 A. There's about four or five on the analytic side, and then
3 there's another four or five on the research side.

4 Q. Who runs the analytics team?

5 A. Ms. Julie Unrue.

6 Q. And do you work with Ms. Unrue?

7 A. Very closely.

8 Q. What is her job, what is Ms. Unrue's job?

9 A. She supports us on all of our financials, the programming
10 financials, all of our analytics, deal support, doing financial
11 analysis against our negotiations. She runs our contract
12 administration and does a lot of our sort of viewership and
13 research analytics.

14 Q. And does she have people who work for her?

15 A. She does.

16 Q. Do you know of a woman named Julya Friedman?

17 A. I do.

18 Q. She does she work for Julie Unrue?

19 A. She works for Julie Unrue.

20 Q. Now, you've mentioned analytics a few times. Does Charter
21 conduct any analytics in-house when you're getting ready for a
22 contract negotiation?

23 A. We do, we like to be well prepared before we enter into
24 discussions with our counterpart.

25 Q. And how do those analytics help you get ready for your

1 negotiations?

2 A. It helps us understand our leverage, the programmers'
3 leverage, what the state of the business is for them, for us,
4 what our vulnerabilities are, what their vulnerabilities are,
5 and just the overall leverage position.

6 Q. Has Charter ever used any analytics to decide to drop a
7 programming group or a programmer?

8 A. We have, it's been a component of many considerations.

9 Q. And what kind of analytics would you have looked at in
10 that situation?

11 A. Primarily viewership. How many customers watch
12 programming network on a regular basis, and, you know, try to
13 determine if it's meaningful, and we compare that to how much
14 money we're paying for the network and do a little assessment
15 of, you know, do we think we're getting the right value for a
16 carriage.

17 Q. You mentioned viewership, is that set-top box data that
18 you look at?

19 A. Primarily, yes.

20 Q. And could you give the Court an example of a programming
21 group you dropped based on some analytics that you ran inside
22 Charter?

23 A. In the short time I'm here, I know we did that for the
24 Sportsman channel is the one that we decided not to carry any
25 longer based on the lack of viewership.

1 Q. And who did the write-up of the analytics that you looked
2 at to decide to drop Sportsman channel?

3 A. Julie Unrue's team and with close support from one of my
4 main reports.

5 Q. And were you involved personally in the decision to drop
6 the Sportsman channel?

7 A. Yes, I was.

8 MS. SCANLON: Your Honor, I'm handing up what's been
9 marked as PX 373 for identification.

10 May I approach the witness, please?

11 THE COURT: You may.

12 BY MS. SCANLON:

13 Q. So Mr. Montemagno, I want to ask you some questions about
14 this without referring to some of the information that's
15 confidential to Charter so we'll be careful here.

16 Could you tell the Court, without naming the company that
17 this pertains to, what this document is?

18 A. This is a preparation document as we ready to enter into
19 negotiation with a big programming portfolio. I was going to
20 have an early conversation with our CEO to establish our
21 thoughts on approaching the negotiation and being prepared to
22 enter into it.

23 Q. So this was done prior to that negotiation?

24 A. Correct.

25 Q. And who put together this analysis?

1 A. It was a combination of Julie Unrue's team, my team and
2 myself.

3 Q. Did you review it before it was presented?

4 A. Yes.

5 Q. Okay. And was it eventually presented within Charter?

6 A. It was.

7 Q. To who was it presented?

8 A. I believe the CEO, and then I mentioned David Ellen who I
9 report to, Julie who was there, I was there, and there may have
10 been one or two from my team.

11 Q. And was this the document you looked at in the meeting as
12 opposed to an informal written memo, was it this spreadsheet --
13 I'm sorry, this PowerPoint deck?

14 A. Yes, this helped guide our conversation.

15 MS. SCANLON: Your Honor, I move for the admission of
16 PX 373 under seal.

17 MR. WALTERS: No objection, Your Honor.

18 BY MS. SCANLON:

19 Q. So again, Mr. Montemagno, without revealing any --

20 THE COURT: I haven't ruled.

21 MS. SCANLON: I apologize, Your Honor.

22 THE COURT: It helps to wait.

23 MS. SCANLON: I'm sorry.

24 THE COURT: Please approach.

25 Step down and sit in that chair, please?

1 (Witness withdrew from the witness stand.)

2 (Sealed Bench Conference.)

3 MS. SCANLON:

4 THE COURT:

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6 MS. SCANLON:

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10 THE COURT:

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12 MS. SCANLON:

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17 MR. PETROCELLI:

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THE COURT:

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MR. WALTERS:

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MS. SCANLON:

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THE COURT:

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MS. SCANLON:

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MR. WALTERS:

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(Open court.)

