

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THOMAS LAUMANN, FERNANDA  
GARBER, ROBERT SILVER, DAVID  
DILLON, GARRETT TRAUB, and PETER  
HERMAN, representing themselves and all  
others similarly situated,

Plaintiffs,

v.

NATIONAL HOCKEY LEAGUE, et al.,

Defendants

No. 12-cv-1817 (SAS)

FERNANDA GARBER, MARC LERNER,  
DEREK RASMUSSEN, ROBERT SILVER,  
GARRETT TRAUB, and VINCENT  
BIRBIGLIA, representing themselves and all  
others similarly situated,

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF  
BASEBALL, et al.,

Defendants

No. 12-cv-3704 (SAS)

ECF Cases

**APPENDIX IN SUPPORT OF:**

- Reply Memorandum of Law in Support of Plaintiffs' Motion for Class Certification
- Memorandum of Law in Opposition to Defendants' Joint Motion to Exclude the Opinions and Testimony of Plaintiffs' Expert Dr. Roger G. Noll
- Plaintiffs' Motion to Exclude the Opinions and Testimony of Defendants' Expert Dr. Janusz Ordovery

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# EXHIBIT A

<p style="text-align: center;">Page 1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p> <p>-----</p> <p>THOMAS LAUMANN, FERNANDA                      CIVIL ACTION NO. GARBER, ROBERT SILVER,                      12-cv-1817(SAS) GARRETT TRAUB, DAVID DILLON, and PETER HERMAN, representing themselves and all others similarly situated</p> <p style="text-align: center;">vs</p> <p>NATIONAL HOCKEY LEAGUE, NHL ENTERPRISES, L.P., NHL INTERACTIVE CYBER ENTERPRISES, LLC, NEW YORK RANGERS HOCKEY CLUB, NEW JERSEY DEVILS, LLC, NEW YORK ISLANDERS HOCKEY CLUB, L.P., COMCAST-SPECTACOR, L.P., LINCOLN HOCKEY, LLC, LEMIEUX GROUP, L.P., HOCKEY WESTERN NEW YORK, LLC, CHICAGO BLACKHAWKS HOCKEY TEAM, INC., SAN JOSE SHARKS, LLC, DIRECTV, LLC, ROOT SPORTS PITTSBURGH, (Caption continued),</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">Friday, December 19, 2014</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">HIGHLY CONFIDENTIAL</p> <p style="text-align: center;">DEPOSITION OF: DANIEL L. McFADDEN</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">Kaplan, Leaman and Wolfe 325 Chestnut Street Suite 909 Philadelphia, PA 19106 (800) 295-7571 KapLeaWol@aol.com</p>	<p style="text-align: center;">Page 3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 COHEN MILSTEIN SELLERS &amp; TOLL, PLLC</p> <p>4 BY: MATTHEW S. AXELROD, ESQUIRE maxelrod@cohenmilstein.com JEFFREY B. DUBNER, ESQUIRE 5 jdubner@cohenmilstein.com 1100 New York Avenue NW 6 Suite 500 Washington, DC 20005 7 (202) 408-4682 Representing the Plaintiffs</p> <p>8</p> <p>9 LANGER GROGAN &amp; DIVER, P.C.</p> <p>10 BY: PETER E. LECKMAN, ESQUIRE (215) 320-0876 pleckman@langergrogan.com 11 1717 Arch Street Suite 4130 12 Philadelphia, PA 19103 Representing the Plaintiffs</p> <p>13</p> <p>14 SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM, LLP</p> <p>15 BY: PAUL ECKLES, ESQUIRE Paul.Eckles@skadden.com JAMES A. KEYTE, ESQUIRE 16 james.keyte@skadden.com Four Times Square 17 New York, NY 10036 (212) 735-2578 18 Representing the Defendants, NHL (except MSG)</p> <p>19</p> <p>20 ALSTON &amp; BIRD</p> <p>21 BY: ANDREW E. PARIS, ESQUIRE drew.paris@alston.com drewparis@yahoo.com 22 dennareznick@alston.com 333 South Hope Street 16th Floor 23 Los Angeles, CA 90071 (213) 576-1000 24 Representing the Defendants, DIRECTV Sports Networks, LLC</p> <p>25</p>
<p style="text-align: center;">Page 2</p> <p>1 (CAPTION CONTINUED), COMCAST CORP., COMCAST 2 SPORTSNET PHILADELPHIA, L.P., COMCAST SPORTSNET 3 MID-ATLANTIC, L.P., COMCAST SPORTSNET 4 CALIFORNIA, LLC, COMCAST SPORTSNET 5 CHICAGO, LLC, and MADISON SQUARE GARDEN 6 COMPANY</p> <p>7 -----</p> <p>7 FERNANDA GARBER, MARC                      CIVIL ACTION NO. 8 LERNER, DEREK RASMUSSEN,                      12-cv-3704(SAS) ROBERT SILVER, GARRETT 9 TRAUB, and PETER HERMAN, representing themselves and all others similarly 10 situated</p> <p>11 vs</p> <p>12 OFFICE OF THE COMMISSIONER OF BASEBALL, et al.</p> <p>13 -----</p> <p>14</p> <p>15 Videotaped Deposition of DANIEL L. McFADDEN, 16 was taken pursuant to Notice at the law offices of COHEN MILSTEIN SELLERS and TOLL, 88 Pine Street, 17 14th Floor, New York, NY 10005 on the above date before DEBRA G. JOHNSON-SPALLONE, CCR, RPR, Delaware 18 CSR, Notary Public in and for the States of 19 Pennsylvania, New Jersey, and Delaware, and a 20 Federally Approved Reporter of the United States 21 District Court commencing on or about 10:12 a.m.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">Page 4</p> <p>1 APPEARANCES: (Continued),</p> <p>2</p> <p>3 DAVIS POLK</p> <p>4 BY: DAVID B. TOSCANO, ESQUIRE (212) 450-4515 david.toscano@davispolk.com 5 ANDREW N. DeLANEY, ESQUIRE (212) 450-4294 andrew.delaney@davispolk.com 6 ARTHUR J. BURKE, ESQUIRE arthur.burke@davispolk.com 450 Lexington Avenue 7 New York, NY 10017 Representing the Defendant, Comcast</p> <p>8</p> <p>9</p> <p>10</p> <p>11 PROSKAUER ROSE, LLC</p> <p>12 BY: ADRIAN FONTECILLA, ESQUIRE (202) 416-5863 afontecilla@proskauer.com 13 1001 Pennsylvania Avenue, NW Suite 400 South 14 Washington, DC 20004-2533 Representing the Defendants, Major League Baseball (except New York Yankees)</p> <p>15</p> <p>16</p> <p>17 PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON, LLP</p> <p>18 BY: WILLIAM Y. DURBIN, ESQUIRE (202) 223-7375 wdurbin@paulweiss.com 19 DAMON C. ANDREWS, ESQUIRE (202) 223-7337 dandrews@paulweiss.com 20 2001 K Street NW Washington, DC 20006-1047 21 Representing the Defendants, YES Network and</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 17</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2   <b>with?</b></p> <p>3       A.   There were junior staff members</p> <p>4       working, basically, under them, and I certainly met</p> <p>5       with all -- with the entire group.</p> <p>6       <b>Q.   Do you know approximately how big a</b></p> <p>7       <b>team of people?</b></p> <p>8       A.   I think at various times there were</p> <p>9       two -- two to four programmers and data analysts.</p> <p>10      <b>Q.   Okay.</b></p> <p>11       <b>I'm going to mark, and show you</b></p> <p>12      <b>another exhibit.</b></p> <p>13               ---</p> <p>14               <b>(At which time Daniel L. McFadden,</b></p> <p>15               <b>Principal, CV was received and marked as</b></p> <p>16               <b>Deposition Exhibit 3 for identification by</b></p> <p>17               <b>the court reporter.)</b></p> <p>18               ---</p> <p>19      <b>CONTINUATION</b></p> <p>20      <b>BY MR. AXELROD:</b></p> <p>21      <b>Q.   So, this is Exhibit-3.</b></p> <p>22       <b>Take a look at that.</b></p> <p>23       <b>I believe Exhibit-3 is a current</b></p> <p>24      <b>copy of your CV.</b></p> <p>25       <b>Is that right?</b></p>	<p style="text-align: right;">Page 19</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2       <b>Q.   Would you agree that Dr. Noll is one</b></p> <p>3       <b>of the country's leading sports economists?</b></p> <p>4       A.   I'd certainly -- he certainly has</p> <p>5       that reputation. I'm not quite sure what sport's</p> <p>6       economics is. It's -- it's a part of applied</p> <p>7       microeconomics and applied econometrics, and there is</p> <p>8       an issue, actually, what's germane to this case in my</p> <p>9       Declaration as to what it involves, the -- the</p> <p>10      institution of sports where I think he has -- is an</p> <p>11      acknowledged expert, and his work on consumer theory</p> <p>12      and -- and consumer choices where he gets into</p> <p>13      general microeconomics and applied econometrics which</p> <p>14      is my -- my specialty.</p> <p>15      <b>Q.   Sure.</b></p> <p>16       <b>But when we're talking about the</b></p> <p>17      <b>business of sports, and even further, the business of</b></p> <p>18      <b>sports broadcasting, you would agree that Dr. Noll</b></p> <p>19      <b>is, you know, one of the country's leading expert in</b></p> <p>20      <b>that area?</b></p> <p>21      A.   I, I actually don't even know the</p> <p>22      list of people who are known as sports economists,</p> <p>23      but -- but that's my -- what you say is what my</p> <p>24      understanding, yes.</p> <p>25      <b>Q.   Okay.</b></p>
<p style="text-align: right;">Page 18</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2       A.   It appears to be. This is</p> <p>3       maintained by staff. So, I haven't -- I didn't</p> <p>4       review this recently myself.</p> <p>5       <b>Q.   Okay.</b></p> <p>6       <b>So, you don't know whether there's</b></p> <p>7      <b>anything on Exhibit-3 that is missing or needs to be</b></p> <p>8      <b>updated?</b></p> <p>9       A.   As far as I know, there's nothing,</p> <p>10      but I would have to actually go through it</p> <p>11      page-by-page to be absolutely sure.</p> <p>12      <b>Q.   Okay.</b></p> <p>13       <b>Well, maybe later.</b></p> <p>14       <b>We'll switch gears.</b></p> <p>15       <b>All right.</b></p> <p>16       <b>Are you familiar with Roger Noll's</b></p> <p>17      <b>professional background?</b></p> <p>18      A.   I am.</p> <p>19      <b>Q.   You're aware that he has published</b></p> <p>20      <b>numerous articles on sports economics?</b></p> <p>21      A.   Yes.</p> <p>22      <b>Q.   And you're also aware he has</b></p> <p>23      <b>published numerous articles on the economics of</b></p> <p>24      <b>television broadcasting?</b></p> <p>25      A.   Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2       <b>And -- and he publishes work in peer</b></p> <p>3      <b>reviewed journals?</b></p> <p>4       A.   I believe so. I haven't</p> <p>5       systematically searched his CV.</p> <p>6       <b>Q.   Okay.</b></p> <p>7       <b>And one purpose of peer review is to</b></p> <p>8      <b>make sure that published articles reliably apply</b></p> <p>9      <b>scientific methods?</b></p> <p>10      A.   Yes.</p> <p>11      <b>Q.   And would you agree that as -- as a</b></p> <p>12      <b>general matter, you would expect that articles</b></p> <p>13      <b>published in peer reviewed journals are</b></p> <p>14      <b>scientifically sound?</b></p> <p>15      A.   The editing refereeing process is</p> <p>16      not a perfect process, and tends to sometimes get</p> <p>17      published that have to be retracted or -- or</p> <p>18      shouldn't have been published, but, by and large,</p> <p>19      yes, that's the purpose of it, and the -- I think</p> <p>20      it's generally successful.</p> <p>21      <b>Q.   Okay.</b></p> <p>22       <b>Sports economics is not your area of</b></p> <p>23      <b>expertise; right?</b></p> <p>24      A.   No. Consumer behavior.</p> <p>25       I would say consumer behavior and</p>

<p style="text-align: right;">Page 21</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2       the empirical and theoretical aspects of that are my</p> <p>3       particular specialty.</p> <p>4           <b>Q.   And with regard to sports economics,</b></p> <p>5       <b>you haven't taught or published in that specific</b></p> <p>6       <b>area, have you?</b></p> <p>7           A.   I have not taught or published on --</p> <p>8       on topics that, I guess, you would classify as sports</p> <p>9       economics.</p> <p>10           Although, again, I don't know</p> <p>11       exactly what your definition of sports economics is.</p> <p>12       I -- I don't remember that that's a category that the</p> <p>13       AA classifies as a separate category. I think it</p> <p>14       would be considered part of general applied</p> <p>15       microeconomics.</p> <p>16           <b>Q.   Well, what would your definition of</b></p> <p>17       <b>sports economics be?</b></p> <p>18           A.   Well, I understand that there is --</p> <p>19       there is an industrial organization specialty that</p> <p>20       deals with the kinds of organizations and ventures</p> <p>21       that are -- are -- are like sports leagues, and</p> <p>22       that's the IO literature that deals with joint</p> <p>23       ventures and the question of bargaining between</p> <p>24       owners of -- in joint ventures and all of that.</p> <p>25           I view that as part of industrial</p>	<p style="text-align: right;">Page 23</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2           Some of that involves specific</p> <p>3       institutional knowledge about those fields, and the</p> <p>4       parlance that they have and the policy issues that</p> <p>5       arise there, and others involve the general</p> <p>6       microeconomic and econometric issues of how you deal</p> <p>7       with data on consumer behavior on -- supply and</p> <p>8       behavior equilibrium in the markets, how</p> <p>9       organizations forms and pacts, equilibrium and so</p> <p>10       forth.</p> <p>11           <b>Q.   Do you see a difference in kind</b></p> <p>12       <b>between classifying something as transportation or</b></p> <p>13       <b>energy or environmental economics as opposed to using</b></p> <p>14       <b>the term sports economics?</b></p> <p>15           A.   I would say that's a similar</p> <p>16       specialization in microeconomics.</p> <p>17           <b>Q.   Okay.</b></p> <p>18           <b>So, you'd agree that in the area of</b></p> <p>19       <b>sports economics, Dr. Noll has more experience than</b></p> <p>20       <b>you do?</b></p> <p>21           A.   If we're talking about the -- the</p> <p>22       industrial organization of sports and the</p> <p>23       institutions, and -- yes, he has more specific</p> <p>24       knowledge than I do.</p> <p>25           <b>Q.   And with regard to the economics of</b></p>
<p style="text-align: right;">Page 22</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2       organization, that particular niche in industrial</p> <p>3       organization.</p> <p>4           <b>Q.   Do you consider yourself an expert</b></p> <p>5       <b>in that area?</b></p> <p>6           A.   No.</p> <p>7           <b>Q.   And your CV, which we've marked as</b></p> <p>8       <b>Exhibit-3, indicates a number of specific areas in</b></p> <p>9       <b>which you've published.</b></p> <p>10           If you look through it, maybe you</p> <p>11       remember, there are breakouts for transportation and</p> <p>12       energy and health economics and environmental</p> <p>13       economics.</p> <p>14           Sports economics isn't one of those</p> <p>15       groups that are broken out in your CV; right?</p> <p>16           A.   That's correct.</p> <p>17           <b>Q.   And -- but there's other groups;</b></p> <p>18       <b>transportation, energy, health economics,</b></p> <p>19       <b>environmental economics.</b></p> <p>20           You don't have trouble defining</p> <p>21       those areas; do you?</p> <p>22           A.   Well, I think there would be a</p> <p>23       general consensus among the economists as to what</p> <p>24       those areas are -- I view them as particularly</p> <p>25       specializations within applied microeconomics.</p>	<p style="text-align: right;">Page 24</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2       <b>television broadcasting, you agree, that's also not</b></p> <p>3       <b>one of your areas of specific expertise?</b></p> <p>4           A.   I'm -- I'm hesitant to -- to give a</p> <p>5       definitive answer to that. I do quite a bit of work</p> <p>6       on intellectual property and digital rights</p> <p>7       management, and I think some -- some of these issues</p> <p>8       would be covered there.</p> <p>9           I've -- have engaged in litigation</p> <p>10       testimony on broadcast. White Sox, for example, and</p> <p>11       so, it's not that I have no knowledge of it. It just</p> <p>12       -- it does not happen to be a specialty in which I</p> <p>13       write papers.</p> <p>14           <b>Q.   Sure.</b></p> <p>15           Have -- have you -- have you -- that</p> <p>16       was my next question.</p> <p>17           Have you taught or published in the</p> <p>18       area of television broadcasting?</p> <p>19           A.   Not specifically, no.</p> <p>20           <b>Q.   And it's not broken out on your CV</b></p> <p>21       <b>as a specific area in which you've published or have</b></p> <p>22       <b>expertise.</b></p> <p>23           A.   That's correct.</p> <p>24           <b>Q.   Would you agree that in the area of</b></p> <p>25       <b>economics of television broadcasting, Dr. Noll has</b></p>

<p style="text-align: right;">Page 69</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: You know -- well, your</p> <p>3 -- your statement is extremely broad, but I would</p> <p>4 suggest just a matter of empirical fact, industrial</p> <p>5 organization economists do testify as experts in</p> <p>6 anti-trust proceedings where -- where it's difficult</p> <p>7 or impossible to identify a control.</p> <p>8 ---</p> <p>9 CONTINUATION</p> <p>10 BY MR. AXELROD:</p> <p>11 Q. And when they do that because it is</p> <p>12 difficult to identify a control, they have to use a</p> <p>13 model, other than a before and after model; right?</p> <p>14 MR. ECKLES: Same objections.</p> <p>15 THE WITNESS: I'm not sure what you</p> <p>16 mean by modeling in this context, because it's such a</p> <p>17 broad question, but use some -- some other</p> <p>18 microeconomic technique, yes.</p> <p>19 ---</p> <p>20 CONTINUATION</p> <p>21 BY MR. AXELROD:</p> <p>22 Q. Okay.</p> <p>23 You're familiar with the work of</p> <p>24 Drs. Gregory Crawford and Ali Yurukoglu?</p> <p>25 A. I am.</p>	<p style="text-align: right;">Page 71</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 But was there discussion within the</p> <p>3 community of economic -- economists, academic</p> <p>4 economists, that you're aware of about this paper?</p> <p>5 A. I'm not aware of it, but as I say,</p> <p>6 there is no -- basically, no forum where this kind of</p> <p>7 thing gets -- gets communicated in any systematic</p> <p>8 way. So, I simply don't know.</p> <p>9 Q. Would you consider their paper a</p> <p>10 significant advance in the field?</p> <p>11 A. I think it was an interesting paper</p> <p>12 that made -- made some contributions, yes.</p> <p>13 Q. Significant contributions?</p> <p>14 MR. KEYTE: Asked and answered.</p> <p>15 THE WITNESS: I don't know how you</p> <p>16 measure significant.</p> <p>17 I -- I -- I -- I think it had some</p> <p>18 innovative aspects to it, and was a useful paper.</p> <p>19 ---</p> <p>20 CONTINUATION</p> <p>21 BY MR. AXELROD:</p> <p>22 Q. And you're familiar with the</p> <p>23 methodology that they used in that paper?</p> <p>24 A. I am.</p> <p>25 MR. ECKLES: Objection. Vague.</p>
<p style="text-align: right;">Page 70</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Q. And you're specifically familiar</p> <p>3 with a 2012 paper of theirs entitled, quote, "The</p> <p>4 Welfare Effect of Bundling in Multichannel Television</p> <p>5 Markets", unquote?</p> <p>6 A. I am.</p> <p>7 Q. That paper was peer reviewed?</p> <p>8 A. Correct.</p> <p>9 Q. That paper was published in the</p> <p>10 American Economic Review?</p> <p>11 A. Yes.</p> <p>12 Q. Do you agree that the American</p> <p>13 Economic Review is a leading -- one of the leading</p> <p>14 academic journals in economics?</p> <p>15 A. Yes.</p> <p>16 Q. Was the paper well received in the</p> <p>17 academic community?</p> <p>18 A. I don't have a meter for that, but I</p> <p>19 have read the paper myself, and I think it's a</p> <p>20 well-written paper.</p> <p>21 Q. And are you aware that -- of whether</p> <p>22 others thought it was a well-written paper?</p> <p>23 A. I'm not aware. I simply don't have</p> <p>24 a meter for assessing public reaction to papers.</p> <p>25 Q. Sure.</p>	<p style="text-align: right;">Page 72</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 ---</p> <p>3 CONTINUATION</p> <p>4 BY MR. AXELROD:</p> <p>5 Q. And the model they used in that</p> <p>6 paper was a structural model?</p> <p>7 A. I'm not sure how you mean the word</p> <p>8 "structural," but it was a model of consumers making</p> <p>9 choices to maximize utility.</p> <p>10 Q. So, would you say it's --</p> <p>11 A. On -- on -- on the demand side.</p> <p>12 There was also a supply side, which involved the</p> <p>13 conduct of firms and the -- and the bargaining</p> <p>14 between them.</p> <p>15 That's not -- that was not my focus</p> <p>16 in reading the paper.</p> <p>17 Q. Okay.</p> <p>18 Was the model in the paper, would</p> <p>19 you describe as a logit model?</p> <p>20 A. No. I would not describe it as a</p> <p>21 logit model, but it is a utility maximization model</p> <p>22 of one component of which, in their analysis, has the</p> <p>23 logit -- logistic forum.</p> <p>24 Q. You would agree that the Crawford</p> <p>25 and Yurukoglu methodology used in their peer reviewed</p>

<p style="text-align: right;">Page 105</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Yeah.</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. And that -- there's only -- and that</b></p> <p>5 <b>how -- how -- whether something is going to function</b></p> <p>6 <b>well as a pH meter doesn't depend on the thing that</b></p> <p>7 <b>the pH meter is measuring; right?</b></p> <p>8 MR. BURKE: Objection to form.</p> <p>9 THE WITNESS: Oh, I would say that</p> <p>10 -- I would say, it certainly could. It could be</p> <p>11 there is something wrong with the pH meter, that is</p> <p>12 -- its -- its function is related to how viscose the</p> <p>13 liquid is.</p> <p>14 I mean, there could be -- could be</p> <p>15 lots -- lots of sources of a failure of a piece of</p> <p>16 laboratory equipment.</p> <p>17 ---</p> <p>18 CONTINUATION</p> <p>19 BY MR. AXELROD:</p> <p>20 <b>Q. Sure.</b></p> <p>21 <b>But my point -- my question is, the</b></p> <p>22 <b>-- the pH meters are standard.</b></p> <p>23 <b>They're standard; right?</b></p> <p>24 MR. FONTECILLA: Objection.</p> <p>25 Foundation.</p>	<p style="text-align: right;">Page 107</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Right.</b></p> <p>3 <b>And so, isn't it -- and if there was</b></p> <p>4 <b>a wildly different type of data, you would construct</b></p> <p>5 <b>a different type of model; right?</b></p> <p>6 MR. BURKE: Objection.</p> <p>7 Foundation.</p> <p>8 MR. KEYTE: Incomplete hypothetical.</p> <p>9 THE WITNESS: Okay.</p> <p>10 I would answer -- answer in the</p> <p>11 following way; you build an econometric model. Say,</p> <p>12 microeconomic model for a specific purpose, and it</p> <p>13 may have a limited range of applicability. There --</p> <p>14 there might be other areas where it cleared. That</p> <p>15 would not be an appropriate model to use.</p> <p>16 So, the issue really is over the</p> <p>17 range in which you intend to apply the model over the</p> <p>18 kinds of behavior, the kinds of taste, in this case,</p> <p>19 that could arise.</p> <p>20 Is this model showing the kind of</p> <p>21 response that a laboratory instrument that -- that</p> <p>22 you -- you would expect to see?</p> <p>23 And I've not -- my -- my view is</p> <p>24 that Dr. Noll's model is precisely intending in his</p> <p>25 description to be able to capture the impact of</p>
<p style="text-align: right;">Page 106</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: Well, they are.</p> <p>3 Yes, they are kind of standard, but</p> <p>4 I think the point here, the pH meter is an example --</p> <p>5 was an example of a scientific method.</p> <p>6 So, it's not really about Ph meters,</p> <p>7 and the same principles apply to a econometric models</p> <p>8 -- to microeconomic models. You can do -- basically</p> <p>9 test whether the models produce false positives and</p> <p>10 that is a -- that is a way of validating the model or</p> <p>11 -- or invalidating.</p> <p>12 ---</p> <p>13 CONTINUATION</p> <p>14 BY MR. AXELROD:</p> <p>15 <b>Q. All right.</b></p> <p>16 <b>But we just -- we just had a</b></p> <p>17 <b>discussion about 15 minutes ago about how, when you</b></p> <p>18 <b>construct an econometric model, how you construct it</b></p> <p>19 <b>depends on the data you are trying to measure; right?</b></p> <p>20 <b>(Pause)</b></p> <p>21 A. Well, certainly -- certainly the</p> <p>22 model has to -- has to be appropriate to the</p> <p>23 application, and that includes the kind of data that</p> <p>24 are available to calibrate it.</p> <p>25 That's true.</p>	<p style="text-align: right;">Page 108</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 tastes for broad spectrum viewing of different teams</p> <p>3 versus focused interest in specific teams, because</p> <p>4 that's critical to, I think, the determination of the</p> <p>5 demand side of what would happen in a but-for world,</p> <p>6 where the people have the option of buying a package</p> <p>7 which gives broad spectrum opportunities versus one</p> <p>8 that gives team specific opportunities.</p> <p>9 It seems, to me, obvious that the</p> <p>10 mix of consumers of those types is going to be very,</p> <p>11 very important in their determination of the final</p> <p>12 result in -- in this case.</p> <p>13 And so, for Dr. Noll's model to be</p> <p>14 successful, certainly should be able to handle that</p> <p>15 range, and -- and show somewhat appropriate response</p> <p>16 to cover that range.</p> <p>17 ---</p> <p>18 CONTINUATION</p> <p>19 BY MR. AXELROD:</p> <p>20 <b>Q. All right.</b></p> <p>21 <b>So, let's look at one of the</b></p> <p>22 <b>experiments you did with Dr. Noll's model that, when</b></p> <p>23 <b>you ran it with a fan of the game world, and then you</b></p> <p>24 <b>ran it with a team super fan world; right?</b></p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 125</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2 individuals that are attached to particular teams,</p> <p>3 and really are interested in the play of those teams.</p> <p>4 There are individuals who just like to watch</p> <p>5 baseball, or just like to watch hockey.</p> <p>6                   So that the caricatures do</p> <p>7 correspond to types of people, which I think is</p> <p>8 plausible, they do exist in the real world.</p> <p>9                   I think in Dr. Noll's declaration he</p> <p>10 -- he, essentially, says this, that there are --</p> <p>11 there are people with these kinds of tastes.</p> <p>12                   ---</p> <p>13 CONTINUATION</p> <p>14 BY MR. AXELROD:</p> <p>15           <b>Q. But in your models your fan of the</b></p> <p>16 <b>game and teams who prefer models assume -- you're</b></p> <p>17 <b>assuming that -- not that they are individuals who</b></p> <p>18 <b>have those preferences, but that everyone has those</b></p> <p>19 <b>preferences; right?</b></p> <p>20           A. First of all, these are not my</p> <p>21 models.</p> <p>22           <b>Q. Sorry.</b></p> <p>23           A. These are tests.</p> <p>24           <b>Q. Okay.</b></p> <p>25           A. Scenarios to test Dr. Noll's model</p>	<p style="text-align: right;">Page 127</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2 <b>the model; right?</b></p> <p>3           MR. BURKE: Objection. Form.</p> <p>4           THE WITNESS: I -- I actually have</p> <p>5 not sat -- sat down and asked whether there are other</p> <p>6 test cases that are in substance more extreme, but I</p> <p>7 would say, in general, there are -- there are a lot</p> <p>8 of test cases, and these -- these are two that are --</p> <p>9 were -- were selected because they are -- they are</p> <p>10 starkly different, and was sufficiently hopeful in</p> <p>11 heterogeneity in the -- in these test extremes so</p> <p>12 that one can plausibly say what the nature of</p> <p>13 equilibrium might likely to be.</p> <p>14           ---</p> <p>15 CONTINUATION</p> <p>16 BY MR. AXELROD:</p> <p>17           <b>Q. Is it a common practice to test all</b></p> <p>18 <b>logit model by plugging in extreme data that wouldn't</b></p> <p>19 <b>exist in the real world -- doesn't -- doesn't exist</b></p> <p>20 <b>in the real world?</b></p> <p>21                   (Pause)</p> <p>22           A. Well, I would say, no. It's not</p> <p>23 common practice, because it -- it's very unusual to</p> <p>24 have a logit model that is -- that is -- in fact, is</p> <p>25 not responsive to -- to different conditions.</p>
<p style="text-align: right;">Page 126</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2 and, yes, under those test scenarios you have got --</p> <p>3 if taken the extreme case where all fans are of one</p> <p>4 extreme type or the other, that is not intended to be</p> <p>5 one -- the whole point of this test is to ask under</p> <p>6 scenarios which are not realistic, where you would</p> <p>7 expect the model to give different results, does it,</p> <p>8 in fact, respond in a reasonable and expected way?</p> <p>9           <b>Q. Right.</b></p> <p>10           <b>So, we agree that those test</b></p> <p>11 <b>scenarios that you constructed do not reflect the</b></p> <p>12 <b>real world?</b></p> <p>13           A. No. I don't agree that they don't</p> <p>14 reflect the real world, but what I -- what I will --</p> <p>15 what I will agree is that the -- the idea that every</p> <p>16 consumer is a fan of the -- of the Sharks, so that</p> <p>17 every consumer has equal taste parameters for every</p> <p>18 team, those are -- those are extreme edges of what</p> <p>19 might -- might occur in reality, and what this model</p> <p>20 purports -- what, in my opinion, this model purports</p> <p>21 to be able to handle in terms of how it would predict</p> <p>22 response of different consumer tastes in the but-for</p> <p>23 world.</p> <p>24           <b>Q. And, in fact, they're the most</b></p> <p>25 <b>extreme examples that you can possibly use to test</b></p>	<p style="text-align: right;">Page 128</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2           But I also want to emphasize here,</p> <p>3 we're not testing the logit model. We're testing the</p> <p>4 entire Noll analysis from the data he starts with</p> <p>5 through estimations, through simulations in the</p> <p>6 but-for world to equilibrium prices in the but-for</p> <p>7 world.</p> <p>8           So, all of the features of his</p> <p>9 demand analysis, which I have commented on, enter</p> <p>10 that, and anything that he does there that I have</p> <p>11 criticized as inappropriate, yeah, I think has an</p> <p>12 impact on that.</p> <p>13           But it is also influenced by the</p> <p>14 supply side which I have not commented on. I think</p> <p>15 Dr. Pakes is responsible for that.</p> <p>16           <b>Q. Yeah.</b></p> <p>17           A. They are also --</p> <p>18           <b>Q. I'm sorry. Let me -- let me ask you</b></p> <p>19 <b>it more broadly then.</b></p> <p>20           <b>Is it common practice to test an</b></p> <p>21 <b>econometric model by plugging in extreme data that</b></p> <p>22 <b>wouldn't exist in the real world?</b></p> <p>23           A. I would say it's not common</p> <p>24 practice, but it would -- it is ordinary practice to</p> <p>25 say -- ordinary practice would be to say, take an</p>

<p style="text-align: right;">Page 129</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 econometric model for prediction, and ask, does it --</p> <p>3 does it predict reasonably?</p> <p>4 And one way you test that is to ask,</p> <p>5 does it produce false positives? Does it produce a</p> <p>6 result which says one thing in a situation where it</p> <p>7 was fed data where that should not be happening?</p> <p>8 And I think that is -- that's --</p> <p>9 that is a common and standard way to test the</p> <p>10 reliable or viability of an econometric model.</p> <p>11 <b>Q. Now, any publication or other</b></p> <p>12 <b>sources you can cite for the proposition that it's</b></p> <p>13 <b>ordinary practice to test an econometric model with</b></p> <p>14 <b>plugging in extreme data that wouldn't exist in the</b></p> <p>15 <b>real world?</b></p> <p>16 MR. KEYTE: Objection.</p> <p>17 Mischaracterizes his testimony.</p> <p>18 THE WITNESS: I can't point to a</p> <p>19 single publication, certainly no publication where</p> <p>20 someone is sitting down and counting models and</p> <p>21 what's -- what kinds of tests are used.</p> <p>22 But it's -- it's what I -- what I</p> <p>23 just suggested is really just part of the general</p> <p>24 scientific method. You -- you -- you take a model</p> <p>25 and you take an instrument which is purporting to</p>	<p style="text-align: right;">Page 131</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 terms of error, distributional substance and so</p> <p>3 forth.</p> <p>4 So, you can test those assumptions,</p> <p>5 and you would say, if you -- that is set up for those</p> <p>6 assumptions, that model is violating some of the</p> <p>7 assumptions, that is a problem for the model.</p> <p>8 You can also look at the predictions</p> <p>9 of the model, and you can ask, is it -- is the model</p> <p>10 producing accurate predictions from given inputs and</p> <p>11 is it -- is it producing false positives or is it</p> <p>12 responding in a way that you would expect when it is</p> <p>13 fed data where you should see no -- no -- no</p> <p>14 response?</p> <p>15 Those are both legitimate ways to</p> <p>16 test a model or a scientific method, and I would say</p> <p>17 that in -- in general, perfectly legitimate to be --</p> <p>18 to be both the latter as in some sense closer to how</p> <p>19 the model is going to be used.</p> <p>20 And so, that's really an acid test</p> <p>21 for whether it's appropriate for the use -- intended</p> <p>22 use.</p> <p>23 <b>Q. Did you test Dr. Noll's model with</b></p> <p>24 <b>alternative assumptions that might actually occur in</b></p> <p>25 <b>the real world?</b></p>
<p style="text-align: right;">Page 130</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 forecast under varied conditions, and you -- and you</p> <p>3 ask the questions, it -- is it forecasting plausibly</p> <p>4 under various conditions? Is it producing false</p> <p>5 positives of its response in test circumstances where</p> <p>6 it's not plausible that there would be a positive</p> <p>7 response?</p> <p>8 And I believe as a -- as a general</p> <p>9 matter throughout econometrics and throughout</p> <p>10 science, that kind of testing is actually quite an</p> <p>11 essential part of this activity pattern.</p> <p>12 -- --</p> <p>13 CONTINUATION</p> <p>14 BY MR. AXELROD:</p> <p>15 <b>Q. Econometrics look to be an essential</b></p> <p>16 <b>part of the scientific method to test alternative</b></p> <p>17 <b>assumptions that might actually occur in the real</b></p> <p>18 <b>world.</b></p> <p>19 (Pause)</p> <p>20 A. There are two levels of testing.</p> <p>21 One -- there are two -- two levels</p> <p>22 at which you can examine econometric models.</p> <p>23 One is, you can examine the -- the</p> <p>24 assumptions that are made in -- in setting it up,</p> <p>25 what goes into it in terms of systematic things, in</p>	<p style="text-align: right;">Page 132</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. I have not tested his model.</p> <p>3 I've done no affirmative analysis</p> <p>4 myself. All I -- all I have done is critique his</p> <p>5 model, and the calculations I've done are -- are</p> <p>6 essentially calculations to provide a -- a test of --</p> <p>7 of the model -- model performance.</p> <p>8 Now, I have not gone on to test all</p> <p>9 the assumptions. As I say, I have not done any</p> <p>10 affirmative analysis. I haven't tried to reestimate</p> <p>11 his model, and I -- and I with -- with the</p> <p>12 corrections I think would be -- would be appropriate.</p> <p>13 That's something that might be done in the future,</p> <p>14 but I have not done it at this point.</p> <p>15 <b>Q. Do you intend to do it in the</b></p> <p>16 <b>future?</b></p> <p>17 A. I have not been asked to.</p> <p>18 <b>Q. Okay.</b></p> <p>19 <b>And getting back to my question.</b></p> <p>20 <b>The calculations that you ran, the</b></p> <p>21 <b>tests that you did with team super fan and fan of the</b></p> <p>22 <b>game, you did -- you tested the model using those</b></p> <p>23 <b>assumptions; right?</b></p> <p>24 A. Use -- using -- using alternative</p> <p>25 data which, in my opinion, should have produced</p>

<p style="text-align: right;">Page 169</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>if the model were scientifically sound?</b></p> <p>3 A. Well, I've -- I've read Dr. Noll</p> <p>4 back and forth in deposition and his Declarations in</p> <p>5 this. So, I think he believes that the Yankees would</p> <p>6 be able to command a premium price.</p> <p>7 <b>Q. Okay.</b></p> <p>8 <b>Any other teams that you would</b></p> <p>9 <b>expect to see in the top ten most expensive if the</b></p> <p>10 <b>model were scientifically sound?</b></p> <p>11 A. Oh, I don't think -- for myself,</p> <p>12 this -- this list is implausible to me.</p> <p>13 Beyond that, I don't think I have a</p> <p>14 strong opinion on it. I'm not basing any information</p> <p>15 I have personally.</p> <p>16 MR. ECKLES: By "this" you are</p> <p>17 referring to what is in paragraph 31?</p> <p>18 MR. AXELROD: What's in paragraph</p> <p>19 31. Okay.</p> <p>20 THE WITNESS: The Yankees, Cubs and</p> <p>21 Braves.</p> <p>22 ---</p> <p>23 CONTINUATION</p> <p>24 BY MR. AXELROD:</p> <p>25 <b>Q. And also -- does that apply also to</b></p>	<p style="text-align: right;">Page 171</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 MR. KEYTE: Objection.</p> <p>3 Foundation.</p> <p>4 THE WITNESS: I -- I have no idea.</p> <p>5 It would depend on what -- what my early bundle would</p> <p>6 -- is costing.</p> <p>7 As far as I'm aware, most minor --</p> <p>8 minor leagues don't even have television contracts.</p> <p>9 It's -- it's beyond -- beyond my knowledge.</p> <p>10 ---</p> <p>11 CONTINUATION</p> <p>12 BY MR. AXELROD:</p> <p>13 <b>Q. But if -- if you believe that</b></p> <p>14 <b>something that's more popular is likely to be more</b></p> <p>15 <b>expensive, why wouldn't it be that you would expect a</b></p> <p>16 <b>major league baseball package to be more expensive</b></p> <p>17 <b>than a minor league package?</b></p> <p>18 MR. ECKLES: Objection.</p> <p>19 Speculation, and incomplete hypothetical.</p> <p>20 THE WITNESS: Again, I think the</p> <p>21 question would be what -- what -- what's the affinity</p> <p>22 of fans for the two when you say something is more --</p> <p>23 more popular?</p> <p>24 We're talking, I guess in this</p> <p>25 context, always about how to market fans. I think</p>
<p style="text-align: right;">Page 170</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>paragraph 31 for hockey, you expect the Rangers,</b></p> <p>3 <b>Black Hawks, Penguins, Red Wings, Flyers and Bruins?</b></p> <p>4 A. The source of -- the source of this</p> <p>5 sentence is polling my own staff of hockey</p> <p>6 enthusiasts for what are the -- what are the most</p> <p>7 popular teams. That's -- that's the basis on -- on</p> <p>8 my belief that experts would expect this.</p> <p>9 <b>Q. All right.</b></p> <p>10 <b>So, your view is that the most</b></p> <p>11 <b>popular teams would be the most expensive for</b></p> <p>12 <b>standalone channels?</b></p> <p>13 A. I think that -- I think there's a --</p> <p>14 there's a reason to expect that. It's not -- it's</p> <p>15 not a logical necessity, but if -- if, for example,</p> <p>16 Dr. Noll's model corrected were a good model for this</p> <p>17 league, it would -- it would have that implication.</p> <p>18 <b>Q. Okay.</b></p> <p>19 <b>And do you agree that minor league</b></p> <p>20 <b>baseball isn't as popular as major league baseball?</b></p> <p>21 A. That's my understanding, yeah.</p> <p>22 <b>Q. So, you would express -- expect the</b></p> <p>23 <b>price for a bundle of minor league baseball games to</b></p> <p>24 <b>cost less than the price for a bundle of major league</b></p> <p>25 <b>baseball games?</b></p>	<p style="text-align: right;">Page 172</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 there are many -- too many things I don't know about</p> <p>3 the -- the tele -- televising of minor league games,</p> <p>4 what might be available to an out of market minor</p> <p>5 league fan. Is it using the same number of games?</p> <p>6 I don't know anything about it.</p> <p>7 ---</p> <p>8 CONTINUATION</p> <p>9 BY MR. AXELROD:</p> <p>10 <b>Q. Let me try hockey.</b></p> <p>11 <b>Would you agree that -- that minor</b></p> <p>12 <b>league hockey is less popular than the NHL?</b></p> <p>13 A. I wasn't even aware there was minor</p> <p>14 league hockey.</p> <p>15 <b>Q. I think that answers my question.</b></p> <p>16 <b>Would you expect the price for a</b></p> <p>17 <b>bundle of minor league hockey games to be less than</b></p> <p>18 <b>the price for a bundle of NHL games given that you</b></p> <p>19 <b>didn't even know that minor league hockey existed,</b></p> <p>20 <b>and you're a fan of the San Jose Sharks?</b></p> <p>21 MR. ECKLES: Objection.</p> <p>22 Speculation. Incomplete hypothetical.</p> <p>23 THE WITNESS: Yeah.</p> <p>24 My answer is, basically, the same as</p> <p>25 for baseball. I think there is so many things</p>

<p style="text-align: right;">Page 177</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 I think when we broke I was about to</p> <p>3 ask you to look at Exhibit-5, which is Dr. Noll's</p> <p>4 Supplemental Declaration in this case.</p> <p>5 ---</p> <p>6 (At which time a Supplemental</p> <p>7 Declaration of Roger G. Noll, was received</p> <p>8 and marked as Deposition Exhibit 5 for</p> <p>9 identification by the court reporter.)</p> <p>10 ---</p> <p>11 CONTINUATION</p> <p>12 BY MR. AXELROD:</p> <p>13 <b>Q. If I can ask you to turn to</b></p> <p>14 <b>Exhibit-5A, which I think I've tabbed with a yellow</b></p> <p>15 <b>sticky in your version.</b></p> <p>16 MR. AXELROD: And for everyone else,</p> <p>17 it's toward the back, I believe.</p> <p>18 Okay.</p> <p>19 MR. PARIS: Which exhibit?</p> <p>20 MR. AXELROD: It's Exhibit-5A to</p> <p>21 Exhibit-5, if that makes sense.</p> <p>22 Okay.</p> <p>23 ---</p> <p>24 CONTINUATION</p> <p>25 BY MR. AXELROD:</p>	<p style="text-align: right;">Page 179</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 --</p> <p>3 THE WITNESS: -- in the alternative?</p> <p>4 MR. ECKLES: -- what it says about</p> <p>5 Exhibit-5A in the text, you can do that, too.</p> <p>6 THE WITNESS: I may need to if you</p> <p>7 have a question about it. Go ahead and ask it, and I</p> <p>8 will see if I need to go to the text.</p> <p>9 MR. AXELROD: Sure.</p> <p>10 ---</p> <p>11 CONTINUATION</p> <p>12 BY MR. AXELROD:</p> <p>13 <b>Q. My question was just; these are the</b></p> <p>14 <b>teams you would expect to have the highest market</b></p> <p>15 <b>share; right, the Yankees, the Braves, the Red Sox</b></p> <p>16 <b>and the Dodgers?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And if you flip to Exhibit-5C, two</b></p> <p>19 <b>pages further on, this shows the predicted market</b></p> <p>20 <b>share for DIRECTV for each of the 30 major league</b></p> <p>21 <b>baseball teams according to Dr. Noll's model; right?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. And top four teams by market share</b></p> <p>24 <b>again are the Yankees and the Braves, the Dodgers and</b></p> <p>25 <b>the Red Sox; right?</b></p>
<p style="text-align: right;">Page 178</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. And, Dr. McFadden, this table here,</b></p> <p>3 <b>Dr. Noll's Exhibit-5A shows predicted market share</b></p> <p>4 <b>for Internet streaming for each of the 30 major</b></p> <p>5 <b>league baseball teams according to his model;</b></p> <p>6 <b>correct?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. And -- and in this exhibit, the top</b></p> <p>9 <b>four teams by market share are the Yankees, the</b></p> <p>10 <b>Braves, the Red Sox, and the Dodgers; correct?</b></p> <p>11 A. I -- take -- it would take me time</p> <p>12 to scan the column. Let me -- let me accept your</p> <p>13 description without --</p> <p>14 <b>Q. Okay.</b></p> <p>15 A. -- going over the numbers.</p> <p>16 <b>Q. Okay.</b></p> <p>17 <b>And those are pretty much the teams</b></p> <p>18 <b>you would expect to have the highest market share?</b></p> <p>19 A. Yes.</p> <p>20 Now, remind me.</p> <p>21 This is the market share of --</p> <p>22 <b>Q. Internet streaming.</b></p> <p>23 A. All -- of all fans who subscribe to</p> <p>24 the particular a la carte --</p> <p>25 MR. ECKLES: If you need to look at</p>	<p style="text-align: right;">Page 180</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. Correct. I believe so.</p> <p>3 <b>Q. And, again, that's pretty much what</b></p> <p>4 <b>you would expect to see; right?</b></p> <p>5 A. Yes. It is, essentially, a</p> <p>6 consequence of the real data, I believe.</p> <p>7 <b>Q. Okay.</b></p> <p>8 <b>And if you go to Exhibit-5 -- 5B on</b></p> <p>9 <b>page -- before the page we were just looking at, this</b></p> <p>10 <b>Exhibit-5B shows the predicted market share for</b></p> <p>11 <b>Internet streaming for each of the 30 NHL teams</b></p> <p>12 <b>according to Dr. Noll's model; right?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. And the top three teams by market</b></p> <p>15 <b>share here, I believe, are the Flyers, the Red Wings</b></p> <p>16 <b>and the Penguins; correct?</b></p> <p>17 A. I will take your -- I'll take that</p> <p>18 without being able to check every number.</p> <p>19 <b>Q. Okay.</b></p> <p>20 <b>And if -- if assuming that is</b></p> <p>21 <b>correct, and I hope -- hope that it is, that's not a</b></p> <p>22 <b>surprising result; is it?</b></p> <p>23 A. No. I think that's -- that's</p> <p>24 because the -- that's -- that's my understanding of</p> <p>25 the popularity of these teams, and the market share</p>

