

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

|                           |   |                   |
|---------------------------|---|-------------------|
| UNITED STATES OF AMERICA, | ) |                   |
|                           | ) |                   |
| Plaintiff,                | ) | CV No. 17-2511    |
|                           | ) |                   |
|                           | ) | Washington, D.C.  |
| vs.                       | ) | April 12, 2018    |
|                           | ) | 2:45 p.m.         |
| AT&T, INC., ET AL.,       | ) |                   |
|                           | ) | Afternoon Session |
| Defendants.               | ) |                   |
| <hr/>                     |   | Day 13            |

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

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WITNESS INDEX

- - -

| WITNESSES | DIRECT | CROSS | REDIRECT | RECROSS |
|-----------|--------|-------|----------|---------|
|-----------|--------|-------|----------|---------|

DEFENDANT'S:

|                      |      |      |      |      |
|----------------------|------|------|------|------|
| DENNIS CARLTON, Ph.D | 2503 | 2520 | 2614 | 2619 |
|----------------------|------|------|------|------|

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

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

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

9 THE COURT: All right. The witness remains under  
10 oath.

11 You may proceed when you're ready.

12 MR. OPPENHEIMER: Thank you, Your Honor.

13 DENNIS CARLTON, Ph.D., WITNESS FOR THE DEFENDANTS, HAVING  
14 BEEN PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED  
15 FURTHER AS FOLLOWS:

16 BY MR. OPPENHEIMER:

17 Q So Professor Carlton, we're going to go through  
18 the last of these variables fairly quickly, given the time.

19 Let's just finish up with the departure discussion  
20 that we were having.

21 Your departure rate, after looking at all of the  
22 material you've looked at that you used in your modeling is  
23 what?

24 A 5 percent.

25 Q And, again, Professor Shapiro's departure rate

1 that you're modeling against is what?

2 A 9 percent or 12 percent or 16 percent, depending  
3 upon which one he's using, which model he's using of his.

4 Q And did you rerun Professor Shapiro's model using  
5 your 5 percent departure rate?

6 A I did.

7 Q What did you find?

8 A If you use a 5 percent departure rate, it turns  
9 his consumer harms into consumer benefits. Prices on  
10 average go down.

11 Q Now, let's do a diversion. We've talked a little  
12 bit about diversion and cord cutting.

13 Would you remind us just very briefly why cord  
14 cutting matters?

15 A Cord cutting matters a lot because in his blackout  
16 scenario, if you, for example, turn a blackout to Comcast,  
17 where are those people go matter lot.

18 Will they go to DTV or will they go to cord  
19 cutting?

20 So the more important cord cutting is -- the more  
21 those people go to cord cutting, the fewer go to DTV.

22 Moreover, the more important, the bigger the size  
23 of the cord cutter is, AT&T is trying to get those as  
24 customers; that's where the double marginalization benefit  
25 really will start mattering a lot.

1           So if you underestimate the size of cord cutting,  
2 you will overestimate diversions to AT&T and underestimate  
3 the incentive of AT&T to be aggressive to acquire the cord  
4 cutters.

5           Q     And what estimate of cord cutting did  
6 Professor Shapiro use?

7           A     Based on Altman Vilandrie, he calculated an  
8 estimate around, I think it was 9.8 percent, something like  
9 that.

10          Q     Were there actual data available to estimate cord  
11 cutting?

12          A     Yes. There's actually data published by Kagan, so  
13 you can calculate what's the size of the households that,  
14 relative to the population, of total TV households that are  
15 cord cutters -- that is, cord cutters over TV households,  
16 you can calculate that.

17          Q     And what do those data show?

18          A     Around 20 percent.

19          Q     And which -- did you use 20 percent in your work?

20          A     I did use 20 percent.

21          Q     Did you see any other evidence regarding the  
22 extent of cord cutting, that helped verify that conclusion?

23          A     There are two other things I will mention. The  
24 first is that 20 percent is based on sort of cord cutters,  
25 people who won't subscribe to anything.

1           If you look at the penetration of Turner,  
2 subscribers in any cable company, it's not 100 percent.  
3 That means there are people within each MVPD that also could  
4 be attracted to Turner. And if you counted that, then cord  
5 cutting would -- equivalent cord cutting number would be 20,  
6 30 percent.

7           But I'm sticking with a 20 percent.

8           The only other piece of information I'll pass on.

9           THE COURT: You say that's a conservative?

10          THE WITNESS: What I'm doing.

11          THE COURT: Yes.

12          THE WITNESS: Because I want to use 20 percent,  
13 not 30 percent.

14          THE COURT: So you'd say that's a conservative  
15 estimate.

16          THE WITNESS: Yes; favorable to the government,  
17 yeah.

18          THE COURT: All right.

19          THE WITNESS: And the other piece of information,  
20 I'm aware that AT&T has asked the people who have left AT&T,  
21 the consumers who have left: Why did you leave? Where did  
22 you go?

23                 And if I recall right, the number is 25 to 30  
24 percent of them are saying, I'm going to cord cutting.

25          Q       All right. Let's talk about margins briefly.



1           A     Yes.

2           Q     You have talked about this a little bit before.  
3     Again, what is the significance of margins in  
4     Professor Shapiro's model?

5           A     Very simple.

6                     The more -- the higher the margin that AT&T earns,  
7     the greater their incentive to divert and black people out.

8                     So in the blackout scenario that's so important  
9     for Professor Shapiro's Nash bargaining, when you have a  
10    blackout, the gain that AT&T gets from the blackout because  
11    of customers coming to it will depend on the margin it can  
12    earn.

13                    So it's pretty straightforward.  If that margin  
14    goes down, then the incentive of AT&T to engage in a  
15    blackout goes down.

16                    And that will work through the Nash bargaining  
17    model to lower the increase they can demand from Turner.  
18    Just mechanically, that's how Professor Shapiro's model  
19    works.

20                    So if margins go down, Professor Shapiro will  
21    predict lower increases in Turner content, even in his own  
22    model.

23           Q     And what did Professor Shapiro use to calculate  
24    margins?

25           A     Professor Shapiro used the second quarter of 2016

1 to calculate margins.

2 Q What did you use?

3 A I used the latest data, which was June of 2017.

4 And two things: One, it's much lower. And that  
5 obviously will affect his results.

6 But, two, it shows that margins are going down.  
7 He has not taken account of the fact that margins, in fact,  
8 have gone down.

9 Q I want to be clear here. Where did  
10 Professor Shapiro get his 2016 margin data?

11 A He got them from, I assume, ultimately from AT&T,  
12 "ordinary business course" documents.

13 I'm using those same documents, just that were  
14 produced at later time period, in exactly the same way as  
15 Professor Shapiro. I'm doing exactly the same thing he's  
16 doing. I'm just using later data, more up-to-date data.

17 Q And what happens when you use the more up-to-date  
18 data? How does that affect the outcome of  
19 Professor Shapiro's model when you run that newer data  
20 through his model.

21 A It eliminates a large fraction of all his harms.

22 Q Now, Professor Shapiro mentioned yesterday in  
23 court that his margin estimates were conservative, because  
24 the -- he said the loss of Turner to DirecTV's rivals might  
25 help DirecTV keep high-margin customers.

1 Do you recall that?

2 THE COURT: What is your reaction to that?

3 THE WITNESS: Well, I've seen no quantification of  
4 this effect. Professor Shapiro provides no quantification.  
5 I've not seen it in any of the underlying documents I've  
6 reviewed.

7 But the one thing I will note, if you remember, at  
8 some point, he characterized the customers who are leading  
9 DTV who would otherwise leave but who stay as unhappy  
10 customers.

11 Well, the point is the customers who are most  
12 likely to leave DTV are those with high churn.

13 The ones with high churn, even if they remained at  
14 DTV, are likely to leave in the future. So, I mean, I  
15 don't -- I understand what he's saying. Different customers  
16 may come and go. That I understand.

17 But to say it's obvious which way it affects  
18 margins, LTV margins, just completely from a theoretical  
19 point of view, not clear to me; and, again, I've seen  
20 absolutely no quantification of this effect.

21 Q Now we're going to take a little bit of a drive  
22 but hopefully not too much of a dive into this model itself  
23 on the subject of what was referred to in court yesterday as  
24 the bargaining split. Can you just briefly explain to us  
25 how that functions in Professor Shapiro's bargaining model.

1           A     Yes.

2                     Well, as Professor Shapiro explained, if two  
3 people reach a deal, they're better off than if they don't  
4 reach a deal. So if they're better off by, say, \$100, he  
5 assumes they split the benefit 50/50. That's just an  
6 assumption he makes.

7           Q     And does that ever change in his model?

8           A     No. It's 50/50 for everybody for the whole time  
9 period.

10          Q     Does that assumption matter?

11          A     It matters a lot, because, obviously, if the split  
12 already is in Turner's favor, then Turner is already getting  
13 a lot -- a very high price, and there won't be much left for  
14 them to be able to raise the price.

15                     So it matters a lot in his bargaining model. It's  
16 an important parameter.

17          Q     Is there any empirical evidence in this case to  
18 support that 50/50 bargaining split that's in his model?

19          A     I'm not seeing any. I've not seen him make any  
20 attempt to use past transactions to figure out how was --  
21 what was, in fact, the bargaining split. He didn't do any  
22 empirical analysis. He just assumed 50/50.

23          Q     Is there any writing out there on this subject and  
24 this industry that would be pertinent to consider?

25          A     You know, there's not much. But there is a very

1 recent article trying to specifically estimate the  
2 bargaining split. And it has to do with RSNs, regional  
3 sports networks, versus distributors.

4 But what it finds is that the bargaining split is,  
5 if I remember right, 72 percent in favor of the content  
6 provider and 28 percent in favor of the distributor.

7 Q And just, hypothetically, if you apply that  
8 bargaining split to Professor Shapiro's model, what happens?

9 A Again, it would be reduce his findings of harm.

10 Q Does it essentially eliminate all the harm?

11 A I'd have to look at the chart that contains all  
12 the various numbers.

13 Q You know what? That is a good cue-up.

14 Your Honor, if you turn to tab 12.

15 And, Professor Carlton, if you would turn to  
16 tab 12, we have marked for identification at that tab  
17 DXD0116. This is a chart with a lot on it, Professor. So  
18 would you do me the favor of explaining to the judge what  
19 you put together in this demonstrative.

20 A Yes. There are a lot of numbers on this chart.  
21 There are over 125. The attorneys wanted me to memorize  
22 this for my direct. And I said, "Let's make a chart.

23 Q Now, Professor, you're under oath. You're under  
24 oath.

25 A Okay. I was only joking. Barely.

1           So what this chart attempts to do is,  
2 Professor Shapiro has several models. And for each model  
3 that he has, I make a variety of changes. And then I make a  
4 variety of combinations of changes. So just to -- let's  
5 just focus on the first column where it says  
6 "Professor Shapiro's 2016 Model." If you see the 27 cents,  
7 which is the first entry, that's his model.

8           And then let's suppose you go down three lines  
9 where it says, Correcting departure rate from 12 to 5, 15 to  
10 5, 20 -- if you look across and you see, in red, minus .01,  
11 that means that when you make the correction of making his  
12 departure rate 5 percent and apply it to his 2016 model, his  
13 harms no longer exist and there's a one-cent benefit.

14           And each one of these rows, it's described on the  
15 left, represents some combination of changed assumptions  
16 under which I run his model.

17           Q     Could you also explain for the Judge what is the  
18 top, very top line that talks about ignoring contracts and  
19 accounting for contracts?

20           A     Yes.

21           So within each model, I have one section where I  
22 don't account for contracts, and I have another column where  
23 I do account for contracts.

24           If you remember, I talked earlier that he pays no  
25 attention to the existence of contracts.

1           So, for example, to use a different model, suppose  
2 I took the 2017 model and I said, what happens if you  
3 account for contracts?

4           If you don't account for contracts, you get the  
5 45 cents, which he got.

6           If you do account for contracts in his 2017 model,  
7 you find there's a benefit of 17 cents; that is, on  
8 average -- by "benefit," I mean prices go down by 17 cents,  
9 on average.

10           THE COURT: So all the red numbers are where it's  
11 going down, and all the black numbers are where it's the  
12 same or going up?

13           THE WITNESS: Exactly.

14           Now, all the black numbers, if you look at the  
15 changes, they're always less than this. That just means  
16 you're reducing the harm. But all the red numbers are where  
17 it's actually a benefit, that prices are going down.

18           Q     And then, lastly, you have a 2016, 2017, and 2021  
19 model. Just briefly tell His Honor what that's about.

20           A     Well, although he talked in detail about it  
21 yesterday, he mainly talked about his 2016 model, he has a  
22 model for 2017 and 2021, where he makes a variety of changed  
23 assumptions. And I adopt whatever assumptions he's changed,  
24 with the exception of what the row indicates.

25           Q     And also, to clarify, Professor, in this sea of

1 red we've got here of all these numbers, these are all --  
2 are they not per-subscriber/per-month amounts?