17

THE COURT: It will be admitted under seal.

18

(Plaintiff's Exhibit No. PX 373 was received under seal.)

19

MS. SCANLON: May I proceed, Your Honor?

20

THE COURT: You may.

21

BY MS. SCANLON:

22

Q. So Mr. Montemagno, would you turn to PX 0373, page 5,

23

please?

24

A. (Witness complies.)

25

Q. And without revealing what company this study was the

1 subject of, could you explain what the information on page 5
2 shows?

3 A. Sure. This is a prediction of the number of customers we
4 might lose if we didn't renew this agreement and no longer
5 carried this programming portfolio. And there's a couple of
6 different methods that estimates were made on the subscriber
7 loss potential.

8 Q. And was this information helpful to you as you entered
9 that negotiation with the company we're not naming?

10 A. It was one data point. It was a helpful data point.

11 Q. Okay. If you look over on the right side there's a column
12 that says third party analysis, do you see that?

13 A. I do.

14 Q. What does that refer to, Mr. Montemagno?

15 A. I believe we had hired a consultant to help us perform
16 some of these analytics so that was one of the methods that was
17 used to make this prediction.

18 Q. And would you turn now to page PX 373-22?

19 A. (Witness complies.)

20 Q. Is this the third party analysis that we just talked
21 about?

22 A. Yes.

23 Q. And that was done by Altman Vilandrie?

24 A. It was.

25 Q. And did you look at this analysis when you reviewed this

1 deck with your co-workers and the CEO of the company?

2 A. We did.

3 Q. And was this information helpful to you when you were
4 thinking about your negotiations with the programmer at issue
5 here?

6 A. Yes, it was helpful.

7 Q. Mr. Montemagno, were you involved in the commissioning of
8 the Altman Vilandrie study?

9 A. I was not.

10 Q. Who was involved in that?

11 A. It was commissioned before I started with the company, I
12 started in September of '16, 2016, and Julie Unrue was the
13 principal, and I believe she consulted with David Ellen on
14 that.

15 Q. Were you presented with the final product at some point?

16 A. I was.

17 Q. And did you review that?

18 A. Very briefly. Julie gave -- walked me through and talked
19 me through the high points.

20 Q. And Charters incorporated that information in internal
21 studies from time to time; is that right?

22 A. Correct.

23 Q. Like the deck PX 373 we just looked at?

24 A. Correct.

25 Q. I want to move on to my next topic. You understand we're

1 here today about the proposed merger between AT&T and Time
2 Warner?

3 A. I do.

4 Q. Does AT&T compete with Charter?

5 A. Yes.

6 Q. Have you considered how the merger could affect your
7 ability to negotiate against Turner in the future?

8 A. I have.

9 Q. And what have you thought about that?

10 A. I've had a few concerns about the impact on Charter.

11 Q. What concerns have you had?

12 A. My concern's mainly around what's going to happen with
13 excessive price, pricing increases. Will we lose access to
14 critically important content that AT&T may take exclusive away
15 from our customers and make it harder for me to compete. I'm
16 concerned about them bundling in other arrangements that are
17 not related to the Turner products, for example, that will make
18 it harder for me to negotiate an agreement.

19 Q. You mentioned a few things there. One was a concern about
20 exclusive content. Could you explain to the Court what your
21 concern is?

22 A. Yes, the Turner portfolio has pretty important programming
23 rights, particularly in the professional sports arena and the
24 college sports arena, and our customers are used to receiving
25 that content from us. And if that was no longer made

1 available, for example, on TNT and only made available if
2 you're an AT&T mobile customer or things like that nature, I
3 was concerned that we may be in that position where we won't
4 have as rich a product as our competition.

5 Q. You mentioned also, I think the term is used "excessive
6 price increases"; is that right?

7 A. Yes.

8 Q. Why do you have that concern?

9 A. The Turner portfolio in particular and HBO, they're very,
10 very expensive products. And I've in my career negotiated a
11 number of agreements with them, and over the past few years
12 there were some rights renewals, Turner renewed their MBA
13 license agreement, I think. They paid triple what they were
14 paying, and we saw a massive increase about three years ago.

15 Q. So if that's the case today, what would change after the
16 merger?

17 A. Well, you know, my concern there is, you know, right today
18 Charter is probably, I'm guessing, fifteen percent of the
19 revenue for the Turner portfolio, and there's natural
20 motivation for us to both want to try and find an agreement and
21 find a middle ground. And post-merger, I might -- I don't
22 know, maybe I'm less than one percent of AT&T's overall
23 revenues and maybe they want to take this product and compete
24 with their new platforms and not review my agreement or, you
25 know, dramatically raise the rates.

1 It could be a win/win situation. Either I pay excessive
2 increases or I lose the product and they have a more
3 competitive distribution profile.