<p style="text-align: right;">Page 189</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 was rerun with 500 different values for the seed.</p> <p>3 <b>Q. And in your view is that a</b></p> <p>4 <b>sufficient number of times to rerun it?</b></p> <p>5 A. Oh, I think for the demonstration</p> <p>6 that the original calculation based on a single seed</p> <p>7 was unduly responsive to something that shouldn't</p> <p>8 matter, yes.</p> <p>9 <b>Q. Do you know how many times Dr. Noll</b></p> <p>10 <b>ran the model?</b></p> <p>11 A. I believe he ran it a single time</p> <p>12 from a single seed.</p> <p>13 <b>Q. Now, are you aware that Dr. Noll's</b></p> <p>14 <b>model contains a simplifying assumption by ignoring</b></p> <p>15 <b>competition between the RSN selling their games out</b></p> <p>16 <b>of market?</b></p> <p>17 A. I'm -- I'm vaguely aware of it, but</p> <p>18 I haven't studied that part of his analysis because</p> <p>19 that was assigned to Dr. Pakes, and I haven't</p> <p>20 concentrated -- concentrated on it.</p> <p>21 <b>Q. Would -- would you agree that it is</b></p> <p>22 <b>a conservative assumption?</b></p> <p>23 MR. ECKLES: Objection. Vague, and</p> <p>24 beyond the scope.</p> <p>25 THE WITNESS: I don't know if it's</p>	<p style="text-align: right;">Page 191</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 make a difference the composition of fan tastes is</p> <p>3 very important for the question of whether</p> <p>4 competition between different a la carte packages</p> <p>5 would -- would have any -- would have any bite or</p> <p>6 not.</p> <p>7 ---</p> <p>8 CONTINUATION</p> <p>9 BY MR. AXELROD:</p> <p>10 <b>Q. Let me turn to -- I believe it's</b></p> <p>11 <b>your next criticism of Dr. Noll's model concerning</b></p> <p>12 <b>marginal costs.</b></p> <p>13 <b>Okay.</b></p> <p>14 <b>Do you agree -- well, is it your</b></p> <p>15 <b>opinion that Dr. Noll has made a faulty assumption,</b></p> <p>16 <b>that marginal costs for teams wanting to sell their</b></p> <p>17 <b>games in other markets will be equal to 1/30th of the</b></p> <p>18 <b>league's costs for the bundle?</b></p> <p>19 A. I -- I believe that ratio is</p> <p>20 implausible, and I -- I will give you an example as</p> <p>21 to why I think it's implausible.</p> <p>22 Suppose -- suppose that one -- one</p> <p>23 of the costs of having subscribed either to the</p> <p>24 league bundle or to a team package is a -- a -- a</p> <p>25 credit card charge -- monthly credit card charge from</p>
<p style="text-align: right;">Page 190</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 conservative. I would have to study the supply side</p> <p>3 before I would draw any conclusions on what is</p> <p>4 conservative and what is not.</p> <p>5 I think at this point I have no</p> <p>6 opinion.</p> <p>7 ---</p> <p>8 CONTINUATION</p> <p>9 BY MR. AXELROD:</p> <p>10 <b>Q. Well, I want to ask you what I think</b></p> <p>11 <b>is a demand side question. You can tell me if I am</b></p> <p>12 <b>correct.</b></p> <p>13 <b>If competition between RSN's were</b></p> <p>14 <b>added into the model, would you expect the but-for</b></p> <p>15 <b>world price of the bundle to drop further due to the</b></p> <p>16 <b>added competition?</b></p> <p>17 MR. ECKLES: Same objections.</p> <p>18 MR. KEYTE: Beyond the scope.</p> <p>19 THE WITNESS: The answer is, I -- I</p> <p>20 don't know. I -- I have earlier talked on the demand</p> <p>21 side about how the -- the distribution of -- of</p> <p>22 tastes in the population, whether there's a lot of</p> <p>23 fans that are fans of particular teams versus a lot</p> <p>24 of fans that are fans of the game in general.</p> <p>25 I would expect that to make a --</p>	<p style="text-align: right;">Page 192</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 the subscriber for the -- for the service. There</p> <p>3 will be a credit -- credit card company charge of a</p> <p>4 few percent on -- on that payment.</p> <p>5 Now, if that payment is -- is in the</p> <p>6 order of 15 or \$20.00, then that credit -- credit</p> <p>7 card charge of one or two percent is already in the</p> <p>8 order of 40, \$.60.</p> <p>9 Dr. Noll's 1/30th rule says the</p> <p>10 total marginal cost is on the order of ten or \$.15, a</p> <p>11 third of what only the credit -- credit card charges</p> <p>12 alone would be a component of the marginal cost to</p> <p>13 provide of servicing a subscriber.</p> <p>14 So, I think that -- I have -- I have</p> <p>15 two -- two criticisms.</p> <p>16 One is, I -- I -- I think because of</p> <p>17 examples like that, and I haven't actually gone out</p> <p>18 and gotten the exact numbers to confirm this, but I'm</p> <p>19 giving an illustration of a cost component which I</p> <p>20 don't think follows the 30 to one rule, and -- and my</p> <p>21 main criticism is that, because this is such an</p> <p>22 important ratio, it -- it -- I don't think there's</p> <p>23 any question in the but-for world the viability and</p> <p>24 the competitiveness of a la carte channels depends</p> <p>25 quite critically on whether they can be -- deliver on</p>

<p style="text-align: right;">Page 193</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2           the marginal cost of substantially below the league</p> <p>3           -- league bundle or not.</p> <p>4           So, it's -- if -- anytime you have a</p> <p>5           critical parameter like this which makes a big</p> <p>6           difference to the outcome, then I think it's</p> <p>7           incumbent upon a careful microeconomist to -- to</p> <p>8           determine what they can about that ratio.</p> <p>9           Now, I'm not -- I'm not suggesting</p> <p>10          that there is a particular set of data that Dr. Noll</p> <p>11          could have gone to, and he failed to do that, but I</p> <p>12          am saying that this is -- this is a critical</p> <p>13          parameter, and if -- if it had been my responsibility</p> <p>14          to do this analysis, I would have at least said,</p> <p>15          "okay. Here's a parameter I don't know nothing</p> <p>16          about. It's critical, and I'm going to vary it. I'm</p> <p>17          going to tell you what the implication of different</p> <p>18          values are, and if I have to, I will do something</p> <p>19          conservative at that point."</p> <p>20          <b>Q. Do you agree as a general economic</b></p> <p>21          <b>principle that when costs to a supplier rise prices</b></p> <p>22          <b>rise?</b></p> <p>23          A. The suppliers' prices to the next</p> <p>24          level do you mean?</p> <p>25          <b>Q. No. I mean the -- I'm sorry.</b></p>	<p style="text-align: right;">Page 195</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2           THE WITNESS: That -- that would be</p> <p>3           a typical outcome certainly under competition.</p> <p>4           Certainly under many models of conduct of rivals in a</p> <p>5           concentrated industry.</p> <p>6           ---</p> <p>7           CONTINUATION</p> <p>8           BY MR. AXELROD:</p> <p>9           <b>Q. And if you -- if you turn to</b></p> <p>10          <b>Exhibit-1, which is your Declaration in this case, on</b></p> <p>11          <b>page 16, Figure-1 -- I'm sorry -- Exhibit-1. Page</b></p> <p>12          <b>16. It's page 16. Figure-1 at the bottom there.</b></p> <p>13          <b>You would agree that Noll's model --</b></p> <p>14          <b>Dr. Noll's model holds true to the principle that</b></p> <p>15          <b>when marginal costs rise prices rise; right?</b></p> <p>16          MR. TOSCANO: Objection to form.</p> <p>17          Foundation.</p> <p>18          THE WITNESS: His -- his model does</p> <p>19          imply that if -- if the relative marginal costs of</p> <p>20          the one commodity; mainly the a la carte bundle,</p> <p>21          rises relative to the marginal cost of the -- of the</p> <p>22          team -- I'm sorry -- of the league bundle, then the</p> <p>23          relative prices would rise within -- within his</p> <p>24          model. That's true.</p> <p>25          ---</p>
<p style="text-align: right;">Page 194</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2           <b>The supplier -- the price to the</b></p> <p>3           <b>buyer.</b></p> <p>4           MR. ECKLES: Objection.</p> <p>5           MR. KEYTE: Incomplete hypothetical.</p> <p>6           THE WITNESS: Well, the answer is</p> <p>7           that it -- in a variety of -- of real situations that</p> <p>8           might not be the case, but in a relatively simple</p> <p>9           situation where you can have, say, a monopolist or</p> <p>10          say the simplest form of conduct of concentrated</p> <p>11          forms, I think that generally will be the case.</p> <p>12          ---</p> <p>13          CONTINUATION</p> <p>14          BY MR. AXELROD:</p> <p>15          <b>Q. Okay.</b></p> <p>16          <b>And when I said -- I misspoke. So,</b></p> <p>17          <b>let me just ask it again with the right term.</b></p> <p>18          <b>Would you agree as a general</b></p> <p>19          <b>economic principle that when costs to the seller rise</b></p> <p>20          <b>that prices would tend to rise?</b></p> <p>21          MR. KEYTE: Objection.</p> <p>22          Incomplete hypothetical.</p> <p>23          THE WITNESS: Marginal cost to -- to</p> <p>24          the seller?</p> <p>25          MR. AXELROD: Yes.</p>	<p style="text-align: right;">Page 196</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2           CONTINUATION</p> <p>3           BY MR. AXELROD:</p> <p>4           <b>Q. Okay.</b></p> <p>5           <b>In your opinion what is an</b></p> <p>6           <b>appropriate estimate for a team's -- the broadcast of</b></p> <p>7           <b>a single team in baseball?</b></p> <p>8           MR. ECKLES: Objection. Vague.</p> <p>9           Lacks foundation.</p> <p>10          THE WITNESS: Can you re-ask the</p> <p>11          question?</p> <p>12          MR. AXELROD: Thank you, because I</p> <p>13          think I dropped an important word.</p> <p>14          ---</p> <p>15          CONTINUATION</p> <p>16          BY MR. AXELROD:</p> <p>17          <b>Q. In your opinion what is an</b></p> <p>18          <b>appropriate estimate for marginal cost of a baseball</b></p> <p>19          <b>team to broadcast its own games?</b></p> <p>20          MR. KEYTE: Objection. Beyond the</p> <p>21          scope. Vague.</p> <p>22          THE WITNESS: That's -- that's</p> <p>23          definitely not something that I have studied or is</p> <p>24          within my opinion. So, I'm not -- I don't think I</p> <p>25          can answer it.</p>

<p style="text-align: right;">Page 205</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2   <b>consumers?</b></p> <p>3           MR. ECKLES: Objection.</p> <p>4   Speculation. Incomplete hypothetical.</p> <p>5           THE WITNESS: Oh, I have not --</p> <p>6           MR. KEYTE: Just a very incomplete</p> <p>7   hypothetical.</p> <p>8           THE WITNESS: I have not undertaken</p> <p>9   any analysis myself of what the impact would be on</p> <p>10 different classes of consumers as a result of the</p> <p>11 introduction of a la carte teams, and I -- I have no</p> <p>12 position, having not studied it, to offer any -- any</p> <p>13 opinion whether it would be a common effect or not.</p> <p>14           MR. AXELROD: All right.</p> <p>15           Maybe we are talking passed each</p> <p>16   other.</p> <p>17                   ---</p> <p>18   CONTINUATION</p> <p>19   BY MR. AXELROD:</p> <p>20           <b>Q. I'm not asking you whether the --</b></p> <p>21 <b>the result as to each consumer would be identical.</b></p> <p>22           <b>I'm asking you whether Dr. Noll's</b></p> <p>23 <b>model if it were refined to fix all the flaws you've</b></p> <p>24 <b>identified, and you agreed that it were</b></p> <p>25 <b>scientifically sound, does that model result in a way</b></p>	<p style="text-align: right;">Page 207</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2   behave if it were corrected, and I don't know whether</p> <p>3   it would show something that applies to all -- some</p> <p>4   kind of effect that is -- that is common to members</p> <p>5   of a class. I have no idea.</p> <p>6                   ---</p> <p>7   CONTINUATION</p> <p>8   BY MR. AXELROD:</p> <p>9           <b>Q. So, as the model stands now you are</b></p> <p>10 <b>saying it's -- you're saying it's -- it's useless, it</b></p> <p>11 <b>shows nothing --</b></p> <p>12           A. Yes. That's my opinion.</p> <p>13           <b>Q. -- as to every plaintiff?</b></p> <p>14           A. Sorry.</p> <p>15           <b>Q. As to every plaintiff?</b></p> <p>16           MR. KEYTE: Objection. Lacks</p> <p>17   foundation. I don't believe the scope of his</p> <p>18   testimony.</p> <p>19           THE WITNESS: The question is</p> <p>20   whether -- the question I asked, and addressed in my</p> <p>21   Declaration was whether the demand analysis was done</p> <p>22   in such a way that it reliably allows the projection</p> <p>23   of but-for market conditions as a function of what</p> <p>24   consumer taste or the patterns of consumer taste</p> <p>25   might be, and my conclusion is that that model fails</p>
<p style="text-align: right;">Page 206</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2   <b>of measuring the impact on all consumers?</b></p> <p>3           MR. KEYTE: Asked and answered.</p> <p>4           It's the exact same question, and</p> <p>5   you didn't like the answer, and I think you should</p> <p>6   move on.</p> <p>7           MR. AXELROD: I ask that the</p> <p>8   speaking objections stop.</p> <p>9           MR. KEYTE: That was the exact same</p> <p>10   question.</p> <p>11           MR. AXELROD: I would ask that you</p> <p>12   answer the question.</p> <p>13           MR. KEYTE: And you act like it is,</p> <p>14   and it's not.</p> <p>15           MR. PARIS: It is also a vague</p> <p>16   question. I also make that objection.</p> <p>17           MR. AXELROD: I don't see that</p> <p>18   reflected.</p> <p>19           I would like you to answer the</p> <p>20   question.</p> <p>21           THE WITNESS: And my answer is that,</p> <p>22   I don't know what this model would show if it were</p> <p>23   corrected.</p> <p>24           At this point it is so contaminated</p> <p>25   that I -- I -- I am unable to guess how it would</p>	<p style="text-align: right;">Page 208</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2   to do that in a scientifically satisfactory way.</p> <p>3           And because of that, I -- I have no</p> <p>4   way of knowing whether this model would produce any</p> <p>5   damages at all, whether those -- whether those</p> <p>6   damages would have different impacts on people in</p> <p>7   different regions, which I don't think one can rule</p> <p>8   out in advance.</p> <p>9           I -- I simply have not studied that.</p> <p>10   It's outside my opinion, and I don't know what the</p> <p>11   outcome will be.</p> <p>12                   ---</p> <p>13   CONTINUATION</p> <p>14   BY MR. AXELROD:</p> <p>15           <b>Q. Okay. Fair enough.</b></p> <p>16           <b>But you -- you -- would you agree</b></p> <p>17 <b>that Noll's model as it is, as you analyzed it, flaws</b></p> <p>18 <b>and all, that that model demonstrates that each</b></p> <p>19 <b>plaintiff was harmed?</b></p> <p>20           MR. KEYTE: Again, beyond the scope.</p> <p>21   Asked and answered three times, and I think you</p> <p>22   should stop badgering the witness on this.</p> <p>23           THE WITNESS: You used the word --</p> <p>24   used the word "demonstrate" and my opinion is that</p> <p>25   this model is sufficiently flawed in its current</p>

<p style="text-align: right;">Page 209</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 form, so it demonstrates nothing. It is useless for</p> <p>3 demonstrating any impact.</p> <p>4 MR. AXELROD: I understand -- I</p> <p>5 understand that's your opinion.</p> <p>6 ---</p> <p>7 CONTINUATION</p> <p>8 BY MR. AXELROD:</p> <p>9 <b>Q. My question, though, is, with all</b></p> <p>10 <b>those flaws that you've identified, understanding</b></p> <p>11 <b>that you think it has flaws, just looking at what</b></p> <p>12 <b>Dr. Noll did, does his flawed model show that each</b></p> <p>13 <b>plaintiff was harmed?</b></p> <p>14 MR. KEYTE: It's beyond the scope of</p> <p>15 his opinions. Asked and answered for the seventh</p> <p>16 time in a row.</p> <p>17 MR. AXELROD: You can answer the</p> <p>18 question.</p> <p>19 MR. KEYTE: --</p> <p>20 THE WITNESS: In its -- in its</p> <p>21 current form this model is junk science, and it gives</p> <p>22 a junk science result, which is in favor of the</p> <p>23 plaintiffs, but I -- in the end it's junk.</p> <p>24 It has no value, no scientific value</p> <p>25 in this case, and that it's really -- it would be</p>	<p style="text-align: right;">Page 211</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 perhaps gotten discounts, perhaps subscribers --</p> <p>3 early subscriber, late subscriber, and so, he -- he</p> <p>4 -- he ignores the fact that there might be some</p> <p>5 information in that about -- about consumer</p> <p>6 responsiveness to price.</p> <p>7 <b>Q. And how significant a degree of</b></p> <p>8 <b>price variation did you see in the data that Dr. --</b></p> <p>9 <b>that you say Dr. Noll did ignore?</b></p> <p>10 A. I don't remember the numbers, but it</p> <p>11 is -- it was substantial.</p> <p>12 Say, for example, people who</p> <p>13 subscribe mid-season and people who subscribe</p> <p>14 early-season, substantially different prices.</p> <p>15 <b>Q. And so, that -- that -- that's one</b></p> <p>16 <b>type of price variation that Dr. -- you say</b></p> <p>17 <b>Dr. Noll's model ignores; right, the mid-season</b></p> <p>18 <b>purchase versus someone who purchased for the entire</b></p> <p>19 <b>season?</b></p> <p>20 A. Or -- or discounts if they are</p> <p>21 offered.</p> <p>22 I -- I -- all -- all I recall is</p> <p>23 that there are quite a few subscribers who paid a</p> <p>24 price, other than the one that Dr. Noll used.</p> <p>25 <b>Q. Sure.</b></p>
<p style="text-align: right;">Page 210</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 irresponsible of Dr. Noll to base opinions on this</p> <p>3 model with its current flaws.</p> <p>4 It should be fixed.</p> <p>5 ---</p> <p>6 CONTINUATION</p> <p>7 BY MR. AXELROD:</p> <p>8 <b>Q. I want to turn to your next</b></p> <p>9 <b>criticism of the model which is, if I understand it,</b></p> <p>10 <b>your opinion is that Dr. Noll's estimate of consumer</b></p> <p>11 <b>demand differs from that used by C&amp;Y in three</b></p> <p>12 <b>different ways.</b></p> <p>13 <b>Do I have that right?</b></p> <p>14 A. That's correct.</p> <p>15 <b>Q. I think it's pages 17 through 19 of</b></p> <p>16 <b>your report, which is Exhibit-1.</b></p> <p>17 <b>I want to talk about what I think is</b></p> <p>18 <b>the first of the three ways you identify.</b></p> <p>19 <b>And am I correct in understanding</b></p> <p>20 <b>that it's your view that Dr. Noll fails to consider</b></p> <p>21 <b>variation in the price of each league bundle across</b></p> <p>22 <b>consumers in the data?</b></p> <p>23 A. I think as -- as -- as a question of</p> <p>24 fact, he does ignore the fact that within his data</p> <p>25 set some consumers have subscribed -- have gotten --</p>	<p style="text-align: right;">Page 212</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>But focusing in on that -- the one</b></p> <p>3 <b>particular type of price variation that you've</b></p> <p>4 <b>identified, the mid-season purchase as opposed to the</b></p> <p>5 <b>entire season purchase, could -- could that be</b></p> <p>6 <b>accounted for if the model were to measure monthly</b></p> <p>7 <b>price, rather than the total price paid?</b></p> <p>8 MR. KEYTE: Objection to form.</p> <p>9 Lack of foundation.</p> <p>10 THE WITNESS: I'm not sure I</p> <p>11 understand your -- your question, but I think</p> <p>12 precisely the way you would account for it would be</p> <p>13 to ask whether the -- the monthly price is different</p> <p>14 for people who are full season subscribers than it is</p> <p>15 for people who were part season subscribers.</p> <p>16 There are definitely additional</p> <p>17 issues involved in using this -- this particular form</p> <p>18 of variation.</p> <p>19 I think my point is that it -- it</p> <p>20 may not be easy to use, but it does have con -- it</p> <p>21 does have some content on how consumers respond to</p> <p>22 price.</p> <p>23 ---</p> <p>24 CONTINUATION</p> <p>25 BY MR. AXELROD:</p>

<p style="text-align: right;">Page 213</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. But it's not your testimony, is it,</b></p> <p>3 <b>that the model compares the prices paid by -- the</b></p> <p>4 <b>total prices paid by consumers who bought for an</b></p> <p>5 <b>entire season with the prices paid by consumers who</b></p> <p>6 <b>bought midway through a season; is it?</b></p> <p>7 COUNSEL: Objection to the form.</p> <p>8 THE WITNESS: Dr. Noll does not take</p> <p>9 into account any price differences paid by</p> <p>10 subscribers to the bundle, whether they are part</p> <p>11 season or full season subscribers, early subscribers</p> <p>12 and so forth.</p> <p>13 So, while there is some variation in</p> <p>14 monthly price for these different groups, that's --</p> <p>15 that's not currently in his model.</p> <p>16 ---</p> <p>17 CONTINUATION</p> <p>18 BY MR. AXELROD:</p> <p>19 <b>Q. Okay.</b></p> <p>20 <b>But you would agree, the model does</b></p> <p>21 <b>measure price monthly as opposed to total price paid</b></p> <p>22 <b>by the consumer during the year?</b></p> <p>23 A. That's -- that's my recollection,</p> <p>24 yes.</p> <p>25 <b>Q. Okay.</b></p>	<p style="text-align: right;">Page 215</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. I -- oh, I have not made -- I have</p> <p>3 not offered an affirmative opinion on how that should</p> <p>4 be done, and I'm not prepared to do so now.</p> <p>5 The point is that there is -- there</p> <p>6 is some price variation there, and it's not being</p> <p>7 used.</p> <p>8 <b>Q. If Dr. Noll were to refine his model</b></p> <p>9 <b>so that all of the criticisms you have of it, other</b></p> <p>10 <b>than this one, other than the accounting for</b></p> <p>11 <b>discounts issue, were fixed, would his failure to</b></p> <p>12 <b>account for discounts standing alone render the model</b></p> <p>13 <b>unsound in your view?</b></p> <p>14 A. No, and on that single point, not</p> <p>15 necessarily, no.</p> <p>16 <b>Q. And standing alone does the failure</b></p> <p>17 <b>to account for discounts effect the damages</b></p> <p>18 <b>calculations?</b></p> <p>19 A. Let me -- let me, actually, in</p> <p>20 answering that also elaborate on my -- my -- my</p> <p>21 previous.</p> <p>22 If discounts influence -- actually</p> <p>23 do influence the demand, and it's -- it's not simply</p> <p>24 a reflection of a shift in demand caused by things</p> <p>25 being sold to different kinds of people with</p>
<p style="text-align: right;">Page 214</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>So -- so, if -- in your view, what</b></p> <p>3 <b>would be necessary to remove this problem of failure</b></p> <p>4 <b>to account for price variation?</b></p> <p>5 A. Well, I think the primary</p> <p>6 information contained in the data that Dr. Noll uses</p> <p>7 comes in the -- in next paragraph, which is that</p> <p>8 subscribers to the league bundle are getting</p> <p>9 different content depending on where they live and</p> <p>10 how much is blacked out, and so, even though they pay</p> <p>11 the same dollar per month subscription say at that</p> <p>12 standard posted rate, they are -- they are getting a</p> <p>13 different effect of price for -- for the content</p> <p>14 that's available for them through the bundle.</p> <p>15 Certainly a very standard technique</p> <p>16 in microeconomics would be to use that source of</p> <p>17 variation, the source of variation of effected price</p> <p>18 to determine how consumers -- how sensitive consumers</p> <p>19 are to the price.</p> <p>20 <b>Q. Well, put the blackouts aside for a</b></p> <p>21 <b>second, and we'll get -- we'll get to those in a</b></p> <p>22 <b>minute.</b></p> <p>23 <b>What, in your view, would be</b></p> <p>24 <b>necessary for Dr. Noll to do to fix the -- the</b></p> <p>25 <b>discounting issue that you've flagged?</b></p>	<p style="text-align: right;">Page 216</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 different kinds of tastes, then -- then you can learn</p> <p>3 something about the elasticities of -- of demand from</p> <p>4 these data.</p> <p>5 <b>Q. Okay.</b></p> <p>6 <b>So, turning to the second of your</b></p> <p>7 <b>three -- the three different ways that you said that</b></p> <p>8 <b>Noll's estimate of consumer demand differs from that</b></p> <p>9 <b>used by C&amp;Y -- I think we were talking about this a</b></p> <p>10 <b>few minutes ago -- the second is that Dr. Noll</b></p> <p>11 <b>ignores the fact that the current blackout rules mean</b></p> <p>12 <b>that a -- for example, a Bruins fan with a league</b></p> <p>13 <b>package who lives in New York City gets fewer Bruin</b></p> <p>14 <b>games -- Bruins games than the Bruins fan who, with</b></p> <p>15 <b>the league package, lives in San Francisco?</b></p> <p>16 A. Right.</p> <p>17 <b>Q. And your view is effectively that</b></p> <p>18 <b>the Bruins fan in New York City is paying more for</b></p> <p>19 <b>each Bruins game than the Bruins fan in San</b></p> <p>20 <b>Francisco; right?</b></p> <p>21 A. Right.</p> <p>22 <b>Q. Okay.</b></p> <p>23 <b>And you'd agree that the bundle</b></p> <p>24 <b>isn't sold on a per game basis; right?</b></p> <p>25 A. It's -- it's not sold on a per game</p>

<p style="text-align: right;">Page 221</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Got you.</b></p> <p>3 <b>So, am I misunderstanding, or is it,</b></p> <p>4 <b>essentially, two different ways that you're saying</b></p> <p>5 <b>Dr. Noll's estimate of consumer demand differs from</b></p> <p>6 <b>that used by C&amp;Y?</b></p> <p>7 A. I would say this is -- this is a re</p> <p>8 -- repeat of the point in paragraph 39, with the --</p> <p>9 with the second sentence being an additional and</p> <p>10 third component in which he does -- which he does it</p> <p>11 differently than C&amp;Y.</p> <p>12 <b>Q. Okay.</b></p> <p>13 <b>I want to turn to the next criticism</b></p> <p>14 <b>which is -- is on page 19 of your report under the</b></p> <p>15 <b>header of, "Dr. Noll inconsistently counts</b></p> <p>16 <b>viewership".</b></p> <p>17 <b>Do you see that?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. And if I have it right, your</b></p> <p>20 <b>criticism here is that Dr. Noll engages in double</b></p> <p>21 <b>counting because -- because he doesn't count, for</b></p> <p>22 <b>example, a Bruins/Rangers game as time spent watching</b></p> <p>23 <b>both teams.</b></p> <p>24 <b>Do I have that right?</b></p> <p>25 A. The criticism is not the double</p>	<p style="text-align: right;">Page 223</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 model, which is assigning a preference parameter to a</p> <p>3 given team, doesn't really match exactly what the</p> <p>4 nature of these data are. The data are data on time</p> <p>5 spent watching team pairs.</p> <p>6 I think that an alternative, and I</p> <p>7 didn't criticize him by saying he should do this, but</p> <p>8 I think he -- he should think about it, would be to</p> <p>9 have a taste parameter for -- for every pair of</p> <p>10 teams. That -- that would be given -- given the way</p> <p>11 his data comes, that would be closer to the way these</p> <p>12 -- these channel alternatives were considered in the</p> <p>13 C&amp;Y paper.</p> <p>14 <b>Q. But is it your view that measuring</b></p> <p>15 <b>preferences for team pairs reflects the way that</b></p> <p>16 <b>actual consumers choose to watch hockey and baseball</b></p> <p>17 <b>games?</b></p> <p>18 A. I don't know, but reflecting on my</p> <p>19 own preferences, it's true for me, and I would -- I'd</p> <p>20 certainly, if I were -- if I were in Dr. Noll's shoes</p> <p>21 and doing the analysis, I would certainly when asked</p> <p>22 the question whether that was a better model.</p> <p>23 <b>Q. And when you -- people are making</b></p> <p>24 <b>purchasing decisions on whether to purchase an out of</b></p> <p>25 <b>market bundle or purchase, at least for now, the home</b></p>
<p style="text-align: right;">Page 222</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 counting, per se. Although, if he had data on which</p> <p>3 feed the consumer was watching, it certainly would</p> <p>4 have been, I think, better off using it, and it would</p> <p>5 have been much closer to the C&amp;Y approach.</p> <p>6 But, given -- given the data he had,</p> <p>7 if he was using the double counted data, then he</p> <p>8 needed to do it consistently, including counting</p> <p>9 consistently for time -- leisure time spent not</p> <p>10 viewing subscription games, and he needed to account</p> <p>11 very carefully on how the -- how the double counting</p> <p>12 influenced the total maximization of what consumers</p> <p>13 could actually do, and what the implications were for</p> <p>14 getting the mathematics of utility optimization</p> <p>15 correct.</p> <p>16 <b>Q. And in this criticism is -- it's</b></p> <p>17 <b>fixable if the math gets fixed.</b></p> <p>18 <b>Is that right?</b></p> <p>19 <b>(Pause)</b></p> <p>20 A. I would -- I would say the immediate</p> <p>21 problem of the inconsistency in the math, and the</p> <p>22 inconsistent specification of demand, those are --</p> <p>23 those are fixable problems.</p> <p>24 There's -- there is -- there remains</p> <p>25 a deeper issue which is that the -- the utility</p>	<p style="text-align: right;">Page 224</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>team's RSN feed, they're not able to make that</b></p> <p>3 <b>decision based on individual game pairs; right?</b></p> <p>4 MR. PARIS: Objection. Foundation.</p> <p>5 THE WITNESS: Well, that's -- that's</p> <p>6 -- that's certainly the but-for world that Dr. Noll</p> <p>7 considers, but -- and I'm not offering opinions on</p> <p>8 whether that is a good description of the but-for</p> <p>9 world.</p> <p>10 But if you ask me as a matter of</p> <p>11 general micro -- microeconomics, if -- if consumers'</p> <p>12 tastes in truth are tastes for team pairs, then you</p> <p>13 would expect the product in this market to be</p> <p>14 marketed by pairs.</p> <p>15 So, the -- the Yankees and the Red</p> <p>16 Sox would offer a package of -- of their -- all</p> <p>17 their matches, and -- and so forth and so forth.</p> <p>18 ---</p> <p>19 CONTINUATION</p> <p>20 BY MR. AXELROD:</p> <p>21 <b>Q. I want to turn to your next</b></p> <p>22 <b>criticism which is on page 21 of Exhibit-1, and under</b></p> <p>23 <b>the heading it's -- the big heading is, quote,</b></p> <p>24 <b>"Dr. Noll's model produces counterintuitive results",</b></p> <p>25 <b>end quote.</b></p>

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1 **HIGHLY CONFIDENTIAL**2 **extreme data possible?**3 A. Without going back and reviewing my  
4 own study, I don't recall.5 **Q. Okay.**6 **I could ask you to turn the page in**  
7 **Exhibit-1, page 22, and take a look at Table 9.**  
8 **Could you tell us what's reflected**  
9 **in Table 9?**

10 A. Yes.

11 The -- the first two columns in  
12 Table 9 correspond to Dr. Noll's model, S -- S run,  
13 and the results it actually produces, and the next  
14 two columns are -- are comparable quantities for this  
15 test alternative in which, when it's in the  
16 simulation assigning an individual consumer to a  
17 choice of an alter -- a la carte product, you're now  
18 offering, like, his least favorite team for the a la  
19 carte product.20 **Q. And you would agree what it is**  
21 **measuring overall is the price for the individual**  
22 **team telecast competing against the bundle, and it**  
23 **measures whether the -- whether the individual team**  
24 **telecast is the consumer's favorite team in one**  
25 **column and whether it is the consumer's least**

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1 **HIGHLY CONFIDENTIAL**2 MR. ECKLES: Is this measuring the  
3 team price or the bundle's price?4 THE WITNESS: This is not measured  
5 against the bundle. This is just the actual price --  
6 actual price.

7 MR. AXELROD: Right.

8 ---

9 CONTINUATION

10 BY MR. AXELROD:

11 **Q. I thought we established that, as it**  
12 **says in the -- maybe I misunderstood, but as it says**  
13 **-- right next to where it says Table 9, that it's a**  
14 **share-weighted average between telecast price and**  
15 **total team market shares when the bundle competes**  
16 **against either a favorite or least favorite team's**  
17 **telecast.**18 A. That's -- that's correct, but the  
19 prices are the a la carte --20 **Q. Right.**21 A. -- average of the a la carte  
22 price --23 **Q. Right.**

24 A. -- and not the bundle.

25 **Q. I apologized if I misspoke.**

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1 **HIGHLY CONFIDENTIAL**2 **favorite team in the other column; right?**

3 A. That's correct.

4 **Q. Okay.**5 **So, putting aside the magnitude of**  
6 **the difference --**7 **Well, strike that -- strike that.**8 **Let me back up.**9 **Would you agree that this table**  
10 **shows that the favorite team's telecast has a higher**  
11 **price than the least favorite team's telecast when**  
12 **measured against the bundle?**13 A. Out of a higher, but very small  
14 difference. I think the point is that this is not  
15 showing as much price sensitivity and share  
16 sensitivity as is plausible if this model were  
17 correctly capturing of real -- real preferences  
18 between teams.19 **Q. But putting aside the magnitude of**  
20 **the difference, which I understand, in your view, is**  
21 **that it's too small.**22 **Putting aside the magnitude, you**  
23 **would expect to see the favorite team's telecast**  
24 **price be higher than the least favorite team when**  
25 **measured against the bundle; right?**

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1 **HIGHLY CONFIDENTIAL**2 **This is -- but, again, putting aside**  
3 **the magnitude of the difference, you would expect to**  
4 **see a higher price for the favorite team's telecast**  
5 **when measured against the bundle, than you would**  
6 **expect to see for the least favorite team's telecast**  
7 **when measured against the bundle?**8 A. I would expect to see a  
9 substantially higher --10 **Q. Okay.**

11 A. -- price.

12 **Q. For market share -- if you look at**  
13 **Table 9, you would agree with me that the market**  
14 **share for the individual team's telecast competing**  
15 **against the bundle is higher if it's the favorite**  
16 **team's telecast and lower if it's the least favorite**  
17 **team's telecast; correct?**18 A. I -- I agree that that's the  
19 direction, and, again, my expectation for a plausible  
20 model is that this would make a huge -- should make a  
21 huge difference if -- if -- if, in the real world,  
22 there are fans that are strong fans of the Yankees  
23 and simply don't care about the San Diego Padres, and  
24 vice versa.

25 You would -- you would expect that

# EXHIBIT B

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3

4 THOMAS LAUMANN; FERNANDA GARBER;  
5 ROBERT SILVER; GARRETT TRAUB;  
6 DAVID DILLON and PETER HERMAN,  
7 representing themselves and all  
8 other similarly situated,

9 Plaintiffs,

10 vs.

CA No. 12-1817 (SAS)

11 NATIONAL HOCKEY LEAGUE,  
12 et al.,

13 Defendants.  
14 \_\_\_\_\_/

15 FERNANDA GARBER; MARC LERNER;  
16 DEREK RASMUSSEN; ROBERT SILVER;  
17 GARRETT TRAUB, and PETER HERMAN,  
18 representing themselves and all  
19 other similarly situated,

20 Plaintiffs,

21 vs.

CA NO. 12-3704 (SAS)

22 OFFICE OF THE COMMISSIONER OF  
23 BASEBALL, et al.,

24 Defendants.  
25 \_\_\_\_\_/

VIDEOTAPED DEPOSITION OF ROGER G. NOLL, Ph.D.  
PALO ALTO, CALIFORNIA  
THURSDAY, OCTOBER 16, 2014

BY: ANDREA M. IGNACIO, CSR, RPR, CCRR, CLR ~ 9830  
JOB NO. 85783

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1	if -- if that assumption is valid by -- by	11:47	1	that 1/30th of the decision --	11:48
2	ascertaining whether it's profitable to do so.	11:47	2	Q Right.	11:48
3	Q Okay. And you don't -- other than the	11:47	3	A -- about the bundle is each team. But the --	11:48
4	testimony you just gave, you don't have any other	11:47	4	when it's 1/30th, the -- that's a tiny number. And	11:48
5	reason to say it would be profitable?	11:47	5	usually when the number of participants in the	11:48
6	A Other than I calculated whether it's	11:47	6	decision is that large, we assume that their	11:48
7	profitable, I have no reason to say whether it's	11:47	7	individual behavior essentially ignores it. And	11:48
8	profitable? That -- that doesn't make sense to me.	11:47	8	that's what we're doing.	11:48
9	Q No. I'm saying other than the testimony you	11:47	9	Q Okay. Because certainly, you would agree	11:48
10	gave, you have nothing --	11:47	10	that these are not independent competitors, which is	11:48
11	A Yeah, yeah, yeah, yeah.	11:47	11	assumed in the model?	11:48
12	Q -- further to say?	11:47	12	A Right.	11:48
13	A Yeah, right.	11:47	13	And if there were three teams in the league,	11:48
14	Q Okay. The second sentence there, you say:	11:47	14	that would be a -- a problematic assumption.	11:48
15	"The idea is that consumer choices are	11:47	15	Q Okay. Well, you're familiar with unilateral	11:48
16	expanded to include unbundled as well as bundled	11:47	16	effects analysis?	11:48
17	services, and that each of these services is priced	11:47	17	A Right.	11:48
18	independently."	11:47	18	Q Upward pricing pressure in these things?	11:48
19	Do you see that?	11:47	19	A Right.	11:48
20	A Yes.	11:47	20	Q You would agree that if you participate in a	11:48
21	Q Is that the idea of the model or some other	11:47	21	venture, that you are going to behave differently if	11:48
22	idea?	11:47	22	you get profits from that venture?	11:49
23	A That is the economic idea that underpins the	11:47	23	A Yes. And the -- and how differently you	11:49
24	model. That's what the model is about. That's --	11:48	24	behave depends on the stakes you have in the joint	11:49
25	that -- now, the -- and the -- the -- the reality is	11:48	25	venture versus the stakes you have in your individual	11:49
Page 104			Page 105		
1	venture.	11:49	1	but not enough to have your model account for it?	11:50
2	Q And so here, you say that -- just so I	11:49	2	A No, the -- the -- that's not quite right.	11:50
3	understand your testimony, the 1/30th is small enough	11:49	3	The -- the issue is -- it's -- it's -- it's	11:50
4	so that you still think the individual teams would act	11:49	4	the following: It's, how much does my decision about	11:50
5	independent of the venture, but it's -- is that	11:49	5	my own broadcasting rights affect my profits provided	11:50
6	correct?	11:49	6	in the bundle?	11:50
7	A Well, we're -- we're modeling as if that's	11:49	7	And that isn't zero, but it's pretty close to	11:50
8	the case. Obviously, you know, how -- what -- what	11:49	8	zero for everybody except the biggest teams. And	11:50
9	1/30th interest in the joint venture would be isn't	11:49	9	they're sort of precluded from following their	11:50
10	zero, but it's close enough to zero that, for modeling	11:49	10	self-interest by the league rules.	11:50
11	purposes, we're ignoring it.	11:49	11	So yes, it's true that for the -- the -- you	11:50
12	Q Because, in fact, I mean, on page -- I	11:49	12	know, the -- the -- for some teams, the	11:51
13	believe it's page 39 of your supplemental	11:49	13	profitability -- the relationship between their own	11:51
14	declaration --	11:49	14	behavior and the profitability of the bundle is	11:51
15	A Where are you?	11:50	15	important. But to the vast majority of teams, it's	11:51
16	Q Page 39, supplemental declaration.	11:50	16	not.	11:51
17	A Yeah. Where?	11:50	17	Q If -- if it's profitable for everybody to	11:51
18	Q First full paragraph, you -- you suggest that	11:50	18	have a league bundle and individual teams competing	11:51
19	the -- that the teams will want to participate in the	11:50	19	against the league bundle, why is that not happening	11:51
20	model because they are participating in 1/30th of the	11:50	20	now?	11:51
21	profits; right?	11:50	21	A I'm sorry. What -- I didn't -- why isn't	11:51
22	A Yes. It's the -- that -- that is to say,	11:50	22	what happening now?	11:51
23	there is positive incremental profits to be gained by	11:50	23	Q If it's profitable, in your view, even more	11:51
24	participating in the bundle. That's right.	11:50	24	profitable to have a league bundle and individual	11:51
25	Q So it's enough to participate in the bundle,	11:50	25	teams also competing nationally, why isn't that not	11:51

1 DirecTV and by Comcast is Fox Sport South which  
2 carries the Braves; does that sound right to you?

3 A I think that's right, but...

4 Q So I guess the question -- I want to get  
5 clarification. I think we got this last time.

6 Your view is that that would not be unbundled  
7 in this model. That would continue to be part of the  
8 Expanded Basic package in the but-for world that you  
9 model?

10 A The way I modeled it is what the  
11 in-markets -- the way the in-market product is  
12 currently distributed and sold wouldn't change. That  
13 doesn't mean it wouldn't change in a way that would  
14 have an even greater affect on the bundle price which  
15 is the goal of the analysis.

16 Q Again, what I'm trying to understand is  
17 exactly what the model does. I totally understand  
18 that there are many, many other contingencies, other  
19 ways the world may evolve.

20 A Right.

21 Q But the model assumes that the Braves are --  
22 unlike all the other teams, are not sold as a  
23 stand-alone stream; is that right?

24 A Well, they -- the model assumes no change in  
25 the way things are currently done, yes. It's -- it

1 looks -- it's focusing only on the incremental  
2 addition of the other RSNs without blackout games to  
3 the list of options available in a metropolitan area.

4 Q Let's see.

5 Dr. Noll, if you have your report, your  
6 second report still, I wanted to direct you to Exhibit  
7 No. 4, which shows the marginal cost estimates for  
8 models in dollars.

9 A Yes.

10 Q Okay. And what I'm trying to compare are  
11 the -- the margins across the three options, MLB TV,  
12 NHL Game Center Live, and DirecTV, and I -- we did the  
13 math, and it seems like what you're projecting is that  
14 the margin is the same across all three of the -- the  
15 percentage margin is the same across all three; is  
16 that -- is that right?

17 A This is actually a prediction from the model,  
18 and the model predicts the same percentage because the  
19 data we have on marginal cost went into the model.  
20 This is a table to demonstrate that the model  
21 accurately predicts the assumptions which is a -- one  
22 way to verify the accuracy of the model so that the --  
23 the -- the underlying data about margins has built  
24 into it the cost data. And so then the question is,  
25 if you run the model and produce estimates of prices

1 and quantities from that -- that -- that result, in  
2 terms of prices and quantities, makes a prediction  
3 about what marginal cost is, and what this shows is  
4 that the model predicts the -- the -- from the  
5 equilibrium prices, the marginal costs that were used  
6 to construct the model to begin with. So it's a  
7 verification test of the model.

8 Q One thing I was confused about, and maybe you  
9 can help clarify it, is I would have thought that the  
10 margin for DirecTV would have been worse than for the  
11 leagues because the leagues get the out-of-market feed  
12 for free but DirecTV obviously has to pay rights fees.