3 A Correct. It's the amount by which the consumer  
4 prices that they pay per month will fall --

5 Q And Professor Carlton, did you --

6 A -- on average.

7 Q I'm sorry.

8 Did you also create a demonstrative that takes  
9 examples from each category of correction that you've talked  
10 about today to illustrate the application of this chart on  
11 each of your changes?

12 A Yes.

13 MR. OPPENHEIMER: Your Honor, if you would turn to  
14 tab 11, it's marked for identification DXD0115.

15 BY MR. OPPENHEIMER:

16 Q And, Professor, if you'd look at that, is that the  
17 chart that you were describing?

18 A Yes.

19 This is a subset of the bigger chart we were just  
20 looking at.

21 THE COURT: Okay.

22 BY MR. OPPENHEIMER:

23 Q So there's a column on the left that's entitled  
24 "Input." And it lists departure rate, diversion rate,  
25 customer margin, contract status.



1           And then you have below that four corrections  
2 together.

3           Is this chart providing information on the effect  
4 on the prices of each one of those things considered  
5 individually?

6           A     Yes.

7           Q     All right.

8           So would you then briefly describe each one of  
9 those.

10          A     Yes. If you -- this is -- what's reported in the  
11 right-hand column is the 2016 model. So if you just change  
12 the departure rate from Shapiro's 9 percent to Carlton's  
13 5 percent, Shapiro's effect goes from a 27-cent, on average,  
14 price increase to a 1-cent price decrease, consumer price  
15 decrease.

16                 If you just change the diversion rate by  
17 blowing -- by taking kind of cord cutting and instead of  
18 making it 10 percent of the market, you make it 20 percent,  
19 then Professor Shapiro's 27-cent price increase on average  
20 becomes 6-cent benefit, decrease.

21                 If you change just Professor Shapiro's 2016 margin  
22 that he's using, which is 45, 50, into the 25, 38 from the  
23 2017 number, the harm goes from 27 to 5 cents, 27 cents to  
24 5 cents.

25                 Contract status, if you ignore it versus not, it

1 lowers it 20 cents in his 2016 model.

2           If you make all four corrections together, 52-cent  
3 benefit.

4           Q    And then so altogether, that's the 50-cent  
5 benefit, 52 cents?

6           A    Yes.

7           Q    And then the last row?

8           A    The last row is if you just change the bargaining  
9 split from 50/50 to 72/28, you, in his 2016 model, cause the  
10 prices on average to go down to consumers by a penny.

11          Q    Does this tell you anything about the sensitivity  
12 of his model?

13          A    Well, his model depends a lot on the values you  
14 have for these key parameters.

15          Q    And, Professor Carlton, sometimes the government's  
16 complaint and sometimes Professor Shapiro when he speaks,  
17 multiplies these and gets these numbers of hundreds of  
18 millions of dollars.

19                    But these smaller numbers that we're looking at  
20 are the numbers that all of those larger numbers are based  
21 on, correct?

22          A    Yes. This is the elevation and price he's  
23 predicting. He's multiplying it by a large number.

24                    But if you flip these small price increases into  
25 sort of the modest price decreases and if you multiply that

1 by a large number, that's a large gain. If he's calling it  
2 a large loss, then it's a large gain when you flip it.

3 But that's why I think it's easier to think about  
4 things as a price, is the price per consumer going up or  
5 down.

6 Q So if we go back to tab 12 and in DXD116, the  
7 combinations that you have shown the Court there, any number  
8 of these combinations could, in fact, produce results in  
9 this merger that represent hundreds and hundreds of millions  
10 of dollars of average cost or price decreases --

11 A To the consumers.

12 Q -- to the consumers; is that correct?

13 A Absolutely.

14 So if you multiply any of these numbers by a large  
15 number, it becomes big savings.

16 Q All right.

17 A Any of the red numbers.

18 Q Red numbers, right.

19 Just a few quick --

20 A Savings to consumers, yeah.

21 Q Just a few quick final questions.

22 Yesterday, there was some exchange between the  
23 Court and Professor Shapiro with the Court asking  
24 Professor Shapiro how it could be the case in his model that  
25 there could be a situation where the increased cost to an

1 MVPD's consumer could exceed the alleged or projected  
2 increased cost to the MVPD for Turner content, and I wonder  
3 if you could address that for the Court.

4 A Well, I looked at the transcript again.

5 I think what Professor Shapiro said, his answer  
6 was basically right, that that's what comes out of the  
7 merger simulation model.

8 Now, you might say, well, does that raise a  
9 question about the merger simulation model?

10 I mean, the truth of the matter is, the particular  
11 merger simulation model that Professor Shapiro is using,  
12 which he said is a standard model -- and I think it is fair  
13 to say it's a very basic model. 20 years ago, it might have  
14 been the standard model. But today, people use much more  
15 refined -- typically or often use much more refined demand  
16 structures than he's using. And that gives different  
17 pass -- can give different pass-through rates.

18 The trouble with a particular standard model he's  
19 using, which is what's called a flat logit model, is that  
20 everything depends on marketshare. And maybe that's  
21 accurate, may be not in terms of calculating pass-through  
22 rates.

23 I think what's more important to say is that  
24 merger simulation models sometimes can work well, sometimes  
25 not. It's going to depend. You might want to check how

1 well they work.

2 But one of the things I happened to look at in his  
3 model, the way he does his merger simulation model, he uses  
4 it to actually calculate costs of other firms. It's kind  
5 of -- sounds a little bizarre, but that's how his model  
6 works.

7 So one of the intermediate files in his model is  
8 his protected costs of, for example, Charter, okay, in  
9 particular location, or the cost of -- or any other MVPD in  
10 a particular location.

11 And what's interesting is if you look at what's  
12 predicted from his model, sometimes, you get very strange  
13 patterns.

14 What I do I mean by that? What I mean by that is,  
15 let's -- I grew up in Boston. So I said, listen, if I had  
16 to give an example, tell me about Boston.

17 So if I remember right -- I'd have to check the  
18 numbers exactly -- but I think it was Charter. You know,  
19 he's doing things by very detailed, local areas. Same  
20 company has very different costs across these areas.  
21 I think they vary from 10 to 100, okay, per person.

22 That's a huge variation. You might look at that  
23 and say, that sounds a little wacky. Maybe the model is not  
24 so good.

25 So I wasn't going to mention that. But since you

1 asked that question about the merger simulation models,  
2 yeah, he's using a relatively standard model, but it can  
3 have peculiar implications sometimes.

4 MR. OPPENHEIMER: Your Honor, no further questions  
5 at this time.

6 THE COURT: All right. Cross-exam?

7 MR. CONRATH: Thank you, Your Honor.

8 May I proceed.

9 THE COURT: When you're ready.

10 MR. CONRATH: Thank you.

11 - - -

12 CROSS-EXAMINATION

13 BY MR. CONRATH:

14 Q Good afternoon, Professor Carlton. Good to see  
15 you again.

16 A Good to see you.

17 Q So, Professor Carlton, if I'm right, is this  
18 approximately the eighth time that you've offered an  
19 economic opinion on behalf of AT&T in a federal proceeding?

20 A I haven't counted, but I have on prior occasions.

21 Q A number of occasions, right?

22 A Yes.

23 Q So when you were doing this work, you worked with  
24 a team of people who helped you prepare your report and do  
25 your analysis?

1           A     Yes.  They were a group of people I worked with at  
2  Compass Lexecon.

3           Q     At Compass Lexecon, right?

4           A     Yes.

5           Q     More or less, how many people worked on that team?

6           A     You know, it varies.  I mean, I typically would  
7  meet with two or three people, but there might have been  
8  others, you know, research assistants that --

9           Q     Sure.

10                    So let's turn to, off process to substance.

11                    You agree, do you not, as a general matter, that  
12  there are some circumstances in which a vertical merger can  
13  be anti-competitive?

14           A     I would agree with that.  My general view is  
15  vertical integration is generally pro-competitive, but there  
16  can be situations.  Doesn't always have to be.

17           Q     And you agree that a vertical merger can be  
18  anti-competitive as a result of raising rivals' costs?

19           A     As a theoretical matter, that could happen.

20           Q     Now, taking out of the context of a merger, you  
21  agree that as a general matter, it is in the interest of any  
22  competitor for its rivals' costs to go up?

23           A     Yes.  Every competitor would like its rivals to be  
24  a worse competitor.

25           Q     We talked about that at your deposition, right?

1           A     I think so, yes.

2           Q     And, therefore, regardless of the merger, it's in  
3 the interest of AT&T for its rivals' costs to go up?

4           A     I agree with that, as long as its costs don't.

5           Q     Right. And the reasons a firm would prefer to see  
6 its rivals' costs would go up, because it makes its rivals  
7 less competitive, right?

8           A     Yeah, generally, yes, I agree with that.

9           Q     How about a simple hypothetical for you that is  
10 something we talked about in your deposition.

11                     If, say, there's a merger of steering wheel  
12 manufacturers --

13           A     Yes.

14           Q     -- and that leads to an increase in the price of  
15 steering wheels of 5 percent and there are no efficiencies,  
16 you agree that a merger like that would be harmful and  
17 should be blocked?

18           A     If there were a horizontal merger that would raise  
19 the price of steering wheels and there were no offsetting  
20 benefits, that sounds reasonable to me if the price goes up  
21 by 5 percent.

22           Q     And you agree that that merger will be harmful  
23 even though the ultimate price of the whole car only goes up  
24 by a very small percentage?

25           A     Well, I thought this was a merger of steering



1 wheels.

2 Q Yes.

3 A So if it's a horizontal merger of steering wheel  
4 manufacturers and they raise price, that's undesirable,  
5 you know, period --

6 Q Right.

7 A -- you know, by your hypothetical 5 percent.

8 Q Right.

9 And it doesn't matter that the price, the price of  
10 the car in which the steering wheel goes doesn't go up but a  
11 very tiny percentage, right?

12 A I would agree with that, but I just want to make  
13 clear, we're talking about a horizontal merger. This is not  
14 a horizontal merger. It's a vertical merger.

15 So if instead a car manufacturer bought a steering  
16 wheel manufacturer, that's a vertical transaction. If it  
17 raised price by 5 cents of steering wheels, you would have  
18 to, like in this case that Professor Shapiro is doing, you  
19 have to say, okay, that's going to raise the price of -- the  
20 cost to some people.

21 On the other hand, I get the elimination of double  
22 marginalization. That's going to be a benefit. And I've  
23 got to figure it out, and I'll have to look at the price of  
24 cars at the ultimate level.

25 So I just want to keep things separate.

1           The fact that it's a horizontal merger to raise  
2 price, that's bad.

3           But if you have a vertical merger that both raises  
4 price but creates efficiencies, as in this case, then you've  
5 got to do the balancing. And that's what  
6 Professor Shapiro's doing and I'm doing.

7           Q     Right. You have referenced the amount, the  
8 27 cents per-subscriber/per-month price increase that  
9 Professor Shapiro projects, right?

10          A     Yes. That's what he talked about.

11          Q     Right. So have you been following some of the  
12 testimony in this trial, either by reading the transcripts  
13 or getting briefed on it?

14          A     Trying to, yes.

15          Q     And you're aware of the testimony from Mr. Breland  
16 that Turner fights over one penny, right?

17          A     I recall reading something about a fight over one  
18 penny.

19          Q     Another topic.

20                 You agree, don't you, that for blackout evidence  
21 to be informative, it needs to be a long-lasting blackout?

22          A     I generally agree that that's the most relevant  
23 because it gives everybody time to respond, especially the  
24 MVPD.

25                 How are you going to replace the content? Can you

1 replace the content? That's what's important.

2           It doesn't mean short-term are irrelevant. I know  
3 I wouldn't ignore them. In fact, I talk about them in my  
4 rebuttal report.

5           But if you're choosing between short-term and  
6 long-term, long-term is the one you want to rely on. That's  
7 what I relied on in the Suddenlink.

8           Q     Listen, I know you're an experienced witness and  
9 you know how this works. Try to answer my questions. You  
10 understand that AT&T's lawyer gets a chance to come back,  
11 and you can give whatever explanations seem appropriate at  
12 that point.

13           But for now, my question was, you agree that for a  
14 blackout evidence to be informative, it needs to be  
15 long-lasting blackout, right? The answer to that is yes?

16           A     Well, generally, yes, much more informative than  
17 temporary. But I wouldn't say temporary or utterly  
18 irrelevant. But I agree basically with what you're saying.

19           Q     You agree that a firm will act to maximize its  
20 profits?

21           A     Try to do that, yes.

22           Q     And if a firm has multiple divisions, a firm will  
23 maximize its profits across all of them?

24           A     That seems to me a reasonable working hypothesis,  
25 yes.

1 Q So focusing on your work in this case, it's  
2 correct, isn't it, that you, you yourself did not create a  
3 model to analyze competition in this market?

4 A Well, I didn't create a model like  
5 Professor Shapiro. But I analyzed an econometric model  
6 trying to measure, as I described, the increase in content  
7 prices. That would be what I modeled.