4 Q. The third thing you mentioned was the potential for
5 bundled products. What do you mean by that?

6 A. So in a post-merger environment AT&T owns Root Sports,
7 it's AT&T sports networks, they're regional sports channels I
8 don't carry today in part of Texas. In my career I've always
9 negotiated my Turner agreement separate from my HBO agreement.
10 And if they mash all that together, the leverage changes, and
11 they could say to me, you have to carry, you know, this sports
12 service now which is going to cost tens of millions of dollars
13 more than you were paying before. So it's a concern.

14 Q. Last topic, Mr. Montemagno, did you receive an arbitration
15 offer from Time Warner?

16 A. I did.

17 Q. And did you review that?

18 A. I did.

19 Q. Without telling us anything that you talked about with
20 your lawyers, did you have any reaction to that offer?

21 A. I thought it was a helpful start. But that it was -- it
22 was deficient in a number of areas from a business perspective.
23 I think separately there were some legal concerns, which I
24 won't speak to.

25 But my concerns, it didn't cover HBO. It didn't cover ROOT

1 SPORTS. It talked about rates, you know, in a gross fashion,
2 and in these agreements there's lots of different value
3 exchanges, and it didn't guarantee me that we would have an
4 outcome that was as favorable a rate as everyone else.

5 And then, you know, I personally just -- these agreements
6 are so intricate and they're often on noneconomic terms,
7 they're often tailored to specific and uniqueness about the
8 particular distributor. So our infrastructure, our platform,
9 our packaging and a baseball style arbitration puts me, I
10 think, at a great disadvantage because I have to blindly submit
11 terms when I have no transparency or visibility with what their
12 other arrangements are and they have all that knowledge.

13 So if I'm off on one little term, I could lose the whole
14 arbitration. And I could be forced into an agreement where I
15 might not even be able to comply with certain terms, just the
16 way we -- our operation is set up. So it's something I, you
17 know, I'd be very reluctant to casually enter into as a, you
18 know --

19 Q. I take it you haven't signed it to date?

20 A. I have not.

21 Q. Okay. Is Turner -- I'm sorry. Is Charter currently in
22 negotiations with Turner?

23 A. We're -- yes, we are operating under a short-term
24 extension.

25 Q. How long is that extension or series of extensions been

1 going on?

2 A. We've been extending since the initial expiration in, I
3 believe it was October, November of 2016.

4 Q. And is Charter trying to prolong that extension period
5 until after this merger?

6 A. We have mutually extended it through June of this year.

7 Q. And so that was a decision by Turner as well as Charter?

8 A. Yes.

9 MS. SCANLON: Nothing further, Your Honor.

10 THE COURT: Cross-exam.

11 CROSS-EXAMINATION

12 BY MR. WALTERS:

13 Q. Good afternoon, Mr. Montemagno.

14 A. Good afternoon.

15 Q. You joined Charter in September of 2016; is that right?

16 A. Correct.

17 Q. And you have been in the content negotiation business your
18 entire career, almost thirty years; is that right?

19 A. Correct.

20 Q. And you did it as a career at Cablevision before you
21 joined in September of 2016; is that right?

22 A. Correct.

23 Q. Okay. And within a month or so of you joining Charter,
24 AT&T and Time Warner announced this merger; is that right?

25 A. Correct.

1 Q. And then within a month or so of that, Charter hired --
2 retained Altman Vilandrie to do that study; isn't that right?

3 A. I was unaware when that occurred.

4 Q. Okay. So even though you're the head of content
5 negotiation, you had no involvement in commissioning or
6 generating that study; is that right?

7 A. Correct.

8 Q. In fact, you never even heard of Altman Vilandrie before
9 the last several months; isn't that right?

10 A. That's right.

11 Q. And you don't recall anyone at Charter explaining to you
12 how the study came about, why it was commissioned, and what its
13 overall objectives were, right?

14 A. No, I knew that we had ambitions of bringing more of an
15 analytical approach to programming decision-making. I worked
16 with David Ellen, who I report to at Cablevision. So we had
17 history there, and I knew when he was taking this business role
18 that he liked some of the analytical work that we did at
19 Cablevision, and he wanted to amplify that in his role at
20 Charter.

21 So I was familiar that that was an objective, and we were
22 going to make investments to have that capability for Charter.
23 But I wasn't familiar with this particular study.