13 So why is -- why is it the same margin across  
14 all three?

15 A These aren't right. The rights fees aren't  
16 part of it. This is the -- this is the cost of the  
17 distribution system as opposed to the rights fees.  
18 The -- the rights fees typically are not marginal. So  
19 the -- the -- the costs that are embedded in price  
20 minus marginal costs are actually the marginal  
21 distribution cost of adding an RSN to the system.

22 Q But isn't it the case in the MVPD industry  
23 that MVPDs typically pay RSNs on a per-subscriber  
24 basis?

25 A Sometimes they do. But an increasingly

1 common phenomenon is they pay a fixed key fee that is  
2 based on an expectation of subscribers, that if they  
3 do a good job promoting themselves, they don't face  
4 the fee increase until the next time around.

5 So this does not include that phenomena.  
6 This is -- this is based upon the distribution cost  
7 data that we have. It's not -- it does not include  
8 the rights fees.

9 Q So in calculating the marginal cost for  
10 DirecTV, you did not take into account any  
11 per-subscriber fees that DirecTV might have to pay to  
12 RSNs?

13 A No. We assumed that the -- that the nature  
14 of those fees is they're -- they're a negotiated  
15 result of dividing the rents as opposed to something  
16 that is marginal.

17 Q So you don't treat per-subscriber expenses as  
18 marginal in your model?

19 A No, and that's because, for the most part, in  
20 the world we're modeling, that isn't the way things  
21 are done; all right. That is to say, we can't use the  
22 analog of what happens in a local market by channels.

23 On average, cable channels charge so much per  
24 pop depending -- well, that number depends on which  
25 tier they are. And the more restricted the tier, the

<p style="text-align: right;">Page 457</p> <p>1 higher the tier, the more they pay per pop of those on  2 the tier. That's the way most channels are.  3 But nationwide distribution, things like the  4 bundle, typically are not negotiated in that way. And  5 the reason for it is to avoid affecting marginal  6 decisions by MVPDs.  7 Q So your model assumes that MVPDs will not  8 negotiate a per subscriber cost for RSNs outside of  9 their footprint?  10 A The model assumes that there is a negotiation  11 of that division of the rents between them, and  12 it's -- again, it's -- it's focused on the bundle, not  13 the RSN/MVPD relationship; all right. It's -- it's --  14 there's a certain margin which is then divided.  15 That's the assumption of the model as opposed  16 to there's a posted price per pop of the sports  17 channel.  18 Q But in the real world isn't that, in fact,  19 the way sports channels are priced?  20 A That's the way that local sports channels  21 frequently are priced, but it's not the way national  22 distribution of sports are priced; all right. And  23 we're looking at the latter when we talk about  24 elimination of territorial restrictions --  25 restrictions.</p>	<p style="text-align: right;">Page 458</p> <p>1 So the analog here is more like how does MLB  2 price Extra Innings, and how does the NFL price Sunday  3 Ticket, and how does the NHL pack price its nationwide  4 package.  5 Q Doesn't ESPN charge MVPDs on a per-subscriber  6 basis?  7 A Yes, it does, but that's not -- that's not --  8 they -- there are things that they include that aren't  9 that way, but that's not the model here. The model is  10 a different one than -- than ESPN. It's a -- the  11 model is premised on the way the national packages are  12 priced.  13 Q And doesn't NFL Network charge on a  14 per-subscriber basis?  15 A Yes, it does.  16 Q And MBA TV does as well?  17 A Yes, they do.  18 Q And MLB, their network does as well on a  19 per-subscriber basis?  20 A Yes, they do.  21 Q And broadcast networks, when they carry  22 sports, they also are priced on a per-subscriber  23 basis, ABC, et cetera?  24 A Yes, to -- mostly, yes.  25 Q Okay. So I'd like to go back now to some</p>
<p style="text-align: right;">Page 459</p> <p>1 questions about the C&amp;Y model.  2 Do you mind if I call it just the C&amp;Y model?  3 A You can call it anything you want, as long I  4 know what you're talking about.  5 Q But you know what I'm talking about?  6 A I assume that I know what you're talking  7 about. You're talking about the Crawford and  8 Yurukoglu -- Yurukoglu model.  9 Q By the time this case is done, I'm going to  10 know how to pronounce that gentleman's name.  11 So your model in impact and damages is based  12 upon the C&amp;Y model; right?  13 A Yes, it is a -- it is an application of that  14 model to this particular circumstance.  15 Q And I think we had some testimony yesterday,  16 I don't want to go through it in great detail, but  17 there's sort of a demand side of that model and a  18 supply side of that model; is that fair?  19 A Well, there's always a demand side and supply  20 side to any economic model, yes.  21 Q Okay. And I think you are applying, as best  22 you can, the -- the demand side of that model to  23 predict consumer preferences for the unbundled  24 packages of teams; right?  25 A Well, the demand side of the model consists</p>	<p style="text-align: right;">Page 460</p> <p>1 of the way you get from the existing data to a demand  2 curve for each of the teams and for various bundles of  3 the teams.  4 Q And you're not really applying the supply  5 side of the model where there's bargaining between  6 MVPDs and RSNs; right?  7 A No; we're using a -- a Bertrand -- imperfect  8 Nash Bertrand computational model for how the supply  9 side works.  10 Q And explain to me again, if you don't mind,  11 why you're not applying the C&amp;Y approach with  12 respect -- with respect to the supply side?  13 A Because of the differences in the  14 heterogeneity of the channels that -- that they were  15 modeling versus the ones that we're modeling. That  16 they were there -- their model -- the key -- the key  17 point to their model is to examine whether a  18 relatively restricted list, sort of unique channels,  19 have sufficient market power than in the unbundled  20 world. They would effectuate price increases if there  21 were a la carte offerings that would offset the  22 benefits to consumers of the unbundling to begin with,  23 not having to pay for things they don't want.  24 So that was the question they were  25 addressing. That the reason that bargaining model is</p>

<p style="text-align: right;">Page 461</p> <p>1 not applied here is because that's not what we're  2 dealing with here. We're dealing with a relatively  3 homogenous set of products; namely, regional sports  4 networks that differ simply only with respect to the  5 teams they have.  6 That's enough to produce heterogeneity and  7 produce it per the competition, but it's much less  8 heterogeneity than you -- than one observes from the  9 top ten or so cable networks that are offered by  10 MVPDs.  11 Q Is there any other reason that you're not  12 applying the supply-side bargaining model of C&amp;Y in  13 this case, or is that the principal or only reason?  14 A No. I mean, we can -- we can attempt -- I  15 mean, we know we can apply it, because they did it to  16 a much more difficult case. So we could -- we  17 could use -- you could use the bargaining model here  18 as well as the one we did. We -- we picked this one  19 because we thought it was more accurate, but you could  20 do the other one.  21 Q Right.  22 But I -- it sounds to me, I just want to make  23 sure I understand, that the reason you're not applying  24 the bargaining model of C&amp;Y in this case is because  25 RSNs are more homogenous and they have less market</p>	<p style="text-align: right;">Page 462</p> <p>1 power than, say, the top 50 cable networks; is that  2 fair?  3 A Well, not all the top 50 cable networks have  4 a lot of bargaining power. The results in the --  5 their -- their model differ according to the channel.  6 So ESPN is much more important than the  7 History Channel; all right. So there's variation in  8 them. The -- most of -- most of the bang you get from  9 their model comes from the top channels on the list.  10 You know, I don't know if they did this in  11 the published version. But one version in the paper  12 actually rank ordered them in terms of what the --  13 what the consequences of unbundling was for their  14 price.  15 Q Right.  16 But I'm focusing on why RSNs are supposedly  17 different from at least the most important major cable  18 networks.  19 A Yes.  20 Q And I think I heard you say that's because  21 they're homogenous, and they have less market power.  22 A Right.  23 CNN is a less perfect substitute for ESPN  24 than Comcast Bay Area is a substitute for Comcast  25 Northern California.</p>
<p style="text-align: right;">Page 463</p> <p>1 Q So the reason that we're not applying the C&amp;Y  2 model is because of the RSN's market power or lack  3 thereof; is that fair?  4 A Well, yeah. The less it -- the greater  5 degree of the competition among them than would be the  6 case for the entire list of the top cable channels.  7 Q Now, that's not the reason you gave in your  8 original report for declining to apply the bargaining  9 model of C&amp;Y; isn't that right?  10 A Well, the very first one, yeah. We were just  11 using something simple, yes. And then the issue was,  12 should I add the bargaining model, and I did -- and we  13 decided not to do it.  14 Q Well --  15 A It was not worth it.  16 Q Well, you didn't apply the bargaining model  17 in either your first report --  18 A No.  19 Q -- or your second report; right?  20 A You're -- you're referring to the explanation  21 of the differences in the first report.  22 Q Right.  23 So you --  24 A And --  25 Q -- changed your explanation for the</p>	<p style="text-align: right;">Page 464</p> <p>1 differences --  2 A Yeah.  3 Q -- is that fair?  4 A Yes.  5 Q Why did you do that?  6 A Have -- having discussions with Ali and Greg  7 about what the right way to model it was, and they  8 thought the Bertrand model was better, and I agreed  9 with them.  10 Q Why does that change the explanation for  11 applying -- declining to apply the bargaining model?  12 Because you didn't apply the bargaining model in  13 either case.  14 A No, that's right. The first case we were --  15 it's -- it's one step at a time. Remember, when we  16 were doing the first model, we were facing a world  17 where it took 20 to 50 hours to solve the model, and  18 so it didn't -- that -- that -- you know, adding the  19 bargaining model, given the coding we had then, would  20 have required still more 20- to 50-hour runs, and that  21 was the main reason. It was simplicity then.  22 The main reason now is because we actually  23 think the Bertrand model is better. Now we've got the  24 runtime way down.  25 Q Can we go to your first report --</p>

1 DirecTV.

2 Q But it's still, in some areas, faces telco  
3 competition, and in other areas doesn't face telco  
4 competition; right?

5 A To some degree, yes.

6 Q And in some areas it might face an  
7 overbilled, like RCN, in other areas it might not face  
8 an overbilled --

9 A To some degree --

10 Q -- like --

11 A -- but that's minor.

12 Q And your model doesn't take any of that into  
13 account?

14 A Nope.

15 MR. BURKE: Okay. I'm -- I'm done. I'm  
16 going do hand this off. Thank you.

18 EXAMINATION BY MR. PARIS

19 MR. PARIS: Q. Good morning, Dr. Noll.

20 A Good morning.

21 Q I'm Andrew Paris, I represent the DirecTV  
22 defendants. I have some additional questions. I'm  
23 keenly aware that I'm the fifth examiner to ask you  
24 these questions, and I'm going to do my best to not  
25 tread on old ground, but we're probably going to hit

1 some of the same subjects, so bear with me.

2 You gave some testimony yesterday, and I want  
3 to ask you about that. You said, and I want to ask  
4 you if this is your assumption, that the league will  
5 price the bundle in a way that maximizes league  
6 profits, but taking into account the relationship to  
7 the profitability of the teams arising from the  
8 RSNs --

9 A Right.

10 Q -- is that your assumption?

11 A Yes. Well, I -- yes, it is an assumption  
12 about how the league would behave if it were rational,  
13 yes.

14 Q And does your model do that?

15 A The -- the model takes account only of the  
16 competition in the out of market -- it's -- it --  
17 that's why the implicit assumption in the model is  
18 what's going on with respect to the way that the  
19 in-market RSNs are offered is held constant. Because  
20 whatever the accounting of protecting the markets for  
21 the RSNs within their home market, that's reflected in  
22 their current pricing.

23 Q Okay. All I'm asking is whether or not when  
24 in the but-for world that you're -- of your model, is  
25 the bundle a combination of the -- is the -- is the

1 league maximizing the profits but taking into account  
2 the profitability of the teams arising from the RSNs,  
3 as you testified yesterday?

4 A Indirectly, yes. But there's not a direct  
5 modeling of the profitability of the in-market teams.

6 Q Okay. So the answer is no?

7 A It's indirect. It is in there, because  
8 the -- the presumption that the price is profit  
9 maximizing is used to derive the parameters as a  
10 model; all right. And so what's assumed is it's  
11 profit maximizing, and then the parameters of the  
12 model are estimated based upon that assumption.

13 Q So it's not the case that the -- the model  
14 treats the league as a separate profit-maximizing  
15 entity? I'll stop there.

16 A Well, its maximizing profits, but the  
17 explicit nature of how it takes into account all the  
18 local -- the in-market sales of the RSNs is only taken  
19 into account by virtue of how it affects the  
20 estimation of the parameters by having the assumption  
21 be it's profit maximizing; all right.

22 So that that profit-maximizing assumption is  
23 not based on actually maximizing the profits. P  
24 minus, you know -- PQ minus C, but it's assumed that  
25 the -- the parameters of the model are going to be

1 such that that is the profit max- -- whatever they  
2 currently charge is the profit-maximizing price based  
3 on whatever their considerations are that go outside  
4 the cost function.

5 Q Is the -- does your model take into account  
6 the out-of-market sales of the sales and profits of  
7 the RSNs?

8 A No. They're not -- there's no direct  
9 modeling of -- of the program content that's sold out  
10 of market by RSNs. It isn't covered by the issues in  
11 the case.

12 Q Okay.

13 A The -- the -- the prices that are being  
14 calculated here are incremental prices by adding that  
15 content.

16 Q Okay. And the model that you've created is  
17 a -- is a structural model like the one based on the  
18 Barry, Levinson & Pakes article that you cited in your  
19 report?

20 A Yes. Well, the Crawford Yurukoglu article is  
21 an extension of the Barry, Levinson & Pakes article  
22 which, in turn, is a different application from the  
23 original GMM paper by Lars Hansen.

24 Q Okay. And the -- but structural models  
25 estimate equilibrium outcomes?

1 A I don't know what the price you have access  
2 to the Angels in Anaheim is --

3 Q Okay.

4 A -- because that's not pertinent to the  
5 question I'm addressing, which is what is the price to  
6 the out-of-market teams.

7 Q Okay. So this price only applies outside of  
8 the current home territory for the Angels; that's your  
9 testimony?

10 A Yeah, this -- well, it is what is the price  
11 for customers that live outside of market; all right.  
12 And who -- that's -- that's what determines the -- the  
13 distribution of viewing and the price of the MLB.TV  
14 service.

15 Q Do you believe that in the but-for world, the  
16 current Angels RSN is going to have the nationwide  
17 Internet streaming rights?

18 A The -- the implicit assumption in the model  
19 is that they do, in fact, acquire the out-of-market  
20 rights along with the in-market rights in negotiations  
21 with the team, yes.

22 Q Are they going to have one price for  
23 nationwide and another price in market?

24 A Most likely that would be the result, yes,  
25 that the prices we're estimating are out-of-market

1 interrupting me and continue your question? I mean,  
2 go ahead. Ask your question, and I'll stop talking so  
3 you can ask more questions.

4 MR. PARIS: Q. I thought you said you didn't  
5 rely on it.

6 A I said all -- are you done? I don't want to  
7 interrupt you. Are you done?

8 Q Go ahead, sir.

9 A Okay. What I said is, I do not recall  
10 whether I read it. I don't think it's on the list of  
11 things I relied on, but that doesn't mean I didn't  
12 read it; all right. I'm just saying I don't remember  
13 whether I ever read it or not.

14 Q Okay. So there -- there are things that --  
15 that you -- you read and then choose not to rely on,  
16 and those are -- those are not disclosed?

17 A There are things that I've read that I  
18 thought were not relevant, and so I -- I didn't put  
19 things that I thought were irrelevant on the list, no.

20 Q Okay.

21 A I mean, I put a whole bunch of public  
22 articles on the list, but that's not everything I've  
23 ever read about sports broadcasting.

24 Q So the testimony of the RSNs in this case may  
25 not be -- let me rephrase that.

1 prices.

2 Q Okay. You didn't read the deposition  
3 testimony of any DirecTV witnesses; did you?

4 A I don't remember sitting here. I can't -- I  
5 don't know whether I've read any of the deposition  
6 testimony of any DirecTV witness.

7 Q Well, I'll --

8 A I didn't -- I don't think I relied on it. I  
9 don't think it's in my list of things I relied upon,  
10 no.

11 Q Okay.

12 A But I don't know whether I looked at it and  
13 didn't use it.

14 Q Okay. So it wasn't important to you to have  
15 the testimony taken into account of Patrick Crum, the  
16 president of DirecTV Sports Network?

17 A Well, I said -- what is there about I don't  
18 recall what I was thinking a year ago about what I  
19 chose to read and what I did read? I don't remember  
20 whether I even looked at it or not. I know I  
21 didn't -- I know it does --

22 Q I thought you said --

23 A -- before --

24 THE REPORTER: One at a time, please.

25 THE WITNESS: Would you like to stop

1 The testimony from witnesses at -- at  
2 DirecTV, you may have read and considered not relevant  
3 to the -- to your opinions?

4 A Perhaps, but I just don't know. I mean,  
5 remember, this is about class certification, and what  
6 I would -- what I'll write the next time around, I  
7 don't know. But for what the purposes of this point  
8 we are now, I don't recall the -- anything said there  
9 was relevant or if I even read it.

10 I mean, I -- it probably would be more useful  
11 to say, is there something that I didn't take into  
12 account that you think is really cool, because I can  
13 tell you what I thought about it or if I remember even  
14 thinking about it.

15 Q You were asked some questions by Mr. Burke  
16 this morning about DirecTV Sports Pack product; do you  
17 remember that?

18 A Yes.

19 Q And that's a product that you're familiar  
20 with that carries the RSNs that direct -- with the pro  
21 sports content blacked out; correct?

22 A Well, that's -- that's included in it, yes.  
23 I think there's other things, but that's included in  
24 it.

25 Q That's why I limited it to pro sports.

1 Basically, you're saying maybe I should have  
2 adjusted it down even more, but that's not going to  
3 change the relative distribution of viewing time among  
4 the teams.

5 What it -- what it -- you know, if I just  
6 say, okay. They watched the Internet 75 time --  
7 percent as much as they watched DirecTV. The relevant  
8 amounts of viewing is still going to be the same. I  
9 don't see there's any principal reason to expect that  
10 ML -- the -- the impact of Internet of Kansas City  
11 fans is different than the impact of the Internet  
12 that's on Minnesota fans, which is the only thing that  
13 would matter is if I observed not just that there was  
14 less, but that the relative proportions of viewing  
15 time somehow got shifted on the Internet versus --  
16 versus DirecTV.

17 Q So if -- if -- if the average duration of  
18 viewing on MLB.TV was .2 hours instead of .4 hours,  
19 that -- you're saying that wouldn't make a difference  
20 in your predicted but-for world price for MLB.TV?

21 A The way the model works is the relative  
22 distributions. What -- if you -- if the average  
23 viewing time across the board just goes down, the  
24 implicit value of viewing time just goes up to  
25 compensate, because we know they paid the price. So

1 it was worth it to them; all right.

2 So the -- the -- the main -- the main  
3 modeling consequence of some sort of assumption that  
4 they watch half as much as we measured would simply be  
5 to change the marginal utility of viewing to make it  
6 be higher so that it would still be an equilibrium  
7 that 3.6 percent of the population would subscribe to  
8 MLB.TV.

9 MR. DIVER: Drew, do you have just a couple  
10 more? It's 12:30.

11 THE WITNESS: We're getting close.

12 MR. DIVER: We got to...

13 MR. PARIS: Q. Are you assuming the league  
14 bundles will carry all 30 teams throughout the  
15 United States?

16 A Yes, but the -- what we're modelling is the  
17 incremental value of the out-of-market teams, right.  
18 The price that we're estimating is the incremental  
19 price of the out-of-market teams, all right. Because  
20 that's what they currently carry.

21 So we're not -- whether they actually carry  
22 the in-market stuff or not is irrelevant, because  
23 that's already available to people. And what we're  
24 doing is what's the value added of the out-of-market  
25 team. Because that's all you can get from the current

1 data is willingness to pay for access to out of  
2 market.

3 MR. PARIS: Okay. Maybe this is more a  
4 question for you, Ned, but Dr. Noll's report says that  
5 everything he's considered is listed in the exhibit,  
6 and we --

7 MR. DIVER: Well --

8 MR. PARIS: -- you know are you saying  
9 everything that he has considered --

10 MR. DIVER: -- no.

11 MR. PARIS: -- is there?

12 MR. DIVER: That -- we can have that  
13 conversation. I don't think there's anything that --  
14 from the litigation that was not listed, but we'll  
15 have this conversation.

16 MR. PARIS: Okay.

17 MR. DIVER: We can check. You're talking  
18 about the deposition of -- of Crum, that -- that line  
19 of questioning you had.

20 MR. PARIS: We need to make sure that  
21 everything that he's considered is, you know, in full  
22 compliance --

23 MR. DIVER: Right.

24 MR. PARIS: -- with Rule 26.

25 MR. DIVER: Yeah.

1 MR. PARIS: That we have everything there.  
2 There have been a number of times during the course of  
3 the deposition --

4 MR. DIVER: I don't think we have a problem.  
5 I understand, but we'll have this discussion after  
6 we've made --

7 MS. SCULLION: Sorry. This is -- this  
8 Jan Scullion. Just to be clear, we're going to  
9 reserve our rights on -- for the deposition until we  
10 get confirmation that everything Dr. Noll was required  
11 to disclose under Rule 26 has been disclosed.

12 MR. DIVER: That's fine, but we don't need to  
13 take up Dr. Noll's time right now dealing with it.

14 MR. PARIS: We don't, but I do want to take  
15 just one -- one -- one moment off, and let me just  
16 confer with my counsel, and then I think we'll be able  
17 to wrap it up.

18 THE VIDEOGRAPHER: You want to go off?

19 MR. DIVER: Yeah.

20 THE VIDEOGRAPHER: Going off the record.  
21 12:35.

22 (Recess taken.)

23 THE VIDEOGRAPHER: Back on the record at  
24 12:36.

25 MR. PARIS: Back to the Internet very

# EXHIBIT C

<p style="text-align: center;">Page 1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p> <p>-----</p> <p>THOMAS LAUMANN, FERNANDA      CIVIL ACTION NO. GARBER, ROBERT SILVER,      12-cv-1817(SAS) GARRETT TRAUB, DAVID DILLON, and PETER HERMAN, representing themselves and all others similarly situated</p> <p style="text-align: center;">vs</p> <p>NATIONAL HOCKEY LEAGUE, NHL ENTERPRISES, L.P., NHL INTERACTIVE CYBERENTERPRISES, LLC, NEW YORK RANGERS HOCKEY CLUB, NEW JERSEY DEVILS, LLC, NEW YORK ISLANDERS HOCKEY CLUB, L.P., COMCAST-SPECTACOR, L.P., LINCOLN HOCKEY, LLC, LEMIEUX GROUP, L.P., HOCKEY WESTERN NEW YORK, LLC, CHICAGO BLACKHAWKS HOCKEY TEAM, INC., SAN JOSE SHARKS, LLC, DIRECTV, LLC, ROOT SPORTS PITTSBURGH, (Caption continued),</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">Thursday, December 11, 2014</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">HIGHLY CONFIDENTIAL DEPOSITION OF: JANUSZ A. ORDOVER</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">Kaplan, Leaman and Wolfe 325 Chestnut Street Suite 909 Philadelphia, PA 19106 (800) 295-7571 KapLeaWol@aol.com</p>	<p style="text-align: center;">Page 3</p> <p>1      HIGHLY CONFIDENTIAL 2      APPEARANCES: 3      LANGER GROGAN &amp; DIVER, P.C. 4      BY: HOWARD LANGER, ESQUIRE 5      (215) 320-5661 6      hlanger@langergrogan.com 7      NED DIVER, ESQUIRE 8      (215) 320-5663 9      ndiver@langergrogan.com 10      1717 Arch Street 11      Suite 4130 12      Philadelphia, PA 19103 13      Representing the Plaintiffs</p> <p>14      KOHN SWIFT &amp; GRAF, P.C. 15      BY: ROBERT LaROCCA, ESQUIRE 16      One South Broad Street 17      Suite 2100 18      Philadelphia, PA 19107 19      (215) 238-1700 20      rlarocca@kahnschwitf.com 21      Representing the Plaintiffs</p> <p>22      SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM, LLP 23      BY: SHEPARD GOLDFEIN, ESQUIRE 24      shepard.goldfein@skadden.com 25      Four Times Square New York, NY 10036 (212) 735-3610 Representing the Defendants, NHL (except MSG)</p> <p>26      ALSTON &amp; BIRD 27      BY: ANDREW E. PARIS, ESQUIRE 28      drew.paris@alston.com 29      333 South Hope Street 30      16th Floor 31      Los Angeles, CA 90071 32      (213) 576-1000 33      Representing the Defendants, DIRECTV Sports Networks, 34      LLC</p>
<p style="text-align: center;">Page 2</p> <p>1      (CAPTION CONTINUED), 2      COMCAST CORP., COMCAST 3      SPORTSNET PHILADELPHIA, 4      L.P., COMCAST SPORTSNET 5      MID-ATLANTIC, L.P., 6      COMCAST SPORTSNET 7      CALIFORNIA, LLC, 8      COMCAST SPORTSNET 9      CHICAGO, LLC, and 10      MADISON SQUARE GARDEN 11      COMPANY</p> <p>12      -----</p> <p>13      FERNANDA GARBER, MARC      CIVIL ACTION NO. 14      LERNER, DEREK RASMUSSEN,      12-cv-3704(SAS) 15      ROBERT SILVER, GARRETT 16      TRAUB, and PETER HERMAN, 17      representing themselves 18      and all others similarly 19      situated</p> <p>20      vs</p> <p>21      OFFICE OF THE COMMISSIONER 22      OF BASEBALL, et al.</p> <p>23      -----</p> <p>24      Videotaped Deposition of JANUSZ A. ORDOVER, 25      was taken pursuant to Notice at the law offices of LIEFF CABRASER HEIMANN &amp; BERNSTEIN, LLP, 250 Hudson Street, 8th Floor, New York, NY 10013-1413 on the above date before DEBRA G. JOHNSON-SPALLONE, CCR, RPR, Delaware CSR, Notary Public in and for the States of Pennsylvania, New Jersey, and Delaware, and a Federally Approved Reporter of the United States District Court commencing on or about 10:30 a.m.</p>	<p style="text-align: center;">Page 4</p> <p>1      HIGHLY CONFIDENTIAL 2      APPEARANCES: (Continued), 3      DAVIS POLK 4      BY: DAVID B. TOSCANO, ESQUIRE 5      (212) 450-4515 6      david.toscano@davispolk.com 7      ANDREW N. DeLANEY, ESQUIRE 8      (212) 450-4294 9      andrew.delaney@davispolk.com 10      ARTHUR J. BURKE, ESQUIRE 11      arthur.burke@davispolk.com 12      450 Lexington Avenue 13      New York, NY 10017 14      Representing the Defendant, Comcast</p> <p>15      PROSKAUER ROSE, LLC 16      BY: ADRIAN FONTECILLA, ESQUIRE 17      (202) 416-5863 18      afontecilla@proskauer.com 19      COLIN R. KASS, ESQUIRE 20      (202) 416-6890 21      ckass@proskauer.com 22      BRADLEY J. RUSKIN, ESQUIRE 23      bruskin@proskauer.com 24      1001 Pennsylvania Avenue, NW 25      Suite 400 South Washington, DC 20004-2533 Representing the Defendants, Major League Baseball (except New York Yankees)</p> <p>26      PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON, LLP 27      BY: SAMANTHA BATEMAN, ESQUIRE 28      sbateman@paulweiss.com 29      BETH WILKINSON, ESQUIRE 30      RANDY CHEN, ESQUIRE 31      2001 K Street NW 32      Washington, DC 20006-1047 33      (202) 223-7375 34      Representing the Defendant, YES Network</p>

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2 A. Do I know what?

3 Q. You know the explanations before the  
4 deposition given to you many times?5 A. Yes, I have heard those explanations  
6 before.

7 Q. When was the most recent deposition?

8 A. That was just a few weeks ago.

9 Q. What matter was that?

10 A. It was a matter involving price --  
11 alleged price fixing in the Flat Glass.

12 Q. Flat Glass case?

13 A. Yes.

14 Q. Okay.

15 Now, the only thing I just want to  
16 remind you is that, although we're in Court here  
17 today in terms of the Court, the accuracy of answers,  
18 so that if you don't understand any of my questions,  
19 please ask me to clarify it.

20 Okay. That's good.

21 A. Absolutely.

22 Q. And I usually need more breaks than  
23 anybody else, but if you need one when I don't need  
24 one, just let me know.

25 A. Okay.

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2 watch a hockey game?

3 A. Maybe once or twice.

4 Q. How about baseball?

5 A. Little bit more often than -- it  
6 depends on whether the friends are over or not, and  
7 they want to watch it. So, maybe five times a  
8 year -- a season.

9 Q. Any baseball team you favor?

10 A. Well, I -- obviously, given where we  
11 are, and everybody tells me how great the Yankees  
12 are, then I do favor the Yankees just as a natural  
13 predilection.14 Q. Because you're in New York City or  
15 because the lawyer is here who told you should root  
16 for them?17 A. No. I rarely listen to the lawyers.  
18 It is because I am in New York. I lived all my  
19 American life in -- in New York, so --20 Q. Well, that's strange, because I grew  
21 up in New York and I root for the Mets.

22 MR. TOSCANO: Is there a question?

23 MR. LANGER: Yes.

24 ---  
25 CONTINUATION

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2 Q. Thanks.

3 Are you a sports fan?

4 A. No. I watch sports occasionally,  
5 and I do read sports pages, especially in the  
6 Financial Times, on Sunday.

7 Q. Huh-huh.

8 A. Saturday, actually.

9 Q. So, there's no particular team that  
10 you root for?11 A. No. As I say, I like sports as an  
12 activity personally, and I like watching it, but I'm  
13 not a fan of any particular team.

14 Q. Huh-huh.

15 Is there any particular sport you  
16 like to watch?

17 A. I like to watch Tour De France.

18 I like to watch soccer.

19 I watched for a while Australian  
20 rules rugby. I couldn't understand them, but I like  
21 to watch the game.22 I like all athletic pursuits,  
23 especially the unusual ones.

24 Q. Okay.

25 How often during the year do you

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2 BY MR. LANGER:

3 Q. Now, is there any hockey team that  
4 you particularly favor?5 A. Well, I used to favor the Kennedy  
6 Lions because I lived for a year in Montreal on  
7 Sherbrooke Avenue which is, as you well know, right,  
8 -- that's where the Canadian's arena is, and I had an  
9 apartment literally 50 yards up the street -- up or  
10 down, and so, I also got free tickets from the people  
11 I rented the room from, and I loved the game. I  
12 watch -- enjoyed watching it.13 Q. So, you used to see Jean Beliveau,  
14 Maurice Richard and those people?15 A. I'm talking -- well, I don't  
16 remember the great names of the great Canadian hockey  
17 players, but this was in 1977 -- '67, '68 season.  
18 That's when I lived in Montreal.

19 Q. Okay.

20 Now, I take it from your prior  
21 answers you have never bought any of the packages --  
22 sports packages that are at issue in this case?23 A. Well, actually, I bought them in  
24 connection with trying to familiarize myself with the  
25 look and feel when I was retained in this case.

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2 **Q. Did you read the Court's decision on**  
3 **the Motion for Summary Judgment?**4 A. I think that is the one I have read,  
5 yes, sir.6 **Q. Did you read the Court's decision on**  
7 **the Motion to Dismiss?**

8 A. I may have read a portion of it.

9 **Q. Now, there were many other**  
10 **Declarations filed of record in the case, other than**  
11 **those that you list here that you told me you did not**  
12 **review those other records -- those other**  
13 **Declarations.**14 **Is that right?**15 A. If it was not on the list, then I  
16 have not reviewed them, no.17 **Q. Did you review the papers filed in**  
18 **support of the Motion for Summary Judgment?**19 A. Papers filed by the -- the  
20 plaintiffs?21 **Q. No. The movements were the**  
22 **defendants.**23 MR. TOSCANO: To the extent that you  
24 know what was filed.

25 THE WITNESS: I have no idea.

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2 **Q. Okay.**

3 A. -- as I sit here.

4 **Q. Okay.**5 **We will get back to Exhibit-1 later.**

6 A. Okay.

7 **Q. Okay.**8 **Now, Dr. Ordoover, how much does it**  
9 **cost an RSN to produce a broadcast of a baseball**  
10 **game, excluding rights fees?**

11 MR. TOSCANO: Objection to form.

12 THE WITNESS: I don't have the  
13 precise number, but I have seen numbers such as high  
14 [REDACTED] or more.

15 ---

16 CONTINUATION

17 BY MR. LANGER:

18 **Q. [REDACTED] or more?**

19 A. Yeah.

20 **Q. Okay.**21 **Up to what?**22 A. Up to -- I don't know the upper  
23 amount. It's really within the control of the -- of  
24 the RSN how much it's willing to pay the announcer,  
25 how expensive is the product that is surrounding the

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2 I don't know whether such papers  
3 were filed, and assuming that they were, I don't  
4 recall surveying them or reading them.

5 So, I would be guessing.

6 ---

7 CONTINUATION

8 BY MR. LANGER:

9 **Q. Okay.**10 **How about the Plaintiff's Response**  
11 **to the Motion for Summary Judgment, did you review**  
12 **that?**13 A. Again, as I sit here I don't recall  
14 seeing that -- the plaintiff's reply, obviously, and  
15 I've seen the documents, but I cannot tell you that I  
16 have studied them closely.17 **Q. Okay.**18 **Do you know whether you read them?**19 A. I read some portions of them, but  
20 not the great level of detail.21 **Q. Okay.**22 **Are there any other Court documents,**  
23 **other than the ones we mentioned that you can recall**  
24 **reading?**

25 A. No. Nothing --

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2 transmission of the game.

3 There's more to it than just the,  
4 you know, televising or recording the game.5 **Q. Right.**6 **But is there an out of balance?**7 A. I've seen a number of [REDACTED]  
8 but it may be -- I don't know if it's a  
9 representative number or not, but I've seen that  
10 number for sure or mentioned that number.11 **Q. And how much does it cost for an RSN**  
12 **to produce a broadcast of a hockey game excluding the**  
13 **rights fees?**

14 MR. TOSCANO: Objection to form.

15 THE WITNESS: Probably should have  
16 asked that before to clarify.

17 What do you mean "to produce"?

18 As I said, there are many elements  
19 of producing a game. That may include the shoulder  
20 programming or the wrappers, I think it used to be  
21 called. There are costs of marketing the -- the  
22 game, and so on and so forth.23 So, there are all kinds of things  
24 that gets involved that are expenditures incurred in  
25 connection with televising live games, and I have not

<p style="text-align: right;">Page 21</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 attempted to estimate the various costs involved,</p> <p>3 whether there are incremental costs, marginal costs</p> <p>4 or total costs.</p> <p>5 ---</p> <p>6 CONTINUATION</p> <p>7 BY MR. LANGER:</p> <p>8 <b>Q. When you gave me the number [REDACTED],</b></p> <p>9 <b>what were you including in that?</b></p> <p>10 A. I think that's a number that was</p> <p>11 mentioned by Professor Noll. So, whatever he</p> <p>12 includes in that number. I would say that's a number</p> <p>13 that I have seen. I personally have not set out to</p> <p>14 calculate these types of costs.</p> <p>15 <b>Q. Okay.</b></p> <p>16 <b>Do you know whether those costs vary</b></p> <p>17 <b>significantly from team to team; that is, the cost of</b></p> <p>18 <b>an RSN to produce the broadcast?</b></p> <p>19 A. I think that the presumption would</p> <p>20 be they will vary to some extent in part because the</p> <p>21 talent that is retained to provide the commentary to,</p> <p>22 you know, interview the players. All of those things</p> <p>23 probably differ from whether we're talking about the</p> <p>24 talent that works with the -- with the Kansas City</p> <p>25 Royals or the Yankees.</p>	<p style="text-align: right;">Page 23</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>the same way that chefs' income varies?</b></p> <p>3 A. They vary some other ways.</p> <p>4 They vary in response to potentially</p> <p>5 other economic factors. The amount that the chef</p> <p>6 gets paid depends on the location because that, to</p> <p>7 some extent, also determines pricing of the products</p> <p>8 in the kitchen and in the restaurant, as well as such</p> <p>9 things as the real estate costs, and so on and so</p> <p>10 forth.</p> <p>11 <b>Q. Okay.</b></p> <p>12 <b>Do you have any sense of the</b></p> <p>13 <b>variation that you just described, how great that is?</b></p> <p>14 MR. TOSCANO: Objection to form.</p> <p>15 THE WITNESS: In actual dollar</p> <p>16 terms?</p> <p>17 ---</p> <p>18 CONTINUATION</p> <p>19 BY MR. LANGER:</p> <p>20 <b>Q. Between the most expensive broadcast</b></p> <p>21 <b>and the least expensive broadcast of the baseball</b></p> <p>22 <b>game.</b></p> <p>23 A. No.</p> <p>24 As I said once before, I can repeat</p> <p>25 as many times as you want me to, I have not set out</p>
<p style="text-align: right;">Page 22</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Do you have any idea whether the</b></p> <p>3 <b>talent that the Royals uses more or less cost than</b></p> <p>4 <b>the Yankees?</b></p> <p>5 A. I don't. I would think that what I</p> <p>6 know from labor economics, I would say that there are</p> <p>7 geographic variations in labor costs. That we know.</p> <p>8 And so, we would expect the similar types of</p> <p>9 variations to carry across more professions than just</p> <p>10 chefs or economists.</p> <p>11 <b>Q. I'm sorry.</b></p> <p>12 A. Chefs or economists.</p> <p>13 <b>Q. What do you mean?</b></p> <p>14 A. Geographic variations. People that</p> <p>15 pay different incomes based on where they work, and I</p> <p>16 would expect that well-known variation labor costs to</p> <p>17 -- to also be present in the broadcasting industry.</p> <p>18 <b>Q. Do you think that --</b></p> <p>19 MR. TOSCANO: And please let him</p> <p>20 finish his answers.</p> <p>21 ---</p> <p>22 CONTINUATION</p> <p>23 BY MR. LANGER:</p> <p>24 <b>Q. Do you think that the amounts that</b></p> <p>25 <b>baseball players are paid varies geographically in</b></p>	<p style="text-align: right;">Page 24</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 to undertake an intensive or extensive study of the</p> <p>3 various types of costs in hockey and baseball.</p> <p>4 <b>Q. So, you would have no idea of the</b></p> <p>5 <b>difference in cost to an RNS to broadcast a Houston</b></p> <p>6 <b>Astros game as compared to a New York Yankees game?</b></p> <p>7 MR. TOSCANO: Objection to form.</p> <p>8 THE WITNESS: To repeat, I have not</p> <p>9 done any such research --</p> <p>10 MR. LANGER: Okay.</p> <p>11 THE WITNESS: -- but having studied</p> <p>12 economics for the last 40 some odd years, I would</p> <p>13 venture to say that there are such geographic</p> <p>14 differences, and they are well documented in the</p> <p>15 literature.</p> <p>16 ---</p> <p>17 CONTINUATION</p> <p>18 BY MR. LANGER:</p> <p>19 <b>Q. How much does an RSN pay on average</b></p> <p>20 <b>in major league baseball on the per game basis for</b></p> <p>21 <b>the rights fees?</b></p> <p>22 A. I don't have those numbers here off</p> <p>23 the top of my head. So, I would be -- would be</p> <p>24 guessing, but there are, obviously, differences in</p> <p>25 how much the rights fees are worth, again, across all</p>

<p style="text-align: right;">Page 25</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 the baseball and hockey markets.</p> <p>3 Q. What would the highest one be in</p> <p>4 baseball?</p> <p>5 A. Again, I'm sorry to disappoint you,</p> <p>6 sir, but I have not set out to learn or actually to</p> <p>7 memorize whatever I had learned about these types of</p> <p>8 differences.</p> <p>9 I believe that there's likely to be</p> <p>10 a substantial variation as between the top team and</p> <p>11 those may vary from year-to-year to the teams that</p> <p>12 happen to be at the bottom of the rankings.</p> <p>13 Q. Which teams are at the top of the</p> <p>14 rankings?</p> <p>15 MR. GOLDFEIN: Objection to form of</p> <p>16 the question.</p> <p>17 THE WITNESS: I'm sorry.</p> <p>18 MR. GOLDFEIN: I object to the form</p> <p>19 of the question.</p> <p>20 ---</p> <p>21 CONTINUATION</p> <p>22 BY MR. LANGER:</p> <p>23 Q. The witness just said that there's</p> <p>24 the variation between the teams at the bottom and top</p> <p>25 of the rankings.</p>	<p style="text-align: right;">Page 27</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 must receive in revenue to warrant broadcasting a</p> <p>3 game?</p> <p>4 A. A particular game?</p> <p>5 Q. Yes.</p> <p>6 A. Well, I think that is linked to the</p> <p>7 costs properly calculated that the RSN would avoid by</p> <p>8 not broadcasting the game. That number, I don't</p> <p>9 know.</p> <p>10 There are different costs that would</p> <p>11 be a bigger pool of costs that would be avoided if</p> <p>12 the RSN cancelled or failed to or chose to not to</p> <p>13 produce more than one game.</p> <p>14 Q. And your answer would be the same</p> <p>15 for baseball and hockey?</p> <p>16 A. As I said, it all depends on -- it</p> <p>17 is all gauged in economics by a concept called</p> <p>18 avoidable costs, and -- but I have not set out to</p> <p>19 calculate these avoidable costs for either sports.</p> <p>20 Q. And you have no sense at all as to</p> <p>21 what those costs would be?</p> <p>22 MR. TOSCANO: Objection.</p> <p>23 Mischaracterize the witness's</p> <p>24 testimony.</p> <p>25 MR. LANGER: In terms of absolute</p>
<p style="text-align: right;">Page 26</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 I want to ask you; which teams in</p> <p>3 baseball are at the top of the rankings?</p> <p>4 A. I said "likely" --</p> <p>5 MR. TOSCANO: Same objection.</p> <p>6 THE WITNESS: First of all, I didn't</p> <p>7 say -- I quanti -- qualified my answer with the word</p> <p>8 "likely".</p> <p>9 Second, again, I'm not sitting here</p> <p>10 trying to memorize the rankings of the baseball teams</p> <p>11 or the hockey teams.</p> <p>12 That's not my role in this case --</p> <p>13 MR. LANGER: Okay.</p> <p>14 THE WITNESS: -- to know -- to</p> <p>15 memorize these things.</p> <p>16 MR. LANGER: Okay.</p> <p>17 MR. TOSCANO: Some of these</p> <p>18 questions have been beyond the scope of his</p> <p>19 Declaration in this case.</p> <p>20 MR. LANGER: Oh, I totally disagree</p> <p>21 with you.</p> <p>22 ---</p> <p>23 CONTINUATION</p> <p>24 BY MR. LANGER:</p> <p>25 Q. What is the minimum amount an RSN</p>	<p style="text-align: right;">Page 28</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 dollars.</p> <p>3 THE WITNESS: In terms of actual</p> <p>4 dollars?</p> <p>5 MR. LANGER: Right.</p> <p>6 THE WITNESS: I have not set out to</p> <p>7 calculate those costs. That was not part of my</p> <p>8 assignment in this case.</p> <p>9 ---</p> <p>10 CONTINUATION</p> <p>11 BY MR. LANGER:</p> <p>12 Q. And you -- and you -- okay.</p> <p>13 And you don't know what they would</p> <p>14 be?</p> <p>15 A. I would not venture to make up the</p> <p>16 numbers. I can think of some categories of costs,</p> <p>17 but I'm not going to attach numbers to any of them.</p> <p>18 Q. Because you don't know what those</p> <p>19 numbers are?</p> <p>20 A. Because I have not set out to</p> <p>21 calculate those numbers. If I were to set out to</p> <p>22 calculate those numbers, I would know them.</p> <p>23 Q. Right, but you don't know.</p> <p>24 Is that right?</p> <p>25 I think we can agree to that.</p>