8 Q So that's your study of past events, right?

9 A Correct.

10 Q You didn't try to model what would happen in this  
11 merger?

12 A I didn't, because I thought the evidence from the  
13 past events was convincing evidence, and trying to build  
14 models that are predictive are more speculative in my mind  
15 than analyzing data of what has actually occurred.

16 Q You presented in your demonstratives some  
17 descriptive statistics.

18 A Yes.

19 Q So, for instance, DXD111, the number of 500  
20 highest-rated sports telecasts like this one, right?

21 A Yes.

22 Q And you presented a large number of those in your  
23 opening report, right?

24 A Yes.

25 Q Did you know that Mr. Petrocelli asked

1 Mr. Schlichting of Dish if he knew what percentage of  
2 national sports viewing Turner represents?

3 A I don't recall that specifically.

4 Q You don't recall that testimony?

5 And did you know that Mr. Petrocelli asked  
6 Mr. Schlichting of Dish if he knew how many Turner sports  
7 events are among the top 500, which would be exactly what  
8 you presented in DXD111?

9 You don't remember that testimony?

10 A I don't remember that exact testimony.

11 Q Do you recall that Mr. Schlichting said, well,  
12 that's not really a metric we use; it's not a metric we find  
13 relevant; I've never looked at that metric?

14 You don't recall that testimony?

15 THE WITNESS: I don't recall that.

16 What I do recall is that he did say that  
17 viewership, which is another one of the metrics that I put  
18 forward is something that he looks at.

19 Q Right.

20 And you do you recall -- do you recall  
21 Ms. Fenwick's testimony that she didn't know the similar  
22 statistic that you presented of all the top 500 non-sports  
23 events? You don't recall that either?

24 A I don't recall that explicitly; but, again, that's  
25 just one of the many metrics I provided.

1           Q     One of the things that you talked about is the  
2 existence of contracts in the industry and how that affects  
3 when the bargaining -- any change in bargaining leverage  
4 could be visited on the market.

5                     Do you recall that testimony?

6           A     Yes.

7           Q     And your rebuttal report contained a table which  
8 was intended to address this subject; is that right? Your  
9 table 3 in your rebuttal report, could we look at that?

10          A     If you want to give me a hint what page.

11          Q     I think I will in a minute.

12                     Page 31.

13          A     Yes, I have it.

14                     THE COURT: Is that in this document here?

15                     MR. CONRATH: No --

16                     THE COURT: Is it one of these?

17                     MR. CONRATH: -- it's not. It's in his rebuttal  
18 report. Did you get those, Your Honor?

19                     THE COURT: Let me look.

20                     Oh, yeah. Wait a minute.

21                     MR. CONRATH: I prefer not to give you a second  
22 version.

23                     THE COURT: No. I have the rebuttal report.

24                     But what page is it?

25                     MR. CONRATH: 31.

1 THE COURT: Okay. Thank you.

2 MR. CONRATH: I'm sorry.

3 THE COURT: Has it been marked as -- for  
4 identification?

5 I think the government -- I mean the defense  
6 should mark it for identification.

7 MR. CONRATH: Okay.

8 If they'll give us a number.

9 THE COURT: Hold on. It's getting done right now.

10 MR. OPPENHEIMER: Your Honor, may we approach?

11 THE COURT: Yeah, sure.

12 (Sealed bench conference)

13 THE COURT:

14 MR. OPPENHEIMER:

15

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17 THE COURT:

18

19 MR. CONRATH:

20 THE COURT:

21 MR. OPPENHEIMER:

22

23

24 THE COURT:

25 (Open court)

1 THE COURT: Come on back up, Professor.

2 All right. So that's DXD117 for identification,  
3 page 31. All right?

4 BY MR. CONRATH:

5 Q Do you have it front of you there,  
6 Professor Carlton?

7 A Yes, I do.

8 Q All right. And I should say that the identities  
9 of the companies on the left has been marked as  
10 confidential, so we're not going to mention them, right?

11 A Okay.

12 Q But I'll ask questions in a way that enables us to  
13 address it.

14 And the distributors that you've listed here in  
15 table 3, you chose to list them because they're among the  
16 largest distributors; is that right?

17 A Yes.

18 Q And the second distributor has blank information  
19 about the years. And that -- do you recall that there's  
20 been testimony in court that that second distributor is  
21 currently operating under a series of short extensions?

22 A Yes.

23 Q So it doesn't have contract for that price  
24 protection, right?

25 A Correct.



1 Q And so you talk about the contracts extending; but  
2 if we look at this, it's correct that there's the first --  
3 there's one distributor that has a contract that goes out a  
4 number of years, right?

5 A Yes.

6 Q And all the others have an expiration date in  
7 either 2018 or 2019, right?

8 A Yes.

9 Q So any of the distributors, other than the first  
10 one on the list there, will be seeking new contracts either  
11 in the rest of this year or next year, right?

12 A No. If they have a contract that goes through  
13 2019, they'll be, I assume, in 2019 seeking a contract for  
14 2020.

15 Q That would be next year?

16 A 2020. Yeah. 2020.

17 Q Well, you don't know --

18 A Oh, I see. Seeking. Yes. Yes.

19 Q You don't know when in 2019 that contract expires,  
20 right? Could be January, could be December, right?

21 A Yes. I'd have to look.

22 Q Right.

23 So the limits of the extent to which contracts  
24 will protect people from any change in bargaining leverage  
25 are defined by when their contract is next up for

1 renegotiation, right?

2 A Absolutely, yes.

3 Q And other than the one that we were not going to  
4 name, the rest of them have something coming up sometime  
5 either later this year or next year, right?

6 A Yes, but the one we're not going to name -- well,  
7 I don't know how to say this.

8 Q Yeah. You have to think about the significance of  
9 them. I understand your point. Let's just say it that way.  
10 Is that sufficient?

11 A Yeah. The significance of the one who's under  
12 contract will matter.

13 Q Yes.

14 A And I take exactly all of this into account when I  
15 present my models of different years.

16 Q All right. Another topic.

17 You talked about the -- about Viacom. And I think  
18 at some point you said you thought it was something that you  
19 might use to compare to a blackout, a blackout of Viacom to  
20 a blackout of Turner, correct?

21 A Yes. That was a justification for examining  
22 Suddenlink.

23 Q In your report -- I'm going to ask you to look at  
24 your first report.

25 MR. CONRATH: And I guess, Your Honor, I'm going

1 to have to ask to mark that as well. And that would be --

2 THE COURT: Hold on.

3 118?

4 MR. CONRATH: DXD118, Your Honor.

5 THE COURT: All right. Marked for identification.

6 MR. CONRATH: First time for me to mark a defense  
7 exhibit, Your Honor. It's an unusual situation.

8 THE COURT: How do you feel?

9 MR. CONRATH: It was okay.

10 THE COURT: Are you doing all right?

11 BY MR. CONRATH:

12 Q All right. Do you have your initial report,  
13 Professor Carlton, DXD118?

14 A Yes.

15 Q You do.

16 So I'd like to direct you to page 53,  
17 paragraph 78.

18 A Yes.

19 Q In that paragraph, you say that firms -- picking  
20 up on the second line, "Firms use Viacom generally and the  
21 Suddenlink-Viacom blackout specifically as a benchmark for a  
22 possible Turner blackout."

23 A Yes.

24 Q And the basis for that is the Citi estimate that  
25 you talked about earlier, right? That's the footnote?

1           THE COURT:  What footnote number are we talking  
2 about?

3           MR. CONRATH:  Footnote 80.

4           THE WITNESS:  No.  I'll have to -- that's not my  
5 recollection.

6           That footnote is a separate footnote.  So one of  
7 the reasons why -- I mean a separate point from the question  
8 you asked.

9           One of the reasons why I think the  
10 Suddenlink-Viacom experience is good is, first, the Citi  
11 document -- I think I talked about that Citi document when  
12 we were doing -- earlier in my testimony.  That Citi  
13 document also makes predictions of long-term blackouts, if  
14 I'm remembering correctly.

15           And what this footnote is referring to is that for  
16 both Turner and Viacom, when it's asking, what's the effect  
17 of a blackout -- and I thought it was a permanent blackout,  
18 but what's the effect of a blackout, it gives the identical  
19 number of 2.9 percent.

20           The, in the text, I'll have to just go back and  
21 check, but my recollection is what I'm talking about is it  
22 was an AT&T document that said, we might have a temporary  
23 Turner blackout.  What's going to happen?

24           Let's look at what happened based on Viacom.  And  
25 we'll do some -- they actually raised it a little bit, not

1 much, by about 5 percent. So we use that as the basis.

2 So --

3 Q Well, let's --

4 A -- that's what I was trying to say here.

5 Q So let's go through and unpack that, because,  
6 first, you understand, first of all, the Citi -- Citi is not  
7 a firm in the industry, right? This was a publicly  
8 available analyst report, right?

9 A Yes. It's an analyst report of the industry;  
10 that's correct.

11 Q Done by an investment bank, not by a firm that's  
12 in the video distribution market?

13 A That's fair.

14 Q And you know -- you looked at this report?

15 A Yes.

16 Q Yeah.

17 And you know that it uses -- all it uses is the  
18 Suddenlink's public statement about the percentage. So it's  
19 not an independent estimate. It's just repeating what  
20 Suddenlink said separately, said about the loss, right?  
21 Said about --

22 A That I'd have to check.

23 Q Okay. But you don't have a different  
24 recollection, do you?

25 A But in any case -- pardon me?

1 Q You don't recall that they did their own  
2 independent study?

3 A I'd have to check. I thought it was based on more  
4 than just repeating.

5 But what I'm saying here is this 2.9 isn't related  
6 to their estimate of Suddenlink.

7 What I'm saying is, they're predicting for -- I'd  
8 have to look exactly to refresh my recollection. My  
9 recollection is they're predicting what's the effect of a  
10 blackout on a general MVPD if it's Viacom, 2.9 percent; if  
11 it's Turner, 2.9 percent. And that's the point, if I  
12 remember right, that I'm trying to make in the footnote.

13 Q All right. And that's not a recommendation for --  
14 or not an estimate by somebody who's in the industry, right?

15 A I agree with you.

16 Q All right.

17 A It's by people who are analyzing the industry.

18 Q So let's look at the AT&T document that you  
19 reference next in the paragraph.

20 A Okay.

21 MR. CONRATH: I have some binders, Your Honor.  
22 May I approach?

23 THE COURT: Yes.

24 MR. CONRATH: May I approach the witness?

25 THE COURT: Yeah, sure. Go right ahead.

1 BY MR. CONRATH:

2 Q Would you look, Professor Shapiro [sic], at DX627.

3 A I'm Professor Carlton. Our economists are  
4 substitutes but not perfect substitutes.

5 THE COURT: You look like Carl to me.

6 THE WITNESS: Thank you.

7 I'm sorry. What tab?

8 BY MR. CONRATH:

9 Q 627.

10 THE COURT: What document are we looking at?

11 MR. CONRATH: 627.

12 THE COURT: 627?

13 MR. CONRATH: Yeah, 627.

14 BY MR. CONRATH:

15 Q Tell me when you're there. I want to direct your  
16 attention to page 3, please, the executive summary.

17 Do you see that?

18 A Yes.

19 Q And what DirecTV says here in the third bullet:  
20 "Our negotiating position is not as strong, relative to the  
21 Viacom deal."

22 THE COURT: Whoa, whoa. I need to see counsel.

23 Hold on.

24 (Sealed bench conference)

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(Open court)

THE COURT: Come on back, Professor.

All right. Let's start over again, consistent with our discussion here at the bench. How's that?

MR. CONRATH: All right.

THE COURT: Take your time.

BY MR. CONRATH:

Q Professor Carlton, do you recall that you cited to what is DX627 in your report?

THE COURT: What page in his report, Mr. Conrath? Is it 51? 53? His footnote is --



1 MR. CONRATH: Page 53, yes.

2 BY MR. CONRATH:

3 Q Page 53 of your initial report, correct?

4 THE COURT: I'm reading page 53. Why don't you  
5 ask him about that. Go ahead.

6 BY MR. OPPENHEIMER:

7 Q And you say there, "AT&T has itself used Viacom as  
8 a proxy for Turner in internal analyses for a blackout."

9 A Yes.

10 Q Would you please look at DX627, and that's the  
11 document you cited --

12 A That's the one.

13 Q -- in your report, correct?

14 A Yes. In other words, is this document -- you're  
15 asking me, is the document you gave me the same as the  
16 document I cited?

17 Q Yes, that's correct.

18 A It looks that way to me.

19 THE COURT: Okay.

20 BY MR. CONRATH:

21 Q All right. And now my question is, would you  
22 please look at the third page of DX627 and read to yourself  
23 the bullets, the bottom two primary bullets, including the  
24 sub bullets. Just read them to yourself.