24 Q. Well, are you familiar, you do recall that you provided a
25 deposition, didn't you?

1 A. Yes.

2 Q. Let me give you a copy of that deposition.

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

4 THE COURT: You may.

5 THE WITNESS: Thank you.

6 THE COURT: You can mark it for identification.

7 BY MR. WALTERS:

8 Q. Now, you recall at your deposition we talked about this
9 very subject, don't you?

10 A. Yes.

11 Q. Why don't you look at page 204, line 6 through 9.

12 THE COURT: What are we marking it as, what are we
13 marking it for identification?

14 MR. WALTERS: 929, Your Honor.

15 THE COURT: Go ahead.

16 (Defendant's Exhibit No. 929 was marked for
17 identification.)

18 BY MR. WALTERS:

19 Q. And if you'll at line 6, do you see that, Mr. Montemagno?

20 A. Yes.

21 Q. You explain there, don't you, that, "I don't recall it
22 ever being explained to me how this came about, how it was
23 commissioned, why, what the overall objectives are for," do you
24 see that?

25 A. Yes.

1 Q. And we were talking about the Altman Vilandrie study; were
2 we not?

3 A. Yes.

4 Q. All right. And you recall that we talked at the
5 deposition also about the study itself. Do you remember that?

6 A. Yes.

7 Q. And do you remember that right there in the study on page
8 2, it says that the study's primary purpose, that it was done
9 primarily for content negotiation, you recall that, don't you?

10 A. I remember it saying that, yeah.

11 Q. And you recall that -- that at least based on that slide
12 that you saw, you learned that that was the purpose of the
13 study, correct?

14 A. Yes.

15 Q. But no one at Charter had ever conveyed that to you
16 before, that notwithstanding the fact that you were head of
17 content negotiations, nobody had ever explained that the
18 primary purpose of that study was purportedly for content
19 negotiations, no one had ever done that, had they?

20 A. No I don't recall that.

21 Q. In fact, the first time you ever heard that was when you
22 and I met at your deposition, right?

23 A. Yes.

24 Q. And don't you think it's a little strange that the company
25 would spend \$700,000 on a study for content negotiations that

1 you had nothing to do with, you thought that was a little
2 strange, didn't you?

3 A. No, that was in the works before I joined Charter. That
4 was already in the works.

5 Q. But that's not true, is it? The company actually retained
6 Altman Vilandrie in December of 2016 after you had joined the
7 company, right?

8 A. That doesn't mean it wasn't discussed and considered and
9 then researched on who was going to help us.

10 Q. But in any event you had nothing to do with securing that
11 study, and you had no idea it was for content negotiations, its
12 primary purpose, fair?

13 A. I did not. We had a separate analytics team that was
14 responsible.

15 Q. Okay. And, in fact, you never spent much time with the
16 study, did you?

17 A. I did not.

18 Q. And to this day you have only skimmed the study, or at
19 least as of your deposition you had only skimmed the study;
20 isn't that right?

21 A. I've relied on Julie Unrue to point out the important
22 pieces. She relies on it more heavily.

23 Q. So to this day, you have only skimmed that study, right?

24 A. Yes.

25 Q. Okay. And, in fact, you even view the judgments that

1 Altman Vilandrie has in that study as being simply a
2 presentation of mathematical outputs that lack qualitative
3 judgment. You offered that opinion, did you not?

4 A. I did.

5 Q. And you can't, as we sit here now, you can't say whether
6 that study is reasonable or whether the methodologies employed
7 were appropriate, as head of content negotiations you have not
8 reached that conclusion, have you?

9 A. I have not.

10 Q. And you don't know whether that study is accurate or even
11 purports to estimate long-term departure rates, short-term
12 departure rates or what kind of departure rates. You don't
13 know that, do you?

14 A. There's not a lot of these blackouts that have existed
15 that we can draw from, so I don't.

16 Q. And, in fact, but you do know it was based on sort of a
17 survey mechanism of some kind, don't you?

18 A. I'm unfamiliar with the methodologies.

19 Q. All right. But you at least, you have some scepticism,
20 don't you, as the head of content negotiations for Charter, you
21 have some scepticism about estimating the number of customers
22 who would cancel their service if a programmer's channels were
23 not available, you have skepticism about surveys suggesting
24 those kinds of answers, don't you?

25 A. I'm -- it's tough to pinpoint what the exact outcome is

1 going to be. In the industry there's not many of these that
2 have been measured over a prolonged time. So, but we have a
3 couple different ways to determine how important it is a
4 programming service or a portfolio decisional for a consumer.
5 And we've looked -- we've tried to look at engagement of
6 viewership to help us better understand and better predict
7 that. But I don't know precisely if it's accurate.

8 Q. It is tough to estimate. In fact, it's an inherently
9 speculative undertaking; is it not?

10 A. It's tough to estimate.

11 Q. And, in fact, the best evidence of what actually happens
12 when there isn't programming is the real world evidence, right,
13 what actually happens when there's a drop. That's the best
14 evidence, correct?