<p style="text-align: right;">Page 29</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                   MR. GOLDFEIN: Objection to the form</p> <p>3                   of the question. Asked and answered.</p> <p>4                   THE WITNESS: As I sit here, I don't</p> <p>5                   have those numbers in my memory because I have not</p> <p>6                   set out to calculate them.</p> <p>7                   ---</p> <p>8                   CONTINUATION</p> <p>9                   BY MR. LANGER:</p> <p>10                  <b>Q. Now, when a game is shown on</b></p> <p>11                  <b>television, okay, who gets the revenue for the</b></p> <p>12                  <b>advertising, the RSN or the MVPD?</b></p> <p>13                  MR. TOSCANO: Objection to form.</p> <p>14                  THE WITNESS: I think there are</p> <p>15                  agreements as between the RSN and the MVPD's to</p> <p>16                  divide the advertising revenues according to the</p> <p>17                  contractual terms which they have reached.</p> <p>18                  ---</p> <p>19                  CONTINUATION</p> <p>20                  BY MR. LANGER:</p> <p>21                  <b>Q. Do you have any sense of how that</b></p> <p>22                  <b>division -- what that division represents?</b></p> <p>23                  MR. TOSCANO: Object to form.</p> <p>24                  THE WITNESS: What do you mean by</p> <p>25                  "what division represents"?</p>	<p style="text-align: right;">Page 31</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                   down to -- to calculate those in the context of this</p> <p>3                   assignment, no.</p> <p>4                   <b>Q. Do you know how the cost of</b></p> <p>5                   <b>producing a baseball game compares with the cost of</b></p> <p>6                   <b>producing a situation comedy on television?</b></p> <p>7                   A. No. I've seen some very high</p> <p>8                   numbers for situation comedies, including the</p> <p>9                   salaries to the so-called talent, but I have not set</p> <p>10                  out to analyze those thoroughly across time and</p> <p>11                  across various situation comedies.</p> <p>12                  Some, of course, are very costly.</p> <p>13                  Others are likely to be much less costly. Much</p> <p>14                  depends on the sets, the talents, and all of the</p> <p>15                  considerations.</p> <p>16                  <b>Q. Let me understand.</b></p> <p>17                  <b>Do you have any idea what a</b></p> <p>18                  <b>situation comedy is considered, as you put it, less</b></p> <p>19                  <b>costly would cost per episode?</b></p> <p>20                  A. Again, I don't believe that there's</p> <p>21                  any particular number one can quote. There may be</p> <p>22                  averages, and it is also the case, as you know, that</p> <p>23                  situation comedy, tragedy or whatever it is, that is</p> <p>24                  not covering its incremental costs or forward looking</p> <p>25                  costs, it is going to get cancelled. Some of them</p>
<p style="text-align: right;">Page 30</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                   It represents a division of the</p> <p>3                   revenues.</p> <p>4                   ---</p> <p>5                   CONTINUATION</p> <p>6                   BY MR. LANGER:</p> <p>7                   <b>Q. What -- by that I meant what</b></p> <p>8                   <b>percentage of the revenues -- the advertising</b></p> <p>9                   <b>revenues would go to the RSN, and what percentage go</b></p> <p>10                  <b>to the MVPD?</b></p> <p>11                  MR. TOSCANO: Objection to form.</p> <p>12                  THE WITNESS: I would -- first of</p> <p>13                  all, I think it is a subject of negotiation as</p> <p>14                  between the RSN and the MVPD, and I'm not aware of</p> <p>15                  there being any particular fixed percentage that goes</p> <p>16                  to one or the other. It's a matter of negotiation,</p> <p>17                  like other terms of the contract, between the RSN and</p> <p>18                  the MVPD.</p> <p>19                  ---</p> <p>20                  CONTINUATION</p> <p>21                  BY MR. LANGER:</p> <p>22                  <b>Q. And -- and I take it from your last</b></p> <p>23                  <b>answer you have no idea of what those ranges would</b></p> <p>24                  <b>be?</b></p> <p>25                  A. As I said before, I have not set</p>	<p style="text-align: right;">Page 32</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                   get cancelled after two episodes. Others likely go</p> <p>3                   for a couple of years, so --</p> <p>4                   <b>Q. Again I'm asking; you have no idea</b></p> <p>5                   <b>what the range of costs actually is --</b></p> <p>6                   MR. TOSCANO: Objection to form.</p> <p>7                   MR. LANGER: -- in terms of absolute</p> <p>8                   dollars?</p> <p>9                   MR. TOSCANO: Asked and answered.</p> <p>10                  THE WITNESS: I have no such idea.</p> <p>11                  All I know is that many -- some</p> <p>12                  cases, these situation comedies or other types of</p> <p>13                  television programming gets cancelled because of the</p> <p>14                  incremental basis. They can simply cannot sustain</p> <p>15                  themselves.</p> <p>16                  MR. LANGER: Right.</p> <p>17                  ---</p> <p>18                  CONTINUATION</p> <p>19                  BY MR. LANGER:</p> <p>20                  <b>Q. Now, is Comcast one of the entities</b></p> <p>21                  <b>that has retained you in this matter?</b></p> <p>22                  A. Yes.</p> <p>23                  <b>Q. Do you know that Comcast owns NBC?</b></p> <p>24                  <b>Is that right?</b></p> <p>25                  A. Yes.</p>

<p style="text-align: right;">Page 33</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Can you compare the profit to</b></p> <p>3 <b>Comcast as a producer of its most popular sitcom to</b></p> <p>4 <b>its profit per hour of its most popular Flyer's game?</b></p> <p>5 MR. TOSCANO: Objection to form.</p> <p>6 THE WITNESS: Why would I want to do</p> <p>7 such a calculation in the context of my assignment?</p> <p>8 I cannot imagine undertaking it.</p> <p>9 ---</p> <p>10 CONTINUATION</p> <p>11 BY MR. LANGER:</p> <p>12 <b>Q. Okay.</b></p> <p>13 <b>So, you don't know?</b></p> <p>14 A. I cannot -- I don't know, that's</p> <p>15 true. I have not undertaken such an assignment, and</p> <p>16 I was not tasked to undertake such an assignment.</p> <p>17 <b>Q. I take it from your prior answers</b></p> <p>18 <b>that you have no idea what the broadcasting revenue</b></p> <p>19 <b>of any baseball team is.</b></p> <p>20 <b>Is that correct?</b></p> <p>21 MR. TOSCANO: Objection.</p> <p>22 Mischaracterizes the witness's</p> <p>23 testimony.</p> <p>24 THE WITNESS: Of any team?</p> <p>25 MR. LANGER: Yes.</p>	<p style="text-align: right;">Page 35</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Over the past ten I have taught</p> <p>3 mostly two subjects at the graduate and undergraduate</p> <p>4 level; one being industrial organization economics --</p> <p>5 industrial organization economics.</p> <p>6 The other being international trade.</p> <p>7 <b>Q. Have -- have there been any subset</b></p> <p>8 <b>of courses that you've taught under the -- under the</b></p> <p>9 <b>industrial economics -- industrial organization</b></p> <p>10 <b>economics?</b></p> <p>11 <b>I'm sorry.</b></p> <p>12 A. At NYU?</p> <p>13 <b>Q. Yes.</b></p> <p>14 A. I have been teaching both</p> <p>15 undergraduate and graduate courses, the MA, MB level</p> <p>16 in industrial organization economics as a</p> <p>17 field subject.</p> <p>18 <b>Q. So, what courses have you taught</b></p> <p>19 <b>this last semester?</b></p> <p>20 A. Well, this semester I'm not</p> <p>21 teaching, but the last semester of the prior academic</p> <p>22 year I taught undergraduate industrial organization,</p> <p>23 MA industrial organization, an MA level course in</p> <p>24 international trade.</p> <p>25 <b>Q. So, you're not teaching this</b></p>
<p style="text-align: right;">Page 34</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: You mean, how much</p> <p>3 they receive from the sale of their rights?</p> <p>4 MR. LANGER: Yes.</p> <p>5 THE WITNESS: Not as I sit here, no.</p> <p>6 ---</p> <p>7 CONTINUATION</p> <p>8 BY MR. LANGER:</p> <p>9 <b>Q. And that would be the same for</b></p> <p>10 <b>hockey.</b></p> <p>11 <b>Is that right?</b></p> <p>12 MR. TOSCANO: Objection.</p> <p>13 THE WITNESS: I have not undertaken</p> <p>14 to -- to familiarize myself with these numbers, no.</p> <p>15 No, sir.</p> <p>16 ---</p> <p>17 CONTINUATION</p> <p>18 BY MR. LANGER:</p> <p>19 <b>Q. Now, you're a professor at NYU.</b></p> <p>20 <b>Is that correct?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. What courses have you taught?</b></p> <p>23 A. Over the past 43 years?</p> <p>24 <b>Q. Well, let's take over the last ten.</b></p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 36</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>semester.</b></p> <p>3 <b>Is that you are on sabbatical?</b></p> <p>4 A. I am on a sabbatical for this year,</p> <p>5 yes, sir.</p> <p>6 <b>Q. And are you doing any particular</b></p> <p>7 <b>research during that sabbatical?</b></p> <p>8 A. I'm spending a lot of time catching</p> <p>9 up on the literature, thinking about economic issues</p> <p>10 that I would like to write about.</p> <p>11 I have written several short papers</p> <p>12 which will be likely to be -- well, two of them or</p> <p>13 three of them already been accepted for publication,</p> <p>14 and they have appeared already, but my focus is</p> <p>15 entirely on antitrust aspects of industrial</p> <p>16 organization economics.</p> <p>17 <b>Q. Have you been overseeing any</b></p> <p>18 <b>graduate students during your sabbatical?</b></p> <p>19 A. No. I try not to work at NYU during</p> <p>20 my sabbatical.</p> <p>21 <b>Q. You said you were retained in this</b></p> <p>22 <b>case about a year ago.</b></p> <p>23 A. I think so.</p> <p>24 <b>Q. Can you describe the circumstances</b></p> <p>25 <b>of your retention?</b></p>

<p style="text-align: right;">Page 41</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2   <b>your Declaration, "I have been asked by counsel for</b></p> <p>3   <b>Defendants in the above-captioned cases to assess</b></p> <p>4   <b>from an economic perspective whether it is more</b></p> <p>5   <b>likely than not or virtually all" --</b></p> <p>6                   Excuse me. I got to reread that.</p> <p>7                   "I've been asked by counsel for the</p> <p>8   <b>Defendants in the above-captioned cases to assess</b></p> <p>9   <b>from an economic perspective, whether it is more</b></p> <p>10   <b>likely than not that all or virtually all of the</b></p> <p>11   <b>purported class members suffered economic injury from</b></p> <p>12   <b>the conduct challenged by the plaintiffs."</b></p> <p>13                  MR. TOSCANO: Doctor, would it be</p> <p>14   helpful for you to have a copy of your Declaration in</p> <p>15   front of you?</p> <p>16                  THE WITNESS: I was going to ask for</p> <p>17   a copy of my Declaration.</p> <p>18                  MR. LANGER: Yeah, I'll give it to</p> <p>19   you in just a minute, but let me ask you as, I was</p> <p>20   just asking you --</p> <p>21                  MR. TOSCANO: But you had some</p> <p>22   trouble reading it. I'm not sure it came across.</p> <p>23                  MR. LANGER: Yeah. I will let you</p> <p>24   look at my copy here just so see.</p> <p>25                  Beginning with paragraph five.</p>	<p style="text-align: right;">Page 43</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2   I was contacted and retained, I was asked then to be</p> <p>3   -- to focus on the classification issues, and in</p> <p>4   connection with that task I was -- was made -- I was</p> <p>5   told or I was informed -- instructed that the kind of</p> <p>6   assignment that I was thinking about undertaking</p> <p>7   would involve the type of determination that I</p> <p>8   summarize in the beginning of paragraph five.</p> <p>9                   ---</p> <p>10   CONTINUATION</p> <p>11   BY MR. LANGER:</p> <p>12                  <b>Q.   Okay.</b></p> <p>13                   Now, you say that was around last</p> <p>14   <b>December?</b></p> <p>15                  A.   I didn't say --</p> <p>16                  <b>Q.   You said that it was about a year</b></p> <p>17   <b>ago. It is now December.</b></p> <p>18                  A.   Right. Maybe -- I don't believe it</p> <p>19   was wintertime. I think it may have been maybe the</p> <p>20   Fall or thereabouts.</p> <p>21                  <b>Q.   Fall of last year?</b></p> <p>22                  A.   Yes.</p> <p>23                  <b>Q.   Okay.</b></p> <p>24                   And what were the first things you</p> <p>25   <b>did?</b></p>
<p style="text-align: right;">Page 42</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2   MR. TOSCANO: Any reason not to just</p> <p>3   mark it now?</p> <p>4                  MR. LANGER: Yeah.</p> <p>5                  I'm going to mark it in a few</p> <p>6   minutes.</p> <p>7                   (Pause)</p> <p>8                  THE WITNESS: Right.</p> <p>9                  I read that sentence.</p> <p>10                  ---</p> <p>11   CONTINUATION</p> <p>12   BY MR. LANGER:</p> <p>13                  <b>Q.   Okay.</b></p> <p>14                   When did you determine that that was</p> <p>15   <b>what you were being approached to do?</b></p> <p>16                  A.   During our --</p> <p>17                  THE WITNESS: Well, I'm going into</p> <p>18   substance, so you have to tell me when to stop.</p> <p>19                  MR. TOSCANO: Yeah.</p> <p>20                  The question is when.</p> <p>21                  THE WITNESS: Oh.</p> <p>22                  MR. TOSCANO: He's asking for a</p> <p>23   date.</p> <p>24                  THE WITNESS: Okay.</p> <p>25                  Dates. It was around the time when</p>	<p style="text-align: right;">Page 44</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                  A.   We touched upon that already, sir.</p> <p>3   But -- so, what I did, I looked at the Complaints.</p> <p>4                  I looked at whatever other documents</p> <p>5   may have been available at that time.</p> <p>6                  I met at some point with the</p> <p>7   counsel.</p> <p>8                  So, that's what I did.</p> <p>9                  <b>Q.   And going back to Exhibit-1 --</b></p> <p>10                  A.   Got it. Yep.</p> <p>11                  <b>Q.   -- when did you receive the bulk of</b></p> <p>12   <b>the items and documents that are shown on Exhibit-1</b></p> <p>13   <b>which is Attachement-2?</b></p> <p>14                  MR. TOSCANO: Objection.</p> <p>15                  Compound.</p> <p>16                  THE WITNESS: I don't recall when</p> <p>17   these documents were flowing in. My office in</p> <p>18   Washington likely has a log, but I don't.</p> <p>19                  ---</p> <p>20   CONTINUATION</p> <p>21   BY MR. LANGER:</p> <p>22                  <b>Q.   Were they sent to you or to</b></p> <p>23   <b>Washington?</b></p> <p>24                  A.   I believe all of the transmissions</p> <p>25   went to Washington, and then I received the -- I just</p>

<p style="text-align: right;">Page 45</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 don't have the capacity of storing that amount of</p> <p>3 paper and maintaining that amount of paper in my home</p> <p>4 office.</p> <p>5 <b>Q. So, what, would you retrieve it from</b></p> <p>6 <b>Washington as you reviewed all of these materials?</b></p> <p>7 A. I would talk to my team and ask for</p> <p>8 some specific documents or documents that are --</p> <p>9 specifically are a particular set of issues, and just</p> <p>10 my usual procedure just because I don't have a local</p> <p>11 office from which I work.</p> <p>12 <b>Q. You said that you considered all of</b></p> <p>13 <b>these documents that are shown here.</b></p> <p>14 A. Right.</p> <p>15 <b>Q. What do you do with them after they</b></p> <p>16 <b>were sent to you from the Washington office?</b></p> <p>17 A. I would generally return them or</p> <p>18 maintain some of them, but not all of them.</p> <p>19 At some point some of them were put</p> <p>20 on the stick. So, I had a thumb drive on which these</p> <p>21 documents -- at this point I would have all of those</p> <p>22 documents on the thumb drive.</p> <p>23 <b>Q. Okay.</b></p> <p>24 <b>Now -- but you don't recall when you</b></p> <p>25 <b>started first reviewing them, other than the initial</b></p>	<p style="text-align: right;">Page 47</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 MR. TOSCANO: So, you are</p> <p>3 representing that?</p> <p>4 MR. LANGER: Yes.</p> <p>5 THE WITNESS: Representing that, but</p> <p>6 I will take your representation, but I will verify</p> <p>7 it.</p> <p>8 MR. LANGER: Okay. Please do.</p> <p>9 My head for dates and numbers is atrocious. That's</p> <p>10 why I wrote it down here. Okay.</p> <p>11 THE WITNESS: Makes two of us.</p> <p>12 MR. LANGER: Yes.</p> <p>13 Well --</p> <p>14 MR. TOSCANO: Your question also</p> <p>15 misstates his Declaration.</p> <p>16 MR. LANGER: Whose Declaration?</p> <p>17 MR. TOSCANO: Mr. Ordovery's.</p> <p>18 MR. LANGER: Misstates.</p> <p>19 Well, I'm sorry. I didn't know I</p> <p>20 was even referring to it.</p> <p>21 ---</p> <p>22 CONTINUATION</p> <p>23 BY MR. LANGER:</p> <p>24 <b>Q. But have you reviewed the bulk of</b></p> <p>25 <b>these documents on Attachment 2 before receiving</b></p>
<p style="text-align: right;">Page 46</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>documents that you told us counsel gave you?</b></p> <p>3 MR. TOSCANO: Objection to form.</p> <p>4 THE WITNESS: I don't have the right</p> <p>5 -- exact date for you. I know that I started working</p> <p>6 probably around a year ago, and then as time</p> <p>7 progressed the pace of the work picked up, and I was</p> <p>8 reviewing or looking at or talking to my team about</p> <p>9 the documents that we were receiving.</p> <p>10 ---</p> <p>11 CONTINUATION</p> <p>12 BY MR. LANGER:</p> <p>13 <b>Q. Now, your -- your Declaration, that</b></p> <p>14 <b>is primarily a critique of Dr. Noll's supplemental</b></p> <p>15 <b>Declaration.</b></p> <p>16 <b>Is that correct?</b></p> <p>17 A. That is true.</p> <p>18 <b>Q. And that was dated September 19,</b></p> <p>19 <b>2014.</b></p> <p>20 <b>Will you accept that?</b></p> <p>21 A. Well, if you show me the document I</p> <p>22 don't have to be accepting.</p> <p>23 <b>Q. I don't have it in front of me.</b></p> <p>24 <b>I'm telling you what I understand.</b></p> <p>25 <b>That is the date of Dr. Noll's Declaration.</b></p>	<p style="text-align: right;">Page 48</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Dr. Noll's supplemental Declaration?</b></p> <p>3 A. As I said, there's a continuous</p> <p>4 process was ebbs and flows, and I reviewed them at</p> <p>5 different points in time. Sometimes a chunk.</p> <p>6 Sometimes one document at a time.</p> <p>7 You know, this is -- as I said, I do</p> <p>8 not keep a log of what I do on any particular day as</p> <p>9 it comes to my actions in the case. I just try to</p> <p>10 keep sense of what I'm doing, and make sure to</p> <p>11 understand what I'm doing.</p> <p>12 <b>Q. Okay.</b></p> <p>13 <b>Let me go back to my question.</b></p> <p>14 A. Okay.</p> <p>15 <b>Q. Had you reviewed the bulk of the</b></p> <p>16 <b>documents -- the majority of the documents shown on</b></p> <p>17 <b>Attachment 2 before receiving Dr. Noll's supplemental</b></p> <p>18 <b>Declaration?</b></p> <p>19 MR. TOSCANO: Objection.</p> <p>20 Asked and answered.</p> <p>21 THE WITNESS: That assumes that I</p> <p>22 remember when I received Dr. Noll's supplemental</p> <p>23 Declaration, and that I have a clear demarcation of</p> <p>24 time in the context of my work.</p> <p>25 MR. LANGER: Put it to you</p>

<p style="text-align: right;">Page 49</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 differently.</p> <p>3 ---</p> <p>4 CONTINUATION</p> <p>5 BY MR. LANGER:</p> <p>6 <b>Q. Had you reviewed the bulk of the</b></p> <p>7 <b>documents on Attachment 2 before September 19th,</b></p> <p>8 <b>2014?</b></p> <p>9 A. You know, you're testing my memory</p> <p>10 for -- for reasons that are alluding me, but those</p> <p>11 are your questions. You have the right to ask me</p> <p>12 anything you want.</p> <p>13 What I'm trying to tell you is that</p> <p>14 I'm not keeping mental track of all of the tasks that</p> <p>15 I did in preparation, and then in writing the report.</p> <p>16 So, I'll be guessing as to the</p> <p>17 timing, and I would be guessing as to what you mean</p> <p>18 by "bulk" in this context.</p> <p>19 <b>Q. Well, let me ask you this.</b></p> <p>20 <b>Since it's only since September,</b></p> <p>21 <b>which of the documents here did you review since last</b></p> <p>22 <b>-- since September, 2014?</b></p> <p>23 MR. TOSCANO: Objection.</p> <p>24 I think he's told you what his</p> <p>25 answer is to this whole line of examination.</p>	<p style="text-align: right;">Page 51</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 document with the Bates number MLB0007212-0007224.</p> <p>3 How would I remember that?</p> <p>4 MR. LANGER: Okay.</p> <p>5 THE WITNESS: I don't even know --</p> <p>6 by looking at it I don't even know what the document</p> <p>7 is.</p> <p>8 MR. LANGER: Okay.</p> <p>9 THE WITNESS: So, show me a</p> <p>10 document. We'll talk about the document.</p> <p>11 MR. LANGER: Okay.</p> <p>12 THE WITNESS: That's what you want</p> <p>13 to do.</p> <p>14 MR. LANGER: That is fine with me.</p> <p>15 Okay.</p> <p>16 Let's -- let me ask you this.</p> <p>17 ---</p> <p>18 CONTINUATION</p> <p>19 BY MR. LANGER:</p> <p>20 <b>Q. You said that you worked with the</b></p> <p>21 <b>staff in Washington.</b></p> <p>22 A. Yes, sir.</p> <p>23 <b>Q. How did you work -- I mean, how --</b></p> <p>24 <b>how was this Declaration prepared?</b></p> <p>25 <b>What was the process?</b></p>
<p style="text-align: right;">Page 50</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 I think it's time to move on.</p> <p>3 MR. LANGER: The question is</p> <p>4 pending.</p> <p>5 THE WITNESS: I certainly reviewed</p> <p>6 the documents that came in after that, but which</p> <p>7 those documents are -- which are those documents, I</p> <p>8 just cannot tell you, other than the Declaration,</p> <p>9 because they have actual dates attached to them.</p> <p>10 All of the other documents, of which</p> <p>11 there are numerous, I don't know when they were</p> <p>12 actually reviewed by me, reviewed by my staff under</p> <p>13 my direction or any of it.</p> <p>14 ---</p> <p>15 CONTINUATION</p> <p>16 BY MR. LANGER:</p> <p>17 <b>Q. So, you don't recall which of them</b></p> <p>18 <b>you reviewed in the last three months?</b></p> <p>19 MR. TOSCANO: I think at this point</p> <p>20 you're starting to harass the witness. He told you</p> <p>21 that he doesn't have the timing memorized. This is</p> <p>22 not relevant to anything related to his report.</p> <p>23 THE WITNESS: I don't mind being</p> <p>24 harassed that way, but as I said, you know, why --</p> <p>25 why -- I cannot be guessing when did I look at the</p>	<p style="text-align: right;">Page 52</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. Well, I have a number of people</p> <p>3 involved in my team in Washington, and I work with</p> <p>4 them the way I work on all of my matters which is,</p> <p>5 when I get retained I try to find, in our offices</p> <p>6 throughout the United States, the people that I would</p> <p>7 find congenial to the particular -- and informed</p> <p>8 about a particular set of issues.</p> <p>9 Not everybody is good for</p> <p>10 everything. So, I formed a core team. I spent time</p> <p>11 with a stenographic person in Washington. Most of all</p> <p>12 of the people, as far as I can tell, are residing in</p> <p>13 our Washington, DC, office.</p> <p>14 So, I would meet with them during my</p> <p>15 visit to DC. I will meet with the lead person on</p> <p>16 this case, Dr. Ezrielev.</p> <p>17 <b>Q. Could you spell that for us?</b></p> <p>18 A. Can you?</p> <p>19 MR. TOSCANO: E-Z-R-I-E-L-E-V.</p> <p>20 MR. LANGER: E-Z-R --</p> <p>21 MR. TOSCANO: -- I-E-L-E-V.</p> <p>22 THE WITNESS: I am hampered in this</p> <p>23 because there is no spelling in Polish, which is my</p> <p>24 fundamental language. So, I have never really</p> <p>25 managed to put the spelling and the words together.</p>

<p style="text-align: right;">Page 53</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 But, anyway, so, Dr. Jay Ezrielev</p> <p>3 was my primary resource and contact, and I would meet</p> <p>4 with him a few times in New York for various lengths</p> <p>5 of time discussing the issues, discussing the -- the</p> <p>6 evolution of our approach, and my approach, and the</p> <p>7 outline, and as the documents began flowing in and as</p> <p>8 I was gaining an understanding of the case, a deeper</p> <p>9 understanding, I would interact with him for the</p> <p>10 purposes of producing an outline, and then once the</p> <p>11 outline was more or less finalized, I would go off</p> <p>12 with Jay, and then additional members of the team to</p> <p>13 start drafting the actual report.</p> <p>14 ---</p> <p>15 CONTINUATION</p> <p>16 BY MR. LANGER:</p> <p>17 Q. Okay.</p> <p>18 Now, what's -- does Dr. Ezrielev</p> <p>19 have any specialty?</p> <p>20 A. Well, he's an industrial</p> <p>21 organization economist with many years of expertise</p> <p>22 in matters of anti-trust, but I don't recall what his</p> <p>23 Ph.D. was in. He actually was at New York University</p> <p>24 as a graduate student.</p> <p>25 Q. Do you have -- who else was on the</p>	<p style="text-align: right;">Page 55</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 I'm sorry to say that.</p> <p>3 Q. So, you wouldn't know who Robert</p> <p>4 Bowman is?</p> <p>5 A. I know that I spoke to several of</p> <p>6 these people and -- but not all.</p> <p>7 For example, I didn't speak to Bud</p> <p>8 Selig, even though I know who he might be, but -- as</p> <p>9 I sit here I have no ability to cross what between</p> <p>10 those folks and their job descriptions, so --</p> <p>11 Q. Who does Michael Biard work for?</p> <p>12 A. As I just said, I have no -- I would</p> <p>13 have to go back to their Declarations and remind</p> <p>14 myself of the job titles and their employers.</p> <p>15 Q. You don't know whether he works for</p> <p>16 the National Hockey League or Major League Baseball.</p> <p>17 Is that right?</p> <p>18 MR. TOSCANO: Objection.</p> <p>19 Asked and answered.</p> <p>20 THE WITNESS: As I sit here I don't</p> <p>21 remember. I knew that, because I think I talked to</p> <p>22 him, but I did not take notes and titles as I was</p> <p>23 discussing the matter with those, yes.</p> <p>24 ---</p> <p>25 CONTINUATION</p>
<p style="text-align: right;">Page 54</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 team?</p> <p>3 A. I think that the second person that</p> <p>4 joined us was Dr. -- Dr. Keating, Brian Keating.</p> <p>5 Again, he is a -- I think Stanford-trained Ph.D.</p> <p>6 economist with a lot of expertise in the area of</p> <p>7 applied econometrics and industrial organization</p> <p>8 econometrics, put it that way.</p> <p>9 Q. Anybody else?</p> <p>10 A. As I said, I did not -- there -- I</p> <p>11 understand there were a number of people working with</p> <p>12 Jay, and then with Jay and Brian, and backing me up.</p> <p>13 I just don't have the -- everybody's names as I sit</p> <p>14 here. Like you, I'm challenged on the names front.</p> <p>15 Q. Okay.</p> <p>16 Now, I want to go back to Exhibit-1.</p> <p>17 A. Okay.</p> <p>18 Q. Okay.</p> <p>19 I take it you know who Gary Bettman</p> <p>20 is?</p> <p>21 A. He's the Commissioner of Baseball.</p> <p>22 Q. Okay.</p> <p>23 And who is Michael Biard?</p> <p>24 A. Do you know what? I -- I have no</p> <p>25 titles attachable to any of these names.</p>	<p style="text-align: right;">Page 56</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 BY MR. LANGER:</p> <p>3 Q. It says that you considered his</p> <p>4 Declaration.</p> <p>5 A. Right.</p> <p>6 Q. Okay.</p> <p>7 Do you know who -- you wouldn't --</p> <p>8 you don't know who Robert Bowman is or whether he's</p> <p>9 associated with Major League Baseball or the National</p> <p>10 Hockey League?</p> <p>11 A. You can go through that, and I will</p> <p>12 give you exactly the same number -- answer, because I</p> <p>13 think it is a true answer, which is to say that I</p> <p>14 have not thoroughly memorized the job titles and the</p> <p>15 employers of these various people on the list.</p> <p>16 Q. So, you don't know who Patrick Crumb</p> <p>17 is.</p> <p>18 Is that right?</p> <p>19 MR. TOSCANO: Again, we are getting</p> <p>20 into the same pattern here where he has given you an</p> <p>21 answer that applies to all of the specific questions</p> <p>22 that you are going to be asking. At a certain point</p> <p>23 it becomes harassment.</p> <p>24 ---</p> <p>25 CONTINUATION</p>

<p style="text-align: right;">Page 57</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 BY MR. LANGER:</p> <p>3 Q. You don't know who Patrick Crumb is.</p> <p>4 Is that right?</p> <p>5 A. My prior answer stands.</p> <p>6 I do not memorize the job titles of</p> <p>7 the various people. I spoke to people from National</p> <p>8 Hockey League and Major League Baseball, that's for</p> <p>9 sure --</p> <p>10 Q. Okay.</p> <p>11 A. -- and others as well.</p> <p>12 Q. Oh, okay.</p> <p>13 Just two more.</p> <p>14 A. Okay.</p> <p>15 Q. Okay.</p> <p>16 You don't know who Jeffrey Krolik is</p> <p>17 employed by.</p> <p>18 Is that right?</p> <p>19 A. No, but I don't -- I think the</p> <p>20 answer would be; I think he's -- no, I would be</p> <p>21 guessing his title. I remember conversation with</p> <p>22 him, but I don't remember the --</p> <p>23 Q. And you don't know who Jon Litner is</p> <p>24 employed by.</p> <p>25 Is that right?</p>	<p style="text-align: right;">Page 59</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. And -- okay. Thank you.</p> <p>3 Now, when did you receive these</p> <p>4 Declarations that are listed in the Declarations</p> <p>5 group?</p> <p>6 When did you receive the</p> <p>7 Declarations of Mr. Biard and Mr. Bowman?</p> <p>8 MR. TOSCANO: Objection.</p> <p>9 Asked and answered.</p> <p>10 This is the same general topic of</p> <p>11 about when he received.</p> <p>12 MR. LANGER: This is very specific.</p> <p>13 MR. TOSCANO: But it's a specific</p> <p>14 example of the whole line you have already exhausted.</p> <p>15 ---</p> <p>16 CONTINUATION</p> <p>17 BY MR. LANGER:</p> <p>18 Q. Do you recall when you received</p> <p>19 them?</p> <p>20 A. I received these Declarations either</p> <p>21 the night before or the day they were filed.</p> <p>22 Q. The night before or the day they</p> <p>23 were filed?</p> <p>24 A. Right.</p> <p>25 Q. And you haven't received them before</p>
<p style="text-align: right;">Page 58</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. Jon who?</p> <p>3 Q. Litner?</p> <p>4 A. Whitner. I don't see him on this.</p> <p>5 Q. Right under Mr. Krolik.</p> <p>6 A. Oh -- oh, Litner. I thought you</p> <p>7 meant Whitner.</p> <p>8 No, I don't.</p> <p>9 Q. Okay.</p> <p>10 Would your answer be the same if I</p> <p>11 asked you any of the people -- and I want you to look</p> <p>12 down the list -- any of the people shown as a</p> <p>13 Declarant or a deposition transcript?</p> <p>14 A. Well, some of them are on both</p> <p>15 lists, and I know that Mr. Birbiglia, for example,</p> <p>16 and Thomas Brosnan are the plaintiffs in this case.</p> <p>17 So, that I know.</p> <p>18 Q. But aside from those two, you could</p> <p>19 not attach an employer or a job description to any of</p> <p>20 the other people?</p> <p>21 A. That is true.</p> <p>22 Q. And you reviewed all of the</p> <p>23 deposition transcripts you have listed here?</p> <p>24 A. Yes, but my focus was on the</p> <p>25 content, not on the job title.</p>	<p style="text-align: right;">Page 60</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 then?</p> <p>3 A. I had not seen any prior version of</p> <p>4 those Declarations, no, sir.</p> <p>5 I only saw the final versions.</p> <p>6 Q. Okay.</p> <p>7 So, if they are dated November 12,</p> <p>8 you saw them for the first time the night before --</p> <p>9 A. Or the day of --</p> <p>10 Q. -- or November 12th?</p> <p>11 A. -- yeah.</p> <p>12 Q. Okay.</p> <p>13 MR. LANGER: I want to take a couple</p> <p>14 minute break.</p> <p>15 MR. TOSCANO: Sure.</p> <p>16 MR. LANGER: Thank you.</p> <p>17 VIDEO TECHNICIAN: Off the record at</p> <p>18 10:21.</p> <p>19 ---</p> <p>20 (Recess was taken at this time.)</p> <p>21 ---</p> <p>22 VIDEO TECHNICIAN: Stand by, please.</p> <p>23 The time is 11:28.</p> <p>24 We're back on record.</p> <p>25 ---</p>

<p style="text-align: right;">Page 81</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                   <b>(Pause)</b></p> <p>3           <b>Q. 17, as I counted here, prior to</b></p> <p>4 <b>being retained in this case, okay, you had testified</b></p> <p>5 <b>in at least 20 anti-trust class actions with regard</b></p> <p>6 <b>to proof of "common impact." Just tallied up the</b></p> <p>7 <b>ones you mentioned.</b></p> <p>8           A. Okay.</p> <p>9           <b>Q. I say, at least, because there were</b></p> <p>10 <b>certain cases you weren't sure which cases, and I</b></p> <p>11 <b>haven't included those.</b></p> <p>12           MR. TOSCANO: Wait for a question.</p> <p>13           THE WITNESS: Okay.</p> <p>14           ---</p> <p>15 CONTINUATION</p> <p>16 BY MR. LANGER:</p> <p>17           <b>Q. So, by the time you were retained in</b></p> <p>18 <b>this case you had given testimony in 20 such cases.</b></p> <p>19           <b>Had you ever on any occasion given</b></p> <p>20 <b>an opinion that you believed the class action should</b></p> <p>21 <b>be certified that "common impact" could be proven on</b></p> <p>22 <b>a class-wide basis?</b></p> <p>23           MR. TOSCANO: Objection to form.</p> <p>24           Lack of foundation.</p> <p>25           THE WITNESS: The answer --</p>	<p style="text-align: right;">Page 83</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                   ---</p> <p>3 CONTINUATION</p> <p>4 BY MR. LANGER:</p> <p>5           <b>Q. Okay.</b></p> <p>6           <b>In every occasion you the testified</b></p> <p>7 <b>the class should not be certified.</b></p> <p>8           <b>Just so we're clear.</b></p> <p>9           <b>Is that right?</b></p> <p>10           MR. TOSCANO: Objection to form.</p> <p>11           THE WITNESS: Every occasion that</p> <p>12 I've testified, either by Declaration or deposition,</p> <p>13 or in Court, that was the testimony that I gave.</p> <p>14           ---</p> <p>15 CONTINUATION</p> <p>16 BY MR. LANGER:</p> <p>17           <b>Q. Have you ever told a potential</b></p> <p>18 <b>client, without identifying the client, sought your</b></p> <p>19 <b>opinion with regard to issues of "common impact" in</b></p> <p>20 <b>class certification that you could not provide an</b></p> <p>21 <b>opinion to them?</b></p> <p>22           MR. GOLDFEIN: I'm going to object</p> <p>23 to the form of the question.</p> <p>24           MR. LANGER: I haven't finished it</p> <p>25 yet.</p>
<p style="text-align: right;">Page 82</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2           MR. TOSCANO: Assumes facts not in</p> <p>3 evidence.</p> <p>4           THE WITNESS: Sorry.</p> <p>5           MR. TOSCANO: Go ahead.</p> <p>6           THE WITNESS: Sorry.</p> <p>7           I didn't mean to rush.</p> <p>8           I was never -- the answer would be;</p> <p>9 I was never approached by the plaintiffs seeking such</p> <p>10 testimony from an expert economist.</p> <p>11           ---</p> <p>12 CONTINUATION</p> <p>13 BY MR. LANGER:</p> <p>14           <b>Q. Again, I'm going to ask you; have</b></p> <p>15 <b>you ever testified in any case -- have you ever come</b></p> <p>16 <b>to the opinion in any case that a -- that proof of</b></p> <p>17 <b>"common impact" could be shown on a class-wide basis?</b></p> <p>18           MR. TOSCANO: Objection to form.</p> <p>19           Vague. Compound.</p> <p>20           THE WITNESS: I have to get</p> <p>21 clarification from you, because I may or may not have</p> <p>22 come to such an opinion, but I never testified to the</p> <p>23 effect that a particular case in which I was</p> <p>24 testifying the class should not be -- the class</p> <p>25 should be certified.</p>	<p style="text-align: right;">Page 84</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2           MR. GOLDFEIN: -- not leading to any</p> <p>3 -- that requires the disclosure of --</p> <p>4           ---</p> <p>5 CONTINUATION</p> <p>6 BY MR. LANGER:</p> <p>7           <b>Q. Have you ever advised the client</b></p> <p>8 <b>that you could not render an opinion that there could</b></p> <p>9 <b>not be "common proof" of class certification -- of</b></p> <p>10 <b>impact onto the class?</b></p> <p>11           MR. GOLDFEIN: Speaking for myself</p> <p>12 and my firm, we have the same objection to the extent</p> <p>13 it is calling for the disclosure of an</p> <p>14 attorney/client communication.</p> <p>15           COUNSEL: I join in that.</p> <p>16           MR. LANGER: I've only asked a yes</p> <p>17 or no question. I haven't asked for identification</p> <p>18 or anything else.</p> <p>19           MR. GOLDFEIN: You asked for the</p> <p>20 substance of communication in your question.</p> <p>21           MR. TOSCANO: Instruct you not to</p> <p>22 answer.</p> <p>23           MR. LANGER: Okay.</p> <p>24           ---</p> <p>25 (Discussion held off the record.)</p>

<p style="text-align: right;">Page 85</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 ---</p> <p>3 CONTINUATION</p> <p>4 BY MR. LANGER:</p> <p>5 Q. Now, these cases that we've gone</p> <p>6 over they involve all different kinds of industries.</p> <p>7 Is that correct?</p> <p>8 A. Yes, sir. Yes.</p> <p>9 Q. They involve walk-ons in college</p> <p>10 sports.</p> <p>11 Is that right?</p> <p>12 A. That's true.</p> <p>13 Q. They involve drugs, pharmaceutical</p> <p>14 drugs?</p> <p>15 A. Pharmaceutical drugs, yes.</p> <p>16 Q. Supermarkets?</p> <p>17 A. Yes.</p> <p>18 Q. Chemicals?</p> <p>19 A. Yes.</p> <p>20 Q. Concerts?</p> <p>21 A. Yes.</p> <p>22 Q. DVD sales?</p> <p>23 A. Yes.</p> <p>24 Q. Pulse Oximetry?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 87</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 ---</p> <p>3 CONTINUATION</p> <p>4 BY MR. LANGER:</p> <p>5 Q. How many different strengths?</p> <p>6 A. I beg your pardon?</p> <p>7 Q. With the Propranolol, was it</p> <p>8 multiple strengths?</p> <p>9 A. I don't -- as I said, some of the</p> <p>10 products, so-called single product.</p> <p>11 Like Hydrogen Peroxide, for example,</p> <p>12 involves a lot of different dilutions or strengths,</p> <p>13 but -- so, is it a single product or is it a</p> <p>14 multiplicity of products?</p> <p>15 Q. Well, there are some -- there are</p> <p>16 some product cases that involve just a single product</p> <p>17 sold in a single form.</p> <p>18 Isn't that correct?</p> <p>19 A. Meta-Fem might be one of those</p> <p>20 cases. I don't recall how many different strengths</p> <p>21 there were or size of the pills were involved.</p> <p>22 I don't recall that.</p> <p>23 Q. Okay.</p> <p>24 Some of these cases involved many</p> <p>25 defendants as a result?</p>
<p style="text-align: right;">Page 86</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Q. Optical disk drives?</p> <p>3 A. Yes.</p> <p>4 Q. Medical devices?</p> <p>5 A. Yes -- well, pulse oximetry is a</p> <p>6 medical device.</p> <p>7 Q. Other medical devices?</p> <p>8 A. Yes.</p> <p>9 Q. Video games?</p> <p>10 A. Yes.</p> <p>11 Q. And some cases involved just one</p> <p>12 product.</p> <p>13 Is that right?</p> <p>14 A. Like what -- what cases would that</p> <p>15 be?</p> <p>16 Q. Like the case involving the</p> <p>17 Propranolol.</p> <p>18 MR. TOSCANO: Objection. Form.</p> <p>19 THE WITNESS: Oh.</p> <p>20 MR. TOSCANO: Objection to form.</p> <p>21 THE WITNESS: Well, there are</p> <p>22 products -- some cases involve a particular</p> <p>23 pharmaceutical product like Propranolol which,</p> <p>24 however, was sold in a variety of formulations and --</p> <p>25 and strengths.</p>	<p style="text-align: right;">Page 88</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. That is true, depending what you</p> <p>3 mean by "many," but some involved more than two.</p> <p>4 Q. Some involved only one seller.</p> <p>5 Is that right?</p> <p>6 A. That is true, too.</p> <p>7 Q. Okay.</p> <p>8 And every one of those cases you</p> <p>9 were of the opinion that impact could not be shown on</p> <p>10 a class-wide basis.</p> <p>11 Is that right?</p> <p>12 MR. TOSCANO: Objection to form.</p> <p>13 Lack of foundation. Assumes facts not in evidence.</p> <p>14 You may answer.</p> <p>15 THE WITNESS: As I said, every case</p> <p>16 in which I testified either by Declaration,</p> <p>17 deposition or in Court, I testified that the class</p> <p>18 should not be certified.</p> <p>19 That's the list that we have</p> <p>20 constructed here.</p> <p>21 ---</p> <p>22 CONTINUATION</p> <p>23 BY MR. LANGER:</p> <p>24 Q. And these cases involved many</p> <p>25 different deposing experts.</p>

<p style="text-align: right;">Page 97</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 MR. LANGER: No, from Compass</p> <p>3 Lexecon.</p> <p>4 THE WITNESS: I do receive other</p> <p>5 compensation which is not related to a successor of</p> <p>6 any of the cases that I or Compass Lexecon works on.</p> <p>7 It's a compensation based on some formula relating</p> <p>8 what I and other economists in the firm get as a</p> <p>9 share -- share of what is called an earn out.</p> <p>10 ---</p> <p>11 CONTINUATION</p> <p>12 BY MR. LANGER:</p> <p>13 Q. Are you -- are you paid any part of</p> <p>14 the time of the other people who work on the case?</p> <p>15 A. Under the new contract I do get some</p> <p>16 portion of their billings on a case, and that portion</p> <p>17 depends on their status in -- and their position in</p> <p>18 the -- in the firm.</p> <p>19 Q. Okay.</p> <p>20 With regard to this case, are you</p> <p>21 getting paid a portion of the hours -- the hourly</p> <p>22 rate of Dr. Ezrielev?</p> <p>23 A. Ezrielev and Dr. Keating, just to</p> <p>24 help you out, I think they may be senior enough that</p> <p>25 I do not get any portion of their hourly billings,</p>	<p style="text-align: right;">Page 99</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Is that right?</p> <p>3 A. Once you account for all of the</p> <p>4 share of the billings to which I am entitled under</p> <p>5 the contract, the answer would be, yes.</p> <p>6 Q. Okay.</p> <p>7 Do you have any understanding as to</p> <p>8 the relative proportions of the compensation?</p> <p>9 A. No, I'm sorry.</p> <p>10 MR. TOSCANO: Objection to form.</p> <p>11 ---</p> <p>12 CONTINUATION</p> <p>13 BY MR. LANGER:</p> <p>14 Q. If you understand where I was going,</p> <p>15 but you don't know what portion comes from your own</p> <p>16 hourly rate being charged and what proportion comes</p> <p>17 from the different staff members working?</p> <p>18 A. That is true. I have no familiarity</p> <p>19 with the bills.</p> <p>20 Q. Okay.</p> <p>21 Do you know how much has been billed</p> <p>22 to date in this case?</p> <p>23 A. No.</p> <p>24 Q. You have no idea whatsoever?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 98</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 but it all depends on the seniority of the persons</p> <p>3 supporting me.</p> <p>4 Q. You don't know?</p> <p>5 A. I sit here, I don't remember that.</p> <p>6 Q. Are there other members of the staff</p> <p>7 who are less senior who have worked on this case for</p> <p>8 whom -- from who you receive a portion of the hours</p> <p>9 they charge?</p> <p>10 MR. TOSCANO: Objection to form.</p> <p>11 MR. LANGER: I will rephrase the</p> <p>12 question, because it got a little messed up.</p> <p>13 Okay.</p> <p>14 ---</p> <p>15 CONTINUATION</p> <p>16 BY MR. LANGER:</p> <p>17 Q. Are there any less senior members of</p> <p>18 the team that has worked on this case for -- for</p> <p>19 whose the -- for whom you were compensated in anyway</p> <p>20 for the hours that they put in the case?</p> <p>21 A. There likely are, because there were</p> <p>22 more than just two people working with me and under</p> <p>23 my supervision, so, yes.</p> <p>24 Q. So, you're -- you're -- you're</p> <p>25 earnings on this case is more than \$1,020.00 an hour.</p>	<p style="text-align: right;">Page 100</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Q. How many hours have you put in?</p> <p>3 A. Probably a couple of hundred hours</p> <p>4 or maybe --</p> <p>5 Q. Couple of hundred?</p> <p>6 A. Maybe more, yeah. I haven't --</p> <p>7 haven't done my billings in a while.</p> <p>8 Q. And would that be the tip of the</p> <p>9 iceberg?</p> <p>10 Would the staff have put in more</p> <p>11 than a couple of hundred hours than you put in?</p> <p>12 MR. TOSCANO: Objection to form.</p> <p>13 MR. GOLDFEIN: Objection.</p> <p>14 THE WITNESS: The tip of the iceberg</p> <p>15 is not defined, but, obviously, the staff has been</p> <p>16 working diligently to support me, but how many hours</p> <p>17 they put in, I don't know.</p> <p>18 ---</p> <p>19 CONTINUATION</p> <p>20 BY MR. LANGER:</p> <p>21 Q. Okay.</p> <p>22 Can you compare the percentage of</p> <p>23 the income you receive as a consultant in cases in</p> <p>24 which you've testified on impact in class actions</p> <p>25 with your income as a professor from NYU?</p>

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1 **HIGHLY CONFIDENTIAL**  
 2 MR. TOSCANO: Objection to form.  
 3 THE WITNESS: Yes, I can compare,  
 4 but crudely.  
 5 MR. LANGER: Okay.  
 6 THE WITNESS: The income that I  
 7 receive from my consulting activities, because I do  
 8 not break them out by subject matter, is  
 9 significantly higher than what I receive from NYU.  
 10 ---  
 11 CONTINUATION  
 12 BY MR. LANGER:  
 13 **Q. More than double?**  
 14 A. Yes.  
 15 **Q. More than triple?**  
 16 A. Yes.  
 17 **Q. More than quadruple?**  
 18 A. Yes.  
 19 **Q. Rather than me going through it, can**  
 20 **you tell me about how many times more it is?**  
 21 MR. TOSCANO: Before we do that, it  
 22 needs to be clear. His question was about your  
 23 income in connection with class action.  
 24 THE WITNESS: Right.  
 25 MR. TOSCANO: Okay.