25 A Yes, I read them.

1 Q And does that refresh your recollection -- let me  
2 phrase it another way.

3 That text does not say that Viacom is a proxy for  
4 Turner, right?

5 A That doesn't.

6 But if you look at page 17, which is what I was  
7 talking about, it shows that they use the Viacom experience  
8 and just make a 5 percent adjustment. So it's not a big  
9 adjustment, so it's pretty close. That was my prior answer  
10 to you.

11 Q And is it correct that, in fact, what the document  
12 says is that -- I'm trying to articulate it.

13 THE COURT: Is it confidential?

14 MR. CONRATH: I don't know -- no, I don't think  
15 it's confidential. I'm trying to adhere to Your Honor's  
16 instructions.

17 BY MR. CONRATH:

18 Q In fact, isn't it correct that the document says  
19 that things would be worse for them if they were dark with  
20 Turner than if Viacom.

21 A It does say that.

22 But page 17, which is what I was talking about,  
23 says "not much worse." That's why I think they're roughly  
24 comparable.

25 Q And the executive summary says that it would be

1 worse with Turner, right?

2 A It does.

3 But it's based on page 17 that says it's not going  
4 to be much worse. That's at only 5 percent adjustment.  
5 That's precisely what was my point.

6 THE COURT: I think you made your point.

7 MR. CONRATH: Thank you.

8 THE COURT: Let's take a break.

9 MR. CONRATH: All right.

10 THE COURT: We're going to take the afternoon  
11 recess, one of them. We're going to have two today,  
12 probably.

13 THE WITNESS: Yeah.

14 THE COURT: So for 15 minutes.

15 You're a witness under oath. So refrain from  
16 discussing your testimony with anyone, including your  
17 counsel. You know this drill by now.

18 So have a good recess. We'll see you in  
19 15 minutes.

20 DEPUTY CLERK: All rise.

21 This Honorable Court will now stand in a brief  
22 recess.

23 (Recess from 4:00 p.m. to 4:25 p.m.)

24 DEPUTY CLERK: The United States District Court  
25 for the District of Columbia is again in session, the

1 Honorable Richard J. Leon presiding. God save the United  
2 States and this Honorable Court. Please be seated and come  
3 to order.

4 Your Honor, re-calling Civil Action 17-2511, the  
5 United States of America v. AT&T, Incorporated, et al.

6 THE COURT: The witness remains under oath.

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

8 THE COURT: You may.

9 BY MR. CONRATH:

10 Q We were talking about -- Professor Carlton, we  
11 were talking about Viacom?

12 A Yes.

13 Q Right.

14 And do you recall reviewing the testimony of  
15 Mr. Sejen that was about the Cable ONE blackout at Viacom,  
16 dropping the Viacom?

17 Do you recall that?

18 A Yes. I referred to that.

19 Q Right. And you recalled that Mr. Sejen said that  
20 Viacom, for them, in the small-world markets where they were  
21 operating was not particularly popular content?

22 A I don't specifically recall that. What I recall  
23 was the 2 percent effect that he mentioned and that it was  
24 over quickly.

25 Q And he said that in that case, they were able to

1 put on some replacement channels that their customers  
2 wanted, right?

3 A I'd have to check. That does square with my  
4 recollection.

5 Q So do you recall that he said that what happened  
6 when they had a brief blackout with Turner was that they  
7 immediately started notifying their customers that they were  
8 trying to work diligently to resolve the situation and get  
9 the Turner programming back on the air?

10 A I'd have to check that.

11 Q And that's different from the way they treated  
12 Viacom, correct?

13 A I'd have to check. From what you said, it sounds  
14 that way, but I'd have to check.

15 Q So you said earlier today something like, there's  
16 a lot of places to get content. An MVPD could go somewhere  
17 else.

18 Do you recall that?

19 A I remember referring to my chart that indicated  
20 that there were many people, many firms --

21 Q Right.

22 A -- that have content, yes.

23 Q So one of the list of possibilities, you mentioned  
24 the fact -- you mentioned Apple, Netflix, Facebook. None of  
25 those is a substitute for live news or live sports for those

1 customers who like sports and news, right?

2 A You know, I haven't investigated demand  
3 substitutability. But if you're asking me, does Apple have  
4 or do some of these people -- if they don't have sports, do  
5 they have a substitute for sports for someone who wants to  
6 watch sports? The answer is no. The question is, would  
7 that person want to watch something else?

8 And also, the point I was making was that the  
9 resources that are used to make programming for  
10 entertainment, whether it's sports or anything else --

11 Q Okay. Could I --

12 A -- is substitutable.

13 MR. CONRATH: Your Honor, I think I'm entitled to  
14 an answer to my question, and we're now moving on beyond the  
15 answer to my question into a speech.

16 THE COURT: Okay. All right. Do you want to  
17 restate your question?

18 BY MR. CONRATH:

19 Q Yes. My question was, Apple, Netflix, and  
20 Facebook are not a substitute for live sports and news for  
21 customers who like live sports and news?

22 A If they don't --

23 THE COURT: If you know.

24 THE WITNESS: I haven't studied in detail. But if  
25 they have live sports, if someone wanted to watch sports and

1 would only substitute the sports, there would be a  
2 substitute. If they don't substitute -- wouldn't be willing  
3 to substitute the sports, it wouldn't be a substitute for  
4 that customer.

5 Q And you remember the testimony of Mr. Schlichting,  
6 for example, from Dish?

7 A I read some of these testimony.

8 Q And you recall that he was asked if he could just  
9 choose to drop Turner. And he said, it's hard to imagine  
10 getting through an election without CNN or getting through  
11 the NBA finals without TNT.

12 You remember that, right?

13 A I'd have to check. I have no reason to doubt what  
14 you're saying.

15 Q Do you recall Mr. Montemagno of Charter saying  
16 that some content is just not replaceable? If I don't have  
17 that content, reducing a rate or giving them a free month of  
18 HBO or Showtime isn't going to satisfy that customer?

19 A Again, I don't remember that specific testimony,  
20 reading that; but if you say that's what he said, I have no  
21 reason to dispute you.

22 Q And according to Mr. Montemagno, consumers are  
23 just going to go to another distributor if you don't have  
24 the content that they want, right?

25 A If that's what he said, that's what he said.

1 Q And you agree, don't you, that the price that a  
2 person pays for something is a reflection of the value that  
3 that person places on it?

4 A Generally, it seems like a reasonable statement.

5 Q And Turner is a product that has value, right?

6 A Yes.

7 Q And what makes a channel valuable to an MVPD or a  
8 virtual MVPD is that they're more profitable carrying it  
9 than they would be not at the price they're able to  
10 negotiate, right?

11 A The price someone pays for something is the price  
12 they're willing to pay, so they value it at least that  
13 amount.

14 Q At least that much?

15 A Yeah.

16 I don't know if I answered your question.  
17 I'm sorry.

18 Q I think you did.

19 A Okay.

20 THE COURT: I was actually correcting a prior  
21 answer I gave.

22 If you pay \$5 for something, it means you value it  
23 at least \$5.

24 Q Right.

25 Let's talk about your review of prior



1 transactions.

2           So the previous deals that you examined, all of  
3 them, is that correct, were governed by an FCC order?

4           A     I'd have to check that. It might be --

5           Q     At least where there was a combination of -- of  
6 vertical integration -- forget the disintegration -- where  
7 the vertical integration, there was an FCC order, right?

8           A     That might be. I'd have to check that.

9           Q     And those placed conditions or limitations on the  
10 behavior of the merged firms?

11          A     Consistent with what I already said this morning.

12          Q     Right.

13          A     To the extent the FCC conditions applied, that  
14 would constrain the activities of the vertically integrated  
15 firms, yes.

16          Q     And that would affect -- those conditions were in  
17 part intended to prevent harm to consumers from increased  
18 prices resulting from the vertical integration, correct?

19          A     I'm not an expert on FCC regulation. I know  
20 Professor Katz is going to talk about that, but -- so  
21 I can't talk about the intent of the law. But, certainly,  
22 if you're asking me would it do that, it seems plausible.

23          Q     In fact, the FCC's conclusion -- and you talked a  
24 little bit about the study that's -- this in the study  
25 that's redacted. The FCC's conclusion in the Comcast-NBCU

1 matter in that redacted study was that the only content to  
2 which it did not apply a remedy, it found evidence of harm?

3 A I'd have to -- I'd really have to go back and look  
4 at that. I don't recall that.

5 Q You talked, in particular, about the Comcast-NBCU  
6 transaction, correct?

7 A Yes.

8 Q And that one did have FCC conditions as well as a  
9 Consent Decree, correct?

10 A Yes. That's my understanding.

11 Q And those FCC conditions were in part intended to  
12 prevent increases in price resulting from vertical  
13 integration?

14 A It's my general understanding.

15 Q And you understand that there were conditions  
16 intended to protect any distributors who considered or used  
17 arbitration?

18 A There was an arbitration provision, yes, for the  
19 their protection.

20 Q And specifically, there were conditions such as an  
21 anti-retaliation provision or an anti-punishment provision  
22 intended to protect anyone who exercised an arbitration  
23 right, correct?

24 A I'd have to check that specifically.

25 Q So did you investigate whether, in your study,

1 whether any of the conditions of the FCC order had an effect  
2 in limiting any price increases that might result from the  
3 vertical integration in the merger?

4 A I didn't do a specific study of whether individual  
5 components of the restrictions had separate facts.

6 I simply, as I said earlier, made the observation that the  
7 arbitration commitment that AT&T is making here or has made,  
8 which will apply post-merger, are similar.

9 Q So let's go back to my question.

10 My question is, you came in and said, I've looked  
11 at this transaction, and I don't see an effect.

12 I'm asking you if you tried to figure out whether  
13 the reason for that was because no effect was possible or  
14 because maybe the FCC provisions helped to diminish any  
15 effect.

16 You didn't try to answer that question, did you?

17 A That's fair. I simply made the observation that  
18 there were conditions in that case that look pretty similar  
19 to the arbitration commitments in this case. And I'm  
20 observing that in that other case, there was no effect.

21 Q And so you can't -- all right. Please, I've got  
22 limited time here. And so you'll get a chance to make  
23 whatever explanations you want. You understand that that's  
24 the way it works --

25 A Yes.

1 Q Right?

2 Okay. So you can't tell whether those -- and,  
3 well, to be precise, the FCC conditions have now expired,  
4 right?

5 A I would have to check.

6 Q And so you weren't able to study the period after  
7 they expired because they just expired in January, right?

8 A My -- well, I didn't study the period in January.

9 Q So looking at the Comcast-NBCU merger was not a  
10 way for you to look at an unremedied vertical transaction;  
11 is that right?

12 A If you thought the AT&T arbitration is not  
13 sufficiently similar to the conditions in the NBCU-Comcast  
14 deal, that would affect the conclusions I could draw for my  
15 study.

16 Q Let's talk about another distinction between that  
17 situation and this one.

18 You'd agree that Comcast is a regional distributor  
19 that just serves defined footprints in different areas,  
20 right?

21 A It's my general understanding.

22 Q And, in fact, Comcast operates in regions that  
23 encompass somewhere around 30 percent of the country?

24 A Yes, that's my understanding.

25 Q And the rest, the 60-plus or 70 percent, are areas

1 where Comcast does not operate?

2 A Here, I'd have to check those exact numbers; but  
3 if those are what you're telling me, I have no reason to  
4 dispute.

5 Q All right. And so where Comcast does not operate,  
6 it couldn't get any benefit from raising rivals' costs in  
7 those markets where it doesn't compete with any rivals,  
8 right?

9 A It's true, but it competes with Dish and DTV  
10 everywhere.

11 It is -- everywhere Comcast is.

12 Q Yes, but when NBCU is raising its price, it's  
13 raising its price in markets that include areas where  
14 Comcast does not operate and thus stands no possible benefit  
15 from raising rivals' costs; isn't that right?

16 A In those areas.

17 But if it raised the price to DTV, it would get a  
18 tremendous benefit in the areas where it is because it has a  
19 large marketshare. So when the version comes from DTV, it  
20 would go to Comcast. So it's the national share that's  
21 going to matter in Shapiro's model.

22 Q So let's be clear. In loosely two-thirds of the  
23 country, the "raising rivals' costs" effect would not  
24 operate in the Comcast-NBCU merger; is that right?

25 A Yeah, but in the third where it is operating, for

1 precisely the point you're making, it will operate with  
2 greater intensity than if it had a lower share and was  
3 everywhere, which is like DTV.

4 So I'm just saying in Shapiro's model, what's  
5 going to matter basically is their national share.

6 Q And your study did not attempt to differentiate  
7 between any effect on prices in areas where Comcast operates  
8 and in areas where Comcast doesn't operate, did it?

9 A It wasn't necessary when I'm studying DTV. It  
10 wasn't necessary when I'm studying Dish, because it's one  
11 price. So it wouldn't make sense; it's all the same price.