15 A. Sure.

16 Q. And I want to get into this in a second. But you don't
17 know whether that Altman Vilandrie study accounted for these
18 so-called countermeasures, you don't know that, do you?

19 A. No.

20 Q. Okay. And so that's kind of industry jargon. And I want
21 to make sure we're communicating on that. Countermeasures just
22 means what you do to try to keep your customers, right?

23 A. Correct.

24 Q. Because nobody, Charter certainly, you don't sit on your
25 hands and just let the customers go away if you don't have a

1 particular content, you fight to keep them, don't you?

2 A. We do.

3 Q. Yeah, and you have a "save" desk, and you can offer
4 promotionals, and you have all kinds of tools in your toolbox
5 to try to keep your customers, that's an important thing to do,
6 right?

7 A. We have a retention desk, but it's hard to, when somebody
8 is missing content that I can't replace, that's -- it's less
9 effective.

10 Q. All right. And so if the Altman Vilandrie study was going
11 to be worth its weight, right, to really understand or at least
12 do a complete analysis of what would actually happen, it would
13 have to take into account the so-called countermeasures,
14 wouldn't it?

15 A. Not necessarily, it could be helpful, but I don't think
16 it's imperative.

17 Q. Well, it would be awfully helpful, wouldn't it, and you
18 have, in fact, done that with other studies, haven't you?

19 A. Some internal analysis.

20 Q. Well, why don't we just look at the one that Ms. Scanlon
21 put in front of you, the Viacom one, do you have that in front
22 of you?

23 A. Yes.

24 Q. Let's look at that one.

25 MS. SCANLON: Your Honor, objection, may we approach?

1 THE COURT: Sure.

2 (Sealed Bench Conference.)

3 MS. SCANLON:

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7 THE COURT:

8 MS. SCANLON:

9 THE COURT:

10 MS. SCANLON:

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12 THE COURT:

13 MS. SCANLON:

14 MR. WALTERS:

15 MS. SCANLON:

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11 MS. SCANLON:

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17 THE COURT:

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20 MR. WALTERS:

21 (Open court.)

22 (Witness resumed the witness stand.)

23 THE COURT: You may proceed consistent with the

24 discussion at the bench.

25 BY MR. WALTERS:

1 Q. Now, that assessment that the government introduced, that
2 is actually an assessment, an internal preparation slide deck
3 in advance of a negotiation; is that fair, is that what that
4 is?

5 A. Correct.

6 Q. And I won't ask you about the date on it, all right? Now,
7 but I will ask you if you will go to page 4.

8 A. (Witness complies.)

9 Q. And that was the page Ms. Scanlon asked you about,
10 correct?

11 A. No, I don't think we talked about this page.

12 Q. Well, don't you see the third party analysis over there on
13 the far right?

14 A. Am I on the wrong page?

15 Q. Well, page 005, the deck says page 4, but page 005, do you
16 see that?

17 A. Yes.

18 Q. Okay. Now, that's the page that Ms. Scanlon asked you
19 about, correct?

20 A. Correct.

21 Q. And if you look at that page on the internal assessment,
22 do you see where it says "pre-mitigation"?

23 A. Yes.

24 Q. Do you see that number?

25 A. Yes.

1 Q. And by the way, for this company -- well, strike that.

2 That is an assessment that you at Charter had made
3 independently, correct?

4 A. Correct.

5 Q. Okay. Now, what I'm most interested in is the line that
6 says mitigation percentage, do you see that?

7 A. Yes.

8 Q. And the mitigation percentage, do you see there that it
9 says fifty percent?

10 A. Correct.

11 Q. Okay. And so mitigation, that's the same thing as
12 countermeasures, right, that is the kinds of things you do to
13 keep your customers?

14 A. Yes.

15 Q. And so the conclusion that Charter is reaching in this
16 deck is that whatever the so-called, the pre mitigation, or the
17 internal assessment, the drop rate at the top, and I won't ask
18 you to identify the percentage number, right?

19 A. Right.

20 Q. What Charter is saying that if we're any good at what we
21 do, our save desk, right, our mitigation measures, our
22 countermeasures, our promotions, that what we should be able to
23 do is cut in half the number of customers who will truly
24 depart, that's what that conclusion reaches, right?

25 A. For this particular portfolio programming networks where

1 there's no sports involved.

2 Q. Okay. For this particular -- okay, well, look, for this
3 particular network, and we don't need to identify it, but it's
4 a top five network, isn't it?

5 A. I don't know the answer to that.

6 Q. Well, and it's oftentimes compared to Turner, isn't it,
7 same grouping?

8 A. It's a portfolio of many networks, so I don't know if
9 you're focusing on one individual, I can't --

10 Q. I'm focusing on the group of networks compared to the
11 group of Turner networks, they are oftentimes compared to one
12 another; are they not?