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1 **HIGHLY CONFIDENTIAL**  
 2 making [REDACTED] a year.  
 3 **Q. Okay.**  
 4 **Now, you said that you taught last**  
 5 **semester, not this immediate semester, but the Spring**  
 6 **semester from 2014.**  
 7 **Is that right?**  
 8 A. Yes, I only teach in the Spring.  
 9 I teach my full course load in the Spring semester.  
 10 **Q. And how many cases did you teach**  
 11 **then?**  
 12 A. The full course load at my level is  
 13 the three courses, and I taught three courses.  
 14 **Q. What three courses did you teach?**  
 15 MR. TOSCANO: Objection.  
 16 Asked and answered.  
 17 THE WITNESS: I taught an  
 18 undergraduate course in industrial organization  
 19 economics, and I taught to MA level course, one in  
 20 industrial organization economics, and the other one  
 21 in international trade.  
 22 ---  
 23 CONTINUATION  
 24 BY MR. LANGER:  
 25 **Q. And have you -- were you overseeing**

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1 **HIGHLY CONFIDENTIAL**  
 2 Just so you understand.  
 3 THE WITNESS: I understood, and my  
 4 answer to that was that I don't keep track of my  
 5 income by subject matter, but it is the case that my  
 6 -- even if we were to try to narrow down the sources  
 7 of my consulting income by subject matter, they would  
 8 be multiple of what I earn from NYU.  
 9 ---  
 10 CONTINUATION  
 11 BY MR. LANGER:  
 12 **Q. At least four or five times --**  
 13 A. Yes.  
 14 **Q. -- from what you just said.**  
 15 **Is that right?**  
 16 A. That is true.  
 17 **Q. More than that?**  
 18 **Four or five is appropriate?**  
 19 A. If you count all the consulting  
 20 activities it could be more, yes.  
 21 **Q. Okay.**  
 22 **And how much is your annual salary**  
 23 **at NYU?**  
 24 A. [REDACTED]  
 25 [REDACTED], and I am now

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1 **HIGHLY CONFIDENTIAL**  
 2 **any doctoral students at that time?**  
 3 A. No. No.  
 4 **Q. Okay.**  
 5 **Have you ever taught any courses**  
 6 **devoted to sports economics?**  
 7 A. No, but --  
 8 **Q. Okay.**  
 9 A. -- I, of course, deal with the issue  
 10 of the sports economics, sports -- not sports  
 11 economics. Sports in my undergrad industrial  
 12 organization economics course.  
 13 **Q. In what form?**  
 14 A. In what form?  
 15 Talking about joint ventures.  
 16 Talking about coordination issues.  
 17 Talking about such things as  
 18 regulatory interventions into the marketplace.  
 19 So, those topics come along as I  
 20 teach. As I said, I have been doing this IO course  
 21 since -- in various versions for the past 30 odd  
 22 years. So, sports issues have come up along the way  
 23 in a variety of forms in different ways throughout my  
 24 teaching career.  
 25 **Q. Have you specialized in any**

<p style="text-align: right;">Page 105</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>particular industries?</b></p> <p>3 A. I don't know what you mean by</p> <p>4 "specialized."</p> <p>5 How -- would you define that for me</p> <p>6 so I can answer it better?</p> <p>7 <b>Q. Well, sometimes you get an expert</b></p> <p>8 <b>who is, you know, extensively studied the</b></p> <p>9 <b>pharmaceutical industry, for example, or the</b></p> <p>10 <b>corrugated box industry, or some other industry.</b></p> <p>11 <b>Is there any particular industry or</b></p> <p>12 <b>sector of the economy that you have studied --</b></p> <p>13 MR. TOSCANO: Objection to form.</p> <p>14 MR. LANGER: -- and specialized in?</p> <p>15 MR. TOSCANO: Same objection.</p> <p>16 THE WITNESS: I certainly have spent</p> <p>17 a fair amount of time thinking and lecturing on the</p> <p>18 subjects involving media content industries, and I</p> <p>19 spent a good chunk of my career some years ago</p> <p>20 focusing on telecommunications industries or</p> <p>21 telecommunication industry.</p> <p>22 So, that would be two industries</p> <p>23 that I spend a lot of time on and --</p> <p>24 MR. LANGER: Sorry.</p> <p>25 It's hard for me to talk when you're</p>	<p style="text-align: right;">Page 107</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 seen that Web page.</p> <p>3 MR. LANGER: -- and it says, "Janusz</p> <p>4 Alexander Ordovery, October, 2014."</p> <p>5 Okay.</p> <p>6 MR. TOSCANO: Okay.</p> <p>7 Thank you.</p> <p>8 ---</p> <p>9 CONTINUATION</p> <p>10 BY MR. LANGER:</p> <p>11 <b>Q. Take a look, scroll through it, and</b></p> <p>12 <b>let me know if that's your CV, and, if you don't</b></p> <p>13 <b>mind, can I look over your shoulder for a minute,</b></p> <p>14 <b>because he just handed it to me.</b></p> <p>15 MR. BURKE: Is this the most</p> <p>16 efficient way to do this?</p> <p>17 Can we get a copy?</p> <p>18 ---</p> <p>19 (Discussion held off the record.)</p> <p>20 ---</p> <p>21 THE WITNESS: So, I'm scrolling</p> <p>22 through this document. Looks like my CV, and looks</p> <p>23 like my CV -- my CV.</p> <p>24 Do you want to look over?</p> <p>25 Come on, guys.</p>
<p style="text-align: right;">Page 106</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 talking. I'm sorry.</p> <p>3 (Pause)</p> <p>4 ---</p> <p>5 (Discussion held off the record.)</p> <p>6 ---</p> <p>7 CONTINUATION</p> <p>8 BY MR. LANGER:</p> <p>9 <b>Q. Okay.</b></p> <p>10 <b>Dr. Ordovery, unfortunately, the copy</b></p> <p>11 <b>machines and everything here are out of order, and I</b></p> <p>12 <b>misplaced my set of your CV. So, I have got it here</b></p> <p>13 <b>online.</b></p> <p>14 <b>Okay?</b></p> <p>15 A. Sure.</p> <p>16 <b>Q. So, I'm going to hand it to you.</b></p> <p>17 MR. TOSCANO: Can you just say for</p> <p>18 the record what you're showing him --</p> <p>19 MR. LANGER: Yes.</p> <p>20 MR. TOSCANO: -- in terms of what Web</p> <p>21 page?</p> <p>22 MR. LANGER: Yes.</p> <p>23 I'm showing him a Web page entitled,</p> <p>24 "Compass-Lexicon.S3.amazonaws.com" --</p> <p>25 THE WITNESS: Right. I have never</p>	<p style="text-align: right;">Page 108</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 MR. BURKE: Is there something in</p> <p>3 particular you want Professor Ordovery to look at?</p> <p>4 MR. LANGER: Yes. Well, we'll</p> <p>5 establish that that's your CV.</p> <p>6 THE WITNESS: It looks like my CV.</p> <p>7 I'm not very fine on the</p> <p>8 completeness, but it is certainly a version of my --</p> <p>9 MR. LANGER: Okay.</p> <p>10 THE WITNESS: -- my CV.</p> <p>11 ---</p> <p>12 CONTINUATION</p> <p>13 BY MR. LANGER:</p> <p>14 <b>Q. In all of your writings there, are</b></p> <p>15 <b>there any that deal with the subject of sports</b></p> <p>16 <b>economics?</b></p> <p>17 A. No.</p> <p>18 <b>Q. Okay.</b></p> <p>19 A. Not explicitly, at least.</p> <p>20 <b>Q. Okay.</b></p> <p>21 <b>Is it discussed in any of the</b></p> <p>22 <b>articles to your recollection?</b></p> <p>23 A. As I said, explicitly, no.</p> <p>24 My work in anti-trust economics,</p> <p>25 obviously, is relevant to the issues of sports, but I</p>

<p style="text-align: right;">Page 109</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 have not written anything in sports economics</p> <p>3 directly.</p> <p>4 <b>Q. Okay.</b></p> <p>5 <b>Do any of these articles</b></p> <p>6 <b>tangentially deal with sports economics --</b></p> <p>7 MR. TOSCANO: Objection to form.</p> <p>8 MR. LANGER: -- any of the articles</p> <p>9 listed in your CV?</p> <p>10 MR. TOSCANO: Same objection.</p> <p>11 THE WITNESS: I just, you know --</p> <p>12 MR. LANGER: Take a minute.</p> <p>13 THE WITNESS: Well, as I said, I</p> <p>14 don't recall writing an article that explicitly deals</p> <p>15 with the issues of sports economics.</p> <p>16 MR. LANGER: Okay.</p> <p>17 THE WITNESS: So, this is not the</p> <p>18 complete CV, because a couple of things that have</p> <p>19 been accepted for publication or published already</p> <p>20 are missing, but it's good enough --</p> <p>21 MR. LANGER: Okay.</p> <p>22 THE WITNESS: -- for your purposes.</p> <p>23 ---</p> <p>24 CONTINUATION</p> <p>25 BY MR. LANGER:</p>	<p style="text-align: right;">Page 111</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 have not, no.</p> <p>3 <b>Q. Okay.</b></p> <p>4 <b>And you have not read any of the</b></p> <p>5 <b>articles by Professor Noll that are referenced in his</b></p> <p>6 <b>Declaration.</b></p> <p>7 <b>Is that right?</b></p> <p>8 A. I have read some of his work over</p> <p>9 the years, but I did not find any of his work</p> <p>10 pertinent to what I was doing in this case.</p> <p>11 <b>Q. You did not read any of the articles</b></p> <p>12 <b>that he had written that he referenced in his</b></p> <p>13 <b>Declaration with regard to sports economics?</b></p> <p>14 MR. TOSCANO: Objection.</p> <p>15 Asked and answered.</p> <p>16 COUNSEL: Object to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: As I said, I have seen</p> <p>19 those references, and I did not read those articles</p> <p>20 that he references because I did not regard -- I did</p> <p>21 not consider these articles to be necessarily</p> <p>22 pertinent to my very narrow assignment, which is to</p> <p>23 discuss the class issues.</p> <p>24 ---</p> <p>25 CONTINUATION</p>
<p style="text-align: right;">Page 110</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Okay.</b></p> <p>3 <b>Going back to Exhibit-1, if you</b></p> <p>4 <b>would.</b></p> <p>5 <b>Do you have that, the documents you</b></p> <p>6 <b>considered?</b></p> <p>7 A. Yep.</p> <p>8 <b>Q. You list various texts --</b></p> <p>9 <b>Do you not?</b></p> <p>10 A. Correct.</p> <p>11 <b>Q. -- and articles?</b></p> <p>12 MR. TOSCANO: Where are you</p> <p>13 referring?</p> <p>14 THE WITNESS: Yeah, the second page.</p> <p>15 MR. LANGER: Second page.</p> <p>16 MR. GOLDFEIN: Exhibit Number-1.</p> <p>17 THE WITNESS: Number one.</p> <p>18 MR. TOSCANO: Second page.</p> <p>19 ---</p> <p>20 CONTINUATION</p> <p>21 BY MR. LANGER:</p> <p>22 <b>Q. You did not consult any texts or</b></p> <p>23 <b>articles devoted to sports economics, is that</b></p> <p>24 <b>correct, with regard to your retention in this case?</b></p> <p>25 A. Not for the purposes of this case I</p>	<p style="text-align: right;">Page 112</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 BY MR. LANGER:</p> <p>3 <b>Q. Okay.</b></p> <p>4 <b>Do you hold yourself as having</b></p> <p>5 <b>special expertise in the field of econometrics?</b></p> <p>6 MR. TOSCANO: Objection to form.</p> <p>7 THE WITNESS: I have a workable</p> <p>8 knowledge. I don't teach econometrics, but I have</p> <p>9 been using it in connection with my various</p> <p>10 assignments and -- somewhat less so.</p> <p>11 ---</p> <p>12 CONTINUATION</p> <p>13 BY MR. LANGER:</p> <p>14 <b>Q. Now, do any of the articles that you</b></p> <p>15 <b>have in your CV, are any of those articles devoted to</b></p> <p>16 <b>econometrics?</b></p> <p>17 A. No. I'm not a published</p> <p>18 econometrician, no.</p> <p>19 <b>Q. Okay.</b></p> <p>20 <b>Now, in paragraph two of your</b></p> <p>21 <b>Declaration --</b></p> <p>22 MR. TOSCANO: Are we going to mark</p> <p>23 this now?</p> <p>24 MR. LANGER: Sure.</p> <p>25 Let's mark it.</p>

<p style="text-align: right;">Page 121</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2           A. I don't believe there was</p> <p>3 necessarily a lawsuit.</p> <p>4           I was involved in trying to</p> <p>5 determine the economic effects from potential</p> <p>6 transaction.</p> <p>7           <b>Q. Okay.</b></p> <p>8           <b>So, you just did an analysis for</b></p> <p>9 <b>some people?</b></p> <p>10          MR. TOSCANO: Objection to form.</p> <p>11          THE WITNESS: Just the analysis.</p> <p>12          It's not just the analysis.</p> <p>13          There is a lot of thinking involved.</p> <p>14          MR. LANGER: We're all lawyers here.</p> <p>15 If you're not in court, you don't think of it as</p> <p>16 being a big deal.</p> <p>17          THE WITNESS: --</p> <p>18          MR. TOSCANO: Wait for a question.</p> <p>19          MR. LANGER: I was being sarcastic.</p> <p>20          THE WITNESS: Yes.</p> <p>21          I'll try not to be sarcastic by</p> <p>22 saying that, there was, obviously, a law firm here</p> <p>23 which I -- and I -- for which I developed some simple</p> <p>24 techniques that are relevant to gauging the extent to</p> <p>25 which different teams are substitutes for each other</p>	<p style="text-align: right;">Page 123</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2 of the question.</p> <p>3           THE WITNESS: Sorry.</p> <p>4           MR. GOLDFEIN: Objection to the form</p> <p>5 of the question.</p> <p>6           THE WITNESS: Oh.</p> <p>7           MR. GOLDFEIN: He's making an</p> <p>8 assumption.</p> <p>9           ---</p> <p>10 CONTINUATION</p> <p>11 BY MR. LANGER:</p> <p>12           <b>Q. Can you tell me which of the cases</b></p> <p>13 <b>listed there --</b></p> <p>14           MR. TOSCANO: If any.</p> <p>15           MR. LANGER: -- involved media, if</p> <p>16 any?</p> <p>17           THE WITNESS: Well, if you think of</p> <p>18 gaming as a part of the media, then Geoffrey Pecover</p> <p>19 versus Electronics Arts is certainly a pertinent one,</p> <p>20 but, as you know, not all cases involve depositions</p> <p>21 or court appearances.</p> <p>22           So, there are other matters on which</p> <p>23 I work that are not listed here, but which involve</p> <p>24 media industries.</p> <p>25           ---</p>
<p style="text-align: right;">Page 122</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2 in the eyes of viewers.</p> <p>3           ---</p> <p>4 CONTINUATION</p> <p>5 BY MR. LANGER:</p> <p>6           <b>Q. In the Time Warner MSG matter, which</b></p> <p>7 <b>-- which party were you retained by?</b></p> <p>8           (Pause)</p> <p>9           A. It was MSG.</p> <p>10          <b>Q. Did you use any report that you</b></p> <p>11 <b>prepared in the merger matter with regard to your</b></p> <p>12 <b>work in this case?</b></p> <p>13          MR. TOSCANO: Objection to form.</p> <p>14          Assumes facts not in evidence.</p> <p>15          THE WITNESS: No.</p> <p>16          ---</p> <p>17 CONTINUATION</p> <p>18 BY MR. LANGER:</p> <p>19           <b>Q. Okay.</b></p> <p>20           <b>Now, you said you've worked</b></p> <p>21 <b>extensively in the media distribution market.</b></p> <p>22           A. Yep.</p> <p>23           <b>Q. And can you tell us, looking at</b></p> <p>24 <b>Exhibits-2 and 3, which cases involved media?</b></p> <p>25           MR. GOLDFEIN: Objection to the form</p>	<p style="text-align: right;">Page 124</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2 CONTINUATION</p> <p>3 BY MR. LANGER:</p> <p>4           <b>Q. And do you want to describe those to</b></p> <p>5 <b>us -- for us?</b></p> <p>6           Excuse me. I'm losing my voice.</p> <p>7           A. Yes, I'm sorry.</p> <p>8           MR. TOSCANO: Objection. Compound.</p> <p>9           You can answer.</p> <p>10          THE WITNESS: As I said, maybe I</p> <p>11 haven't, but -- so let me just say briefly.</p> <p>12          I have done a fair amount of work</p> <p>13 for motion picture companies in the United States.</p> <p>14          I have done a fair amount of work</p> <p>15 for music industry firms, both here and in Europe.</p> <p>16          So, I will just point to these two</p> <p>17 sets of engagements as being very pertinent to the</p> <p>18 distribution aspects of music and the distribution</p> <p>19 aspects of motion pictures, and such is there.</p> <p>20          ---</p> <p>21 CONTINUATION</p> <p>22 BY MR. LANGER:</p> <p>23           <b>Q. Did your work with regard to motion</b></p> <p>24 <b>picture companies involve their distribution over</b></p> <p>25 <b>television?</b></p>

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A. Well, actually, my -- one of my earliest cases called -- in which the United States Government was involved, was US versus Premier.

I don't know. You may be too young to remember that case, but -- so this was going back to, oh, 1980's, I think, in which several motion picture companies wanted to develop a product that would be a competitive substitute to HBO, and I worked with the companies to understand the economics of such a deal.

**Q. Anything since -- since that work in the 1980's?**

A. Yes.

I worked for Sony in connection with its joint venture with German record company, Berelsman.

I worked for --

**Q. Wait. Wait. No, I'm sorry.**

MR. TOSCANO: Just let him finish his answer.

MR. LANGER: No, no. I wanted to -- you misunderstood the question.

THE WITNESS: Okay.

---

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**Q. I'm confining it to broadcasting.**

A. I didn't hear you confining that way. So, anyway -- so maybe I've gone too far. All right.

**Q. Okay.**

**So, since -- just to make sure we are clear --**

A. Okay.

**Q. -- we are going to take a break in a couple of minutes --**

A. Okay.

**Q. -- because the video is running out, but since US versus Premier that you told us occurred, and I was too young to remember, in the 1980's, was that only the case -- okay.**

**But, anyway, since then, what matters involving the movie industry and broadcasting have you been involved in -- which involved the movie industry and broadcasting together?**

**(Pause)**

A. I think that's probably the only one, but I would have to scratch --

**Q. Okay.**

A. -- my memory some more.

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CONTINUATION  
BY MR. LANGER:

**Q. I meant with regard to distribution of motion pictures on television.**

A. On television?

**Q. Yes.**

A. I think there were subsequent efforts by the motion picture companies to develop their product for distribution over -- over television, and I advised them in connection with those subsequent efforts.

**Q. When was that, and who were your clients?**

A. I -- generally, I worked for the motion picture companies. The -- the clients may have differed from time to -- from engagement to engagement. I don't believe that any of those are necessarily public.

So, I just leave it at that.

I think I remember -- I do work for, I think, Sony, or one of the other movie distributors in connection with allegations of exclusionary conduct in the distribution of motion pictures in New York City.

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**Q. Okay.**

**Have you been involved in any cases involving distribution of motion pictures over the Internet?**

**(Pause)**

A. No, not that I recall as I sit here.

MR. LANGER: Okay.

I think we better break now because the video is going to run out.

I suggest we go off the record.

VIDEO TECHNICIAN: 12:36.

Off the record.

---

(Recess was taken at this time.)

---

MR. LANGER: Back on the record.

VIDEO TECHNICIAN: Stand by, please. 12:46.

We're back on the record.

---

CONTINUATION

BY MR. LANGER:

**Q. Oh, was -- I just asked you a series of questions relating to your prior experience with**

<p style="text-align: right;">Page 137</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2   industrial organization economist, and I believe that</p> <p>3   I understand what those things are about.</p> <p>4                   I understand their purpose.</p> <p>5                   ---</p> <p>6   CONTINUATION</p> <p>7   BY MR. LANGER:</p> <p>8                   <b>Q. Did you -- did you read any articles</b></p> <p>9                   <b>or books relating to distribution of sports over</b></p> <p>10                   <b>broadcast media?</b></p> <p>11                  A. I am -- I am familiar with these</p> <p>12                  things from the past. I did some work in a way --</p> <p>13                  not so way back, but some years ago involving the</p> <p>14                  regional sports network in -- in Philadelphia.</p> <p>15                  I didn't mention that, but it came</p> <p>16                  back to my mind now that you are probing those</p> <p>17                  things.</p> <p>18                  So, I understood the role of the</p> <p>19                  RSN.</p> <p>20                  I understand the role of the nature</p> <p>21                  of the vertical arrangements in the sports industry,</p> <p>22                  starting with the team going to the RSN, and going to</p> <p>23                  the MVPD's or -- or of different kinds.</p> <p>24                  I understand the role of the</p> <p>25                  Leagues, which I understand from my work for the --</p>	<p style="text-align: right;">Page 139</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2   because I only have a somewhat vague recollection,</p> <p>3   but more importantly, I have never -- was never</p> <p>4   presented as a testifying expert, and so --</p> <p>5                   <b>Q. Excuse me. I'm sorry.</b></p> <p>6                   <b>Vertical distribution, this was in</b></p> <p>7                   <b>sports?</b></p> <p>8                  A. Vertical distribution of --</p> <p>9                   (Pause)</p> <p>10                  A. Vertical distribution as -- as a</p> <p>11                  topic in industrial organization economics. It is</p> <p>12                  something that I have devoted years of thinking</p> <p>13                  about, and -- and that's why I have been involved in</p> <p>14                  some of the engagements either as a consultant or an</p> <p>15                  expert -- external expert.</p> <p>16                  <b>Q. Going back to my question, though.</b></p> <p>17                  <b>With your retention with Comcast</b></p> <p>18                  <b>Philadelphia is that with regard to vertical</b></p> <p>19                  <b>distribution of any particular sport?</b></p> <p>20                  A. I think it was in relationship to</p> <p>21                  the issues relating to the RSN generally, Regional</p> <p>22                  Sports Network.</p> <p>23                  <b>Q. What sports were involved?</b></p> <p>24                  A. I think -- well, I think that the</p> <p>25                  issue involved hockey or baseball. I don't remember</p>
<p style="text-align: right;">Page 138</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2   in collegiate -- collegiate sports.</p> <p>3                  So, noth -- nothing that I have come</p> <p>4   across in this case was not familiar to me either as</p> <p>5   an economist or someone who is interested in the,</p> <p>6   broadly speaking, industrial organization economics</p> <p>7   issue.</p> <p>8                  <b>Q. What work did you do for the</b></p> <p>9                  <b>Regional Sports Network in Philadelphia?</b></p> <p>10                  A. I was -- I think I offered some</p> <p>11                  consultant services relating to the economics of</p> <p>12                  vertical issues, which is one of my areas of</p> <p>13                  expertise within the narrow -- within the industrial</p> <p>14                  organization economics. I spend a lot of time on</p> <p>15                  vertical -- vertical issues.</p> <p>16                  <b>Q. When did you provide this consulting</b></p> <p>17                  <b>service?</b></p> <p>18                  A. Five, six years ago.</p> <p>19                  <b>Q. And for whom did you provide it?</b></p> <p>20                  A. I think it was Comcast Philadelphia.</p> <p>21                  <b>Q. And what was the nature of what you</b></p> <p>22                  <b>were asked to opine on?</b></p> <p>23                  A. It was a consulting arrangement that</p> <p>24                  focused on the vertical aspects of the distribution.</p> <p>25                  I don't want to go beyond that,</p>	<p style="text-align: right;">Page 140</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2   as I sit here. So, I do know that I did some of the</p> <p>3   work, but the details, again, it's not something that</p> <p>4   is -- that is relevant --</p> <p>5                  <b>Q. So, in this --</b></p> <p>6                  A. -- for the analysis of the issues in</p> <p>7   -- in this case.</p> <p>8                  <b>Q. So, in this case, just to be clear,</b></p> <p>9                  <b>you did not go out at the time you were retained, and</b></p> <p>10                  <b>either consult any text on sports economics, or seek</b></p> <p>11                  <b>to look at any academic articles on sports economics,</b></p> <p>12                  <b>or the distribution of sports through broadcasting</b></p> <p>13                  <b>over the Internet.</b></p> <p>14                  <b>Is that right?</b></p> <p>15                  MR. TOSCANO: Objection.</p> <p>16                  Asked and answered.</p> <p>17                  Objection to form.</p> <p>18                  THE WITNESS: As I said, I think,</p> <p>19                  and I will try to repeat it quickly and clearly.</p> <p>20                  Given the issues that I have been</p> <p>21                  asked to opine on, I did not see at that time any</p> <p>22                  deep and particular need to study a variety of issues</p> <p>23                  that are discussed in the area of sports economics.</p> <p>24                  MR. LANGER: Okay.</p> <p>25                  THE WITNESS: I am familiar with the</p>

<p style="text-align: right;">Page 153</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I'm not being a</p> <p>3 lawyer. I'm saying, if you give me a hypothetical</p> <p>4 that may not be sufficiently complete for me to be</p> <p>5 able to answer your question. That's not being a</p> <p>6 lawyer. That's being a responsible testifier.</p> <p>7 ---</p> <p>8 CONTINUATION</p> <p>9 BY MR. LANGER:</p> <p>10 <b>Q. Okay.</b></p> <p>11 <b>Horizontal agreement among</b></p> <p>12 <b>competitors to reduce output, would that be a per se</b></p> <p>13 <b>violation?</b></p> <p>14 MR. GOLDFEIN: Objection to the form</p> <p>15 of the question.</p> <p>16 Calls for a legal conclusion.</p> <p>17 Misleading.</p> <p>18 MR. TOSCANO: Also, objection to the</p> <p>19 form. It's an incomplete hypothetical.</p> <p>20 Again, Dr. Ordovery is not here as a</p> <p>21 legal expert.</p> <p>22 THE WITNESS: So, my answer is; that</p> <p>23 will be determined by the Court, by -- or the</p> <p>24 Department of Justice, whether they want to sue or</p> <p>25 not. Totally, legal, law-driven decision.</p>	<p style="text-align: right;">Page 155</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 legal.</p> <p>3 I am obtained to opine, if I can, on</p> <p>4 the economic consequences in the well-defined market</p> <p>5 of such an alleged agreement by such alleged</p> <p>6 competitors, and such a thing as the alleged price,</p> <p>7 and the answer will depend on the outcome of my</p> <p>8 economic work.</p> <p>9 MR. TOSCANO: Asking Dr. Ordovery</p> <p>10 legal questions is really not a good use of any of</p> <p>11 our time.</p> <p>12 ---</p> <p>13 CONTINUATION</p> <p>14 BY MR. LANGER:</p> <p>15 <b>Q. Have you ever heard it said that an</b></p> <p>16 <b>agreement to allocate territories among competitors</b></p> <p>17 <b>is worse than an agreement among competitors to fix</b></p> <p>18 <b>prices, because under an agreement to allocate</b></p> <p>19 <b>territories there's neither price competition nor</b></p> <p>20 <b>service competition?</b></p> <p>21 MR. TOSCANO: Objection to form.</p> <p>22 Objection. Incomplete hypothetical.</p> <p>23 Calls for a legal conclusion. Vague and ambiguous.</p> <p>24 THE WITNESS: I've seen statements</p> <p>25 like that, but that doesn't mean anything to me as an</p>
<p style="text-align: right;">Page 154</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 I will be able to potentially, if</p> <p>3 asked analyze, the competitive effects of such an</p> <p>4 alleged agreement and an alleged price among alleged</p> <p>5 horizontal competitors, and that may take awhile, and</p> <p>6 take a lot of effort and creativity to provide what I</p> <p>7 would consider a sound answer to the economic issues</p> <p>8 that arise in such a context.</p> <p>9 ---</p> <p>10 CONTINUATION</p> <p>11 BY MR. LANGER:</p> <p>12 <b>Q. Okay.</b></p> <p>13 <b>Horizontal agreements among</b></p> <p>14 <b>competitors to allocate geographic territories, is</b></p> <p>15 <b>that known to be a per se violation?</b></p> <p>16 MR. GOLDFEIN: Object to the form of</p> <p>17 the question as calling for a legal conclusion.</p> <p>18 Misleading and incomplete</p> <p>19 hypothetical and abstract.</p> <p>20 MR. TOSCANO: Vague and ambiguous.</p> <p>21 MR. GOLDFEIN: There you go.</p> <p>22 Anything else?</p> <p>23 THE WITNESS: No, I think, again, as</p> <p>24 I said, I'm an economist. I'm not making judgments</p> <p>25 of whether something is per se illegal or not per se</p>	<p style="text-align: right;">Page 156</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 economist, other than assertions that would have to</p> <p>3 be analyzed in a particular concrete case.</p> <p>4 ---</p> <p>5 CONTINUATION</p> <p>6 BY MR. LANGER:</p> <p>7 <b>Q. Okay.</b></p> <p>8 <b>What is the object of the anti-trust</b></p> <p>9 <b>laws as you understand it?</b></p> <p>10 MR. TOSCANO: Same objections.</p> <p>11 THE WITNESS: I guess it depends on</p> <p>12 which folks you ask.</p> <p>13 From the economic perspective, I</p> <p>14 believe that if I -- when I think about it and talk</p> <p>15 to my undergraduates about it, I say, "the object of</p> <p>16 the anti-trust law is to stimulate competition,</p> <p>17 ensure that firms behave in a way that's consistent</p> <p>18 with the interest of the -- of the consumers, whoever</p> <p>19 they might be; they not act in a way that impedes</p> <p>20 innovation."</p> <p>21 That's my topic that I'm very</p> <p>22 interested in. That's why, as an economist, you, as</p> <p>23 a -- generalized notions of what anti-trust laws</p> <p>24 ought to try to accomplish.</p> <p>25 Some people use other -- have other</p>

<p style="text-align: right;">Page 157</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 views, and I am happy to discuss some of them, but --</p> <p>3 ---</p> <p>4 CONTINUATION</p> <p>5 BY MR. LANGER:</p> <p>6 Q. Is the goal to assure --</p> <p>7 A. To what?</p> <p>8 Q. Is the goal to assure an optimal</p> <p>9 distribution of goods and services for the consumer?</p> <p>10 MR. GOLDFEIN: Object to the form of</p> <p>11 the question.</p> <p>12 MR. TOSCANO: Objection. Form.</p> <p>13 Calls for a legal conclusion.</p> <p>14 Incomplete hypothetical. Vague and ambiguous.</p> <p>15 MR. GOLDFEIN: Also beyond the scope</p> <p>16 of his report.</p> <p>17 MR. PARIS: Objection.</p> <p>18 THE WITNESS: I think -- I would --</p> <p>19 I would disagree with that, because as we said a</p> <p>20 second ago, the role of the anti-trust is to</p> <p>21 facilitate unimpeded workings of -- of the markets,</p> <p>22 and there's not necessarily an assurance that that</p> <p>23 will accomplish an optimal allocation of resources</p> <p>24 from the standpoint of consumers.</p> <p>25 It will accomplish some allocation,</p>	<p style="text-align: right;">Page 159</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 eliminated."</p> <p>3 MR. TOSCANO: Same objections.</p> <p>4 THE WITNESS: In -- in an -- in an</p> <p>5 effectively competitive market some producers will be</p> <p>6 eliminated. There is no question.</p> <p>7 But the question is, what kind of --</p> <p>8 what's the right measure of efficiency that one uses</p> <p>9 for asking and answering the question?</p> <p>10 And one would have to specify that</p> <p>11 vigorously in order to be able to answer what it is</p> <p>12 exactly that the marketplace accomplishes.</p> <p>13 ---</p> <p>14 CONTINUATION</p> <p>15 BY MR. LANGER:</p> <p>16 Q. What is a Bertrand model?</p> <p>17 A. A Bertrand model?</p> <p>18 Q. Huh-huh.</p> <p>19 A. It is one of the so-called work</p> <p>20 horses of industrial organization economics. It is a</p> <p>21 model of rivalry among firms, generally applied or</p> <p>22 initially applies to the question of the nature of</p> <p>23 price competition among firms in the marketplace.</p> <p>24 In the price version of the Bertrand</p> <p>25 model there are firms in the market, and each firm</p>
<p style="text-align: right;">Page 158</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 and there may be other allocations that would be</p> <p>3 better, but I'm not acting as a philosopher king or</p> <p>4 philosopher economist.</p> <p>5 I am very happy to take the workings</p> <p>6 of the market and ask whether those have been</p> <p>7 adversely effected or not.</p> <p>8 ---</p> <p>9 CONTINUATION</p> <p>10 BY MR. LANGER:</p> <p>11 Q. Okay.</p> <p>12 Now, I think a minute ago when I</p> <p>13 asked you, and I shouldn't have tried to characterize</p> <p>14 it, you said that the goal was to maintain a</p> <p>15 competitive marketplace.</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 And --</p> <p>19 MR. TOSCANO: Same objections.</p> <p>20 ---</p> <p>21 CONTINUATION</p> <p>22 BY MR. LANGER:</p> <p>23 Q. It says here that, "in the</p> <p>24 competitive marketplace the most efficient producers</p> <p>25 will succeed and the less efficient producers will be</p>	<p style="text-align: right;">Page 160</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 makes a decision how much to charge for its product</p> <p>3 taking as given the prices of its rivals.</p> <p>4 So, take Coke and Pepsi, for example</p> <p>5 you could use -- Coke says "how much to charge for a</p> <p>6 can of my soda?" Well, that depends how much Pepsi</p> <p>7 charges.</p> <p>8 Pepsi says, "well, how much could I</p> <p>9 charge for my can of soda? Well, that depends on</p> <p>10 what Coke charges."</p> <p>11 I am expressing the fact that they</p> <p>12 are also going to be looking around and asking what</p> <p>13 are the other prices by other suppliers of carbonated</p> <p>14 soft drinks or other products.</p> <p>15 But let's just look at Coke and</p> <p>16 Pepsi.</p> <p>17 So, the basic nature of that</p> <p>18 Bertrand competition is that kind of economic</p> <p>19 modeling or reasoning in which one firm takes as</p> <p>20 given the price of its rivals and tries to optimize</p> <p>21 against the price, plus all the other considerations.</p> <p>22 I think, more generally, it's a</p> <p>23 model in which firms engage in competition involving</p> <p>24 what we will refer to as strategic complement, and if</p> <p>25 you go to the YouTube and turn on the Nobel lecture</p>

<p style="text-align: right;">Page 165</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 for identification by the court reporter.)</p> <p>3 ---</p> <p>4 CONTINUATION</p> <p>5 BY MR. LANGER:</p> <p>6 Q. Dr. Ordovery, Exhibit-5 is a page of</p> <p>7 a brief that you received a few weeks ago.</p> <p>8 A. Yes.</p> <p>9 MR. TOSCANO: Do you have this whole</p> <p>10 document?</p> <p>11 MR. LANGER: No, I don't, but I just</p> <p>12 have one question. One quick question.</p> <p>13 ---</p> <p>14 CONTINUATION</p> <p>15 BY MR. LANGER:</p> <p>16 Q. If you look on page two of footnote</p> <p>17 eight --</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. -- the last sentence, you see it</p> <p>21 originally read, "in fact, neither Dr. Noll nor</p> <p>22 Dr. Ordovery has ever applied a Bertrand model without</p> <p>23 also relying on the control group methodology to</p> <p>24 control economic damages."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 167</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 MR. TOSCANO: Objection.</p> <p>3 Asked and answered.</p> <p>4 MR. LANGER: I'm confused. I'm just</p> <p>5 confused by the answer. That's all.</p> <p>6 THE WITNESS: Oh, I thought I was</p> <p>7 clear.</p> <p>8 I have never used it in that context</p> <p>9 as far as I can recall, but I have used them,</p> <p>10 Bertrand stimulation methodology, in the merger</p> <p>11 context, yes.</p> <p>12 ---</p> <p>13 CONTINUATION</p> <p>14 BY MR. LANGER:</p> <p>15 Q. And have you done that without a</p> <p>16 control group methodology?</p> <p>17 A. In the merger stimulation we do</p> <p>18 something different, because you take the actual</p> <p>19 world, and then you try to stimulate.</p> <p>20 So, the -- the benchmark is the</p> <p>21 actual world, and you ask yourself, "how would the</p> <p>22 actual world be changed in response in a wake of a</p> <p>23 particular merger transaction?"</p> <p>24 So, there's a control group is the</p> <p>25 world, as we defined it, the actual world, and the</p>
<p style="text-align: right;">Page 166</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. You see it was corrected to say,</p> <p>4 "in fact, Dr. Noll has never applied a Bertrand model</p> <p>5 without also relying on the controlled group</p> <p>6 methodology to calculate economic damages."</p> <p>7 Do you see that?</p> <p>8 A. Right.</p> <p>9 Q. Have you used a Bertrand model</p> <p>10 without also relying on the control group methodology</p> <p>11 to calculate economic damages?</p> <p>12 A. Okay.</p> <p>13 So, we're now outside of the merger</p> <p>14 stimulation world, and we're looking at the damages.</p> <p>15 No, I -- I have not heretofore</p> <p>16 applied that technique, although I am familiar with</p> <p>17 Bertrand methodology stimulation or methodology in</p> <p>18 the context of the merger analysis. I am very</p> <p>19 familiar with that.</p> <p>20 Q. I'm sorry.</p> <p>21 I'm not clear on the answer.</p> <p>22 A. Okay.</p> <p>23 Q. Have you ever applied a Bertrand</p> <p>24 model without also relying on the control group</p> <p>25 methodology to calculate economic damages?</p>	<p style="text-align: right;">Page 168</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 goal is to figure out where the but-for world would</p> <p>3 be, and you can do that on your -- not the but-for</p> <p>4 world, but the world would be if the merger were to</p> <p>5 take place, and you can do it within the Bertrand</p> <p>6 stimulation approach.</p> <p>7 MR. TOSCANO: And, just for the</p> <p>8 record, this correction was made solely to conform to</p> <p>9 the citation. It was done --</p> <p>10 MR. LANGER: Huh?</p> <p>11 MR. TOSCANO: This correction brief</p> <p>12 was made solely to conform to the citation.</p> <p>13 MR. LANGER: I'm just trying to</p> <p>14 understand it.</p> <p>15 MR. TOSCANO: I understand, but for</p> <p>16 the record.</p> <p>17 MR. LANGER: Thank you.</p> <p>18 ---</p> <p>19 CONTINUATION</p> <p>20 BY MR. LANGER:</p> <p>21 Q. Now, when -- when you used the</p> <p>22 Bertrand model as you described it before with regard</p> <p>23 to mergers, is that -- is that the only area in which</p> <p>24 you have used it?</p> <p>25 A. That's the area in which I am most</p>

<p style="text-align: right;">Page 197</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 ---</p> <p>3 CONTINUATION</p> <p>4 BY MR. LANGER:</p> <p>5 <b>Q. Right.</b></p> <p>6 Now, you did not do anything to</p> <p>7 determine what the actual relationship of the</p> <p>8 marginal cost of the individual feed would be in</p> <p>9 relation to the marginal costs of an MLB package, I</p> <p>10 take it, from what you just said.</p> <p>11 A. I would not undertake an</p> <p>12 investigation into the marginal cost either of the</p> <p>13 package or the standalone fees.</p> <p>14 I only tested the sensitivity of</p> <p>15 Professor Noll's results --</p> <p>16 <b>Q. Okay.</b></p> <p>17 A. -- to what I considered to be a</p> <p>18 reasonable modification, which was to bring the price</p> <p>19 of the standalone feed -- marginal costs, sorry -- of</p> <p>20 the standalone offerings to that of -- of the</p> <p>21 package.</p> <p>22 <b>Q. Do you know what the primary</b></p> <p>23 <b>marginal costs are of adding a customer to the MLB</b></p> <p>24 <b>package?</b></p> <p>25 A. I think -- well, those will differ</p>	<p style="text-align: right;">Page 199</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 MR. LANGER: Do you understand what</p> <p>3 I mean?</p> <p>4 THE WITNESS: No.</p> <p>5 ---</p> <p>6 CONTINUATION</p> <p>7 BY MR. LANGER:</p> <p>8 <b>Q. In other words, when I use a credit</b></p> <p>9 <b>card, a certain percentage goes to the vendor --</b></p> <p>10 A. Right.</p> <p>11 <b>Q. -- and a certain percentage goes to</b></p> <p>12 <b>the card company, so to speak.</b></p> <p>13 A. That I understand.</p> <p>14 <b>Q. So, would the per -- the amount that</b></p> <p>15 <b>goes to the card company be a marginal cost?</b></p> <p>16 MR. TOSCANO: Objection to form.</p> <p>17 Incomplete hypothetical.</p> <p>18 THE WITNESS: The marginal -- yeah,</p> <p>19 looking at the net price.</p> <p>20 So, if a vendor sells the product,</p> <p>21 let's say, a package, the vendor will be looking at</p> <p>22 the net price to itself, and that will be accounted</p> <p>23 for. Transaction costs with the credit card will be</p> <p>24 the same whether you sell the customer a standalone</p> <p>25 feed, you have to pay say, seven percent or</p>
<p style="text-align: right;">Page 198</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 depending on the realities of the individual aspects</p> <p>3 of the marketplace.</p> <p>4 The primary -- the -- one of the</p> <p>5 costs would be the cost of signing up the -- the</p> <p>6 customer.</p> <p>7 There might be the cost of</p> <p>8 maintaining the customer.</p> <p>9 There will be a cost of -- of having</p> <p>10 enough bandwidths to service the additional customer.</p> <p>11 All kinds of costs are customer</p> <p>12 marginal specific or customer marginal specific, but</p> <p>13 there are also other margins in which one may want to</p> <p>14 investigate the -- the -- the appropriate basis for</p> <p>15 cost.</p> <p>16 <b>Q. Is the -- is the -- do you know</b></p> <p>17 <b>whether those costs you just described would be</b></p> <p>18 <b>greater or less?</b></p> <p>19 Let me just ask you this first.</p> <p>20 Would the -- would the -- I want to</p> <p>21 use the right term.</p> <p>22 Would the discount rate on the</p> <p>23 credit card be a marginal cost?</p> <p>24 MR. TOSCANO: Objection to form.</p> <p>25 Assumes facts not in evidence.</p>	<p style="text-align: right;">Page 200</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 three percent or two percent, depends on the card,</p> <p>3 or whether you sell the customer a package, that will</p> <p>4 be also two percent, one percent, or -- or so --</p> <p>5 ---</p> <p>6 CONTINUATION</p> <p>7 BY MR. LANGER:</p> <p>8 <b>Q. That would be part of the marginal</b></p> <p>9 <b>cost of an additional customer.</b></p> <p>10 <b>Is that correct?</b></p> <p>11 A. Right.</p> <p>12 So, essentially, my way to think</p> <p>13 about it is to say; what is your net benefit from</p> <p>14 selling to a customer?</p> <p>15 And that is the price that you</p> <p>16 charge minus the fees that you charge if the customer</p> <p>17 pays with a credit card.</p> <p>18 <b>Q. Okay.</b></p> <p>19 <b>Another --</b></p> <p>20 A. But that's going to be the same</p> <p>21 whether the customer is being sold by -- by the</p> <p>22 League bundle, vendor, purveyor or is sold by the</p> <p>23 standalone supplier.</p> <p>24 <b>Q. Now, when you ran your model one of</b></p> <p>25 <b>the changes you made was, you would not assume, as</b></p>

<p style="text-align: right;">Page 201</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>Professor Noll did, that the RSN's -- strike --</b></p> <p>3 <b>strike the question.</b></p> <p>4 <b>You assumed that the RSN's would</b></p> <p>5 <b>charge a fee to the League.</b></p> <p>6 <b>Is that correct?</b></p> <p>7 A. Yes. I assumed that this is a</p> <p>8 fundamental problem with Professor Noll's modeling of</p> <p>9 the marketplace where he fails to recognize that the</p> <p>10 owner of the scarce resource here, the feed, would</p> <p>11 give it away for free in the but-for world to</p> <p>12 somebody who will then take that feed and compete,</p> <p>13 again, the seller of the input into the marketplace.</p> <p>14 I think that's just wrong --</p> <p>15 <b>Q. So --</b></p> <p>16 A. -- economics.</p> <p>17 <b>Q. So, you -- you -- you determined</b></p> <p>18 <b>what the fee would be.</b></p> <p>19 <b>Is that correct?</b></p> <p>20 A. I took -- I went at it twice, as you</p> <p>21 may remember, in Section 4 and in Section 6.</p> <p>22 In Section 4, I did not actually</p> <p>23 calculate out what some people might refer to as an</p> <p>24 equilibrium fee, whatever the economic model that I'm</p> <p>25 calculating it out for.</p>	<p style="text-align: right;">Page 203</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 I didn't do that in Section 4.</p> <p>3 <b>Q. Now, aside from the -- running the</b></p> <p>4 <b>model with a different calculation of marginal cost,</b></p> <p>5 <b>and running the model with the -- the change you just</b></p> <p>6 <b>described --</b></p> <p>7 A. The feed fee.</p> <p>8 <b>Q. -- the feed fee, did you do any</b></p> <p>9 <b>other tests that you report in which you change any</b></p> <p>10 <b>aspects of the inputs or design of Dr. Noll's model?</b></p> <p>11 MR. TOSCANO: Objection to form.</p> <p>12 THE WITNESS: No. Everything that I</p> <p>13 have done is reported in my Declaration.</p> <p>14 So, there's nothing in my back</p> <p>15 pocket.</p> <p>16 ---</p> <p>17 CONTINUATION</p> <p>18 BY MR. LANGER:</p> <p>19 <b>Q. So, those are -- those are the two</b></p> <p>20 <b>-- no, no. I wasn't suggesting you had anything in</b></p> <p>21 <b>your back pocket, but those are the two major</b></p> <p>22 <b>differences.</b></p> <p>23 <b>Is that correct?</b></p> <p>24 A. That is right.</p> <p>25 As far as I give you a full report,</p>
<p style="text-align: right;">Page 202</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 I attacked a simple question.</p> <p>3 A simpler question was to say; is it</p> <p>4 realistic -- is it realistic to claim, as Professor</p> <p>5 Noll, that the RSN's will give their product away for</p> <p>6 free?</p> <p>7 That's what he says. This is one of</p> <p>8 his key assumptions; giving it away for free to the</p> <p>9 rival.</p> <p>10 I never heard of that.</p> <p>11 But, okay. I said, all right.</p> <p>12 So, let's see how far one could</p> <p>13 raise that fee under a realistic set of modeling</p> <p>14 assumptions? And I developed what I thought was a</p> <p>15 realistic set of modeling assumptions, and calculated</p> <p>16 out a particular stopping fee -- stopping rate, and I</p> <p>17 showed that it's 33 cents, and I think for the</p> <p>18 Internet version of the baseball -- Internet baseball</p> <p>19 distribution, and higher in -- in the other versions</p> <p>20 of the model that I -- that I exercised.</p> <p>21 But I did not calculate the</p> <p>22 equilibrium fee. There is a fee such that this</p> <p>23 maximizes some objective function that in no universe</p> <p>24 is really the sum of the Leagues revenues or profits,</p> <p>25 and the profits of the standalones.</p>	<p style="text-align: right;">Page 204</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 that's what I have done, because I believed that</p> <p>3 those are two things that stick out like a sore</p> <p>4 thumb, and I wanted to see how sore the thumb is.</p> <p>5 <b>Q. Correct.</b></p> <p>6 A. So, that's all.</p> <p>7 <b>Q. Now, did you run the model with both</b></p> <p>8 <b>changes or did you run each one separately?</b></p> <p>9 MR. TOSCANO: Objection to form.</p> <p>10 False dichotomy.</p> <p>11 THE WITNESS: Well, in some sense,</p> <p>12 you know, the -- the -- those two things are not the</p> <p>13 things, right, because a feed fee that I'm looking at</p> <p>14 is a per subscriber fee; right?</p> <p>15 And the marginal cost is, I think</p> <p>16 Noll uses it, is also a per subscriber marginal cost.</p> <p>17 So, you can see what's going on,</p> <p>18 either by lowering the marginal cost or by raising</p> <p>19 the marginal cost.</p> <p>20 I did it in two separate ways.</p> <p>21 If I were to -- because my main</p> <p>22 focus was on the economics of the situation, and the</p> <p>23 economics is straightforward that -- that RSN's would</p> <p>24 charge a feed fee, and it's also straightforward that</p> <p>25 Roger Noll has absolutely zero basis, zero, as far as</p>

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2 Q. Okay.