12 Q Let's look at your study of Dish -- oh, I'm sorry,  
13 of DirecTV.

14 Your chart -- I'll get the right number here.

15 THE COURT: Are you looking at his report?

16 MR. CONRATH: No. I'm looking at the  
17 demonstratives, Your Honor.

18 THE COURT: Oh, okay, the demonstratives.

19 MR. CONRATH: DXD113.

20 THE COURT: 113.

21 BY MR. CONRATH:

22 Q Do you have that in front of you?

23 A Can you tell me what tab that is.

24 Oh, I have it.

25 Q All right. You have that in front of you.

1           So -- and this DXD113.

2           THE COURT: Which slide are you looking at?

3           MR. CONRATH: So it's slide -- DXD113 in the lower  
4 right.

5           THE COURT: That's what it says in the lower right  
6 corner.

7           MR. CONRATH: Right.

8           Tab 7, Your Honor, sorry.

9           THE COURT: Okay. Tab 7.

10 BY MR. CONRATH:

11           Q     Do you have that, Professor Carlton?

12           A     Yes.

13           Q     So, I guess -- and this reflects DirecTV's --  
14 prices that DirecTV pays to NBCU and also to all the other  
15 control networks, right?

16           A     Yes.

17           Q     So, first, let's note that this time period that  
18 you show here encompasses the time period when you -- all  
19 the entry that you're talking about encompasses the time  
20 period when virtual MVPDs were entering and whatever entry  
21 from Apple and Facebook happened. And we still see that the  
22 prices are going up substantially; isn't that right?

23           A     Of content in general?

24           Q     Yeah.

25           Well, for the content -- this is the content that

1 DirectTV pays for to NBCU and the other control networks.

2 So whatever --

3 A Yes, generally prices are going up, if that's your  
4 question.

5 Q And it's going up even in a period when you made a  
6 big point of telling us earlier that there was a lot of  
7 entry, right?

8 A Yes.

9 Q So the entry isn't doing anything to prevent the  
10 prices from going up, right?

11 A Well, be careful. Costs are going up.

12 THE COURT: Whoa, whoa. Let him finish his  
13 answer.

14 THE WITNESS: If costs go up, prices are going to  
15 go up.

16 BY MR. CONRATH:

17 Q Right. So prices have gone up in this industry,  
18 despite the entry that you mentioned from Facebook, Google,  
19 Netflix, right?

20 A Yes. Costs have gone up because products are  
21 higher quality. And my suspicion is -- my expectation is  
22 the demand for video content has gone up.

23 Q You haven't studied whether quality has gone up,  
24 correct?

25 I mean, that's a possible explanation. But



1 another possible explanation is that Apple and Facebook  
2 aren't very good substitutes for the kind of content that  
3 DirecTV is putting on; isn't that right? That's another  
4 possible explanation?

5 A I haven't -- anything's possible. If you're  
6 asking me what's likely based on what I've studied and the  
7 readings I've done for this case, I don't think what you  
8 said is a good explanation.

9 I think what I said -- namely, content prices are  
10 generally going up. The talent for content is in greater  
11 demand. I bet the costs are going up. I bet the quality of  
12 the programming has gone up. And that's what I think is  
13 going on.

14 But there's nowhere in my report I'm doing  
15 detailed studies of that, but that's what I think.

16 Q It's not something you've studied?

17 A Not in my reports.

18 But based on, you know, the background, readings  
19 I've done.

20 Q Well, you understand that you're limited in  
21 testifying to the opinions you've disclosed in your report,  
22 right?

23 A I know, but you asked me questions as to why do  
24 I think the price is going up.

25 Q All right.

1           I have an exhibit that I'd like to share. May I  
2 approach?

3           THE COURT: Yes.

4           MR. CONRATH: May I approach the witness?

5           THE COURT: You may.

6           THE WITNESS: Thank you.

7 BY MR. CONRATH:

8           Q     So what I've given you, Professor Carlton, is  
9 Government's Exhibit 547 for identification, which, as you  
10 can see, is your chart with one additional line, dotted line  
11 that we've added to it.

12                   Do you see it there?

13           A     Yes.

14           Q     And it's added -- I'm not going to mention the  
15 numbers of the years here, just out of confidentiality  
16 concern. But you see that on a particular year, right?

17           A     Yes.

18           MR. CONRATH: May I approach one more time,  
19 Your Honor, with an additional exhibit?

20           THE COURT: You may.

21           MR. CONRATH: And may I approach the witness?

22           THE COURT: You may.

23           MR. CONRATH: Your Honor, PX548 is backup material  
24 for -- Professor Carlton's backup material for figure 12 in  
25 his initial report, page 70. And it was provided to us by

1 the expert with his report.

2 BY MR. CONRATH:

3 Q So, Professor Carlton --

4 THE COURT: Where does this appear in his report?

5 MR. CONRATH: It is the backup material to his  
6 report.

7 So with the report comes, I want to say a stack.  
8 But, I mean, it's electronic, of course, of backup material  
9 that explains or backs up material that's actually in the  
10 report.

11 THE COURT: It's not cited in the report?

12 MR. CONRATH: It backs up figure 12.

13 THE COURT: All right.

14 BY MR. CONRATH:

15 Q So if you could look at this second exhibit that I  
16 gave you, Government's Exhibit 548 for identification?

17 A Right, 547.

18 Q No. 548, the backup material.

19 A Oh, yes.

20 Q If you look at the bottom two lines there, that  
21 gives the dates for some agreements between NBCU and  
22 DirectTV, right?

23 A Yes.

24 Q Do you see those dates?

25 A Yes.

1 Q And the second date is in the year where we have  
2 placed the line on Government's Exhibit 547 for  
3 identification.

4 Do you see that?

5 A Yes. Yes.

6 Q All right.

7 The prior contract between DirectTV and NBCU was  
8 one that had been negotiated at an earlier date that was, in  
9 fact, before the NBC-Comcast merger; isn't that right? Can  
10 you see that?

11 A Yes.

12 Q So the price increases that went into effect, that  
13 would be the blue line, the NBCU price increases that went  
14 into effect after that contract was signed?

15 A Yes.

16 Q There are not any tests of vertical integration  
17 because they're on a contract that was negotiated before  
18 there was vertical integration, right?

19 A Yeah. That's before vertical integration.

20 Q Right. So --

21 A If it's before -- if the price is set before  
22 vertical integration, it's not a test of vertical  
23 integration.

24 Q All right.

25 So --

1           A     It can be a basis for a test.

2           Q     So the first -- let me see --

3           A     You can ask a question.

4           Q     -- if I got it right.

5                     So there's a contract that's signed before  
6 vertical integration. And we see that that happened in the  
7 case of DirecTV and NBCU, right?

8           A     Yes.

9           Q     And the -- until they re-negotiate a contract, you  
10 don't see any effect of vertical integration, right, because  
11 the contract was signed before they were vertically  
12 integrated?

13          A     Correct.

14          Q     So the blue line, which goes up until the date of  
15 the new contract, which is indicated by the dashed line on  
16 the right here, all those reflect no vertical -- prices  
17 reflect no vertical integration, correct?

18          A     To the extent a contract is signed beforehand, all  
19 that would be plotted would be escalation in those  
20 contracts.

21          Q     Right.

22                     And your backup tells us that that contract was  
23 signed before the vertical integration, correct?

24          A     That's right.

25          Q     Now, looking at Government's Exhibit 547, the

1 dashed line near the right reflects the date of the second  
2 contract that's reported in your backup, right?

3 A Yes.

4 Q And you see there's sort of a kink in the blue  
5 line, the NBCU price line there?

6 A Yes.

7 Q And that's -- the kink happens at the point where  
8 the first contract under vertical integration happens; isn't  
9 that right?

10 A That's -- I'd have to check, but that's my general  
11 recollection.

12 Q And after, after the first contract with vertical  
13 integration, you'll agree that the NBCU price increases more  
14 steeply than the control networks, right?

15 A That's true, but they wind up at exactly the same  
16 point on this chart.

17 Q They wind up at the same point. But the one that  
18 is increasing faster is the price that was set with vertical  
19 integration; isn't that right?

20 A If you start in 2016 as the base, not if you start  
21 in 2010.

22 But that's the whole point. You want to ask  
23 before and after the NBC transaction which price went up.

24 And the point you're making I agree with. It has  
25 to be pre-contract, pre-vertical integration,

1 post-vertical -- pre-transaction, I mean, sorry,  
2 pre-Comcast-NBCU transaction, post.

3 This is -- this diagram that I have in here, I  
4 said is suggestive evidence. If you do the exact test, as  
5 you say, as you're pointing at, you're exactly right. You  
6 want to compare a contract that was signed without the  
7 influence of vertical integration to a contract that's  
8 signed with vertical integration.

9 So if you look at paragraph 190 in my report,  
10 that's exactly what I do. I compare a price signed pre to a  
11 price signed post. And that's exactly the test they do for  
12 DTV.

13 So you're exactly right. This is just a rough  
14 indication of what's going on, suggestive. To do it right,  
15 you have to be careful. I agree, it's a much more  
16 complicated. And that's what I do, read paragraph 190.

17 That's why I said in my direct, you know,  
18 basically, after you do lot of stuff, like you're  
19 suggesting -- and I'm not disagreeing -- you get back the  
20 same result, same thing.

21 So I agree with you.

22 Q So once you look at when the first contract was  
23 signed with vertical integration -- just stick with my  
24 question -- you see the prices go up faster for NBCU, the  
25 vertically integrated company, than they do for the other

1 companies, correct?

2 A As a matter of graphics, what you're saying is  
3 correct.

4 As a matter of economic logics, it's utterly  
5 irrelevant.

6 What's relevant is the -- here's where the event  
7 starts. They're equal.

8 Where do they wind up? Same point. Start at the  
9 same point; they end at the same point.

10 This is only suggestive, only suggestive, because,  
11 as you say, you've got to be much more careful. Read  
12 paragraph 190. That's my econometric study. I do it  
13 exactly like you're suggesting.

14 Q Can you just answer the simple question: The  
15 prices go up faster with vertical integration, according to  
16 your own chart?

17 A No.

18 The prices -- a correct statement is the  
19 following: If you look at an irrelevant date, as you're  
20 looking, do prices go up faster? Yes.

21 If you look at the relevant date, using these  
22 price indices and you look between 2010 and 2017, they're  
23 spot-on.

24 Is this the right we to do a complete analysis?  
25 No. That's what I said.



1           The right way, look at my report. Look at my  
2 econometric analysis. Look at paragraph 190.

3           So I agree with what you're saying.

4           Q     You did think it was good enough to bring to court  
5 and put in your demonstratives, didn't you?

6           A     I absolutely did, because I said it was  
7 suggestive. This is the first place you start. You look at  
8 the actual evidence in a simple way.

9           And then you say, now, I have to do  
10 more-complicated stuff. Exactly for the reason you're  
11 saying. You don't want to make a mistake.

12           If you do the more complicated stuff, you can't  
13 put it on a simple graph like this. You have to do an  
14 econometric analysis, and you have to go contract by  
15 contract. When did they sign it? When's the price?

16           Read paragraph 190. That's exactly what I do. I  
17 agree with you.

18           And the reason I did it here is because I could  
19 either put up a chart and say, here's a simple way to -- a  
20 suggestive. I'm telling you I did a very complicated  
21 analysis, and this conclusion holds. Or I could have spent  
22 days going through my econometric analysis. I mean, I'm  
23 happy to do that, but I don't have the time.

24           Q     I think we'll all buy into that going through the  
25 econometric analysis.

1 THE COURT: We don't have the time either.

2 THE WITNESS: Oh, go ahead.

3 BY MR. CONRATH:

4 Q Nobody is asking for the econometric version.

5 A I would like to tell me students about it, though.

6 Q Let's switch topics to -- I would like you to look  
7 at your first report, table 7, which is at page 61?

8 A My first report?

9 Q No, no. Table -- that's not right.

10 It's possible that I'm in the wrong report. Give  
11 me one moment, please.

12 Page 57. I'm sorry. My apologies.

13 So one of the ways -- one of the things that  
14 you've talked to us about the change in the marketplace is  
15 the -- you've identified as a relevant change, the growth of  
16 virtual MVPDs, right?

17 A Yes. Their entry and growth and expected growth.

18 Q And this chart table in your initial report is  
19 attempted -- your attempt to report on particular virtual  
20 MVPDs and their activity in the marketplace, correct?

21 A Yes.

22 Q So let's look at the eight virtual MVPDs that you  
23 identified in your February 2nd report.

24 So, first, let's note, obviously, DirecTV Now is  
25 owned by a traditional player, DirecTV, correct?

1 A Yes.

2 Q And Sling is owned by Dish, right?

3 A Yes.

4 Q And those two are the largest virtual MVPDs?

5 A That's my recollection.

6 Q And do you know that they used their existing  
7 pay-TV contracts to help to launch their services?

8 A My general understanding is they've used their --  
9 obviously, you have content, yes.

10 Q Their contracts for content?

11 A You know, I assume so. I have no reason to doubt  
12 what you're saying. I haven't studied in that detail.

13 Q Okay. Sure.

14 You identified in your initial report a number of  
15 virtual MVPDs that had launched without Turner networks.  
16 And your report states that the fact that there are some who  
17 launched without Turner content undercuts the plaintiff's  
18 theory of harm; is that right?