13 A. I don't know that, I can't --

14 Q. But in all event, for this major network system, right,
15 Charter itself reached a conclusion that whatever this
16 so-called drop rate is, we can slash that in half with our
17 countermeasures, right?

18 A. That was -- that's what this analysis shows.

19 Q. And so any analysis that anybody does, if you're really
20 interested in trying to understand what might really happen,
21 you would have to take into account countermeasures, wouldn't
22 you?

23 A. Yeah, I think this number would differ based on the type
24 of programming dramatically.

25 Q. But for this one, this particular network, you guys

1 reached a conclusion that we would cut it in half, right?

2 A. Somebody did, yes.

3 Q. Well, yes, somebody did, and this was -- this information
4 you discussed with your CEO, didn't you?

5 A. No, we didn't debate -- I mean, we showed them, that's not
6 something we debated. We took it on face value just to get a
7 sense of the analysis.

8 Q. That information was presented to your CEO?

9 A. Yes.

10 Q. Okay. Now, back to this Altman Vilandrie study, were you
11 aware that there were different iterations of the Altman
12 Vilandrie study, one on April 26th, one on April 27, were you
13 aware of that?

14 A. No.

15 Q. Okay. Were you aware of the fact that in the first Altman
16 Vilandrie study that the so-called Turner hybrid number was
17 five percent and that a day later it was changed to nine
18 percent, were you aware of that at all?

19 A. No.

20 Q. Okay. Were you aware of the fact, by the way, you have
21 met with DOJ on many occasions have you not?

22 A. I have met with them.

23 Q. Well, you had three telephone conversations, you,
24 yourself?

25 A. That sounds about right.

1 Q. In 2017?

2 A. That sounds about right.

3 Q. And in January of 2018, you had a separate meeting with
4 DOJ; did you not?

5 A. Correct.

6 Q. Okay. And have you had any meetings since January of 2018
7 and today?

8 A. One.

9 Q. And when was that?

10 A. Yesterday.

11 Q. And now you also know that your boss, Mr. Ellen, has been
12 meeting separately with DOJ, right?

13 A. I don't know, you say meeting like it's a continuing
14 thing, I don't know that.

15 Q. Well, did you know that on April 26th, when this report
16 came out, that Mr. Ellen was meeting with DOJ with others from
17 Charter laying out the case in opposition to this merger, did
18 you know?

19 A. I'm aware of one meeting that took place.

20 Q. Now, Mr. Ellen, he is a lawyer by training, correct?

21 A. Correct.

22 Q. General counsel at Cablevision, right?

23 A. Correct.

24 Q. Okay. He was, you know formally an FCC lawyer, right?

25 A. Correct.

1 Q. Okay. And he has come over to Cablevision -- I mean,
2 excuse me, to Charter as the number two person, right?

3 A. He's one of the top four executives in the company, I
4 would say.

5 Q. And he actually, he, as well as -- he's got a lot of skin
6 in the game at Charter, doesn't he?

7 A. I don't know what you mean by that.

8 Q. Well, what I mean by that is last year his income was
9 reported and it was largely equity of 22 million dollars,
10 right?

11 A. Okay.

12 Q. And Mr. Rutledge, his income last year was reported
13 something like 78 million dollars, right, but largely in
14 equity, right?

15 A. I can't confirm the number, but I know that his
16 compensation is largely in equity.

17 Q. And those numbers are largely dependent on Charter being
18 financially successful, correct, those equity allocations, you
19 know that, don't you?

20 A. Correct.

21 Q. Okay. And so both of them have very healthy incentives
22 for Charter to prosper, right?

23 A. Correct.

24 Q. Now, you -- Mr. Ellen and his meeting or meetings, and do
25 you know how many times he has interacted with DOJ either in

1 person or by telephone, do you know?

2 A. I'm only familiar with one.

3 Q. All right. And Mr. Ellen never has included you in any of
4 those interactions with DOJ, has he?

5 A. No.

6 Q. And Mr. Ellen never included you in any of the process or
7 the transmission of the Altman Vilandrie study or any other
8 information to DOJ, has he?

9 A. No.

10 Q. And I take it that Mr. Ellen has never offered any
11 explanation of how that five percent was hardcoded to nine and
12 a half percent in the next iteration of the Altman Vilandrie
13 study, is that true?

14 A. I never had a conversation with him about that.

15 Q. All right.

16 Mr. Montemagno, let's visit for a few minutes about
17 something the DOJ has put forward as a pricing study, okay?

18 A. I'm sorry?

19 Q. A pricing study. Now, you're basically aware that DOJ has
20 suggested that as a consequence of this merger there could be a
21 price increase, you're aware of that notion?