3 You have not tried to run a single  
4 model including the critiques of Dr. Pakes,  
5 Dr. McFadden, and then the different elements you  
6 described at once.

7 Is that correct?

8 A. That is entirely correct, because I  
9 did not see the Pakes and McFadden affidavits after  
10 -- until after I finished my work.

11 Q. Okay.

12 Now, you reached certain conclusions  
13 based on -- regarding the but-for world based on the  
14 Noll model.

15 Is that correct?

16 MR. TOSCANO: Objection to form.

17 THE WITNESS: Well, depends what  
18 conclusions you have in mind.

19 I reached the -- the overarching  
20 conclusion based on sound economics as opposed to  
21 empirics.

22 I reached a conclusion that the  
23 teams -- actually, they are RSN's -- sorry, will  
24 impose a feed fee on the League, because in the new  
25 postulated environment the team or the RSN and the

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2 Is that right?

3 A. It cannot take its game and have it  
4 broadcast through its RSN or RSN that it contracts  
5 with outside of its territory, that is true.

6 Q. It can't do it itself?

7 A. And you cannot do it itself.

8 It is my understanding that teams  
9 that such, generally, do not engage in the production  
10 and distribution of the video product resulting from  
11 their games.

12 Q. But each team negotiates its own  
13 deal with an RSN subject to the constraints imposed  
14 by the group as to what it can sell.

15 Is that right?

16 A. It negotiates with the RSN, and  
17 under the -- within the four corners of the rules  
18 that it has to abide by, yes.

19 Q. Okay.

20 Who retains the copyright to the  
21 broadcast?

22 MR. TOSCANO: Objection to form.

23 Calls for a legal conclusion.

24 Dr. Ordovery is not here as a legal  
25 expert.

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2 League have become competitors, and it's only natural  
3 and sound economics which I have, I thought, advanced  
4 some 30 or 40 years ago, that a rival cannot expect  
5 to get the input from the supplier who competes with  
6 it for free, and I think most people will agree with  
7 that proposition.

8 One of the effects of that, we  
9 already heard from what the effects are, and the  
10 effects are that the actual price, the minimum price  
11 of which the bundle would sell is higher by the  
12 calculated amounts than what it is in the actual  
13 world.

14 ---

15 CONTINUATION

16 BY MR. LANGER:

17 Q. Now, in the present world each team  
18 can sell certain rights to broadcast its game in its  
19 own territory.

20 Is that correct?

21 A. Each team is allocated certain  
22 rights, yes, and it can sell the rights to its game  
23 in its so-called home television territory, HTT.

24 Q. And it cannot sell rights to  
25 broadcast its games in another team's territory.

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2 THE WITNESS: That I don't know.

3 ---  
4 CONTINUATION

5 BY MR. LANGER:

6 Q. Okay.

7 Do you know whether the RSN is  
8 employed by the team to provide a broadcast for the  
9 team which the team owns?

10 MR. TOSCANO: Objection to form.

11 Vague, including as to "employed  
12 by."

13 MR. GOLDFEIN: Can you raise your  
14 voice just a bit?

15 MR. LANGER: Okay. I'm sorry.

16 MR. GOLDFEIN: I'm having a hard  
17 time.

18 THE WITNESS: I think the word  
19 employer is -- I don't believe is the correct word.  
20 I think that there is a bargain struck between the  
21 team and the RSN with which it -- that they -- there  
22 is a two-way contract.

23 Under the terms of the contract the  
24 RSN engages in the variety of business activities --  
25 costly business activities that are designed to

<p style="text-align: right;">Page 217</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 benefit both the RSN and the team.</p> <p>3 That's my understanding that the</p> <p>4 team charges a fee, which is generally a fixed fee,</p> <p>5 for the duration of the contract.</p> <p>6 ---</p> <p>7 CONTINUATION</p> <p>8 BY MR. LANGER:</p> <p>9 Q. They don't do it on a per subscriber</p> <p>10 basis.</p> <p>11 Is that right?</p> <p>12 A. Not with the RSN's, no, but RSN's do</p> <p>13 it on a subscriber basis with the MVPD.</p> <p>14 Q. Now, the team retains at the present</p> <p>15 time the right to the Internet broadcast games.</p> <p>16 Is that correct?</p> <p>17 MR. BURKE: Objection to form.</p> <p>18 COUNSEL: Objection.</p> <p>19 THE WITNESS: I would be guessing as</p> <p>20 to whether they do or they don't.</p> <p>21 ---</p> <p>22 CONTINUATION</p> <p>23 BY MR. LANGER:</p> <p>24 Q. You don't know?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 219</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 In the world that you've just</p> <p>3 described as the present world, okay, the RSN does</p> <p>4 not care about the outer market.</p> <p>5 Is that correct?</p> <p>6 MR. TOSCANO: Objection to form.</p> <p>7 ---</p> <p>8 CONTINUATION</p> <p>9 BY MR. LANGER:</p> <p>10 Q. It only purchases rights for the</p> <p>11 in-market broadcast.</p> <p>12 MR. TOSCANO: Same objection.</p> <p>13 MR. GOLDFEIN: Objection to the form</p> <p>14 of the question.</p> <p>15 THE WITNESS: I'm sorry.</p> <p>16 Can you speak up?</p> <p>17 MR. GOLDFEIN: I think you need to</p> <p>18 be more specific as to which League you are talking</p> <p>19 about.</p> <p>20 MR. LANGER: Both Leagues.</p> <p>21 THE WITNESS: Generally speaking, at</p> <p>22 the moment, in the actual world, the RSN's do not</p> <p>23 sell their product outside of the home territory.</p> <p>24 That's my understanding.</p> <p>25 ---</p>
<p style="text-align: right;">Page 218</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 As I sit here, I don't recall what</p> <p>3 their rights are with regard to the Internet</p> <p>4 streaming.</p> <p>5 Q. And each team is required by the</p> <p>6 League to provide all of its broadcast to the League</p> <p>7 by a League rule for inclusion of the bundle.</p> <p>8 Is that correct?</p> <p>9 MR. KASS: Objection.</p> <p>10 Foundation.</p> <p>11 MR. GOLDFEIN: Objection to the form</p> <p>12 of the question.</p> <p>13 THE WITNESS: It's my understanding</p> <p>14 that, at present, in the current environment, the</p> <p>15 teams provide their feed to the League for free for</p> <p>16 inclusion in the bundle, and I stress the words "at</p> <p>17 present," because it is a key assumption that Roger</p> <p>18 makes -- Roger Noll makes, that the same incentives</p> <p>19 would exist in the but-for environment in which all</p> <p>20 kinds of modifications in the environment has -- has</p> <p>21 taken place.</p> <p>22 ---</p> <p>23 CONTINUATION</p> <p>24 BY MR. LANGER:</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 220</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 CONTINUATION</p> <p>3 BY MR. LANGER:</p> <p>4 Q. They do not sell their product?</p> <p>5 A. The RSN does not sell the game that</p> <p>6 it produces and distributes outside of the RSN's or</p> <p>7 team's home territory.</p> <p>8 Q. Whose game is it?</p> <p>9 Is it the RSN's game or the team's</p> <p>10 game?</p> <p>11 MR. TOSCANO: Objection to form.</p> <p>12 Calls for a legal conclusion.</p> <p>13 THE WITNESS: Exactly. I'm not a</p> <p>14 lawyer.</p> <p>15 There is a game. There is a</p> <p>16 contract, and it's the question; where can the game</p> <p>17 be sold and where it can't be sold?</p> <p>18 At the moment it's clear to me,</p> <p>19 anyway, I may be wrong, that no RSN sells its game</p> <p>20 outside of its home -- the team's home territory.</p> <p>21 ---</p> <p>22 CONTINUATION</p> <p>23 BY MR. LANGER:</p> <p>24 Q. So, the RSN looks for its own</p> <p>25 revenue to the home team territory?</p>

<p style="text-align: right;">Page 225</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 I know I take too long, but I</p> <p>3 usually come to an end.</p> <p>4 At the moment --</p> <p>5 MR. LANGER: Like all good things.</p> <p>6 THE WITNESS: What?</p> <p>7 MR. LANGER: Like all good things.</p> <p>8 THE WITNESS: Yes.</p> <p>9 At the moment the package obtains</p> <p>10 the rights to what I regard as the valuable input,</p> <p>11 which is the game feed for free for a specific</p> <p>12 purpose of inclusion in the package.</p> <p>13 In the but-for world that I</p> <p>14 understand your client, and the Roger Noll model</p> <p>15 supports, that League would use that feed to compete</p> <p>16 with the RSN in the RSN's home territory.</p> <p>17 I regard that as a huge change in</p> <p>18 the way the market functions, and a huge change in</p> <p>19 the scope of rights that the RSN has.</p> <p>20 ---</p> <p>21 CONTINUATION</p> <p>22 BY MR. LANGER:</p> <p>23 <b>Q. Now, is the feed of the visiting</b></p> <p>24 <b>team something that would violate content exclusivity</b></p> <p>25 <b>in your view?</b></p>	<p style="text-align: right;">Page 227</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Kansas City, and there's a game and it's produced</p> <p>3 by --</p> <p>4 <b>Q. The who?</b></p> <p>5 A. The Tampa -- the Tampa team,</p> <p>6 whatever name, I forget. Anyway.</p> <p>7 The Kansas City Royals are playing</p> <p>8 with the Tampa team, okay, and there is two feeds.</p> <p>9 One is produced by the Tampa team, and the one is</p> <p>10 produced by the Kansas City team, right?</p> <p>11 <b>Q. Right.</b></p> <p>12 A. The question is; are they the same</p> <p>13 two products or are they different products?</p> <p>14 That was your question?</p> <p>15 <b>Q. Yeah.</b></p> <p>16 A. There are some differences in the</p> <p>17 products, yes.</p> <p>18 <b>Q. Okay.</b></p> <p>19 <b>Does the feed that the Tampa team</b></p> <p>20 <b>into Kansas City violate what you call content</b></p> <p>21 <b>exclusivity?</b></p> <p>22 A. Does the sale?</p> <p>23 <b>Q. No.</b></p> <p>24 <b>Does the -- would -- where their</b></p> <p>25 <b>feed of the Tampa game into Kansas City, the home</b></p>
<p style="text-align: right;">Page 226</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 MR. TOSCANO: Objection to form.</p> <p>3 Incomplete hypothetical.</p> <p>4 THE WITNESS: Yeah. I was going to</p> <p>5 ask the question that you finish the sentence.</p> <p>6 I don't know that a -- at the moment</p> <p>7 the way things work is that the home team has the</p> <p>8 rights to its -- the feed in its territory, and the</p> <p>9 visiting team will have the rights to the feed that</p> <p>10 it produces in its home territory.</p> <p>11 MR. LANGER: Right.</p> <p>12 THE WITNESS: That is the way it</p> <p>13 works. That is my understanding.</p> <p>14 MR. LANGER: Okay.</p> <p>15 THE WITNESS: Correct me if I'm</p> <p>16 wrong.</p> <p>17 ---</p> <p>18 CONTINUATION</p> <p>19 BY MR. LANGER:</p> <p>20 <b>Q. If the visiting team's feeds were</b></p> <p>21 <b>available in the home team's territory, that would be</b></p> <p>22 <b>a different feed.</b></p> <p>23 <b>Isn't that correct?</b></p> <p>24 A. There will be -- sorry.</p> <p>25 So, if the Tampa Royals are visiting</p>	<p style="text-align: right;">Page 228</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>game is in Kansas City, would that violate what you</b></p> <p>3 <b>call content exclusivity?</b></p> <p>4 A. I just truly don't understand the</p> <p>5 hypothetical.</p> <p>6 At the moment the Tampa team</p> <p>7 produces its own feed of the same game.</p> <p>8 <b>Q. Correct.</b></p> <p>9 A. It may have different announcements,</p> <p>10 or it will have different booths, it will have</p> <p>11 different stats. It will have all kinds of different</p> <p>12 things, and that's -- that's their feed, which is</p> <p>13 then is being shown on the Tampa team's RSN.</p> <p>14 <b>Q. Right.</b></p> <p>15 A. It's not being shown now in the</p> <p>16 Kansas City teams -- on the Kansas City RSN's in the</p> <p>17 Kansas City team's home territory.</p> <p>18 <b>Q. Under my hypothetical the situation</b></p> <p>19 <b>would be that the Tampa feed would also be available</b></p> <p>20 <b>within the home territory of the Kansas City team.</b></p> <p>21 A. Okay.</p> <p>22 <b>Q. Would that violate what you call</b></p> <p>23 <b>content exclusivity?</b></p> <p>24 MR. TOSCANO: Objection to form.</p> <p>25 Incomplete hypothetical.</p>

<p style="text-align: right;">Page 237</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. But you're not -- I'm sorry.</b></p> <p>3 <b>I didn't mean to interrupt you.</b></p> <p>4 A. No.</p> <p>5 And the key difference between what</p> <p>6 you're talking about right now and what I focused on,</p> <p>7 was that I am examining the implications for</p> <p>8 Professor Noll's predictions, not from the visiting</p> <p>9 team now starting to send the feed into the home</p> <p>10 territory of the host team or the home team, but the</p> <p>11 implications for the economic arrangements in hockey</p> <p>12 or in baseball that arise as a result of the League</p> <p>13 using the feed that it obtains heretofore for free at</p> <p>14 zero price to compete with the RSN.</p> <p>15 I believe that arrangement is not</p> <p>16 sustainable, and I believe that such an arrangement</p> <p>17 would have to trigger all kinds of notifications, all</p> <p>18 of which, in my view, leads to potentially higher</p> <p>19 price for the League package than heretofore.</p> <p>20 MR. LANGER: Let's take a break.</p> <p>21 THE WITNESS: Okay.</p> <p>22 VIDEO TECHNICIAN: Off the record.</p> <p>23 3:21.</p> <p>24 ---</p> <p>25 (Recess was taken at this time.)</p>	<p style="text-align: right;">Page 239</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 because it has to have some rights.</p> <p>3 ---</p> <p>4 CONTINUATION</p> <p>5 BY MR. LANGER:</p> <p>6 <b>Q. It simply would have rights to</b></p> <p>7 <b>license its games for broadcast.</b></p> <p>8 MR. TOSCANO: Same objection.</p> <p>9 THE WITNESS: Throughout the world?</p> <p>10 United States? Eastern seaboard? What?</p> <p>11 MR. LANGER: Anywhere.</p> <p>12 THE WITNESS: So, it would have no</p> <p>13 exclusive rights in its home territory as it has now,</p> <p>14 but in exchange, or it will obtain the right to</p> <p>15 broadcast its programming everywhere?</p> <p>16 Is that your hypothetical?</p> <p>17 ---</p> <p>18 CONTINUATION</p> <p>19 BY MR. LANGER:</p> <p>20 <b>Q. Would have the rights to license</b></p> <p>21 <b>someone to broadcast anywhere.</b></p> <p>22 A. Anywhere.</p> <p>23 MR. TOSCANO: Objection to form.</p> <p>24 Incomplete hypothetical.</p> <p>25 THE WITNESS: Okay.</p>
<p style="text-align: right;">Page 238</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 ---</p> <p>3 VIDEO TECHNICIAN: Stand by, please.</p> <p>4 The time is 3:29.</p> <p>5 We're back on the record.</p> <p>6 ---</p> <p>7 CONTINUATION</p> <p>8 BY MR. LANGER:</p> <p>9 <b>Q. A team has the right, as you</b></p> <p>10 <b>understand it, to license a broadcaster to broadcast</b></p> <p>11 <b>with content exclusivity within the home territory of</b></p> <p>12 <b>the team.</b></p> <p>13 <b>Is that correct?</b></p> <p>14 A. That's my understanding, yes.</p> <p>15 <b>Q. And does that make a team more</b></p> <p>16 <b>valuable than it would be if it didn't have that</b></p> <p>17 <b>right?</b></p> <p>18 A. More valuable if it didn't have that</p> <p>19 right, but what rights would it have?</p> <p>20 Some -- some rights have to exist.</p> <p>21 <b>Q. It would have no territorial rights</b></p> <p>22 <b>with regard to broadcasting.</b></p> <p>23 MR. TOSCANO: Objection to form.</p> <p>24 Incomplete hypothetical.</p> <p>25 THE WITNESS: That's not sufficient,</p>	<p style="text-align: right;">Page 240</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 ---</p> <p>3 CONTINUATION</p> <p>4 BY MR. LANGER:</p> <p>5 <b>Q. Would the team be less valuable in</b></p> <p>6 <b>the latter circumstance?</b></p> <p>7 MR. TOSCANO: Same objection.</p> <p>8 MR. GOLDFEIN: Object to the form of</p> <p>9 the question.</p> <p>10 THE WITNESS: It's an empirical</p> <p>11 issue. I don't think one can say yes or no to that.</p> <p>12 MR. LANGER: Okay.</p> <p>13 THE WITNESS: At least I cannot, as</p> <p>14 I sit here.</p> <p>15 ---</p> <p>16 (Discussion held off the record.)</p> <p>17 ---</p> <p>18 CONTINUATION</p> <p>19 BY MR. LANGER:</p> <p>20 <b>Q. Now -- now, Professor, is it your</b></p> <p>21 <b>testimony that allowing the out-of-market packages to</b></p> <p>22 <b>be sold within the home territory at the same time as</b></p> <p>23 <b>home games being played in broadcast does not violate</b></p> <p>24 <b>content exclusivity?</b></p> <p>25 <b>Is that correct?</b></p>

<p style="text-align: right;">Page 241</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 MR. TOSCANO: Objection to form.</p> <p>3 THE WITNESS: Selling the League</p> <p>4 package in Tampa while the Tampa Rays are playing</p> <p>5 some other team, in my definition it does violate</p> <p>6 content exclusivity unless there's a blackout of the</p> <p>7 Tampa Rays' game in the package.</p> <p>8 MR. LANGER: Right.</p> <p>9 ---</p> <p>10 CONTINUATION</p> <p>11 BY MR. LANGER:</p> <p>12 <b>Q. But I'm talking about the package as</b></p> <p>13 <b>it is now.</b></p> <p>14 A. Oh, okay. I'm sorry.</p> <p>15 <b>Q. So, you're saying it does not</b></p> <p>16 <b>violate content exclusivity?</b></p> <p>17 A. At the moment it does not, because</p> <p>18 the same content, which is a Tampa game -- Tampa game</p> <p>19 is not being made available from two different</p> <p>20 sources.</p> <p>21 So, content is not --</p> <p>22 <b>Q. And --</b></p> <p>23 A. -- content exclusivity is not being</p> <p>24 violated.</p> <p>25 <b>Q. But the visiting team -- the</b></p>	<p style="text-align: right;">Page 243</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 ---</p> <p>3 CONTINUATION</p> <p>4 BY MR. LANGER:</p> <p>5 <b>Q. So, going back there's -- is there</b></p> <p>6 <b>some magic formula or some -- some special formula</b></p> <p>7 <b>that an economist could use to determine where the</b></p> <p>8 <b>line is as to what would be defined content</b></p> <p>9 <b>exclusivity and what would not?</b></p> <p>10 MR. TOSCANO: Objection to form.</p> <p>11 MR. GOLDFEIN: Objection to form of</p> <p>12 the question.</p> <p>13 ---</p> <p>14 CONTINUATION</p> <p>15 BY MR. LANGER:</p> <p>16 <b>Q. In other words, what is the</b></p> <p>17 <b>distinction between the package being sold on a</b></p> <p>18 <b>blackout basis in Tampa and the visiting team feed</b></p> <p>19 <b>being sold in Tampa?</b></p> <p>20 MR. TOSCANO: Same objection.</p> <p>21 THE WITNESS: There's a massive</p> <p>22 distinction. The blackout package does not have the</p> <p>23 feed of the home team or even the visiting team in</p> <p>24 their home territory.</p> <p>25 There is no ability for the viewer</p>
<p style="text-align: right;">Page 242</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>visiting team feed you agree was, to some degree, a</b></p> <p>3 <b>different product than the home team feed.</b></p> <p>4 <b>Is that right?</b></p> <p>5 MR. TOSCANO: Objection to form.</p> <p>6 THE WITNESS: To some viewers it</p> <p>7 might be a different product.</p> <p>8 To other viewers it may not be a</p> <p>9 different product, but in any case, it is to me a --</p> <p>10 a -- a distraction from the core issue here in this</p> <p>11 -- in this -- in -- in this litigation which I tried</p> <p>12 to understand, discuss, and analyze, and assess as an</p> <p>13 economist.</p> <p>14 I don't think -- I do not recall</p> <p>15 Professor Noll at all addressing the issue of what --</p> <p>16 what, I guess, you have called game exclusivity in</p> <p>17 this -- but certainly one of the reasons I have not</p> <p>18 addressed it myself because, as I said, I believe it</p> <p>19 to be a distraction from the key question which is,</p> <p>20 can the League package; A, gauge the input for free</p> <p>21 and use that free input to construct the product with</p> <p>22 which to compete against the home team territory RSN?</p> <p>23 That is the focus of everything that</p> <p>24 I'm thinking about.</p> <p>25 (Pause)</p>	<p style="text-align: right;">Page 244</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 subscribing to the package to watch the home team's</p> <p>3 game as it was developed and produced by the home</p> <p>4 team RSN by acquiring the rights to watch the -- the</p> <p>5 package.</p> <p>6 ---</p> <p>7 CONTINUATION</p> <p>8 BY MR. LANGER:</p> <p>9 <b>Q. But you told me earlier that a</b></p> <p>10 <b>majority of purchasers of the Major League Internet</b></p> <p>11 <b>package, Major League Baseball Internet package,</b></p> <p>12 <b>would pay 18 percent more to get the premium package.</b></p> <p>13 <b>Do you recall that?</b></p> <p>14 MR. TOSCANO: Objection to form.</p> <p>15 Misstates the witness' testimony.</p> <p>16 THE WITNESS: I think it would be</p> <p>17 great if we could focus on one issue at a time, but I</p> <p>18 understand it's your afternoon, and you can do</p> <p>19 whatever you want.</p> <p>20 My -- I'm going to bring you back to</p> <p>21 the core concern I have, and the core concern I have</p> <p>22 is not how much extra people are willing to pay for</p> <p>23 the home feed -- for one feed versus the other. That</p> <p>24 is a possibility, an issue that can be resolved, I</p> <p>25 think, in a variety of ways.</p>

<p style="text-align: right;">Page 245</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 The more important question is the</p> <p>3 whole concept of content exclusivity as I defined it,</p> <p>4 and I think it is entirely consistent with the</p> <p>5 definition that the Judge uses, and in that context</p> <p>6 the key question is; is the package violating content</p> <p>7 exclusivity as defined by selling the package in</p> <p>8 which the home team's feed is available at the same</p> <p>9 time?</p> <p>10 ---</p> <p>11 CONTINUATION</p> <p>12 BY MR. LANGER:</p> <p>13 <b>Q. Do you conclude that if an RSN lost</b></p> <p>14 <b>content exclusivity there would be fewer broadcasts</b></p> <p>15 <b>of inferior quality.</b></p> <p>16 <b>Is that correct?</b></p> <p>17 A. Can you direct me to -- you are</p> <p>18 reading from my deposition?</p> <p>19 <b>Q. No, I'm not reading.</b></p> <p>20 A. Oh, okay.</p> <p>21 Can you then restate the question or</p> <p>22 please restate it again? Sorry.</p> <p>23 <b>Q. You have concluded that if the RSN's</b></p> <p>24 <b>lost content exclusivity there would be fewer</b></p> <p>25 <b>broadcasts.</b></p>	<p style="text-align: right;">Page 247</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 lower quality, which I believe is similarly explained</p> <p>3 by the diminution in the rate of return by the RSN on</p> <p>4 its investment in the -- in the production and</p> <p>5 distribution of the product.</p> <p>6 <b>Q. But you didn't do any analysis of</b></p> <p>7 <b>your own of the minimum revenue required to provide a</b></p> <p>8 <b>quality broadcast.</b></p> <p>9 <b>Isn't that correct?</b></p> <p>10 MR. TOSCANO: Objection to form.</p> <p>11 THE WITNESS: That is true. I speak</p> <p>12 solely as an industrial organization economist who</p> <p>13 is, I think, of the unimpeachable view that the less</p> <p>14 money you make, the less incentive you have to spend</p> <p>15 money on the product.</p> <p>16 ---</p> <p>17 CONTINUATION</p> <p>18 BY MR. LANGER:</p> <p>19 <b>Q. And you didn't do any analysis of</b></p> <p>20 <b>the actual decline in revenue to the RSN if the</b></p> <p>21 <b>relief sought in this case were granted?</b></p> <p>22 MR. TOSCANO: Objection to form.</p> <p>23 THE WITNESS: No. My focus is on</p> <p>24 the class certification issues as opposed to a host</p> <p>25 of other issues that may be raised by this</p>
<p style="text-align: right;">Page 246</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Is that correct?</b></p> <p>3 A. Fewer games being produced?</p> <p>4 <b>Q. Yes.</b></p> <p>5 A. I believe that there's such a</p> <p>6 possibility, because the effect on the RSN would be</p> <p>7 to lose margin or preference on the investment that's</p> <p>8 made in the team, and it would have, therefore,</p> <p>9 incentive to react -- to react to it possibly through</p> <p>10 saving on producing those games for which the</p> <p>11 anticipated, expected viewership is not likely to be</p> <p>12 high, and for which the associated revenues may</p> <p>13 simply not cover the -- the -- the incremental cost</p> <p>14 of producing the game.</p> <p>15 MR. TOSCANO: I believe you may be</p> <p>16 referring to paragraph 30.</p> <p>17 MR. LANGER: Thank you.</p> <p>18 ---</p> <p>19 CONTINUATION</p> <p>20 BY MR. LANGER:</p> <p>21 <b>Q. Now, you also believe that such</b></p> <p>22 <b>games as would be broadcast would be of inferior</b></p> <p>23 <b>quality.</b></p> <p>24 <b>Is that correct?</b></p> <p>25 A. I said that there might be a risk of</p>	<p style="text-align: right;">Page 248</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 litigation.</p> <p>3 ---</p> <p>4 CONTINUATION</p> <p>5 BY MR. LANGER:</p> <p>6 <b>Q. So, you didn't do any empirical</b></p> <p>7 <b>analysis based on the revenues and costs of games on</b></p> <p>8 <b>the diminution that would occur as you see it in the</b></p> <p>9 <b>but-for world from which you could conclude -- strike</b></p> <p>10 <b>that. Strike the question.</b></p> <p>11 <b>You did not do any analysis of</b></p> <p>12 <b>revenue or costs or the diminution in revenue from</b></p> <p>13 <b>which you could draw any conclusion regarding the</b></p> <p>14 <b>quality of broadcasts that would occur in the but-for</b></p> <p>15 <b>world or the number of broadcasts?</b></p> <p>16 MR. TOSCANO: Objection to form.</p> <p>17 You mean besides what is set forth</p> <p>18 in this Declaration?</p> <p>19 MR. LANGER: Yeah.</p> <p>20 THE WITNESS: I did not do any work</p> <p>21 that is not recorded in this Declaration.</p> <p>22 So, there is nothing I can add to</p> <p>23 what you have written.</p> <p>24 I do believe, however, that the</p> <p>25 testimony from the representatives of the defendants</p>

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1 HIGHLY CONFIDENTIAL  
 2 clearly indicate that their incentives would be  
 3 effected if there were a frontal breach of the -- of  
 4 the content exclusivity as it is present in baseball  
 5 and hockey right now.  
 6 All of them, I think, are in  
 7 agreement on that proposition, but I, as an  
 8 economist, did not undertake such an investigation.  
 9 MR. LANGER: Okay.  
 10 So, wait a second.  
 11 (Pause)  
 12 ---  
 13 CONTINUATION  
 14 BY MR. LANGER:  
 15 Q. Who is John Litner?  
 16 MR. TOSCANO: Objection.  
 17 Asked and answered.  
 18 THE WITNESS: I'm sorry.  
 19 ---  
 20 CONTINUATION  
 21 BY MR. LANGER:  
 22 Q. Who is John Litner?  
 23 MR. TOSCANO: Objection.  
 24 Asked and answered.  
 25 THE WITNESS: I thought we went over

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1 HIGHLY CONFIDENTIAL  
 2 Q. Mr. Litner, Mr. Crumb and  
 3 Mr. Krolick are the people upon whom you rely for  
 4 your conclusion that there would be a diminution in  
 5 the number of games broadcast.  
 6 Is that correct?  
 7 A. No, it's totally incorrect.  
 8 I relied on the economic analysis  
 9 which I think claims such as, if somebody is making  
 10 less money on a product sale on an investment in the  
 11 product there will be a reaction.  
 12 What kind of reaction will there be,  
 13 you may ask? The reaction would be to lessen the  
 14 amount of investment. That's how firms react.  
 15 You want to equate marginal revenue  
 16 with marginal cost. If your marginal revenue goes  
 17 down, then I pull back on the investment or on the  
 18 sales, and, therefore, I find those Declarations that  
 19 you instance to be entirely consistent with my basic  
 20 economic reaction to these arguments.  
 21 Q. You haven't -- I'm sorry.  
 22 A. No, that's all right.  
 23 Q. You haven't done any empirical  
 24 analysis as to how much the minimum amount a team --  
 25 strike that -- the minimum amount an RSN requires in

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1 HIGHLY CONFIDENTIAL  
 2 that at 9:30 this morning. I do not recall the name,  
 3 and I did not refresh myself on the names or on any  
 4 of the grades. So, my answer would be as it was  
 5 before.  
 6 ---  
 7 CONTINUATION  
 8 BY MR. LANGER:  
 9 Q. Okay.  
 10 But those are the two -- Mr. Crumb  
 11 and Mr. Krolick are the people whom -- sorry.  
 12 MR. GOLDFEIN: Did you say Whitman?  
 13 THE WITNESS: Litner.  
 14 MR. GOLDFEIN: Litner.  
 15 THE WITNESS: Yes.  
 16 MR. GOLDFEIN: I heard Whitman.  
 17 THE WITNESS: Yeah. Well, it's  
 18 Litner. We had that conversation before.  
 19 MR. LANGER: I'm sorry.  
 20 Now I have lost my thought process.  
 21 Do you want to go back?  
 22 (Pause)  
 23 ---  
 24 CONTINUATION  
 25 BY MR. LANGER:

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1 HIGHLY CONFIDENTIAL  
 2 order to broadcast a game -- the minimum amount of  
 3 revenue.  
 4 Is that correct?  
 5 MR. TOSCANO: Objection to form.  
 6 Asked and answered.  
 7 THE WITNESS: I think that was asked  
 8 and answered.  
 9 I said consistently with my prior  
 10 answers, no, I have not done that --  
 11 MR. LANGER: Okay.  
 12 ---  
 13 CONTINUATION  
 14 BY MR. LANGER:  
 15 Q. Okay.  
 16 Now, if you go to footnote 28.  
 17 MR. TOSCANO: Page 13.  
 18 THE WITNESS: Yep.  
 19 ---  
 20 CONTINUATION  
 21 BY MR. LANGER:  
 22 Q. You refer to the fact witnesses  
 23 testifying in this matter.  
 24 Do you see that?  
 25 A. Yes.

<p style="text-align: right;">Page 253</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Is that a legal conclusion on your</b></p> <p>3 <b>part as to whether they're a fact or opinion</b></p> <p>4 <b>witnesses?</b></p> <p>5 MR. TOSCANO: Objection to form.</p> <p>6 That is ridiculous.</p> <p>7 THE WITNESS: I -- I don't know the</p> <p>8 difference between. I think the fact witness is a</p> <p>9 corporate witnesses who are talking about facts.</p> <p>10 ---</p> <p>11 CONTINUATION</p> <p>12 BY MR. LANGER:</p> <p>13 <b>Q. Someone could ask you for a fact as</b></p> <p>14 <b>to whether there are nine defense lawyers sitting at</b></p> <p>15 <b>the table in your deposition; right?</b></p> <p>16 <b>That would be a fact that you could</b></p> <p>17 <b>testify to.</b></p> <p>18 A. I, as an expert economist, could</p> <p>19 come and testify as to the correctness of that</p> <p>20 statement, yes.</p> <p>21 <b>Q. But if I were to ask you how many</b></p> <p>22 <b>lawyers are going to be present at Dr. McFadden's</b></p> <p>23 <b>deposition next week, that would be asking your</b></p> <p>24 <b>opinion as to what would occur next week.</b></p> <p>25 <b>Isn't that correct?</b></p>	<p style="text-align: right;">Page 255</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 are -- they are not advising me. I think they are</p> <p>3 advising, to the extent they are advising anybody, is</p> <p>4 the Court.</p> <p>5 My opinions are being supported by</p> <p>6 these fact witnesses. But I am not saying to</p> <p>7 myself -- until I read those Declarations, I thought</p> <p>8 that -- was going to expand.</p> <p>9 Wow, I was so wrong. How could I</p> <p>10 have been so wrong?</p> <p>11 No, I have 43 years of thinking</p> <p>12 about anti-trust industrial organization economics,</p> <p>13 and what I'm testifying here is based on my thinking</p> <p>14 on those issues in this case and other cases, and it</p> <p>15 happens to be consistent with what these people have</p> <p>16 testified to for very good reason.</p> <p>17 They are experienced business</p> <p>18 people, and I am an experienced economist, and</p> <p>19 sometimes there is a parallel in the outcomes of</p> <p>20 those two types of expertise.</p> <p>21 ---</p> <p>22 CONTINUATION</p> <p>23 BY MR. LANGER:</p> <p>24 <b>Q. They are also interested parties in</b></p> <p>25 <b>this litigation.</b></p>
<p style="text-align: right;">Page 254</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 MR. TOSCANO: Objection to form.</p> <p>3 It sounds like you're trying to call</p> <p>4 for a legal conclusion. It's, quite frankly, so</p> <p>5 vague, I don't know what you are trying to ask.</p> <p>6 THE WITNESS: Or, if you were to ask</p> <p>7 me how many of the lawyers present are good lawyers,</p> <p>8 I would have to not resort to counting, but to some</p> <p>9 other forensic truths to answer that question.</p> <p>10 So, I don't know what you mean by</p> <p>11 fact or opinion, but --</p> <p>12 ---</p> <p>13 CONTINUATION</p> <p>14 BY MR. LANGER:</p> <p>15 <b>Q. All of the Declarations that you</b></p> <p>16 <b>have cited in footnote 28 are advising you with</b></p> <p>17 <b>regard to or providing opinions as to what would</b></p> <p>18 <b>likely occur in the future under certain</b></p> <p>19 <b>circumstances.</b></p> <p>20 <b>Is that correct?</b></p> <p>21 MR. TOSCANO: Objection to form.</p> <p>22 Misstates the time in the but-for</p> <p>23 world.</p> <p>24 THE WITNESS: I think they are not</p> <p>25 advising about the past, present, or future. They</p>	<p style="text-align: right;">Page 256</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Is that correct?</b></p> <p>3 MR. TOSCANO: Objection to form.</p> <p>4 THE WITNESS: To the extent they</p> <p>5 have any particular interest, they might, but they</p> <p>6 are -- they are witnesses for the defendant's</p> <p>7 employees, yes, is my understanding.</p> <p>8 ---</p> <p>9 CONTINUATION</p> <p>10 BY MR. LANGER:</p> <p>11 <b>Q. Okay.</b></p> <p>12 <b>And you did no analysis --</b></p> <p>13 A. --</p> <p>14 <b>Q. -- to verify these statements.</b></p> <p>15 <b>You did no empirical analysis.</b></p> <p>16 <b>Is that correct?</b></p> <p>17 MR. TOSCANO: Objection.</p> <p>18 Misstates the witness' testimony.</p> <p>19 THE WITNESS: I thought clearly that</p> <p>20 I had not done any empirical analysis, but I have</p> <p>21 done a fair amount of thinking here, and in other</p> <p>22 matters about the economic consequences of impacts on</p> <p>23 business decisions from circumstances in which the</p> <p>24 returns to investment are diminished.</p> <p>25 ---</p>

<p style="text-align: right;">Page 257</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 CONTINUATION</p> <p>3 BY MR. LANGER:</p> <p>4 <b>Q. How many baseball games -- Major</b></p> <p>5 <b>League Baseball games currently are not broadcast in</b></p> <p>6 <b>a season?</b></p> <p>7 A. There are some that are not.</p> <p>8 How many, I don't know.</p> <p>9 <b>Q. Maybe ten.</b></p> <p>10 A. I don't know. I told you I don't</p> <p>11 know. I would be guessing to give you an answer,</p> <p>12 which I refuse to do.</p> <p>13 <b>Q. And those that are not broadcast,</b></p> <p>14 <b>are they not broadcast by anyone or are they</b></p> <p>15 <b>broadcast only by the visiting team?</b></p> <p>16 MR. TOSCANO: Objection to form.</p> <p>17 Doesn't make any sense.</p> <p>18 THE WITNESS: As I said, I mean,</p> <p>19 what else can I say? I said -- look, I have not done</p> <p>20 this kind of analysis. I do know that not even in</p> <p>21 the current environment the -- not all games are</p> <p>22 broadcast by all teams. There are teams -- teams of</p> <p>23 -- all the games are not necessarily all broadcast,</p> <p>24 but the number, the frequency, the reasons, I just</p> <p>25 don't know as I sit here. I would be guessing.</p>	<p style="text-align: right;">Page 259</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 baseball game.</p> <p>3 <b>Q. Do you know that women's-- college</b></p> <p>4 <b>women's softball games appear on television?</b></p> <p>5 A. Yes, and snooker is one of my</p> <p>6 favorite things to watch, especially when I'm abroad.</p> <p>7 Darts. Every conceivable sport is -- can be seen</p> <p>8 somewhere on TV.</p> <p>9 Some of it -- some advertising is</p> <p>10 associated with some of them. Some are not. There's</p> <p>11 no advertising, but, yes, it's a huge amount of</p> <p>12 sports out there on TV.</p> <p>13 <b>Q. Correct, and it's worthwhile for</b></p> <p>14 <b>RSN's or some broadcasters to undertake to broadcast</b></p> <p>15 <b>those different sports.</b></p> <p>16 <b>Is that correct?</b></p> <p>17 A. Yes, because of the -- the</p> <p>18 economics. How many of those games will be</p> <p>19 broadcast? Who knows. It may be just one. Maybe</p> <p>20 three per season.</p> <p>21 But Major League Baseball and Major</p> <p>22 League Hockey generally broadcasts each and every</p> <p>23 game, other than those that are being broadcasted</p> <p>24 through national distribution.</p> <p>25 So, it's a difference between the</p>
<p style="text-align: right;">Page 258</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 ---</p> <p>3 CONTINUATION</p> <p>4 BY MR. LANGER:</p> <p>5 <b>Q. Which -- which -- which games do you</b></p> <p>6 <b>think would attract greater advertising, greater</b></p> <p>7 <b>viewership and advertising revenue, a college</b></p> <p>8 <b>baseball game or a Major League Baseball game?</b></p> <p>9 MR. TOSCANO: Objection to form.</p> <p>10 Beyond the scope of the report.</p> <p>11 THE WITNESS: A; being beyond the</p> <p>12 scope of the report, it is so insanely vague as not</p> <p>13 to be answerable, because as you probably well know,</p> <p>14 both within the college basketball lineups, there's a</p> <p>15 huge variance of attractiveness of the team.</p> <p>16 ---</p> <p>17 CONTINUATION</p> <p>18 BY MR. LANGER:</p> <p>19 <b>Q. I said college baseball.</b></p> <p>20 A. Baseball. I've never seen a college</p> <p>21 baseball team.</p> <p>22 <b>Q. Are you aware that college baseball</b></p> <p>23 <b>games appear on television?</b></p> <p>24 A. That -- I think I have heard about</p> <p>25 that fact, but I have never watched a college</p>	<p style="text-align: right;">Page 260</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 one of snooker game versus the full season with</p> <p>3 expensive announcers and other production values</p> <p>4 being invested by the RSN into the -- into the</p> <p>5 program.</p> <p>6 <b>Q. Now, going to -- does Dr. Noll</b></p> <p>7 <b>assume that in-market blackouts -- strike that.</b></p> <p>8 <b>Does Dr. Noll -- does Dr. Noll</b></p> <p>9 <b>assume that visiting teams can stream games into the</b></p> <p>10 <b>home market of the team they are playing?</b></p> <p>11 A. Stream? I don't know what he</p> <p>12 assumes on that particular issue. I just don't know.</p> <p>13 I believe, as I have testified a</p> <p>14 moment ago, that I'm not focusing here on, and I</p> <p>15 think what you term, game exclusivity.</p> <p>16 I am focusing here on content</p> <p>17 exclusivity, which is a much broader concept --</p> <p>18 concept, and it, basically, focuses on the use by the</p> <p>19 -- the League package of the feed, whether it is home</p> <p>20 team's feed or away home -- away team's feed in the</p> <p>21 package to offer a competitive product against the</p> <p>22 producers of that content.</p> <p>23 That's my focus.</p> <p>24 <b>Q. So, you say in footnote 87,</b></p> <p>25 <b>"Dr. Noll also assumes the elimination of any</b></p>