19 A I did say that.

20 Q So on that same page, you mention -- that same  
21 chart, you mention the ones without Turner contact. Let's  
22 just talk about a couple of those.

23 YouTube TV, do you understand that YouTube TV has  
24 now added Turner content?

25 A Yes. That's a new development. I didn't know

1 that when I wrote my report.

2 Q So have you -- did you hear the testimony that  
3 that contract was being negotiated through the fall and up  
4 to being signed in the winter?

5 A At the time I wrote my report, I did not know that  
6 there was going to be a contract.

7 Q Okay. And that's something that one of the  
8 clients involved knew, but you didn't learn it from them?

9 A I was not told that there was a likely contract.

10 Q Right. So that's one that has launched but now  
11 quickly added Turner content, right?

12 A They've added Turner content, yes.

13 Q And CenturyLink Stream is another one that you  
14 link -- list as being -- launching without Turner, correct?

15 A Yes.

16 Q And are you aware that they have since left the  
17 business?

18 A Since I wrote this report, yes, that's my  
19 understanding.

20 Q And the other two that launched without Turner  
21 content, do you understand that they're significantly  
22 smaller than the others?

23 A Yes, significantly smaller and recent entrants,  
24 very recent.

25 Q So let's just say, it's correct, isn't it, that of

1 the four examples you gave of entry without Turner content,  
2 two are no longer good examples of Turner -- of entry  
3 without Turner content; and the other two are still small  
4 enough that it's hard to say whether they're going to be  
5 successful and thrive without Turner content; isn't that  
6 right?

7 A I would agree with that. And that's why my  
8 testimony this morning, I didn't talk about possible entry,  
9 based on the evidence, of virtual MVPDs without Turner  
10 content. But I did talk about the fact that the people who  
11 have Turner content are guaranteed to keep having it under  
12 the arbitration condition. And under the arbitration  
13 condition, new MVPDs could get --

14 MR. CONRATH: Your Honor, could I have an  
15 instruction not to volunteer things beyond the question  
16 that's been asked?

17 THE COURT: Limit yourself to the answer to the  
18 question he asks.

19 THE WITNESS: Okay.

20 THE COURT: Mr. Oppenheimer will have a chance to  
21 follow up --

22 THE WITNESS: Okay.

23 THE COURT: -- on redirect.

24 BY MR. CONRATH:

25 Q Let's shift to another topic.

1           You talked a little bit about margins.

2           A     Yes.

3           Q     And you said that in your direct testimony, that  
4 you found a big 39 percent drop in margins, and you thought  
5 that one was one of your principle criticisms of  
6 Professor Shapiro; isn't that right?

7           A     Principle criticism was he didn't use current  
8 margins, and that has a big effect.

9           Q     And you actually you made that criticism even  
10 though you acknowledged in your deposition that you knew  
11 Professor Shapiro didn't have access to the data that AT&T  
12 gave you, right?

13          A     I don't know whether he had access to it or not.  
14 I don't recall what I said in my deposition.

15          Q     You don't recall saying that?

16          A     Saying what? That he did or did not or that I  
17 don't --

18          Q     He did not have access to it.

19          A     If that's what I said, that's what I said.

20                 As I sit here now, I don't know what access he  
21 had. I assume he had access to the same information I have  
22 since I turned it over as of today.

23          Q     After you turned it over, yes, right?

24          A     Whatever -- I have no reason to doubt whatever  
25 Professor Shapiro said about the data he had available to

1 him. Whatever he said, I'm happy to agree with.

2 Q You got new data on lifetime value from AT&T in  
3 February, which you used in your February 26th report,  
4 right?

5 A That's correct.

6 Q And you didn't have it in time for your  
7 February 2nd report?

8 A That's correct.

9 Q And you used the new lifetime value data to  
10 calculate margins?

11 A Yes; just like Professor Shapiro, using the same  
12 methodology as Professor Shapiro.

13 Q And lifetime values also is called LTV, right?

14 A Yes.

15 Q And churn is one of the factors that goes into  
16 lifetime value?

17 A Yes.

18 Q I think we've talked about this before, but churn  
19 is how long a customer stays. And if you stay for less  
20 time, your lifetime value is lower, right?

21 A All those equal, yes.

22 Q I think you said at your deposition, a high churn  
23 means a short lifetime --

24 A Sounds right.

25 Q -- right?

1           Okay.

2           A     I don't remember saying that, but it sounds right.  
3                 Lifetime with DTV, not period.

4           Q     Right. Let's be clear.

5                 So the 39 percent drop number that you talked  
6 about, that was a pretty -- you'd agree that that would have  
7 been a pretty significant drop, right?

8           A     You mean the fact that Professor -- the new  
9 margins are 39 percent lower than what Professor Shapiro was  
10 using in June --

11          Q     Right.

12          A     -- of --

13          Q     You recall in your deposition I asked you if when  
14 you got these numbers reflecting such a big drop, did you go  
15 to ask anybody at AT&T, what's going on to cause these  
16 margins to drop by 39 percent?

17                 And you told us at your deposition that you didn't  
18 know if you had a specific discussion with anybody about  
19 that?

20          A     I didn't -- I don't recall having a specific --  
21 I mean whatever I said in my deposition, I said and  
22 obviously would stand by it.

23                 As I sit here now, my recollection is  
24 I don't recall going through any details of calculations of  
25 LTV and assume that the data was accurate. And my



1 understanding was it was produced in the same way in the  
2 ordinary business course and that when I saw it, it's  
3 consistent with my notion that margins are going down in  
4 this industry with my view that it's likely margins are  
5 going down in this industry, which is what the analysts have  
6 said.

7 Q So they have been on, the margins have been on a  
8 long, slow, steady decline. But 39 percent is not a long,  
9 slow, steady decline, right? It's a big drop?

10 A 39 percent is a big drop. I point that out.

11 Q And you didn't do a separate investigation into  
12 those lifetime values numbers versus the numbers that  
13 Professor Shapiro had?

14 A Wait a minute. I'm using the same number as  
15 Professor Shapiro, the same source as Professor Shapiro.

16 Professor Shapiro has a million calculations he's  
17 doing, and he's relying on lots of data.

18 And I said, listen, I'm just going to update what  
19 you're doing. And I'll use the same data source you're  
20 using, and I'm updating it, period. I'm just doing exactly  
21 what he did.

22 Q You understand that the data Professor Shapiro  
23 used was provided by AT&T during the investigation?

24 A No. I assume so. I mean, I assume he got it  
25 through the Department of Justice and AT&T gave it to you

1 guys and you gave it to Professor Shapiro.

2 Q You based your analysis on the lifetime value  
3 numbers from June 2017; is that right?

4 A That report in my rebuttal is the margins from  
5 June of 2017.

6 I also, if I'm not mistaken, include in the backup  
7 redoing the calculations if instead of using June 2017, I  
8 used January 2017 or April 2017.

9 Q Well, you received data for January, April, and  
10 June.

11 A Correct.

12 Q And what you told us at your deposition was that  
13 your understanding was you had the only numbers that were  
14 produced in the ordinary course; is that right?

15 A That's my understanding that -- that's actually  
16 still my understanding that the latest numbers that are  
17 available are those three I mentioned to you, with the  
18 latest one being June 2017. And that's the one I used.

19 Q And you testified that you thought AT&T produces  
20 the data every three months in the ordinary course; that was  
21 what you said you thought your understanding was?

22 A Yeah.

23 Well, if that's what I said, that's what I said, I  
24 guess.

25 My understanding now is that they try and produce

1 it but that I gather the schedule is sometimes not -- it's  
2 produced in the ordinary course but that there's a delay in  
3 how rapidly they can produce the study because you can't  
4 produce it because they have a time lag of data that they  
5 need to get.

6 Q But what you got was not on a three-month  
7 schedule, right? You had January, skipped February and  
8 March and got April.

9 A Correct.

10 Q Skipped May, but you didn't skip June. You got  
11 June.

12 And you didn't try to investigate what was going  
13 on there?

14 A I didn't do an investigation as to the timeliness  
15 of the data, why they produced the data, why they produced  
16 it in the past, why they are going to produce it in the  
17 future. I'm just trying to do something real simple.

18 Professor Shapiro uses the -- uses old data from a  
19 document. And I'm going to say I'm just going to get the  
20 updated document. I'm going to use the latest data, and  
21 that's it.

22 I -- just like Professor Shapiro hasn't done an  
23 investigation of how AT&T -- you know, who produced his data  
24 or their underlying analysis.

25 I just took the exact same data source as

1 Professor Shapiro and used it in exactly the same way.

2 The only difference between what I'm doing and  
3 he's doing is I'm using the latest data.

4 Q Let's come to that.

5 So there was -- when we were at your deposition,  
6 there was an anomaly in the data that you couldn't explain.  
7 And later, AT&T's lawyers explained that there was a coding  
8 error. You hadn't checked into the anomaly; is that right?

9 A I was unaware that there was, when I used it, that  
10 there was a coding error.

11 My understanding is that the coding error did not  
12 affect the June 27 data that I'm using.

13 Q And at your deposition, I asked you whether you  
14 had checked about whether AT&T calculated lifetime value in  
15 the same way as to 2016 and 2017, and you said you weren't  
16 aware of any changes.

17 And we later learned in a letter from your lawyers  
18 that there was a change in methodology; is that right?

19 A My understanding is a little different.

20 My understanding is they have been producing these  
21 LTV values for a while, many years, and that they are  
22 continually refining their techniques to make them more  
23 accurate and that whatever they do in the ordinary course is  
24 what they have done. They've been refining their procedures  
25 ever since they were instituted, I gather.

1           But that -- and this is the key point. The LTVs  
2 that are being produced today are used in the same way as  
3 the LTVs in prior years for financial planning. And that is  
4 what they use to influence their economic decision-making.

5           And from an economic point of view, that's the key  
6 point. That's what Professor Shapiro needs in his model,  
7 and that's what I'm sticking in when I update his model.

8           Q     And are you aware that there was a change in  
9 methodology for predicting customer churn between  
10 Professor Shapiro's 2016 data and your June 2017 data that  
11 AT&T gave you that produced --

12          A     No, I'm not.

13          Q     -- that produced about a 10 percent increase in  
14 the churn number?

15          A     My understanding now, not at the time of my  
16 deposition, was that there have been improvements in the  
17 methodology and that the purpose of the LTV is to make it as  
18 accurate as possible.

19                 Improvements in the methodology are required over  
20 time because the underlying economic conditions change over  
21 time. In particular, churn has become more important to get  
22 right. And, therefore, they are continually improving their  
23 methods in order to make accurate predictions of their  
24 financial incentives that result from capturing a new  
25 customer and that the data they're using in this ordinary

1 business course that they produce in their ordinary business  
2 for LTV are the numbers they look at for financial planning.

3 That's what they do today with those June 2017  
4 numbers. That's what they did with the numbers  
5 Professor Shapiro was using.

6 And from an economic point of view, that means  
7 those are the variables you want to be looking at.

8 Q And an increase in churn would have the effect of  
9 reducing lifetime value and reducing margin, right?

10 A If churn increases, lifetime value will go down.  
11 My general understanding is that those are the predictions  
12 in the industry, that churn has been increasing and will  
13 continue to increase.

14 Q And you're aware, I assume, that companies like  
15 AT&T can affect the amount of churn by, for example,  
16 deciding to not take some credit-risky customers.

17 So they can adjust what credit score we're going  
18 to sign up people at, and that can reduce churn, right?

19 A Many things they can do to influence churn,  
20 pricing, for example.

21 Q Right. And you're aware that AT&T had a project  
22 in this time frame specifically designed to reduce churn?

23 A My general understanding is that they are  
24 concerned with churn. They are considering projects to  
25 reduce churn because the change in the industry has been

1 that churn has gone up over time. Obviously, it's costly to  
2 reduce churn.

3 Q And if they're successful in reducing churn, that  
4 will have the effect of increasing lifetime value and  
5 margins, right?

6 A Not necessarily. It depends how costly it is; in  
7 other words, I agree with you if you lower the price to  
8 someone, he won't churn. On the other hand, he's not worth  
9 as much because he's not paying as much.

10 So that's the tricky business calculation that  
11 they have to go through and figure out.

12 That's why margin LTVs are going down.

13 Q So in your deposition, you said that you were --  
14 actually, just now, you said you were using exactly the same  
15 methodology as Professor Shapiro, but, in fact,  
16 Professor Shapiro used an average of three months, right,  
17 and you used only one month?

18 A That wouldn't make any difference, significantly,  
19 to what I've testified to. You could use the average.

20 As I said in my work papers, I use the April  
21 numbers, which are higher than the June numbers, and didn't  
22 change any of the conclusions in my report.