22 A. Correct.

23 Q. Okay. Now, one of the considerations, one of the factors
24 in that pricing model concerns the so-called departure rate,
25 you're aware of that, aren't you?

1 A. Departure rate?

2 Q. Yes.

3 A. Meaning like customer dissatisfaction?

4 Q. Yes, exactly. You're aware of that, aren't you?

5 A. I'm not familiar with their analysis or study. But that
6 is one of the things I raised as a concern.

7 Q. All right. And all that means is, that's just fancy
8 language if you didn't have Turner content, what would happen,
9 right, how many customers would depart, you understand that?

10 A. Yes.

11 Q. All right. Now, I want to be clear about this. You are
12 not here today offering to this Court any real world evidence,
13 any empirical data, any facts about what would happen if
14 Charter didn't have Turner content; is that right?

15 A. No, just my experience and some of the analysis that we've
16 done.

17 Q. Because you have never had a Turner blackout, correct?

18 A. I have not, I've had many others.

19 Q. Okay. But you've had no -- you have no hard core
20 empirical data about what would happen in the absence of Turner
21 networks at Charter, correct?

22 A. I don't.

23 Q. All right. Well, let's go look for a couple of clues, if
24 you don't mind, within sort of the Charter information.

25 Now, and I don't want to mention the date. But it wasn't

1 that long ago that you were preparing for negotiations with
2 Turner, the negotiations that Ms. Scanlon asked you about, that
3 you guys have been bumping along for some period of time,
4 right?

5 A. Correct.

6 Q. Okay. And at that time that you were evaluating the
7 Turner networks, they had actually dropped in their viewership
8 from something like nine percent and seven percent of
9 viewership, you know that, don't you?

10 A. I was aware there was a drop, not the magnitude.

11 Q. Okay. And as part of that process of getting ready for
12 those negotiations, the company comes up with talking points or
13 position points, right?

14 A. Public relation points, yes.

15 Q. Yes. Okay. And that's typical of Charter to do as it's
16 approaching a negotiation like it was with Turner, correct?

17 A. When there's a high likelihood of potential blackout, us
18 not coming to terms and Turner had been suggesting that might
19 happen, so yes, we were beginning to prepare.

20 Q. Okay. In one of those talking points you'll recall that
21 we spoke about in your deposition was that Charter's position,
22 its talking points, was that it didn't think it was worth the
23 increase in the -- for Turner programs when, quote, similar
24 programs can be found on more affordable networks or through
25 OTT services such as Hulu. That was one of your talking

1 points, right?

2 A. I remember seeing that in a draft that said potential
3 talking points. I didn't write them, the public relations team
4 did.

5 Q. Yeah, you didn't, but you agree with that, don't you?

6 A. To some extent.

7 Q. Well, you agree, and you told me in your deposition
8 that -- that indeed there are similar programs to Turner's that
9 can be found on more affordable networks or through OTT or
10 Internet services, you recall that, don't you?

11 A. Some of the less important programming on the Turner
12 networks.

13 Q. Well, but you went on and said more than that, didn't you?
14 You said that that included all kinds of Turner programming,
15 that description, syndicated programs, cartoon programming,
16 children's programming that can be found on more affordable
17 networks, you offered that observation conclusion, didn't you?

18 A. Yes, syndicated programming like reruns, Seinfeld,
19 Friends, things of that nature that is available.

20 Q. Well, that was one of them, but you also included cartoon
21 programming, you included children's programming as well,
22 didn't you?

23 A. I did. The Internet and YouTube and children are finding
24 entertainment on more than traditional television these days,
25 that's the dramatic shift in our industry.

1 Q. And, in fact, you went on to tell me, didn't you, that the
2 only Turner program, the only Turner program that does not fit
3 that statement is Turner's limited sports and some, but not all
4 live news, correct?

5 A. Sports and news, I did mention, yes.

6 Q. So otherwise, besides sports, okay, and besides some live
7 news, all other Turner programming is fungible, isn't it? It
8 can be found elsewhere on more affordable networks, that's what
9 you told me, right?

10 A. Yes, I don't know that it's just live news, I think I said
11 there's personalities like Anderson Cooper and Chris Cuomo, and
12 there's political slants in the different news networks, that
13 for somebody is very important.

14 Q. All right.

15 A. So it was just more than just live.

16 Q. So besides sports and news, everything is just fungible,
17 interchangeable, right?

18 A. That's what I said in the deposition, yes.

19 Q. And it is, and that was true then, wasn't it?

20 A. Yes.

21 Q. And it's true now, right?

22 A. I haven't thought about, again, I think I said to you as
23 well, they program a dozen networks 24/7, I didn't have the
24 grid in front of me to go through all of the programming and
25 tell you, like what is important and what is not. I didn't do

1 that off the top of my head. I answered your question, that's
2 what came to mind. That's what I think is more decisional for
3 consumers --

4 Q. Sure, you were trying to --

5 THE COURT: Let me see counsel.

6 (Sealed Bench Conference.)