# EXHIBIT D

<p style="text-align: center;">Page 1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p> <p style="text-align: center;">-----</p> <p>THOMAS LAUMANN, FERNANDA GARBER, ROBERT SILVER, GARRETT TRAUB, DAVID DILLON, and PETER HERMAN, representing themselves and all others similarly situated</p> <p style="text-align: center;">vs</p> <p>NATIONAL HOCKEY LEAGUE, NHL ENTERPRISES, L.P., NHL INTERACTIVE CYBERENTERPRISES, LLC, NEW YORK RANGERS HOCKEY CLUB, NEW JERSEY DEVILS, LLC, NEW YORK ISLANDERS HOCKEY CLUB, L.P., COMCAST-SPECTACOR, L.P., LINCOLN HOCKEY, LLC, LEMIEUX GROUP, L.P., HOCKEY WESTERN NEW YORK, LLC, CHICAGO BLACKHAWKS HOCKEY TEAM, INC., SAN JOSE SHARKS, LLC, DIRECTV, LLC, ROOT SPORTS PITTSBURGH, (Caption continued),</p> <p style="text-align: center;">- - - Monday, December 8, 2014 - - - HIGHLY CONFIDENTIAL DEPOSITION OF: ARIEL PAKES - - - Kaplan, Leaman and Wolfe 325 Chestnut Street Suite 909 Philadelphia, PA 19106 (800) 295-7571 KapLeaWol@aol.com</p>	<p style="text-align: center;">Page 3</p> <p>HIGHLY CONFIDENTIAL</p> <p>APPEARANCES:</p> <p>LANGER GROGAN &amp; DIVER, P.C. BY: NED DIVER, ESQUIRE (215) 320-5663 ndiver@langergrogan.com PETER E. LECKMAN, ESQUIRE (215) 320-0876 pleckman@langergrogan.com 1717 Arch Street Suite 4130 Philadelphia, PA 19103 Representing the Plaintiffs</p> <p>SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM, LLP BY: PAUL ECKLES, ESQUIRE Paul.Eckles@skadden.com Four Times Square New York, NY 10036 (212) 735-2578 Representing the Defendants, NHL (except MSG)</p> <p>ALSTON &amp; BIRD BY: LOUIS A. KARASIK, ESQUIRE lou.karasik@alston.com ANDREW E. PARIS, ESQUIRE drew.paris@alston.com ALEXANDER ACKERMAN, ESQUIRE alex.ackerman@alston.com 333 South Hope Street 16th Floor Los Angeles, CA 90071 (213) 576-1000 Representing the Defendants, DIRECTV Sports Networks, LLC</p>
<p style="text-align: center;">Page 2</p> <p>(CAPTION CONTINUED), COMCAST CORPORATION, COMCAST SPORTSNET PHILADELPHIA, L.P., COMCAST SPORTSNET MID-ATLANTIC, L.P., COMCAST SPORTSNET CALIFORNIA, LLC, COMCAST SPORTSNET CHICAGO, LLC, and MADISON SQUARE GARDEN COMPANY</p> <p>-----</p> <p>FERNANDA GARBER, MARC LERNER, DEREK RASMUSSEN, ROBERT SILVER, GARRETT TRAUB, and PETER HERMAN, representing themselves and all others similarly situated</p> <p style="text-align: center;">vs</p> <p>OFFICE OF THE COMMISSIONER OF BASEBALL, et al.</p> <p>-----</p> <p>Videotaped Deposition of ARIEL PAKES, was taken pursuant to Notice at the law offices of COHEN MILSTEIN, 88 Pine Street, 14th Floor, New York, NY 10005 on the above date before DEBRA G. JOHNSON-SPALLONE, CCR, RPR, Delaware CSR, Notary Public in and for the States of Pennsylvania, New Jersey, and Delaware, and a Federally Approved Reporter of the United States District Court commencing on or about 9:54 a.m.</p>	<p style="text-align: center;">Page 4</p> <p>HIGHLY CONFIDENTIAL</p> <p>APPEARANCES: (Continued),</p> <p>DAVIS POLK BY: DAVID B. TOSCANO, ESQUIRE (212) 450-4515 david.toscano@davispolk.com ANDREW N. DeLANEY, ESQUIRE (212) 450-4294 andrew.delaney@davispolk.com 450 Lexington Avenue New York, NY 10017 Representing the Defendant, Comcast</p> <p>PROSKAUER ROSE, LLC BY: ADRIAN FONTECILLA, ESQUIRE (202) 416-5863 afontecilla@proskauer.com COLIN R. KASS, ESQUIRE (202) 416-6890 ckass@proskauer.com 1001 Pennsylvania Avenue, NW Suite 400 South Washington, DC 20004-2533 Representing the Defendants, Major League Baseball (except New York Yankees)</p> <p>PAUL, WEISS, RIFKIND, WHARTON &amp; GARRISON, LLP BY: WILLIAM Y. DURBIN, ESQUIRE Wdurbin@paulweiss.com DWIGHT DRAUGHON, ESQUIRE 2001 K Street NW Washington, DC 20006-1047 (202) 223-7375 Representing the Defendants, YES Network</p> <p>ALSO PRESENT:</p> <p>Jeffrey F. Brown, Ph.D., Bates White Economic Consulting Phillip Roller, Video Technician</p>

<p style="text-align: right;">Page 13</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. You are -- you don't consider</b></p> <p>3 <b>yourself an expert in broadcasting -- broadcasting</b></p> <p>4 <b>history in particular?</b></p> <p>5 A. No.</p> <p>6 <b>Q. Do you consider yourself an expert</b></p> <p>7 <b>in sports economics?</b></p> <p>8 A. No.</p> <p>9 <b>Q. Are you a sports fan?</b></p> <p>10 A. Somewhat.</p> <p>11 <b>Q. And of what sports are you a fan?</b></p> <p>12 A. Mostly the NBA.</p> <p>13 <b>Q. The NBA.</b></p> <p>14 <b>And do you watch NBA basketball on</b></p> <p>15 <b>television?</b></p> <p>16 A. Sometimes.</p> <p>17 <b>Q. Frequently?</b></p> <p>18 A. Depends how busy I am.</p> <p>19 <b>Q. You have never purchased an</b></p> <p>20 <b>out-of-market package from the NBA?</b></p> <p>21 A. No.</p> <p>22 <b>Q. Have you ever studied economics in</b></p> <p>23 <b>sports in any formal setting?</b></p> <p>24 A. Have I studied?</p> <p>25 No.</p>	<p style="text-align: right;">Page 15</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 those primitives from appropriate data, and then uses</p> <p>3 a behavioral assumption and those primitives that</p> <p>4 you've estimated to determine the endogenous</p> <p>5 variables which could be price or quantity or whether</p> <p>6 I'm going to participate.</p> <p>7 <b>Q. How do you know when -- when you</b></p> <p>8 <b>have a perfect model?</b></p> <p>9 A. There is no perfect model.</p> <p>10 Okay.</p> <p>11 But what I can tell you, what we do</p> <p>12 do, which is --</p> <p>13 <b>Q. Please.</b></p> <p>14 A. -- in my report, but I will repeat</p> <p>15 it, we take a model. We make it as close as we think</p> <p>16 is necessary for the real issue at hand, and then we</p> <p>17 -- seminars and our referees, their job is to relax</p> <p>18 the assumptions that are as far away from reality as</p> <p>19 -- they're questionable with respect to reality, and</p> <p>20 see if the answer with respect to the issue at hand</p> <p>21 changes.</p> <p>22 <b>Q. And how do you know when an</b></p> <p>23 <b>assumption is far away from reality?</b></p> <p>24 A. We look at the institutions.</p> <p>25 It's separate for every industry.</p>
<p style="text-align: right;">Page 14</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Now, you would consider yourself an</b></p> <p>3 <b>expert in structural modeling.</b></p> <p>4 <b>Is that correct?</b></p> <p>5 A. I think people consider me an expert</p> <p>6 in structural modeling.</p> <p>7 <b>Q. Huh-huh.</b></p> <p>8 <b>How long have you studied structural</b></p> <p>9 <b>modeling?</b></p> <p>10 A. My thesis started with such in 1980.</p> <p>11 <b>Q. 1980?</b></p> <p>12 A. 1979.</p> <p>13 <b>Q. And you've used structural models</b></p> <p>14 <b>for particular pricing in the past?</b></p> <p>15 A. Sure.</p> <p>16 <b>Q. You think it's an appropriate way of</b></p> <p>17 <b>analyzing and predicting pricing?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. Now, could you describe what a</b></p> <p>20 <b>structural model is, please?</b></p> <p>21 A. A structural model, what it does is,</p> <p>22 it takes the primitive. So, in the context of the</p> <p>23 market that would be a demand system, and cost</p> <p>24 systems -- I'm going to describe a static structure</p> <p>25 model like the one used in this case. It estimates</p>	<p style="text-align: right;">Page 16</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Now, do reasonable economists ever</b></p> <p>3 <b>differ -- differ when an assumption needs to be</b></p> <p>4 <b>relaxed?</b></p> <p>5 A. What happens typically, at least in</p> <p>6 a good journal is, if somebody questions it and has a</p> <p>7 reason to question it; that is, for example, you</p> <p>8 know, contracts are actually signed. So, there was</p> <p>9 some bargaining and negotiation. The referee will</p> <p>10 require them to do that, and see if it changes the</p> <p>11 result at hand.</p> <p>12 <b>Q. And this is the process that you're</b></p> <p>13 <b>describing at -- at top economic journals?</b></p> <p>14 A. The journals I've been associated</p> <p>15 with, yes. Also in seminars.</p> <p>16 <b>Q. Is there a similar process outside</b></p> <p>17 <b>of the academic world for economists?</b></p> <p>18 A. I've done very little outside of the</p> <p>19 academic world.</p> <p>20 <b>Q. So, you wouldn't know how economists</b></p> <p>21 <b>decide which assumptions are reasonable in a</b></p> <p>22 <b>structural model outside the academic context?</b></p> <p>23 A. I don't understand why it would be</p> <p>24 any different outside the academic context or inside</p> <p>25 the academic context.</p>

<p style="text-align: right;">Page 33</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 differential, very little variance.</p> <p>3 The reason that happens is, there's</p> <p>4 -- there's a price that the dealers get charged and</p> <p>5 they can bargain if they like, okay, but it's the</p> <p>6 price that the dealers get charged is the variance in</p> <p>7 -- that is almost all the variance in car prices.</p> <p>8 So -- and that's what we're interested in.</p> <p>9 <b>Q. In -- in the voluntary export</b></p> <p>10 <b>restraints paper, did you model the prices paid by</b></p> <p>11 <b>the dealers?</b></p> <p>12 A. We -- you know, I don't -- so, I</p> <p>13 can't remember whether we used transaction prices or</p> <p>14 MSRP prices here, so --</p> <p>15 <b>Q. I can help you so that we don't</b></p> <p>16 <b>guess.</b></p> <p>17 A. Okay.</p> <p>18 <b>Q. On page 412.</b></p> <p>19 A. Good. 412. Okay. Used list</p> <p>20 prices, which I guess are MSRP prices.</p> <p>21 <b>Q. Am I reading it correctly that the</b></p> <p>22 <b>top -- the first paragraph on 412 that, in fact,</b></p> <p>23 <b>you're using the list prices of the base model, even</b></p> <p>24 <b>if somebody bought a different model?</b></p> <p>25 A. Yeah. It depends how you define</p>	<p style="text-align: right;">Page 35</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. I should say, by the way --</p> <p>3 <b>Q. Yeah.</b></p> <p>4 A. -- I think every structural model</p> <p>5 I've written -- well, I shouldn't say that -- almost</p> <p>6 every certainly is written with somebody who is an</p> <p>7 expert in the field of that industry.</p> <p>8 <b>Q. Okay.</b></p> <p>9 <b>Now, was your report in this case</b></p> <p>10 <b>written with an expert in sports broadcasting?</b></p> <p>11 A. My report was not written to be a</p> <p>12 model of sports broadcasting.</p> <p>13 I was brought on line by counsel to</p> <p>14 find out whether Dr. Noll's model was</p> <p>15 methodologically flawed, and whether I could -- I</p> <p>16 would think that the predictions from that model were</p> <p>17 reliable or not. Nobody asked me to build a model of</p> <p>18 the sports industry.</p> <p>19 <b>Q. Okay.</b></p> <p>20 <b>Now, with respect to the auto</b></p> <p>21 <b>prices, the MSRP's that you used, your model assumed</b></p> <p>22 <b>those prices were profit maximizing prices.</b></p> <p>23 A. Our model assumed that -- yes, I</p> <p>24 believe -- so, I imagine, because every one of them</p> <p>25 are models, when we do a counterfactual price we say</p>
<p style="text-align: right;">Page 34</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 model.</p> <p>3 So, let me -- let me be more clear</p> <p>4 on this. Okay. You always have to define what a</p> <p>5 product is. Okay. Otherwise, you would be in a</p> <p>6 situation where, you know, different color seats</p> <p>7 would be a different product. Okay.</p> <p>8 I believe -- I mean, in this paper,</p> <p>9 different engine sizes were different products for</p> <p>10 the same model. I can't -- I honestly can't</p> <p>11 remember, but we made some distinction like that in</p> <p>12 Micro BLP. I don't remember exactly, because General</p> <p>13 Motors told us what was a product, what they</p> <p>14 considered a product.</p> <p>15 You have to understand that the</p> <p>16 add-ons can be added on to, not just the engine. The</p> <p>17 add-ons can be added on to any car. So, you know,</p> <p>18 you have a fancy radio. You can have it in that car</p> <p>19 or not have it in that car.</p> <p>20 <b>Q. But you agree that there are</b></p> <p>21 <b>different, what you call here, term levels that are</b></p> <p>22 <b>standard groups of add-ons?</b></p> <p>23 A. That's Jim's word. He is the auto</p> <p>24 guy, but if he -- if he says so, I believe him.</p> <p>25 <b>Q. Okay.</b></p>	<p style="text-align: right;">Page 36</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 it's a national price equilibrium.</p> <p>3 <b>Q. And the observed prices are assumed</b></p> <p>4 <b>to be in that national price equilibrium?</b></p> <p>5 A. In this paper I believe the answer</p> <p>6 is, yes, with a bunch of robustness tests.</p> <p>7 <b>Q. Now, you agree people don't pay list</b></p> <p>8 <b>prices for cars; right?</b></p> <p>9 A. Correct.</p> <p>10 Not necessarily. They might well</p> <p>11 pay the list price.</p> <p>12 <b>Q. So, is that -- is that an example of</b></p> <p>13 <b>an unrealistic assumption as you described?</b></p> <p>14 A. It's an example of an assumption</p> <p>15 where, if you were to relax it, it doesn't change</p> <p>16 anything. We did that in the Micro BLP paper.</p> <p>17 <b>Q. But you didn't do it in this paper?</b></p> <p>18 A. No, because we've done it in another</p> <p>19 paper for the same industry in the same kind of data.</p> <p>20 <b>Q. And if you hadn't done it would this</b></p> <p>21 <b>be an okay assumption for this paper?</b></p> <p>22 A. I think what -- on our very first</p> <p>23 time that we got data -- that we got data, we started</p> <p>24 on the auto industry, we investigated this assumption</p> <p>25 for exactly this reason.</p>

<p style="text-align: right;">Page 41</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 MR. DIVER: Yes.</p> <p>3 MR. KARASIK: -- if -- if you</p> <p>4 would --</p> <p>5 THE WITNESS: Okay.</p> <p>6 MR. KARASIK: --</p> <p>7 THE WITNESS: Yeah.</p> <p>8 (Pause)</p> <p>9 THE WITNESS: Go ahead.</p> <p>10 ---</p> <p>11 CONTINUATION</p> <p>12 BY MR. DIVER:</p> <p>13 <b>Q. Now, correct my understanding if</b></p> <p>14 <b>it's wrong.</b></p> <p>15 <b>Do I understand that -- that you</b></p> <p>16 <b>modeled the Japanese manufacturers as being subject</b></p> <p>17 <b>to a tax on the production of their automobiles, even</b></p> <p>18 <b>though they were not, in fact, subject to a tax?</b></p> <p>19 A. They were subject to pressure by</p> <p>20 MITI, which is their industrial -- I don't know</p> <p>21 exactly the structure of the Japanese Regulatory</p> <p>22 Authorities, but Jim does, but -- so, they were</p> <p>23 subject to various types of pressure from MITI.</p> <p>24 So, for -- if they exceeded a limit,</p> <p>25 okay, that was given to them by MITI, presumably</p>	<p style="text-align: right;">Page 43</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 COUNSEL: Objection.</p> <p>3 Vague.</p> <p>4 THE WITNESS: We did it, and did</p> <p>5 other robustness tests alongside of it.</p> <p>6 Again, you have to realize what went</p> <p>7 before this was a paper that -- or papers in this</p> <p>8 trade literature that said the opposite.</p> <p>9 ---</p> <p>10 (Discussion held off the record.)</p> <p>11 ---</p> <p>12 MR. DIVER: I wonder if we should</p> <p>13 take a break right now?</p> <p>14 MR. KARASIK: Okay.</p> <p>15 VIDEO TECHNICIAN: The time is</p> <p>16 10:39.</p> <p>17 Off the record.</p> <p>18 ---</p> <p>19 (Recess was taken at this time.)</p> <p>20 ---</p> <p>21 VIDEO TECHNICIAN: The time is</p> <p>22 10:59.</p> <p>23 We're back on the record.</p> <p>24 ---</p> <p>25 CONTINUATION</p>
<p style="text-align: right;">Page 42</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 something happened. MITI provides funds. Makes</p> <p>3 regulations for them. Does everything, and the way</p> <p>4 we did that is just, we put in a dummy variable at</p> <p>5 the right place and see if there was really a cost or</p> <p>6 not a cost.</p> <p>7 If there was not a cost, you would</p> <p>8 expect the dummy variables to have a zero</p> <p>9 coefficient. Those are the dummy variables that I</p> <p>10 showed you prior. Okay. And they ended up</p> <p>11 significant, and -- you know, important and</p> <p>12 significant.</p> <p>13 <b>Q. Am I understanding this correctly</b></p> <p>14 <b>that there's -- you are unable to model the actual</b></p> <p>15 <b>effects on the manufacturers, so you used, plus the</b></p> <p>16 <b>taxes, an approximation that you thought would</b></p> <p>17 <b>approximate the effects of the pressure?</b></p> <p>18 A. We did not have a political model</p> <p>19 for the interaction between MITI and Honda, Toyota</p> <p>20 and et cetera, which would have been what was</p> <p>21 required.</p> <p>22 <b>Q. And -- and it was appropriate to --</b></p> <p>23 <b>to use this model that doesn't quite reflect the</b></p> <p>24 <b>facts of the relationship, but captures what you</b></p> <p>25 <b>think is the effect of it?</b></p>	<p style="text-align: right;">Page 44</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 BY MR. DIVER:</p> <p>3 <b>Q. I want to ask you a general</b></p> <p>4 <b>question, if you could explain what double</b></p> <p>5 <b>marginalization is.</b></p> <p>6 A. Double marginalization occurs in</p> <p>7 vertical industries where a -- there's a manufacturer</p> <p>8 -- a producer of a service who then resells or forms</p> <p>9 an agreement with either a retailer or some other</p> <p>10 agent who then re-markets the good to consumers.</p> <p>11 There's a margin in the first</p> <p>12 transaction, and then there's a second margin in the</p> <p>13 second transaction.</p> <p>14 So, that's called -- so the first</p> <p>15 transaction is a transaction between the producer and</p> <p>16 the retailer, and the second transaction between the</p> <p>17 retailer and the customer.</p> <p>18 <b>Q. Does double marginalization help</b></p> <p>19 <b>consumers?</b></p> <p>20 A. Yes.</p> <p>21 MR. KARASIK: Vague and ambiguous.</p> <p>22 Incomplete hypothetical. Lacks foundation.</p> <p>23 ---</p> <p>24 CONTINUATION</p> <p>25 BY MR. DIVER:</p>

<p style="text-align: right;">Page 45</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Does it raise prices for consumers?</b></p> <p>3 MR. KARASIK: Same objections.</p> <p>4 THE WITNESS: Relative to what?</p> <p>5 MR. DIVER: Relative to single</p> <p>6 marginalization.</p> <p>7 MR. KARASIK: Same objections.</p> <p>8 Overly broad.</p> <p>9 THE WITNESS: Probably the answer</p> <p>10 is, no, but it depends on the industry.</p> <p>11 ---</p> <p>12 CONTINUATION</p> <p>13 BY MR. DIVER:</p> <p>14 <b>Q. Is double marginalization profit</b></p> <p>15 <b>maximizing for the sellers and producers?</b></p> <p>16 COUNSEL: Objection.</p> <p>17 Vague.</p> <p>18 MR. KARASIK: Vague and ambiguous.</p> <p>19 Overly broad, and incomplete hypothetical.</p> <p>20 THE WITNESS: I'm not sure what you</p> <p>21 mean actually. There's contracts being signed in the</p> <p>22 middle of this. Everybody is trying to do the best</p> <p>23 they can.</p> <p>24 Thanks.</p> <p>25 ---</p>	<p style="text-align: right;">Page 47</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 CONTINUATION</p> <p>3 BY MR. DIVER:</p> <p>4 <b>Q. Do -- do firms ever make -- take</b></p> <p>5 <b>affirmative efforts to avoid the effect of double</b></p> <p>6 <b>marginalization?</b></p> <p>7 MR. KARASIK: Incomplete</p> <p>8 hypothetical. Lacks foundation.</p> <p>9 THE WITNESS: Again, I don't know</p> <p>10 what you mean by "affirmative efforts."</p> <p>11 ---</p> <p>12 CONTINUATION</p> <p>13 BY MR. DIVER:</p> <p>14 <b>Q. Let me see. On page 15 and 16 of</b></p> <p>15 <b>your report -- put that one down.</b></p> <p>16 A. Okay.</p> <p>17 And what page? I'm sorry.</p> <p>18 <b>Q. I'm on 16.</b></p> <p>19 A. Okay. Thank you.</p> <p>20 <b>Q. The third line down.</b></p> <p>21 A. Okay.</p> <p>22 Go ahead, what's the question?</p> <p>23 <b>Q. Now, you -- perhaps you can explain.</b></p> <p>24 <b>I'm curious to the term double marginalization in</b></p> <p>25 <b>this sentence.</b></p>
<p style="text-align: right;">Page 46</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 CONTINUATION</p> <p>3 BY MR. DIVER:</p> <p>4 <b>Q. If the producer and the retailer are</b></p> <p>5 <b>vertically integrated, would they be able to avoid</b></p> <p>6 <b>double marginalizations?</b></p> <p>7 MR. KARASIK: Incomplete</p> <p>8 hypothetical. Vague and ambiguous. Lacks</p> <p>9 foundation.</p> <p>10 THE WITNESS: They would incur other</p> <p>11 costs in most of the industries I'm aware of. Okay.</p> <p>12 MR. DIVER: Okay.</p> <p>13 THE WITNESS: There's a reason for</p> <p>14 that.</p> <p>15 ---</p> <p>16 CONTINUATION</p> <p>17 BY MR. DIVER:</p> <p>18 <b>Q. But leaving -- leaving the other</b></p> <p>19 <b>costs aside, is the effect of double marginalization</b></p> <p>20 <b>to raise prices?</b></p> <p>21 MR. KARASIK: Same -- same</p> <p>22 objections.</p> <p>23 THE WITNESS: How can you leave the</p> <p>24 other part aside? The industry is an industry.</p> <p>25 ---</p>	<p style="text-align: right;">Page 48</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 MR. KARASIK: Would you like to read</p> <p>3 the sentence so we have some context?</p> <p>4 THE WITNESS: Yeah, I can read it,</p> <p>5 but let me just say -- okay. So, I want to provide</p> <p>6 context.</p> <p>7 So, you know what's going on, which</p> <p>8 is, this is the case. We're asking the question, how</p> <p>9 would the RSN's and the league bundle be priced?</p> <p>10 Okay. And as it is in Dr. Noll's report, the RSN's</p> <p>11 is doing the pricing. In the real world the RSN's</p> <p>12 don't have power to do pricing. So, the MVPD would</p> <p>13 do the pricing. Okay. And if the MVPD did the</p> <p>14 pricing it would have to add a markup.</p> <p>15 ---</p> <p>16 CONTINUATION</p> <p>17 BY MR. DIVER:</p> <p>18 <b>Q. All right.</b></p> <p>19 <b>And if the MVPD -- if the MVPD's</b></p> <p>20 <b>action results, as you suggest here, double</b></p> <p>21 <b>marginalization?</b></p> <p>22 A. The MVPD action --</p> <p>23 MR. KARASIK: Wait a second.</p> <p>24 That mischaracterizes the sentence.</p> <p>25 Again, I'll ask you to read it --</p>

<p style="text-align: right;">Page 49</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: Okay.</p> <p>3 MR. KARASIK: -- if you're going to</p> <p>4 ask him questions about the sentence.</p> <p>5 THE WITNESS: I will read it.</p> <p>6 Do you want me to read it?</p> <p>7 MR. DIVER: Sure.</p> <p>8 THE WITNESS: "The resulting</p> <p>9 equilibrium price of the but-for world League Package</p> <p>10 to DIRECTV's markup, the League would recognize that</p> <p>11 as a result of double marginalization it would lose</p> <p>12 some end customers and it would change its price."</p> <p>13 MR. DIVER: So --</p> <p>14 THE WITNESS: So, this is a caveat</p> <p>15 to my own analysis.</p> <p>16 MR. DIVER: Huh-huh. Yeah, and I am</p> <p>17 just trying to understand.</p> <p>18 I want to come back to this</p> <p>19 analysis, but I'm just trying to understand the</p> <p>20 concept of double marginalization.</p> <p>21 ---</p> <p>22 CONTINUATION</p> <p>23 BY MR. DIVER:</p> <p>24 <b>Q. Relative -- this double</b></p> <p>25 <b>marginalization results in prices that are higher</b></p>	<p style="text-align: right;">Page 51</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Is there kind of a textbook</b></p> <p>3 <b>definition so we can have a working understanding?</b></p> <p>4 A. I think it is what I told you when I</p> <p>5 started this, when I was asked the question.</p> <p>6 <b>Q. And what did you mean "my margin"</b></p> <p>7 <b>when you said there's --</b></p> <p>8 A. Margin means price minus marginal</p> <p>9 cost.</p> <p>10 <b>Q. So, it's -- it's -- it's pricing</b></p> <p>11 <b>above marginal cost by both firms?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Let me -- I'm sure you have seen</b></p> <p>14 <b>this paper.</b></p> <p>15 MR. DIVER: This is Exhibit-3.</p> <p>16 ---</p> <p>17 (At which time The Welfare Effects</p> <p>18 of Bundling in Multichannel Television</p> <p>19 Markets, was received and marked as</p> <p>20 Deposition Exhibit 3 for identification by</p> <p>21 the court reporter.)</p> <p>22 ---</p> <p>23 THE WITNESS: Yes, I have seen his</p> <p>24 paper.</p> <p>25 ---</p>
<p style="text-align: right;">Page 50</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>than the joint profit maximizing prices.</b></p> <p>3 MR. KARASIK: Incomplete</p> <p>4 hypothetical. Lacks foundation.</p> <p>5 THE WITNESS: And you don't know --</p> <p>6 I don't know the answer to that. Depends on the</p> <p>7 industry, the demand of the cost functions.</p> <p>8 ---</p> <p>9 CONTINUATION</p> <p>10 BY MR. DIVER:</p> <p>11 <b>Q. And if you isolated the effects of</b></p> <p>12 <b>double marginalization, you wouldn't be able to say?</b></p> <p>13 COUNSEL: Objection.</p> <p>14 Vague.</p> <p>15 MR. KARASIK: Saying incomplete</p> <p>16 hypothetical. Lacks foundation.</p> <p>17 ---</p> <p>18 (Discussion held off the record.)</p> <p>19 ---</p> <p>20 CONTINUATION</p> <p>21 BY MR. DIVER:</p> <p>22 <b>Q. Now, do you -- do you teach the</b></p> <p>23 <b>concept of double marginalization to your students?</b></p> <p>24 A. Depends on me, or sometimes somebody</p> <p>25 else teaches it, and sometimes I teach it. I mean --</p>	<p style="text-align: right;">Page 52</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 CONTINUATION</p> <p>3 BY MR. DIVER:</p> <p>4 <b>Q. All right.</b></p> <p>5 <b>Now, am I correct in understanding</b></p> <p>6 <b>that this is a -- that Mr. Yurukoglu</b></p> <p>7 <b>-- Dr. Yurukoglu's dissertation was, in effect, an</b></p> <p>8 <b>earlier version of what became this paper?</b></p> <p>9 A. I don't know if it became -- his</p> <p>10 dissertation was on a similar topic.</p> <p>11 <b>Q. It was on a similar topic.</b></p> <p>12 <b>Okay.</b></p> <p>13 <b>And you're an advisor to</b></p> <p>14 <b>Dr. Yurukoglu?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. Now, I notice that</b></p> <p>17 <b>Professor Crawford is listed as a co-author on his</b></p> <p>18 <b>dissertation.</b></p> <p>19 <b>Did you work with him as well?</b></p> <p>20 A. No, I never worked directly with</p> <p>21 Greg.</p> <p>22 <b>Q. Are you familiar with Dr. Crawford's</b></p> <p>23 <b>work?</b></p> <p>24 A. Much less so than with this paper.</p> <p>25 <b>Q. Now, you -- you approved the</b></p>

<p style="text-align: right;">Page 53</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>dissertation; correct?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. And you agree that it was -- this</b></p> <p>5 <b>analysis was reliable?</b></p> <p>6 A. It was certainly more reliable than</p> <p>7 anything that had been done before this.</p> <p>8 <b>Q. And it met the standards of the</b></p> <p>9 <b>economic community?</b></p> <p>10 A. Yes, for two reasons.</p> <p>11 One reason was, it was a</p> <p>12 methodological innovation.</p> <p>13 <b>Q. And what's the other reason?</b></p> <p>14 A. It was better than what had been</p> <p>15 done in this literature prior to this. It was an</p> <p>16 improvement.</p> <p>17 <b>Q. Now, did you review the AER paper</b></p> <p>18 <b>before it was published?</b></p> <p>19 A. No.</p> <p>20 <b>Q. Did you make any suggestions?</b></p> <p>21 A. I saw it in seminars probably. I</p> <p>22 don't recall. It's -- it's considered unethical for</p> <p>23 an advisor to referee a paper by one of his students.</p> <p>24 <b>Q. But you've reviewed this --</b></p> <p>25 A. I've read it since.</p>	<p style="text-align: right;">Page 55</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 A. I think the authors themselves</p> <p>3 understand that parts of it are unreliable, and</p> <p>4 they're writing a subsequent paper right now.</p> <p>5 <b>Q. And what parts are those?</b></p> <p>6 A. I think there's -- I should not</p> <p>7 speak for the authors, but I believe one of their</p> <p>8 issues that I saw in this seminar was viewer hours</p> <p>9 are not the only -- the only indicator of intensity</p> <p>10 of preference.</p> <p>11 <b>Q. And is the lack of consideration of</b></p> <p>12 <b>-- of other indicators mean that this paper shouldn't</b></p> <p>13 <b>have been published?</b></p> <p>14 A. This paper -- again, let's take a</p> <p>15 step back.</p> <p>16 It always depends on what the issue</p> <p>17 at hand is. In this paper the issue at hand was</p> <p>18 whether we should de-bundle cable tiers. This was an</p> <p>19 issue in front of the FCC, I believe at the time, and</p> <p>20 being debated in Congress, and the presumption was</p> <p>21 that if we de-bundled, every person would just buy</p> <p>22 what he wanted or she wanted, and that would be less</p> <p>23 costly to consumers.</p> <p>24 What this paper found is that if</p> <p>25 everybody de-bundled, and you considered that effect</p>
<p style="text-align: right;">Page 54</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>Q. -- since?</b></p> <p>3 A. Yeah.</p> <p>4 <b>Q. You read it prior to this</b></p> <p>5 <b>litigation?</b></p> <p>6 A. Yeah. I was looking at it a few</p> <p>7 weeks ago.</p> <p>8 <b>Q. Was that the first time you looked</b></p> <p>9 <b>at it?</b></p> <p>10 A. You know, I really don't recall.</p> <p>11 <b>Q. Do you agree that it's a reliable</b></p> <p>12 <b>paper?</b></p> <p>13 MR. KARASIK: Asked and answered.</p> <p>14 MR. DIVER: I believe I asked him</p> <p>15 about the dissertation.</p> <p>16 THE WITNESS: Again, it's more</p> <p>17 reliable than what had been done in this literature</p> <p>18 prior to this, considerably, for the industry it's</p> <p>19 studying.</p> <p>20 ---</p> <p>21 CONTINUATION</p> <p>22 BY MR. DIVER:</p> <p>23 <b>Q. Huh-huh.</b></p> <p>24 <b>Is there any part of it that you</b></p> <p>25 <b>think is -- is unreliable?</b></p>	<p style="text-align: right;">Page 56</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 on the content providers, they would re --</p> <p>3 re-do their contracts, increase their fees, and the</p> <p>4 prices to consumers would actually go up.</p> <p>5 And so, their conclusion was very</p> <p>6 different from what was in literature prior to it,</p> <p>7 and that was because of the mode of analysis.</p> <p>8 <b>Q. And you agree if -- say the FCC had</b></p> <p>9 <b>asked Drs. Crawford or Yurukoglu to analyze this</b></p> <p>10 <b>question that you just described, that they would be</b></p> <p>11 <b>entitled to do rely on the results?</b></p> <p>12 MR. KARASIK: Objection. Lacks</p> <p>13 foundation. Vague and ambiguous. Incomplete</p> <p>14 hypothetical.</p> <p>15 THE WITNESS: Depends what issue</p> <p>16 they were studying, but if they were studying</p> <p>17 de-bundling --</p> <p>18 MR. DIVER: Yes.</p> <p>19 THE WITNESS: -- I'm sure this would</p> <p>20 have an effect on it.</p> <p>21 ---</p> <p>22 CONTINUATION</p> <p>23 BY MR. DIVER:</p> <p>24 <b>Q. Now, is the analysis in here an</b></p> <p>25 <b>instance of the BLP method?</b></p>

<p style="text-align: right;">Page 57</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 A. So, this analysis -- BLP method is</p> <p>3 directed at products that are sold to consumers. So,</p> <p>4 the second stage of this model there is an upstream</p> <p>5 part where the content providers are contracting with</p> <p>6 the networks, and then the networks are selling to</p> <p>7 consumers. That stage uses a BLP model.</p> <p>8 <b>Q. Huh-huh.</b></p> <p>9 <b>And was it a good choice for them to</b></p> <p>10 <b>use that?</b></p> <p>11 A. I don't think it would have been</p> <p>12 possible to do with any other model. Maybe not, I</p> <p>13 don't know, but --</p> <p>14 <b>Q. And you agree that viewership data</b></p> <p>15 <b>is a good basis for determining consumer demand with</b></p> <p>16 <b>other indicators?</b></p> <p>17 MR. KARASIK: Objection. Incomplete</p> <p>18 hypothetical. Vague and ambiguous.</p> <p>19 THE WITNESS: Depends on the</p> <p>20 context.</p> <p>21 ---</p> <p>22 CONTINUATION</p> <p>23 BY MR. DIVER:</p> <p>24 <b>Q. But in this paper, that's my</b></p> <p>25 <b>question?</b></p>	<p style="text-align: right;">Page 59</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>which negotiation of a price occurs need to be</b></p> <p>3 <b>subject to a formal bargaining model?</b></p> <p>4 MR. KARASIK: Overly broad. Vague</p> <p>5 and ambiguous. Lacks foundation. Incomplete</p> <p>6 hypothetical.</p> <p>7 THE WITNESS: I don't want to say</p> <p>8 every anything. Okay, and I won't.</p> <p>9 ---</p> <p>10 CONTINUATION</p> <p>11 BY MR. DIVER:</p> <p>12 <b>Q. So, is your answer no?</b></p> <p>13 MR. KARASIK: Same objections.</p> <p>14 Asked and answered.</p> <p>15 THE WITNESS: And what I'll say is,</p> <p>16 you study the institutions of the market, and what's</p> <p>17 required by the institutions is what you do, or what</p> <p>18 you try to approximate at least.</p> <p>19 ---</p> <p>20 CONTINUATION</p> <p>21 BY MR. DIVER:</p> <p>22 <b>Q. Now, did C&amp;Y analyze any of the</b></p> <p>23 <b>vertical relationships in this market, other than the</b></p> <p>24 <b>relationship between the programmers and the MVPD's?</b></p> <p>25 A. Content providers and MVPD's.</p>
<p style="text-align: right;">Page 58</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 A. It was better than what was done</p> <p>3 before. I think now they're using more data.</p> <p>4 <b>Q. Now, they -- they introduced a</b></p> <p>5 <b>formal bargaining model into -- into the model.</b></p> <p>6 <b>Is that correct?</b></p> <p>7 A. Correct.</p> <p>8 <b>Q. Now, is it -- is it their conclusion</b></p> <p>9 <b>that every vertical relationship must be subject to a</b></p> <p>10 <b>formal bar -- bargaining model?</b></p> <p>11 MR. KARASIK: Did you say, is it</p> <p>12 their conclusion?</p> <p>13 MR. DIVER: Yeah.</p> <p>14 MR. KARASIK: The document speaks</p> <p>15 for itself. Calls for conclusion. No foundation.</p> <p>16 MR. DIVER: You can answer.</p> <p>17 THE WITNESS: I don't remember what</p> <p>18 they -- I'm sure they didn't conclude that every</p> <p>19 vertical model -- nobody would be that silly to</p> <p>20 include everything about everything.</p> <p>21 We do things based on institutions.</p> <p>22 ---</p> <p>23 CONTINUATION</p> <p>24 BY MR. DIVER:</p> <p>25 <b>Q. Does every vertical relationship in</b></p>	<p style="text-align: right;">Page 60</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 I don't know what you mean by vert</p> <p>3 -- I mean, the vertical relationship is both sides,</p> <p>4 right. So, the other side is also involved. It's</p> <p>5 sort of an upstream part and a downstream part we</p> <p>6 usually call in economics.</p> <p>7 <b>Q. Okay.</b></p> <p>8 <b>Is there any -- is there any other</b></p> <p>9 <b>relationship in this market that is subject to a</b></p> <p>10 <b>formal bargaining model than the relationship between</b></p> <p>11 <b>the content providers and the MVPD's?</b></p> <p>12 MR. KARASIK: Vague and ambiguous.</p> <p>13 THE WITNESS: Yeah, I would have to</p> <p>14 look at how the content providers are doing things,</p> <p>15 each one individually.</p> <p>16 ---</p> <p>17 CONTINUATION</p> <p>18 BY MR. DIVER:</p> <p>19 <b>Q. Did Drs. Crawford and Yurukoglu</b></p> <p>20 <b>bargain any -- any bargaining involving the content</b></p> <p>21 <b>providers, other than their contracts with the</b></p> <p>22 <b>MVPD's?</b></p> <p>23 A. Not to my recollection. You know, I</p> <p>24 can't remember exactly what they did, but not to my</p> <p>25 recollection.</p>

<p style="text-align: right;">Page 61</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Now, how did they model the prices</b></p> <p>3 <b>that MVPD's charged to consumers, that stage?</b></p> <p>4 A. National prices.</p> <p>5 <b>Q. And that's the Bertrand model?</b></p> <p>6 A. So, we've been over this also, I</p> <p>7 think. So, Bertrand came before Nash. Okay. So,</p> <p>8 Bertrand was 19th century and Nash is 20th century.</p> <p>9 So, I don't know what you call it.</p> <p>10 I think what Dr. Noll means when he</p> <p>11 said, Bertrand, and I think he said, Bertrand, Nash</p> <p>12 Bertrand or something at a different point, I think</p> <p>13 he means national prices.</p> <p>14 <b>Q. All right. Oh, okay.</b></p> <p>15 <b>And if I used the term Bertrand, I</b></p> <p>16 <b>think I mean the same thing as Nash Bertrand,</b></p> <p>17 <b>national prices. If you're okay with that, then we</b></p> <p>18 <b>can go with that.</b></p> <p>19 A. I'm okay with that.</p> <p>20 <b>Q. So, that just so -- so, the MVPD's</b></p> <p>21 <b>pricing to consumers was modeled by Nash Bertrand --</b></p> <p>22 A. Yeah, I'm pretty sure.</p> <p>23 <b>Q. -- model in this case, was that a</b></p> <p>24 <b>mistake?</b></p> <p>25 A. No -- well, a mistake? I don't want</p>	<p style="text-align: right;">Page 63</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 So, the Nash price depends on cost.</p> <p>3 So, we allowed these extra costs to MITI, and we</p> <p>4 allowed them in a general way so we could estimate</p> <p>5 the costs because we didn't know what they were.</p> <p>6 ---</p> <p>7 CONTINUATION</p> <p>8 BY MR. DIVER:</p> <p>9 <b>Q. Now, you'll agree that consumers</b></p> <p>10 <b>bargain with dealers over the price of their</b></p> <p>11 <b>automobiles; correct?</b></p> <p>12 MR. KARASIK: Overly broad. Vague</p> <p>13 and ambiguous.</p> <p>14 THE WITNESS: They argue over the</p> <p>15 difference between the inventory price that the</p> <p>16 management sets, okay, and the price they pay.</p> <p>17 The inventory price is set by</p> <p>18 General Motors or Honda, whoever is sending it.</p> <p>19 ---</p> <p>20 CONTINUATION</p> <p>21 BY MR. DIVER:</p> <p>22 <b>Q. And -- but you didn't need to -- you</b></p> <p>23 <b>didn't need to model the bargaining that goes on</b></p> <p>24 <b>between those two?</b></p> <p>25 A. As I said before, we studied this,</p>
<p style="text-align: right;">Page 62</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 to say it is probably the best approximation you</p> <p>3 could do at this --</p> <p>4 <b>Q. There's no need to -- to -- to -- to</b></p> <p>5 <b>model bargaining with consumers?</b></p> <p>6 A. Well, it's two things.</p> <p>7 I don't know enough about -- my</p> <p>8 guess is, no, by the way. I don't know enough about</p> <p>9 exactly how this is marketed.</p> <p>10 Also, I'm sure that everybody else</p> <p>11 that studied this industry prior to the MO is</p> <p>12 considering the de-bundling, okay, used something</p> <p>13 like the national prices. I don't know the whole</p> <p>14 literature, but I'd be amazed if it wasn't the case.</p> <p>15 <b>Q. Now, going back to your automobile</b></p> <p>16 <b>paper.</b></p> <p>17 <b>Did you use a Nash prices model</b></p> <p>18 <b>to --</b></p> <p>19 MR. KARASIK: What paper are you</p> <p>20 referring to? There are several papers.</p> <p>21 MR. DIVER: The VER. Excuse me.</p> <p>22 The one we were discussing, the Exhibit-2.</p> <p>23 MR. KARASIK: Exhibit-2.</p> <p>24 THE WITNESS: Yes. National prices</p> <p>25 modified for allowing these extra costs to MITI.</p>	<p style="text-align: right;">Page 64</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 and it was too small a fraction of a variance in</p> <p>3 price to have any impact on our results.</p> <p>4 <b>Q. Did you model any bargaining between</b></p> <p>5 <b>components, suppliers and manufacturers?</b></p> <p>6 A. We modeled the cost of</p> <p>7 manufacturers, and the cost of manufacturers includes</p> <p>8 the prices that the component suppliers provided.</p> <p>9 <b>Q. Did you assess the question of</b></p> <p>10 <b>whether, given the removal of the voluntary export</b></p> <p>11 <b>restraints, the parts suppliers may wish to</b></p> <p>12 <b>renegotiate those contracts?</b></p> <p>13 A. No. We took the cost functions</p> <p>14 fixed, but, again, this is going to be one of those</p> <p>15 things, just like the other things, that I'm sure we</p> <p>16 put caveats in. It's also not customary to go --</p> <p>17 this is not customary.</p> <p>18 <b>Q. It's not customary to -- to -- to</b></p> <p>19 <b>model bargaining?</b></p> <p>20 A. No. It is customary to model</p> <p>21 bargaining, at least currently.</p> <p>22 <b>Q. Now, you understand, I assume, that</b></p> <p>23 <b>Major League Baseball has a contract with ESPN.</b></p> <p>24 A. I presume that's true.</p> <p>25 <b>Q. And do you know that the National</b></p>