23 Q But in your report, you used the lowest number,  
24 right? You chose to use --

25 A I used the most current number in the report.

1 That happened to be lower than the April number.

2 But what I just said is if I use the April number,  
3 it wouldn't change any of my conclusions. It would change  
4 the specific numbers, but it wouldn't change my conclusion  
5 that Professor Shapiro's margins are way too high and if you  
6 use those lower margins, even April's margin, you would wipe  
7 out a lot of this harm.

8 Q Let's look at a document.

9 MR. CONRATH: May I approach, Your Honor?

10 THE COURT: Yes.

11 MR. CONRATH: May I approach the witness?

12 THE COURT: You may.

13 MR. CONRATH: Your Honor, I've handed up what's  
14 been marked as PX549 for identification. This is one of the  
15 documents that Your Honor ordered to be searched for and  
16 produced to us within the last couple of days.

17 So I obviously don't -- and I -- and I got it  
18 without a cover email, without metadata and whatnot. But  
19 I -- so I'm not in a position to establish it, but I would  
20 like to cross-examine this witness with it.

21 THE COURT: Uh-huh.

22 MR. CONRATH: May I proceed?

23 THE COURT: Well, I don't know what you're going  
24 to do with it, but I'll wait and see.

25 MR. CONRATH: All right.



1 THE COURT: You're not seeking to admit it,  
2 I trust?

3 MR. CONRATH: I am not.

4 THE COURT: Good.

5 Go ahead.

6 MR. CONRATH: Although given the circumstances in  
7 which it was -- may we approach?

8 THE COURT: Sure.

9 (Sealed bench conference)

10 THE COURT:

11 MR. CONRATH:

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16 MR. OPPENHEIMER:

17 THE COURT:

18 MR. CONRATH:

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THE COURT:

(Open court)

THE COURT: All right, Counsel. We're going to take a brief recess.

Witness remains a witness under oath. Refrain from discussing your testimony with anyone. You know the rules. We'll see you back here in 15 minutes. We'll be going till about 7:00.

DEPUTY CLERK: All rise.

This Honorable Court will now take a brief recess.

(Recess from 5:33 p.m. to 5:55 p.m.)

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

THE COURT: Witness remains under oath.

You may proceed.

1 MR. CONRATH: Thank you, Your Honor.

2 BY MR. CONRATH:

3 Q Professor Carlton, we were talking about the  
4 lifetime value calculations that went into your margin  
5 calculations.

6 Do you understand that lifetime value calculations  
7 on a monthly basis are something that goes up and down over  
8 the course of a year?

9 A My understanding, there can be fluctuations in  
10 LTV.

11 Q All right. And it would be, there's a potential,  
12 if you choose just one month, to pick an unrepresentative  
13 month; isn't that right?

14 A Anything is possible. I simply chose the latest  
15 data, which is what Professor Shapiro did when -- or thought  
16 he was doing.

17 Q And if, hypothetically, the lifetime value went up  
18 after you picked that data, then that would mean that a  
19 calculation would have to be redone that would reflect an  
20 increase in lifetime, value, right?

21 A If there's a more-updated lifetime value and its  
22 different than the one I'm using, that would or could --  
23 I mean, would alter the calculations, depending on how much  
24 it goes up or down.

25 Q And am I right that you have not seen any more

1 recent lifetime value calculations after your February 26th  
2 report?

3 A I have seen yesterday some new lifetime value  
4 calculations that were, I think, turned over to the  
5 Department of Justice. My understanding is those are  
6 preliminary.

7 Q So what did you learn about them when you saw  
8 them?

9 A My general impression was that, as you said, they  
10 go up and down, but that, even when they go up -- well,  
11 first of all, my general understanding is there are no new  
12 finalized LTVs. That's my first point.

13 The second point, the ones that are in process, as  
14 you say, show that LTV can go up and down but that even the  
15 more recent LTV values are significantly below those that  
16 Professor Shapiro used and, therefore, would not alter the  
17 fact that he used LTVs that were too high and that if he  
18 used lower LTVs, it would eliminate a lot of his harm.

19 Q And you recognize that if -- did you see numbers  
20 that represent projections for the January 2018 number?

21 A I believe there were, in what was shown to me,  
22 projections, as well as documents that contain projections,  
23 yes.

24 Q Right. And those projections showed an even  
25 higher number than the numbers for July and August of -- and

1 September of 2017?

2 A That I'd have to check. Like I say, I used June  
3 2017, which as I understand it, is the latest available data  
4 of finalized LTVs.

5 The data I saw, as I recollect, had the  
6 characteristic that even if these projections materialize,  
7 it would still be the case that the LTVs were much lower  
8 than what Professor Shapiro used and what period.

9 Q And is it correct that of all the lifetime values  
10 that you saw, the June numbers that you received and  
11 incorporated into your report were the lowest of any month;  
12 is that right?

13 A They were the latest data I had; but as I told  
14 you, I also did the LTVs for April and for January, which  
15 are higher, and the same implication.

16 Q My question is narrower.

17 I want to talk about all the numbers that you saw,  
18 both before and after June, including the ones you saw just  
19 in the last day or so. The lowest, current, completed  
20 draft, estimate, projection, the lowest of any of those was  
21 the one that you chose to incorporate into your report; is  
22 that right?

23 A No. Wait. Wait.

24 Q The June number.

25 A My understanding, the lowest completed estimate is

1 June 2017. That's the one I used.

2 Q That's not my question.

3 My question is, now that you've had a chance to  
4 look at some of the data in a more updated, the more recent  
5 documents that you saw -- you've seen some other months, in  
6 addition to June, right? Some more recent months,  
7 projections --

8 A What you're saying is not --

9 Q -- and current estimates?

10 THE COURT: You better approach.

11 (Sealed bench conference)

12 MR. CONRATH:

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14 THE COURT:

15 MR. CONRATH:

16 MR. OPPENHEIMER:

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MR. CONRATH:

THE COURT:

(Open court)

THE COURT: All right. You may proceed,  
consistent with the discussion at the bench.

BY MR. CONRATH:

Q Professor Carlton, one of the things you talked  
about was the outside good.

Do you remember that?

A I think I called the cord cutting, but the outside  
good is fine.

Q All right. Well, the outside good would be the  
economist's phrase for the analytic purposes, right?

A I'm happy to use the word "outside good."

Q Well, I actually was going to ask you about cord  
cutter. I just want to see if we're talking about the same  
thing.

So what do you mean when you testified earlier and  
said that cord cutters are the outside good in this market?

1           A     What I meant was that there are people who are  
2 taking -- who are subscribed to MVPDs. There are people who  
3 subscribe to virtual MVPDs. And then there's everybody  
4 else. Those are the three categories.

5                     And that third category is an outside good, and  
6 those are cord cutters. And those represent a group of  
7 consumers that AT&T could get as customers.

8           Q     All right. So you do not include people who  
9 subscribe to a virtual MVPDs as cord cutters, correct?

10          A     In my calculation of the 20 percent, that's fair.  
11                     That's because --

12          Q     Yeah.

13          A     -- Professor Shapiro --

14          Q     You don't need to explain.

15          A     Yeah.

16          Q     I just wanted to clarify what you meant by the  
17 term "cord cutter."

18          A     Yes.

19          Q     And the source of your projection of 20 percent is  
20 SNL Kagan's list of all the people who don't -- reporting of  
21 all the households that don't take an MVPD service; is that  
22 right?

23          A     TV households that don't take MVPDs of virtual or  
24 virtual MVPDs. And I defined it that way to be consistent  
25 with what Professor Shapiro's model was doing.

1 Q And is the outside good the percentage of people  
2 who might leave in response to a blackout and decide that  
3 they wouldn't sign up with any other pay-TV provider?

4 A The outside good is just what I described. It's  
5 the group of TV households that are not customers of virtual  
6 MVPDs and MVPDs.

7 Q Or MVPDs.

8 Right.

9 And to be -- to think about how this applies to  
10 analyzing a blackout, right?

11 So is a question that you're asking -- when you  
12 say the outside good or cord cutters are relevant, the  
13 question you're asking is, are there people who leave the  
14 company, the MVPDs that no longer carries Turner,  
15 hypothetically, in the case we're talking about, and decide  
16 to go to being a cord cutter?

17 A I was using outside good just to be that third  
18 category.

19 Q Right.

20 A And in the model, say, this merger simulation  
21 model, that represent the category, for example, that's  
22 relevant to AT&T.

23 Q So you would agree -- would you agree with me that  
24 if there is someone who leaves an MVPD because they don't  
25 have Turner, so the MVPD has a blackout with Turner, right?

1           A     Yes.

2           Q     There are some people who are attached enough to  
3 Turner that they don't want to stay with that MVPD that you  
4 agree that it's unlikely that if they're so attached to  
5 Turner that they want to leave the MVPDs, they're very  
6 unlikely to become cord cutters?

7           A     I'd have to investigate that.

8           Q     And that you haven't investigated that?

9           A     I haven't done an investigation of the  
10 substitution patterns of people in a blackout. I chose to,  
11 when I was redoing Professor Shapiro's model and altering  
12 it, I was simply using his model.

13                   He also didn't do an investigation of the  
14 substitution patterns amongst the consumers. He simply  
15 assumed what's called a flat logit model, that he just  
16 assumed it. He didn't do any substitution analysis.

17           Q     And would you agree that it's unlikely that of the  
18 people who would leave an MVPD because it drops Turner, it's  
19 pretty unlikely that 20 percent of those people who are so  
20 attached to Turner that they're going to leave their MVPD,  
21 it's unlikely that 20 percent of them are going to go be  
22 cord cutters and have no video linear service at all; do you  
23 agree?

24           A     Well, I've not studied that in detail, nor has  
25 Professor Shapiro.

1           But what I'm doing is simply adopting his merger  
2 simulation, his standard merger simulation. And that is the  
3 assumption of the demand structure he has adopted.

4           As I said earlier -- I think it was in response to  
5 a question you asked, that the demand substitution in these  
6 merger simulations -- I think he described them as  
7 Rube Goldberg -- I said they're very simple, assumption he's  
8 made. And it's proportional substitution.

9           He hasn't tested that. That was one of my  
10 criticisms, that he simply imposed this demand structure  
11 without investigating it.

12           But I didn't investigate it.

13           Q     And so you don't --

14           A     And I adopted his assumptions. And I'm saying, if  
15 you want to assume that and you want to assume proportional  
16 diversion, I'm telling you there's this third category; you  
17 simply are relying on Altman Vilandrie for the number, when  
18 the number is actually right in Kagan.

19           Q     So your assessment, are you implicitly saying that  
20 anybody who has a TV is potentially a customer for an MVPD?  
21 Is that your implication?

22           A     I'm not saying anything. I'm using  
23 Professor Shapiro's model and saying, this is what your  
24 substitution patterns assume. And if you want to assume  
25 that -- you haven't proven anything. You've done no

1 investigation of that. If you want to assume it, fine.

2 But then you have to, if you're going to use  
3 shares, which is what he's using, you have to use the shares  
4 of the people who are in that third category of yours.

5 Q And your source for that --

6 A By that "of yours," I mean of Professor Shapiro's.

7 Q Right. And your source for that is SNL Kagan?

8 A Yes. For shares, just like he's using those  
9 shares for his relative market shares of MVPDs.

10 Q Another topic.

11 If this merger goes through, other firms in the  
12 industry might decide to vertically integrate as well;  
13 is that right?

14 A If this merger goes through -- well, whether or  
15 not this merger goes through, other firms may decide to  
16 vertically integrate. The incentive for vertical  
17 integration in this case is, I think, a reflection of what's  
18 going on in the industry; namely, there's an efficiency from  
19 vertical integration.

20 And I think barring -- an improper decision to bar  
21 this merger, the efficiency of vertical integration will  
22 continue to be an incentive that will encourage firms to  
23 engage in this industry in vertical integration.

24 I think we are seeing -- we're going to see a  
25 restructuring of the industry.

1 Q And let me ask you to take this in a hypothetical  
2 way.

3 Let's suppose that it turns out that you're  
4 incorrect and that there actually is a benefit to vertical  
5 integration in raising rivals' costs. I understand that's  
6 not your opinion, but I'm asking you a hypothetical  
7 question.

8 A Yes.

9 Q If the merger allows some firms to benefit by  
10 raising rivals' costs, then other firms could vertically  
11 integrate in self-defense, right?

12 A Well, anything could happen in a hypothetical.

13 I mean, I can assume that if you'd like.

14 Q One of the things that you were asked about was  
15 the bargaining parameter.

16 Do you remember that?

17 A Yes.

18 Q Right. And the question you were asked, if I  
19 recall, was whether there was any writings out there that  
20 addressed the question of bargaining parameter.

21 Do you remember? And you mentioned --

22 A Well, I thought the question was whether  
23 Professor Shapiro had done anything in this industry --

24 Q The question you were asked by Mr. Oppenheimer  
25 was, are there any writings out there that discuss



1 bargaining parameter in this industry?

2 And you gave an example of one article.

3 Do you remember that question and answer?

4 A Yes. Yes, I do.

5 Q And there are other writings out there that  
6 address the bargaining parameter, that use a bargaining  
7 parameter in this industry; isn't that right?