7 THE COURT:

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10 MR. WALTERS:

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12 THE COURT:

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15 MR. WALTERS:

16 (Open court.)

17 THE COURT: We're going to take the evening recess.

18 THE WITNESS: Sure.

19 THE COURT: You are a witness under oath in the case,

20 so what that means is you're not at liberty to discuss your

21 testimony so far or what it might be when you return tomorrow

22 morning with anyone, including your own attorney.

23 THE WITNESS: I understand.

24 THE COURT: Don't talk to anyone.

25 THE WITNESS: I understand, sir.

1 THE COURT: Your family members, your friends,
2 nobody. You have to be able to answer the question under oath
3 honestly that you haven't spoken with anyone since you've been
4 excused.

5 THE WITNESS: I understand.

6 THE COURT: Okay?

7 THE WITNESS: Okay.

8 THE COURT: You can step down, I'll see you 10:30
9 tomorrow morning.

10 THE WITNESS: Okay, thank you.

11 THE COURT: You're excused.

12 (Witness excused.)

13 THE COURT: All right, counsel, let's go over next --
14 tomorrow's batting order. This will be probably another half
15 hour, 45 minutes, something like that.

16 MR. CONRATH: Then we're going to go, Your Honor, to
17 Mr. Torres.

18 THE COURT: That's still -- the estimate, is that
19 still about a half hour each? Is that the rough estimate?

20 MR. CONRATH: That's the rough estimate. We're going
21 to take a look at the rest of them and see if we can make -- do
22 any pruning before -- where we go next after that.

23 THE COURT: But Benefield would be next after that?

24 MR. CONRATH: That would be the most logical next
25 person. Sutton and Patel.

1 THE COURT: All right.

2 MR. PETROCELLI: All tomorrow?

3 THE COURT: So realistically, the most we can do
4 tomorrow is three?

5 MR. CONRATH: Probably right.

6 THE COURT: So that would be Torres, Benefield
7 Sutton, right?

8 MR. CONRATH: As I said, we're going to look, after
9 Mr. Torres, we're going to look and evaluate so streamlining as
10 we've committed to Your Honor all along, so.

11 THE COURT: All right. So -- but at least have those
12 three in the ready position.

13 MR. CONRATH: Sure.

14 THE COURT: So we don't want to get to the
15 midafternoon and not have a witness available. So that's not a
16 good option.

17 MR. PETROCELLI: Well, Your Honor, if Mr. Conrath
18 might prune some of these witnesses, they're all our witnesses.

19 Maybe you can let us know this evening?

20 MR. CONRATH: Absolutely, immediately, yeah, very
21 shortly.

22 MR. PETROCELLI: Tonight.

23 MR. CONRATH: Yes.

24 MR. PETROCELLI: Okay.

25 MR. CONRATH: Of course.

1 MR. PETROCELLI: Because we have to have additional
2 witnesses available to be here, Your Honor, and they're all our
3 witnesses.

4 THE COURT: I see your point.

5 MR. PETROCELLI: Yeah, so if you go down this list,
6 the next, like ten witnesses are all our people, and if he's
7 going to eliminate a few, we need to make sure the others are
8 available. So that's why I think we should be getting prompt
9 notification.

10 THE COURT: Are they out of town, most of the ones
11 who would be next?

12 MR. PETROCELLI: The next few are here, but others,
13 yes, are out of town, exactly.

14 MR. CONRATH: We're not envisioning changing the
15 order if we do anything, Your Honor.

16 THE COURT: All right. Well, I just want to make
17 sure we have --

18 MR. CONRATH: Yes.

19 THE COURT: -- a bullpen with plenty of witnesses in
20 it so that we don't find ourselves losing blocks of time
21 tomorrow afternoon.

22 MR. CONRATH: Understood, Your Honor.

23 THE COURT: And then Thursday too.

24 MR. CONRATH: Yes.

25 THE COURT: Do we have any of these confidentiality

1 issues alleged for these next group of witnesses?

2 MR. CONRATH: There's a potential -- if I could
3 consult with Ms. Scanlon for one moment?

4 THE COURT: Yes.

5 MR. CONRATH: No, Your Honor.

6 THE COURT: All right. Any other issues we need to
7 address tonight?

8 MR. PETROCELLI: No, Your Honor, thank you.

9 MR. CONRATH: No thanks.

10 THE COURT: Stand in recess.

11 (Proceedings adjourned at 6:01 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

Date: April 4, 2018