8 A That use a bargaining parameter?

9 Q Yes.

10 A There are -- that might well be that they use it.  
11 I was referring to a study that actually estimated it.

12 MR. CONRATH: Can we approach, Your Honor?

13 THE COURT: Yes.

14 (Sealed bench conference)

15 MR. CONRATH:

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MR. OPPENHEIMER:

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MR. CONRATH:

THE COURT:

MR. OPPENHEIMER:

MR. CONRATH:

(Open court)

THE COURT: All right. What's next?

BY MR. CONRATH:

Q Professor Shapiro [sic], it's correct, isn't it, that a bargaining split of 70/30 would reflect the fact -- would imply that Turner is powerful enough to bargain for nearly three-quarters of the gains from trade?

A Yeah. First, again, I'm Professor Carlton. But the -- yes, the bargaining split would mean that if it were, say, 75 percent, that person would be getting three-quarters of the gain from trade.

Q But you've heard the testimony or learned of the testimony of various Turner executives like Mr. Martin and Mr. Breland that MVPDs like Mr. Ergen's Dish today drive hard bargains with Turner.

You've heard the testimony, right?

A I don't remember that specific testimony. I remember reading things that both sides seem to be saying:

1 Everybody is driving a hard bargain.

2 MR. CONRATH: May I have one moment, Your Honor?

3 THE COURT: Sure.

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

5 THE COURT: All right.

6 Redirect.

7 REDIRECT EXAMINATION

8 BY MR. OPPENHEIMER:

9 Q Your Honor, just a few questions.

10 Professor Carlton, I have documents that I could  
11 use to refresh your recollection, but perhaps it won't be  
12 necessary. But if it is, I can do so.

13 You were asked some questions about the effect of  
14 a certain long-term contract by one of the entities. And  
15 you were, the point was made that this is a single entity  
16 with the longest-term contract.

17 Do you have that entity in mind from what I've  
18 just asked you?

19 A Yes.

20 Q Do you recall, without my having to refresh you  
21 with documents, the percentage reduction in harm resulting  
22 from taking that single contract and its actual duration  
23 into account?

24 A I once recollected it since I told you what it  
25 was, but you better show me the document so I don't misstate

1 it. My recollection, it was a lot.

2 MR. OPPENHEIMER: Your Honor, may I approach the  
3 witness with two documents. We'll provide them to the Court  
4 as well.

5 THE COURT: What's the identification?

6 MR. OPPENHEIMER: Your Honor, the identification  
7 is -- there are two.

8 The first is PXD011-2. It's a demonstrative that  
9 was used yesterday in court by the government.

10 And a second is PXD011-10, also a demonstrative  
11 used yesterday in court by the government.

12 THE COURT: All right.

13 BY MR. OPPENHEIMER:

14 Q So, Professor Shapiro [sic], what I'd like to do  
15 is have --

16 A Carlton.

17 Q -- is have you take a look at -- I'm sorry.  
18 Pardon me.

19 Is this refreshing --

20 A I have a respect for Mr. Shapiro, but I don't --

21 Q I so apologize.

22 A I don't want to be him.

23 Q I so apologize. I cannot tell you how much  
24 I apologize.

25 So do you see the PXD001-2? This was a

1 demonstrative entitled "Predicted Turner Monthly Fee  
2 Increases for Rival MVPDs, 2016, Market Configuration."

3 A Yes.

4 Q And if you look at the -- for confidentiality  
5 reasons, I will not call out names, but do you see the  
6 entity that is listed at the top?

7 A Yes.

8 Q And do you see the total change in affiliate fee  
9 per month which Professor Shapiro is projecting to be the  
10 price increase?

11 A Yes.

12 Q All right. And if you then look at -- well, if  
13 you multiply that out, is that roughly \$200 million a year?

14 A You're asking me to multiply out the number on the  
15 far right --

16 Q Correct.

17 A -- in the first row times 12?

18 Q Yes.

19 A Yes.

20 Q Okay. So roughly 200 million.

21 Now, may I direct your attention to the second  
22 document I gave you, PXD011-10. This also, from  
23 Professor Shapiro's report, predicted net change in MVPD  
24 annual Turner costs.

25 MR. OPPENHEIMER: Your Honor, this is the diagram

1 that was given of the net harm -- the net benefit from EDM  
2 and the total harm in orange.

3 BY MR. OPPENHEIMER:

4 Q Do you have that in front of you, Professor?

5 A Yes.

6 Q All right.

7 So would I be correct that we would take the  
8 change from that contract that I identified that comes from  
9 the first entrant on a prior document? That's the  
10 \$200 million change.

11 A Yes.

12 Q And in order to understand the impact of holding  
13 the contract price protection so that that change, in fact,  
14 did not occur because of the contract, would we, in fact,  
15 reduce the harm to rivals on PXD011-10 from \$587 million --  
16 would we reduce that number by \$200 million?

17 A Yes.

18 Q And would we retain the blue bar, which is the EDM  
19 effect, the benefit of the merger, at \$352 million?

20 A Yes.

21 Q And then can you see there how that affects the  
22 net harm, which is, in Professor Shapiro's report, projected  
23 to be \$235 million, how this one contract reduces that?

24 A Yes, by --

25 Q And would I be correct that it reduces that amount

1 to approximately, from 235 million total harm to  
2 \$35 million?

3 A Yes.

4 Q And, again, this is just one contract?

5 A Correct.

6 Q And does that translate to roughly a 5-cent,  
7 leaving roughly a 5-cent projected price increase instead of  
8 a 27-cent price increase?

9 A I think that sounds right. That should be in one  
10 of the calculations I do here.

11 Q And that's just a single contract and the contract  
12 that you were asked about during your examination?

13 A Yes.

14 Q Okay. Just a couple of very quick additional  
15 questions.

16 You were asked some questions in a hypothetical  
17 about your view of the industry and whether there would be  
18 self-defense vertical mergers of some kind.

19 When you answered that question, were you  
20 answering that you factually believed that was your  
21 assessment that that would occur, or were you simply  
22 accepting the premise of the hypothetical?

23 A The premise was?

24 Q That there would be vertical defensive mergers.

25 A I thought I was asked the question, if this merger



1 occurs and it's anti-competitive, would there be other  
2 mergers in response in order to protect yourself?

3 And I'm saying that could happen; that could not  
4 happen. Depends, depends on the circumstances.

5 Q And you obviously haven't formed a judgment about  
6 that at this point?

7 A I've not investigated that because I don't think  
8 the hypothetical is an accurate statement of conditions in  
9 this industry.

10 Q All right. And you were asked some questions  
11 regarding some regional -- actually, strike that.

12 MR. OPPENHEIMER: Your Honor, I have no further  
13 questions.

14 THE COURT: All right.

15 Recross?

16 MR. CONRATH: Very briefly, Your Honor.

17 - - -

18 RE-CROSS-EXAMINATION

19 BY MR. CONRATH:

20 Q Professor Carlton, you agree with the proposition  
21 that was in defendants' pretrial brief that distributors and  
22 programmers have complex, combative, and constant  
23 negotiations?

24 A Could you read that once more.

25 Q Sure.

1 Defendants' pretrial brief, page 5, says that  
2 video distributors and programmers have complex, combative,  
3 and constant negotiations.

4 Do you recognize that?

5 A I read the briefs. I don't remember that specific  
6 language.

7 Q Do you agree with the proposition that  
8 distributors and programmers have constant negotiations?

9 A I agree they're negotiating and they each want to  
10 get a better deal, as in any transaction between two  
11 businesses. But I don't know what to add to that.

12 Q Let's focus on the constant part. Let's take an  
13 example.

14 You know that DirecTV launched its over-the-top  
15 service, DirecTV Now, in November 2016, right?

16 A I have to check the exact date, but I think what  
17 you say squares with my recollection.

18 Q And during the six, eight, ten months before that,  
19 they negotiated the rights that would let them put the  
20 programming onto their over-the-top service, right?

21 A I'm happy to accept that.

22 Q Okay. But not all of their contracts expired  
23 during that period, right?

24 A I don't believe so.

25 Q So they had to go back to someone with whom they

1 had an already-signed contract with an ask in hand, saying,  
2 I want this new right. They had to do that during the life  
3 of the contract, right?

4 A I think the answer to your question is yes, from  
5 the way you phrased it. But if you're asking me if  
6 businesses -- if business one is dealing with business two  
7 on some particular product, might it not also then be  
8 dealing with it on another product? That's possible.

9 Q Right.

10 And so you have talked about -- so there can be  
11 renegotiations within the life of an existing contract,  
12 right?

13 A There can be, even for the same product.

14 Q If one side needs something, the other side has an  
15 opportunity to use whatever bargaining leverage they have to  
16 get something in return; is that right?

17 A Anytime there's a negotiation, people can use  
18 bargaining leverage, and then you have to consider the  
19 long-term reputation of two parties.

20 If you and I sign a contract and the next day,  
21 I think you're trying to do something, take advantage of me,  
22 the next time I have to buy something, I'm not going to be  
23 so eager to go to you.

24 Q Well, we're talking about parties who by and large  
25 need each other, right?

1           A     I don't know.

2                     "Need" is a matter of economic -- that depends on  
3 the economics.

4                     And my point is the reputation of two parties to  
5 behave in a certain way matters a lot in terms of each  
6 party's willingness to deal with that party, rather than  
7 seeking out someone or cutting back how much you rely on  
8 that party and switching over to a more-reliable party, if  
9 you think someone is going to take advantage of you.

10           Q     So the fact that there's a contract with a certain  
11 term doesn't preclude the possible use of bargaining  
12 leverage if there are interim negotiations during the life  
13 of that contract, correct?

14           A     Bargaining -- bargaining leverage occurs anytime  
15 you bargain.

16                     MR. CONRATH: All right. No more questions.

17                     THE WITNESS: That depends whether you need to  
18 bargain or not and re-open a contract; that will depend.

19                     If you sign a contract with me and there's some  
20 terms in the future that we know we're going to negotiate  
21 and I know -- let's say you sign the contract with me and  
22 you think Carlton is dishonest; you're not going to be so  
23 eager to sign with me.

24                     So, yes, bargaining leverage matters. Your  
25 reputation matters. If I think you're going to take

1 advantage of me later in the contract, I will take that into  
2 account at the outset.

3 Q And just to stick with the question, the question  
4 is, if there's renegotiation, because one side needs  
5 something additional from the other side, that's an  
6 opportunity for bargaining leverage, right?

7 A Yes and no. It depends.

8 If I think that you're going to be dishonest and  
9 take advantage of -- not dishonest but going to take  
10 advantage of me in the future, right now, I'm going to say,  
11 Mr. Conrath, I don't trust you in the future to be a fair  
12 partner. I think you're going to try and take advantage of  
13 me.

14 So right now, when we have more equal leverage,  
15 we're going to set the conditions into the future as to how  
16 contracts get re-negotiated.

17 So that's why, for example, in many industries, if  
18 you deal with a supplier, you might specify, this is what  
19 I want if I need repair parts. This is what I want if I  
20 want a second-generation model. You specify all that out.  
21 So all that is considered upfront.

22 So the mere fact that there could be renegotiation  
23 in the future doesn't mean you can be taken advantage of.  
24 You'll anticipate if you're going to be taken advantage of,  
25 and that will affect your willingness to deal with the party

1 initially.

2 Q And it's correct, isn't it, that in this industry,  
3 there are constant negotiations?

4 A In many industries, there can be constant  
5 negotiations. It's going to depend on the circumstances.

6 MR. CONRATH: All right. No more questions,  
7 Your Honor.

8 THE COURT: You're excused.

9 THE WITNESS: I'm excused? Great.

10 Thank you.

11 THE COURT: Have a nice day.

12 I'll see the parties.

13 (Sealed bench conference)

14 THE COURT:

15 MR. CONRATH:

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18 MR. CONRATH:

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21 MR. CONRATH:

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24 MR. PETROCELLI:

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5 MR. PETROCELLI:

6 MR. CONRATH:

7 THE COURT:

8 MR. CONRATH:

9 (Open court)

10 THE COURT: All right. We will reconvene on  
11 Monday morning. The government does have one more witness,  
12 but he is not going to be available until Tuesday. So we  
13 will continue to go forward out of order, technically  
14 speaking.

15 The defense has two other experts that'll be on  
16 the stand on Monday. And then first thing Tuesday morning,  
17 the government's last witness will be available. And he  
18 will take the stand then.

19 And then the defense will have continuation. They  
20 have a couple more witnesses that day. So we'll be moving  
21 forward with the defense case at that point.

22 The government will be resting sometime Tuesday,  
23 probably around lunchtime or something like that.

24 So get your rest, Counsel. Have a good weekend.

25 DEPUTY CLERK: All rise.

1                   His Honorable Court will stand in recess until the  
2 return of court.

3                   (Proceedings concluded at 6:41 p.m.)  
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## C E R T I F I C A T E

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

Date: April 13, 2018                      /S/ William P. Zaremba

William P. Zaremba, RMR, CRR