<p style="text-align: right;">Page 65</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>Hockey League has a contract with NBC Sports?</b></p> <p>3 A. Do I know or do I expect?</p> <p>4 I expect it to be true, but I don't</p> <p>5 know. I have not seen a contract.</p> <p>6 <b>Q. Now, did Drs. Crawford and Yurukoglu</b></p> <p>7 <b>model the bargaining between the leagues in those</b></p> <p>8 <b>networks under a la Carte?</b></p> <p>9 A. Drs. Crawford and Yurukoglu had all</p> <p>10 of the content providers to television in their</p> <p>11 model. Okay. What they did is, they modeled the</p> <p>12 relationship between those content providers and the</p> <p>13 MVPD's by this Nash bargaining. That's --</p> <p>14 <b>Q. Do you have any reason to doubt</b></p> <p>15 <b>that, if ESPN became a standalone a la Carte channel,</b></p> <p>16 <b>that Major League Baseball may wish to renegotiate</b></p> <p>17 <b>its contract with ESPN?</b></p> <p>18 MR. KARASIK: Vague and ambiguous.</p> <p>19 Incomplete hypothetical.</p> <p>20 THE WITNESS: I know less about the</p> <p>21 ESPN contract than I do about the RSN's contracts.</p> <p>22 So, if you want to rephrase that, it</p> <p>23 may be easier to answer it.</p> <p>24 ---</p> <p>25 CONTINUATION</p>	<p style="text-align: right;">Page 67</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>Q. -- that is in the C&amp;Y paper, and</b></p> <p>3 <b>that's one of two relationships?</b></p> <p>4 A. Yeah, but that's the one that is</p> <p>5 analogous, yeah.</p> <p>6 <b>Q. Okay.</b></p> <p>7 <b>I mean, the paper doesn't tell me</b></p> <p>8 <b>anything about a bargain between TSR, does it --</b></p> <p>9 A. Not that I recall.</p> <p>10 <b>Q. -- or between clubs and leagues?</b></p> <p>11 A. Not that I recall.</p> <p>12 Though, again, you should keep in</p> <p>13 mind their goal, and their goal was to show what</p> <p>14 would happen if we de-bundled, and their goal was to</p> <p>15 find out whether -- what was generally thought to be</p> <p>16 true, would, in fact, be true.</p> <p>17 <b>Q. And they didn't -- they didn't model</b></p> <p>18 <b>anything that came to RSN's bargaining with leagues?</b></p> <p>19 A. My presumption is for the major</p> <p>20 conclusion of their paper, that was not.</p> <p>21 <b>Q. Do you think that they -- they</b></p> <p>22 <b>tested the effects of -- of those other bargaining --</b></p> <p>23 A. I can't tell you that.</p> <p>24 <b>Q. -- situations?</b></p> <p>25 A. I wasn't a referee on this paper.</p>
<p style="text-align: right;">Page 66</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 BY MR. DIVER:</p> <p>3 <b>Q. Did you ever suggest to</b></p> <p>4 <b>Dr. Yurukoglu that he model the bargaining between</b></p> <p>5 <b>either of the leagues and any content providers?</b></p> <p>6 A. In which paper? In -- in Dr. Noll's</p> <p>7 paper or Dr. Noll's report?</p> <p>8 <b>Q. Did -- did you ever recommend to</b></p> <p>9 <b>Dr. Yurukoglu that he add such an analysis to his</b></p> <p>10 <b>model?</b></p> <p>11 A. Dr. Yurukoglu knows much more about</p> <p>12 the sports industry and about the content providers</p> <p>13 in this industry than I do.</p> <p>14 I would have relied on him for that.</p> <p>15 <b>Q. Now, so you want to talk about</b></p> <p>16 <b>RSN's.</b></p> <p>17 <b>RSN's are content providers;</b></p> <p>18 <b>correct?</b></p> <p>19 A. Correct.</p> <p>20 <b>Q. And they sell their programs to</b></p> <p>21 <b>MVPD's?</b></p> <p>22 A. Correct.</p> <p>23 <b>Q. So, that -- that's the relationship</b></p> <p>24 <b>that is analogous to bargaining that -- that --</b></p> <p>25 A. It's one of them.</p>	<p style="text-align: right;">Page 68</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 I can't tell you that.</p> <p>3 <b>Q. Do you have any reason to believe</b></p> <p>4 <b>that the lack of such bargaining renders this paper</b></p> <p>5 <b>unreliable?</b></p> <p>6 A. Again, the issue is unreliable with</p> <p>7 respect to what? And the -- and the issue raised by</p> <p>8 the paper was that de-bundling would enhance consumer</p> <p>9 welfare.</p> <p>10 In this paper it made it clear that</p> <p>11 that may not happen, and they claim it's unlikely to</p> <p>12 happen, and I think that's a fairly reliable result.</p> <p>13 Certainly a result that the regulatory agencies</p> <p>14 should keep in mind when they're determining this</p> <p>15 regulation.</p> <p>16 <b>Q. Now, you agree -- you understand</b></p> <p>17 <b>that, in this case, there are both television</b></p> <p>18 <b>products and Internet products?</b></p> <p>19 A. In Dr. Noll's case?</p> <p>20 <b>Q. Yeah.</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. And you agree that there are no</b></p> <p>23 <b>MVPD's involved in the Internet?</b></p> <p>24 A. As far as I understand, it's direct.</p> <p>25 <b>Q. So, that relationship that is</b></p>

<p style="text-align: right;">Page 69</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>directly addressed in this paper doesn't have any</b></p> <p>3 <b>analog on the Internet side?</b></p> <p>4 MR. KARASIK: I didn't understand</p> <p>5 your question.</p> <p>6 THE WITNESS: Yeah, neither did I.</p> <p>7 MR. DIVER: All right.</p> <p>8 ---</p> <p>9 CONTINUATION</p> <p>10 BY MR. DIVER:</p> <p>11 <b>Q. If I were to analyze the Inter --</b></p> <p>12 <b>Internet distribution toward the program, I would not</b></p> <p>13 <b>find a relationship in that distribution that wasn't</b></p> <p>14 <b>analogous to the one that's modeled as bargaining in</b></p> <p>15 <b>this case?</b></p> <p>16 A. Unless you also wanted to do --</p> <p>17 oops. Excuse me.</p> <p>18 MR. KARASIK: Vague and ambiguous.</p> <p>19 Incomplete hypothetical.</p> <p>20 MR. DIVER: You can answer.</p> <p>21 THE WITNESS: Okay.</p> <p>22 You know, the other relationship</p> <p>23 would be between the RSN's and the teams. Okay. So,</p> <p>24 there might well be, and there, undoubtedly, would be</p> <p>25 a contracting arrangement or bargaining rela --</p>	<p style="text-align: right;">Page 71</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 I mean, it's a result of a</p> <p>3 bargaining process, and then re --</p> <p>4 <b>Q. We may -- we may have a problem, but</b></p> <p>5 <b>I'm just not smart enough. I thought I understood</b></p> <p>6 <b>something about double marginalization, but I guess I</b></p> <p>7 <b>don't.</b></p> <p>8 MR. DIVER: Exhibit-4, I believe.</p> <p>9 ---</p> <p>10 (At which time Price Discrimination</p> <p>11 and Vertical Relationships in Multichannel</p> <p>12 Television was received and marked as</p> <p>13 Deposition Exhibit 4 for identification by</p> <p>14 the court reporter.)</p> <p>15 ---</p> <p>16 CONTINUATION</p> <p>17 BY MR. DIVER:</p> <p>18 <b>Q. Now, I have -- do you recognize the</b></p> <p>19 <b>cover?</b></p> <p>20 A. Yeah, I saw it. I have this in my</p> <p>21 file somewhere.</p> <p>22 <b>Q. Okay.</b></p> <p>23 <b>So, this is a collection of four</b></p> <p>24 <b>pages of the dissertation of Ali Yurukoglu.</b></p> <p>25 <b>I have the whole thing, but I didn't</b></p>
<p style="text-align: right;">Page 70</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 negotiations.</p> <p>3 ---</p> <p>4 CONTINUATION</p> <p>5 BY MR. DIVER:</p> <p>6 <b>Q. Right.</b></p> <p>7 <b>But we just decided that the</b></p> <p>8 <b>bargaining and the paper doesn't apply to that</b></p> <p>9 <b>relationship.</b></p> <p>10 A. I keep on saying this.</p> <p>11 So, I'm going to try it once more.</p> <p>12 <b>Q. Go ahead.</b></p> <p>13 A. Okay.</p> <p>14 The way you build the model for the</p> <p>15 infusion of the industry and the issue you want to</p> <p>16 study, okay, Dr. Noll's analysis is on a way</p> <p>17 different set of issues. It's on extraterritorial</p> <p>18 rights.</p> <p>19 <b>Q. Okay.</b></p> <p>20 A. The analysis in this paper was on</p> <p>21 de-bundling.</p> <p>22 <b>Q. Do you agree that the rise in prices</b></p> <p>23 <b>that Crawford and Yurukoglu observed was the result</b></p> <p>24 <b>of increased double marginalization?</b></p> <p>25 A. I don't know what that means.</p>	<p style="text-align: right;">Page 72</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>think it was useful.</b></p> <p>3 <b>Do you see in the introduction --</b></p> <p>4 MR. KARASIK: Can I understand what</p> <p>5 you just said?</p> <p>6 So, this is certain parts or</p> <p>7 excerpts?</p> <p>8 MR. DIVER: This is the excerpts</p> <p>9 from the dissertation.</p> <p>10 MR. KARASIK: So, you're going to</p> <p>11 ask the witness to look at pages 1 and 67 and nothing</p> <p>12 in between?</p> <p>13 I'm just going to object, for the</p> <p>14 record. That's not proper.</p> <p>15 MR. DIVER: Oh, fine.</p> <p>16 ---</p> <p>17 CONTINUATION</p> <p>18 BY MR. DIVER:</p> <p>19 <b>Q. I'm looking at one, and I'm toward</b></p> <p>20 <b>the bottom. Dr. Yurukoglu wrote, "total welfare</b></p> <p>21 <b>decreases slightly due to a worsening of the double</b></p> <p>22 <b>marginalization problem".</b></p> <p>23 A. Huh-huh. I see that.</p> <p>24 <b>Q. Now, you reviewed what you said was</b></p> <p>25 <b>his dissertation; correct?</b></p>

<p style="text-align: right;">Page 73</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2           A. I'm not sure I reviewed the</p> <p>3 introduction.</p> <p>4           <b>Q. Do you understand what he's saying?</b></p> <p>5           A. Yes. I think I do.</p> <p>6           <b>Q. What is he saying?</b></p> <p>7           A. I think he's saying the result of</p> <p>8 the bargaining process provided a price marginal cost</p> <p>9 markup to the content providers, which is necessary</p> <p>10 to cover their fixed costs they were covering in a</p> <p>11 different way before. And so, that was one cost.</p> <p>12           And then the MVPD's added another</p> <p>13 markup. They had to add that markup just to cover</p> <p>14 their fixed costs so they wouldn't be a liable</p> <p>15 enterprise.</p> <p>16           <b>Q. But they're already covering their</b></p> <p>17 <b>markup -- markup -- we'll get back to that.</b></p> <p>18           <b>Why does he call it a problem --</b></p> <p>19           MR. KARASIK: You're asking --</p> <p>20           MR. DIVER: -- double</p> <p>21 marginalization?</p> <p>22           MR. KARASIK: -- what this witness --</p> <p>23 why this?</p> <p>24           MR. DIVER: Yes.</p> <p>25           THE WITNESS: I have no idea.</p>	<p style="text-align: right;">Page 75</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2           Oh, up here.</p> <p>3           MR. KARASIK: What page, counsel?</p> <p>4           MR. DIVER: 658.</p> <p>5           THE WITNESS: I'm going to start</p> <p>6 early on just to see where we are.</p> <p>7                   (Pause)</p> <p>8           THE WITNESS: Okay.</p> <p>9           I'm not sure I know all of the</p> <p>10 relevant literature on the topic.</p> <p>11           Let me just say that before I go on.</p> <p>12           MR. KARASIK: What is the question</p> <p>13 pending?</p> <p>14           Wait a minute.</p> <p>15           THE WITNESS: There's no question</p> <p>16 pending, but there's about to be.</p> <p>17           MR. KARASIK: Okay.</p> <p>18           Wait for a question.</p> <p>19           THE WITNESS: Okay. Thank you.</p> <p>20           Sorry.</p> <p>21                   ---</p> <p>22           CONTINUATION</p> <p>23 BY MR. DIVER:</p> <p>24           <b>Q. Well, do you understand what he</b></p> <p>25 <b>means when he said that "linear input costs above the</b></p>
<p style="text-align: right;">Page 74</p> <p>1                   HIGHLY CONFIDENTIAL</p> <p>2           MR. KARASIK: Lacks foundation.</p> <p>3           THE WITNESS: I have no idea. He</p> <p>4 could have called it 15 different things.</p> <p>5                   ---</p> <p>6           CONTINUATION</p> <p>7 BY MR. DIVER:</p> <p>8           <b>Q. Do you understand that some people</b></p> <p>9 <b>think of double marginalization as a problem?</b></p> <p>10           COUNSEL: Objection.</p> <p>11           Vague.</p> <p>12           THE WITNESS: Perhaps. I mean, I</p> <p>13 don't know the answer to that.</p> <p>14                   ---</p> <p>15           CONTINUATION</p> <p>16 BY MR. DIVER:</p> <p>17           <b>Q. Let me turn back to the NYU paper,</b></p> <p>18 <b>and I want to look at page 658 --</b></p> <p>19           A. Okay.</p> <p>20           <b>Q. -- and you are welcomed to review</b></p> <p>21 <b>the text as much as you want.</b></p> <p>22           <b>I want to focus on the footnote.</b></p> <p>23           A. Text is heavy duty. The footnote, I</p> <p>24 have to read the text for.</p> <p>25           Where is the footnote in the text?</p>	<p style="text-align: right;">Page 76</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>production marginal cost, in this case zero, are</b></p> <p>3 <b>often considered unrealistic"?</b></p> <p>4           MR. KARASIK: He is asking your</p> <p>5 understanding of that.</p> <p>6           COUNSEL: I'm going to object.</p> <p>7           Mischaracterizes the document.</p> <p>8           MR. KARASIK: It's not clear to me,</p> <p>9 but I would suggest that he's asking for your</p> <p>10 understanding of what he said in number 23.</p> <p>11           THE WITNESS: Okay.</p> <p>12           I think you have to read the whole</p> <p>13 footnote, and you have to read where it comes into in</p> <p>14 the paper.</p> <p>15           MR. DIVER: Okay.</p> <p>16           THE WITNESS: Okay.</p> <p>17           So, we assume that the agreement is</p> <p>18 with dish and channel that are simple linear fees.</p> <p>19           Okay. How much must the distributor pay to the</p> <p>20 channel each month for each subscriber that would</p> <p>21 receive the channel?</p> <p>22           The footnote refers to the fact that</p> <p>23 there is literature that assumes the linear marginal</p> <p>24 cost can be zero. It's all in the fixed cost, okay,</p> <p>25 that they have to cover by the markup, and they're</p>

<p style="text-align: right;">Page 77</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 saying that there's also literature that says that</p> <p>3 that's not what will be done. The rational for</p> <p>4 them -- okay.</p> <p>5 Go ahead.</p> <p>6 ---</p> <p>7 CONTINUATION</p> <p>8 BY MR. DIVER:</p> <p>9 <b>Q. Do you disagree with their</b></p> <p>10 <b>assertions that some people would consider it</b></p> <p>11 <b>unrealistic?</b></p> <p>12 A. No, I don't know what some people</p> <p>13 think.</p> <p>14 <b>Q. Do you think it would be</b></p> <p>15 <b>unrealistic?</b></p> <p>16 A. No, and the reason I don't think it</p> <p>17 is unrealistic is because they say in the paragraph</p> <p>18 preceding that that's actually what's done.</p> <p>19 <b>Q. So, will you agree that if -- if --</b></p> <p>20 <b>if the double marginalization increases they would be</b></p> <p>21 <b>less likely to do it that way?</b></p> <p>22 COUNSEL: Objection.</p> <p>23 THE WITNESS: I honestly don't know</p> <p>24 what you mean.</p> <p>25 MR. KARASIK: Hold on.</p>	<p style="text-align: right;">Page 79</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 COUNSEL: Objection to form.</p> <p>3 THE WITNESS: Is it where? What?</p> <p>4 ---</p> <p>5 CONTINUATION</p> <p>6 BY MR. DIVER:</p> <p>7 <b>Q. Why would somebody choose a two-part</b></p> <p>8 <b>tariff instead of straight linear pricing?</b></p> <p>9 MR. KARASIK: Incomplete</p> <p>10 hypothetical. Vague and ambiguous.</p> <p>11 THE WITNESS: There are times when</p> <p>12 it would lead to higher profits.</p> <p>13 ---</p> <p>14 CONTINUATION</p> <p>15 BY MR. DIVER:</p> <p>16 <b>Q. And what would those circumstances</b></p> <p>17 <b>be?</b></p> <p>18 MR. KARASIK: Same objections.</p> <p>19 THE WITNESS: You have to give me</p> <p>20 models, and then I can tell you, or maybe I can tell</p> <p>21 you without looking it up.</p> <p>22 ---</p> <p>23 (Discussion held off the record.)</p> <p>24 ---</p> <p>25 CONTINUATION</p>
<p style="text-align: right;">Page 78</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Vague and ambiguous. Incomplete</p> <p>3 hypothetical.</p> <p>4 ---</p> <p>5 CONTINUATION</p> <p>6 BY MR. DIVER:</p> <p>7 <b>Q. Do you understand why people think</b></p> <p>8 <b>that fixed transfers can make both better off after</b></p> <p>9 <b>changing the input cost to marginal cost?</b></p> <p>10 MR. KARASIK: Lacks foundation.</p> <p>11 Vague and ambiguous. Incomplete hypothetical.</p> <p>12 THE WITNESS: In certain structures</p> <p>13 it would be true. I think, although, that, you know,</p> <p>14 I would have to write down things, and figure it out.</p> <p>15 ---</p> <p>16 CONTINUATION</p> <p>17 BY MR. DIVER:</p> <p>18 <b>Q. Do you -- do you know what a</b></p> <p>19 <b>two-part tariff is?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. What is a two-part tariff?</b></p> <p>22 A. It's usually considered a fixed fee,</p> <p>23 and then a marginal cost.</p> <p>24 <b>Q. And why would somebody use a</b></p> <p>25 <b>two-part tariff?</b></p>	<p style="text-align: right;">Page 80</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 BY MR. DIVER:</p> <p>3 <b>Q. When you -- when you -- when you</b></p> <p>4 <b>teach double marginalization, do you teach two-part</b></p> <p>5 <b>tariffs as a potential response?</b></p> <p>6 A. No. Do I when I do it?</p> <p>7 No, I don't.</p> <p>8 <b>Q. Is -- are two-part tariffs a</b></p> <p>9 <b>strategy for dealing with double marginalization?</b></p> <p>10 MR. KARASIK: Vague -- vague and</p> <p>11 ambiguous.</p> <p>12 THE WITNESS: Well, when you say,</p> <p>13 "dealing with double marginalization," I don't know</p> <p>14 what you mean.</p> <p>15 ---</p> <p>16 CONTINUATION</p> <p>17 BY MR. DIVER:</p> <p>18 <b>Q. With -- with improving the</b></p> <p>19 <b>profitability of a relationship.</b></p> <p>20 MR. KARASIK: Vague and ambiguous.</p> <p>21 Incomplete hypothetical.</p> <p>22 THE WITNESS: It can be true. It</p> <p>23 depends on the model.</p> <p>24 ---</p> <p>25 CONTINUATION</p>

<p style="text-align: right;">Page 81</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 BY MR. DIVER:</p> <p>3 Q. Do you have any reason to doubt that</p> <p>4 reasonable economists might view it as an unrealistic</p> <p>5 model to prices as linear?</p> <p>6 A. In this industry?</p> <p>7 MR. KARASIK: Vague and ambiguous.</p> <p>8 Incomplete hypothetical.</p> <p>9 MR. DIVER: Yes.</p> <p>10 THE WITNESS: The paragraph before,</p> <p>11 I don't know any economist -- I would be surprised if</p> <p>12 anybody I trusted did not trust the paragraph before</p> <p>13 that says, this is how it is done in the industry.</p> <p>14 So, if we want to approximate the</p> <p>15 industry, this is what we do. But, you know,</p> <p>16 somebody could doubt that. I don't know.</p> <p>17 ---</p> <p>18 CONTINUATION</p> <p>19 BY MR. DIVER:</p> <p>20 Q. But if there was a change to the</p> <p>21 industry that would enhance profits, you would expect</p> <p>22 that to change?</p> <p>23 MR. KARASIK: Vague and ambiguous.</p> <p>24 Incomplete hypothetical.</p> <p>25 THE WITNESS: I would have expected</p>	<p style="text-align: right;">Page 83</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 if the bargain didn't change, then it would be</p> <p>3 unnecessary to conduct this -- this exercise.</p> <p>4 MR. KARASIK: Vague and ambiguous.</p> <p>5 THE WITNESS: I believe in the one</p> <p>6 contract I looked at, okay, in every contract --</p> <p>7 well, at least in the one I looked at, I shouldn't</p> <p>8 say in every contract -- there is a clause that says,</p> <p>9 "if there is a material change in the environment, we</p> <p>10 get to renegotiate."</p> <p>11 ---</p> <p>12 CONTINUATION</p> <p>13 BY MR. DIVER:</p> <p>14 Q. Let's focus on the second sentence</p> <p>15 here.</p> <p>16 A. Sure.</p> <p>17 So, you want me to read it?</p> <p>18 Q. Back to 23. Paragraph 23, the</p> <p>19 footnote.</p> <p>20 A. Yeah.</p> <p>21 Q. It says, "when there is downstream</p> <p>22 competition, however, committing to linear contracts</p> <p>23 is one way of avoiding the dissipation of profits due</p> <p>24 to such competition."</p> <p>25 A. I do read it.</p>
<p style="text-align: right;">Page 82</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 it to change already prior to this.</p> <p>3 ---</p> <p>4 CONTINUATION</p> <p>5 BY MR. DIVER:</p> <p>6 Q. You agree that the bargain --</p> <p>7 A. Perhaps. It depends.</p> <p>8 Q. -- that the bargaining model in the</p> <p>9 paper has an effect because the bargaining situation</p> <p>10 is different in the a la Carte world than it is in</p> <p>11 the bundled cable world?</p> <p>12 MR. KARASIK: Vague and ambiguous.</p> <p>13 Incomplete hypothetical.</p> <p>14 THE WITNESS: Again, I'm trying to</p> <p>15 figure out what you're trying to get at.</p> <p>16 ---</p> <p>17 CONTINUATION</p> <p>18 BY MR. DIVER:</p> <p>19 Q. Well, the programing providers</p> <p>20 bargain now with MVPD's; correct?</p> <p>21 A. Content providers.</p> <p>22 Q. Content providers?</p> <p>23 A. Yes.</p> <p>24 Q. Yes.</p> <p>25 And they would bargain if -- if --</p>	<p style="text-align: right;">Page 84</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you believe that that -- that</p> <p>3 justifies using modeling linear contracts in this</p> <p>4 case?</p> <p>5 MR. KARASIK: Asked and answered.</p> <p>6 Vague and ambiguous.</p> <p>7 THE WITNESS: Again, I'll answer</p> <p>8 exactly what I said before.</p> <p>9 What would convince me is the fact</p> <p>10 that that's what they do. So, you know, when you are</p> <p>11 writing an article, okay, it's -- you cite all the</p> <p>12 relevant literature and explain it, and that's what</p> <p>13 he's doing here.</p> <p>14 ---</p> <p>15 CONTINUATION</p> <p>16 BY MR. DIVER:</p> <p>17 Q. Now, if -- if an economist came to</p> <p>18 you and said that he or she thought that this model</p> <p>19 was unrealistic because of the linear pricing</p> <p>20 assumption, would you judge that economist to be</p> <p>21 unreasonable, or do you think that's a reasonable</p> <p>22 position an economist could take?</p> <p>23 MR. KARASIK: Asked and answered.</p> <p>24 THE WITNESS: You know, it would</p> <p>25 depend what he -- why he felt it was unreasonable or</p>

<p style="text-align: right;">Page 93</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 consequences from our baseline, full a la Carte" --</p> <p>3 model. So, the ALC did the a la Carte model</p> <p>4 -- "counterfactual with input-cost</p> <p>5 renegotiation." Okay. So, they allow for input cost</p> <p>6 renegotiation.</p> <p>7 "As in Table 8, downstream prices</p> <p>8 are set at the renegotiated input costs. See</p> <p>9 footnote 39. The first three columns report weighted</p> <p>10 average across distributors of our estimated per</p> <p>11 subscriber input costs under bundling and ALC</p> <p>12 equilibria."</p> <p>13 So, without going into the heart of</p> <p>14 the paper, that's what I know.</p> <p>15 MR. DIVER: Okay.</p> <p>16 I think we have a common</p> <p>17 understanding, and I don't think we need to know in</p> <p>18 more detail than that, but if we need to, then we</p> <p>19 will -- hopefully we'll reach it.</p> <p>20 ---</p> <p>21 CONTINUATION</p> <p>22 BY MR. DIVER:</p> <p>23 Q. It's the third column, you see, is</p> <p>24 the percentage change between the first two columns.</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 95</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. V.</p> <p>3 Q. -- which I will represent is the</p> <p>4 former name of the NBC Sports Net.</p> <p>5 A. It's positive 17 percent, 18</p> <p>6 percent.</p> <p>7 Q. That's -- that's a modest raise as</p> <p>8 compared to all the other numbers on this table;</p> <p>9 correct?</p> <p>10 A. These model do not depend on, you</p> <p>11 know, what the content provider thinks, not what I</p> <p>12 think.</p> <p>13 Q. Now, you're aware that the overall</p> <p>14 cost of the sports-oriented programming on this table</p> <p>15 show a decrease.</p> <p>16 Is that correct?</p> <p>17 A. The three of the four you pointed</p> <p>18 out, or four of the five, I can't remember.</p> <p>19 Q. Were you aware of that before now?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 Before today?</p> <p>23 A. Before you asked me, yes.</p> <p>24 Q. Before I asked you, yes.</p> <p>25 Could a reasonable economist assume</p>
<p style="text-align: right;">Page 94</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Q. And those are correct substantially;</p> <p>3 correct?</p> <p>4 A. Looks like it, and their average</p> <p>5 goes up for sure.</p> <p>6 Q. But some of them go down.</p> <p>7 A. Sure.</p> <p>8 Q. Okay.</p> <p>9 Now, do you see ESPN?</p> <p>10 A. It's alphabetical, so it's easy to</p> <p>11 see. Okay.</p> <p>12 Q. What is the percentage change of</p> <p>13 ESPN?</p> <p>14 A. It's negative 64 percent.</p> <p>15 Q. And what is the percentage change of</p> <p>16 FOX Sports Net?</p> <p>17 A. It's negative 49 percent.</p> <p>18 Q. What is the percentage change in</p> <p>19 Golf Channel?</p> <p>20 A. It's negative 57 percent.</p> <p>21 Q. I'm trying to be complete here.</p> <p>22 What's the percentage change in the</p> <p>23 Versus channel?</p> <p>24 A. Which channel.</p> <p>25 Q. Versus --</p>	<p style="text-align: right;">Page 96</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 from looking at this table that the cost of the</p> <p>3 programming in an a la Carte bargaining situation</p> <p>4 would not rise?</p> <p>5 A. No.</p> <p>6 Q. And why not?</p> <p>7 A. There are two reasons really.</p> <p>8 You know, there's the overall reason</p> <p>9 which is, this is modeling something entirely</p> <p>10 different from what they're modeling.</p> <p>11 What Dr. Noll is modeling, you know,</p> <p>12 this is modeling content providers who are very, you</p> <p>13 know -- you know, one of them is the Family Channel.</p> <p>14 One of them is Animal Planet. One of them is CNN.</p> <p>15 You know, that's a very different kind of competition</p> <p>16 than you're talking about in this context. That's</p> <p>17 the first thing, and that's the major thing about it.</p> <p>18 The other thing is, they say</p> <p>19 somewhere here that they believe the numbers on the</p> <p>20 sports channels are wrong, or that they -- they have</p> <p>21 a footnote that says, this is one of the problems</p> <p>22 with the paper that, you know, viewership doesn't --</p> <p>23 the intensity of desire for the good is not expressed</p> <p>24 solely by viewership, and, indeed, this is exactly</p> <p>25 what they're correct about.</p>

<p style="text-align: right;">Page 97</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 The one I saw, presentation I have</p> <p>3 seen on their next paper corrects this.</p> <p>4 <b>Q. Did they model that in this paper?</b></p> <p>5 A. I don't -- I believe not, but they</p> <p>6 did not have the data even.</p> <p>7 <b>Q. And the fact that that's not modeled</b></p> <p>8 <b>in this paper didn't prevent this paper from being</b></p> <p>9 <b>published in the AER.</b></p> <p>10 MR. PARIS: Objection.</p> <p>11 Vague and ambiguous.</p> <p>12 THE WITNESS: I don't know what you</p> <p>13 mean by "prevent." The -- you know, these -- they</p> <p>14 say as a caveat that that's a problem. This paper</p> <p>15 was partly -- had two roles.</p> <p>16 One role was; wake up society.</p> <p>17 De-bundling might not help everybody. Okay. And it</p> <p>18 was, you know, an issue at the time. That is, it was</p> <p>19 going go through Congress. It was going through the</p> <p>20 FCC, et cetera. Okay. That was one role of the</p> <p>21 paper.</p> <p>22 The second role of the paper was</p> <p>23 just to provide methodology and show that you can</p> <p>24 actually do this in an intelligent way.</p> <p>25 So, it's a first step, and it's</p>	<p style="text-align: right;">Page 99</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. The conclusion of the model is, we</p> <p>3 should be aware that de-bundling cannot be analyzed</p> <p>4 without analyzing what happens in the upstream part</p> <p>5 of this market or you'll get a very wrong answer. It</p> <p>6 wasn't specific to a particular content provider.</p> <p>7 MR. KARASIK: Dr. Pakes, could you</p> <p>8 take a look at footnote 6 and tell us if that's your</p> <p>9 response to the recollection --</p> <p>10 THE WITNESS: Okay.</p> <p>11 Thank on.</p> <p>12 MR. KARASIK: -- you have of the</p> <p>13 author's segmented a problem -- in sports?</p> <p>14 THE WITNESS: "Channels offering</p> <p>15 sports programming, for example, may be watched less</p> <p>16 but valued more."</p> <p>17 MR. DIVER: May be?</p> <p>18 THE WITNESS: Watched less and</p> <p>19 valued more. That's why.</p> <p>20 MR. KARASIK: And also 41 --</p> <p>21 footnote 41.</p> <p>22 THE WITNESS: This is their own</p> <p>23 words, published words. 41. "The results described</p> <p>24 in this table should be interpreted under the</p> <p>25 maintained assumption that the more households</p>
<p style="text-align: right;">Page 98</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 better than what has been done before. That's the</p> <p>3 reason it got published in AER.</p> <p>4 ---</p> <p>5 CONTINUATION</p> <p>6 BY MR. DIVER:</p> <p>7 <b>Q. Now, they have a footnote that you</b></p> <p>8 <b>-- that you discuss where they --</b></p> <p>9 A. I should look for it.</p> <p>10 I remember seeing it.</p> <p>11 <b>Q. Huh-huh.</b></p> <p>12 A. Is it a footnote or is it the text?</p> <p>13 I would have to go through it all.</p> <p>14 <b>Q. Do you know if they did any</b></p> <p>15 <b>econometric analysis of -- of the effect of their</b></p> <p>16 <b>model on sports programming as reported in this</b></p> <p>17 <b>paper?</b></p> <p>18 MR. TOSCANO: Objection to form.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 ---</p> <p>21 CONTINUATION</p> <p>22 BY MR. DIVER:</p> <p>23 <b>Q. So, the -- so, the statement about</b></p> <p>24 <b>it's a conclusion of modeling or is it more of a</b></p> <p>25 <b>supposition?</b></p>	<p style="text-align: right;">Page 100</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 watches a channel, the more they value that channel.</p> <p>3 In online Appendix B, we conduct a Monte Carlo</p> <p>4 analysis to explore the consequences of allowing</p> <p>5 channels that are watched less by households to,</p> <p>6 nonetheless, be valued more, and vice versa, and find</p> <p>7 that it may yield overestimates of willingness to pay</p> <p>8 for channels for which household tastes are high for</p> <p>9 early minutes, but decline quickly with minutes</p> <p>10 watched, like sports programming, e.g." -- I'm</p> <p>11 sorry -- sports programming" --</p> <p>12 <b>Q. Huh-huh.</b></p> <p>13 <b>Now --</b></p> <p>14 A. -- "and overestimates" --</p> <p>15 Let me just finish.</p> <p>16 -- "and overestimates of WTP for</p> <p>17 channels," WTP is willingness to pay, "for channels</p> <p>18 which household tastes are more constant across</p> <p>19 minutes. See the Robustness subsection below and in</p> <p>20 online Appendix B for detail about this issue."</p> <p>21 That's it exactly.</p> <p>22 Thank you.</p> <p>23 ---</p> <p>24 CONTINUATION</p> <p>25 BY MR. DIVER:</p>

<p style="text-align: right;">Page 101</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Is this reliably established?</b></p> <p>3 A. They say --</p> <p>4 MR. TOSCANO: Objection.</p> <p>5 THE WITNESS: They say "may."</p> <p>6 ---</p> <p>7 CONTINUATION</p> <p>8 BY MR. DIVER:</p> <p>9 <b>Q. They say "may," so they don't have</b></p> <p>10 <b>an answer to this question.</b></p> <p>11 A. They are clearly worried about it.</p> <p>12 <b>Q. Are they worried about it because</b></p> <p>13 <b>there was lies in their modeling?</b></p> <p>14 MR. KARASIK: Vague and ambiguous.</p> <p>15 Lacks foundation. Incomplete hypothetical.</p> <p>16 THE WITNESS: They are worried about</p> <p>17 it because they are good economists, and in this</p> <p>18 paper, they wrote a paper that was careful.</p> <p>19 ---</p> <p>20 CONTINUATION</p> <p>21 BY MR. DIVER:</p> <p>22 <b>Q. Now, you have suggested, I believe,</b></p> <p>23 <b>and please characterize this if it's incorrect, that</b></p> <p>24 <b>the conglomerated nature of 21st Century Fox means</b></p> <p>25 <b>that its bargaining power will be enhanced.</b></p>	<p style="text-align: right;">Page 103</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 you mean by Fox RSN's.</p> <p>3 Do you mean they bundled together or</p> <p>4 --</p> <p>5 ---</p> <p>6 CONTINUATION</p> <p>7 BY MR. DIVER:</p> <p>8 <b>Q. What he meant when referring to the</b></p> <p>9 <b>Fox Network RSN's?</b></p> <p>10 MR. KARASIK: Do you know one way or</p> <p>11 another?</p> <p>12 THE WITNESS: No, I don't know.</p> <p>13 ---</p> <p>14 CONTINUATION</p> <p>15 BY MR. DIVER:</p> <p>16 <b>Q. If -- if that were true, could a</b></p> <p>17 <b>reasonable economist in looking at this table come to</b></p> <p>18 <b>the conclusion that because they recorded a drop of</b></p> <p>19 <b>49.3 percent in the cost, Fox would be able to charge</b></p> <p>20 <b>MVPD's for the Fox Sports Net that -- that bargaining</b></p> <p>21 <b>would not be likely to increase the price?</b></p> <p>22 A. They told you --</p> <p>23 MR. KARASIK: Just lacks foundation.</p> <p>24 Calls for conclusion. Incomplete hypothetical, and</p> <p>25 partially asked and answer.</p>
<p style="text-align: right;">Page 102</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Is it bargaining with multiple RSN's</b></p> <p>3 <b>at the same time?</b></p> <p>4 A. Typically, yes, I think that's the</p> <p>5 answer.</p> <p>6 <b>Q. Now, you understand that</b></p> <p>7 <b>Drs. Crawford and Yurukoglu modeled the bargaining by</b></p> <p>8 <b>content provider, and not by channel?</b></p> <p>9 A. Is that true?</p> <p>10 I can't remember.</p> <p>11 Does somebody know the answer?</p> <p>12 You want to point me to the page</p> <p>13 where they say that?</p> <p>14 <b>Q. Okay. This we'll have to find.</b></p> <p>15 <b>So, you did -- you did not know</b></p> <p>16 <b>that; correct, that's correct?</b></p> <p>17 A. At one point I probably knew that --</p> <p>18 <b>Q. Okay.</b></p> <p>19 A. -- but this was written -- the</p> <p>20 thesis was written how many? Seven, eight years ago.</p> <p>21 <b>Q. Now, you understand that -- that Fox</b></p> <p>22 <b>Sports Net is the Fox RSN's?</b></p> <p>23 MR. KARASIK: Lacks foundation.</p> <p>24 Calls for a conclusion.</p> <p>25 THE WITNESS: I -- I don't know what</p>	<p style="text-align: right;">Page 104</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: They told you to read</p> <p>3 about this already, you know. So, you know, a</p> <p>4 reasonable economist would tell you, you should worry</p> <p>5 about this. If you're interested in that issue, you</p> <p>6 worry about it.</p> <p>7 ---</p> <p>8 CONTINUATION</p> <p>9 BY MR. DIVER:</p> <p>10 <b>Q. Are the results generally undermined</b></p> <p>11 <b>by the fact that they -- they didn't -- they counted</b></p> <p>12 <b>each minute of viewing time equally?</b></p> <p>13 MR. PARIS: Objection to form.</p> <p>14 MR. KARASIK: Vague and ambiguous.</p> <p>15 Overly broad.</p> <p>16 THE WITNESS: The result of interest</p> <p>17 was that, if the substantive or empirical result of</p> <p>18 interest was, if we de-bundled you should not think</p> <p>19 that the content provider's prices will stay the</p> <p>20 same. Okay. And that, as a result, there will be an</p> <p>21 impact on consumers just -- you know, consumers could</p> <p>22 choose each one separately.</p> <p>23 The result was, we should be worried</p> <p>24 about de-bundling. It's not obvious that it helps</p> <p>25 consumers.</p>

<p style="text-align: right;">Page 105</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 ---</p> <p>3 CONTINUATION</p> <p>4 BY MR. DIVER:</p> <p>5 Q. Now, are you surprised that</p> <p>6 Drs. Crawford and Yurukoglu chose to report the</p> <p>7 values of the sports channels in this table?</p> <p>8 A. Why?</p> <p>9 I mean --</p> <p>10 Q. In light of what they say in</p> <p>11 paragraph 41.</p> <p>12 A. No. They appropriately report the</p> <p>13 results and caveat them.</p> <p>14 Q. And does paragraph 41 say anything</p> <p>15 about the effect on prices?</p> <p>16 A. You mean footnote 41?</p> <p>17 Q. Footnote 41.</p> <p>18 MR. KARASIK: Footnote will speak</p> <p>19 for itself.</p> <p>20 THE WITNESS: Yeah.</p> <p>21 MR. DIVER: Okay.</p> <p>22 ---</p> <p>23 CONTINUATION</p> <p>24 BY MR. DIVER:</p> <p>25 Q. Have you modeled the bargaining</p>	<p style="text-align: right;">Page 107</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 report.</p> <p>3 A. Okay.</p> <p>4 Q. I'm looking at three lines above the</p> <p>5 number 58.</p> <p>6 A. Okay.</p> <p>7 Q. You say, "in this model each team in</p> <p>8 its RNS agree to choose prices to maximize their</p> <p>9 joint profits".</p> <p>10 Why is that a reasonable assumption?</p> <p>11 A. Can we go, and tell you what comes</p> <p>12 before that --</p> <p>13 Q. Huh-huh.</p> <p>14 A. -- because I'm going to read the</p> <p>15 whole thing, the paragraph.</p> <p>16 "The current contracts between the</p> <p>17 RNS's and the teams are negotia -- negotiated</p> <p>18 pursuant to the League requirement that the RSN's</p> <p>19 must provide their telecasts to the BFW League</p> <p>20 Package free of charge. Since the ownership of the</p> <p>21 league is just the ownership of the teams, this is</p> <p>22 not surprising. However, it does imply that the</p> <p>23 League can and will constrain the negotiations</p> <p>24 between the teams and the RSN's in ways that increase</p> <p>25 the value of the joint venture."</p>
<p style="text-align: right;">Page 106</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 between the RSN's and the MVPD's in this case?</p> <p>3 A. You mean in my deposition?</p> <p>4 In my report? I'm sorry.</p> <p>5 Q. Yeah.</p> <p>6 A. I was not asked to do that.</p> <p>7 I was asked the question, and it's</p> <p>8 stated in my report very clearly, "are Dr. Noll's</p> <p>9 results reliable?"</p> <p>10 And as I said before, the way we do</p> <p>11 this is, we take what we think to be unrealistic</p> <p>12 assumptions. Okay. Modify them to become more</p> <p>13 realistic to the extent possible, and find out</p> <p>14 whether that changes the results, and in this case</p> <p>15 every change I tried changed the issue of interest</p> <p>16 result.</p> <p>17 So, I view them as unreliable.</p> <p>18 Q. But you didn't -- you didn't model</p> <p>19 this bargaining?</p> <p>20 A. No.</p> <p>21 Q. So, you don't know what the effect</p> <p>22 would be of this bargaining?</p> <p>23 A. I don't know, and Dr. Noll doesn't</p> <p>24 know.</p> <p>25 Q. Let me turn to page 25 of your</p>	<p style="text-align: right;">Page 108</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 The joint venture being the leagues</p> <p>3 and the teams, "and that the agreed upon rights fees,</p> <p>4 which are subject to League requirements, will thus</p> <p>5 be related to the subsequent profit and hence price</p> <p>6 of the BFW League Package".</p> <p>7 And what I'm referring to here is</p> <p>8 that the League package, its price that Dr. Noll set,</p> <p>9 is -- does not take into account the fact that the</p> <p>10 League is the team. So, if the League increases --</p> <p>11 increase its price or decreases its price, probably</p> <p>12 the best way to say, it takes away from the teams --</p> <p>13 it might take away consumers from the teams. Okay.</p> <p>14 Which is detrimental to the League and similarly the</p> <p>15 team's price. Okay.</p> <p>16 When it sets its price, it doesn't</p> <p>17 take into account the demands of the League, and</p> <p>18 there are just two bundles of money that go to the</p> <p>19 team. So, cares equally about the two of them.</p> <p>20 Okay.</p> <p>21 So, that is not in Dr. Noll's</p> <p>22 modeling, and when I say, to model this directly</p> <p>23 would require a more complex set of relationships</p> <p>24 between the teams and the RNS's in the League.</p> <p>25 So, I'm going to consider a related</p>

<p style="text-align: right;">Page 113</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>Q. Dr. Pakes, you said you have seen at</b></p> <p>3 <b>least one of the contracts at issue in this case.</b></p> <p>4 A. I skimmed one of the contracts,</p> <p>5 yeah.</p> <p>6 <b>Q. Do you remember what contract it</b></p> <p>7 <b>was?</b></p> <p>8 A. It's listed, I believe, in the list</p> <p>9 of documents. I think it's Com -- if I remember</p> <p>10 correctly, the Com --</p> <p>11 <b>Q. It's one -- one of the three Bates</b></p> <p>12 <b>numbered documents you listed.</b></p> <p>13 Okay.</p> <p>14 <b>Is that an RSN's contract?</b></p> <p>15 A. Yeah. Yes.</p> <p>16 <b>Q. Yes.</b></p> <p>17 <b>Have you seen -- I take it that</b></p> <p>18 <b>means you haven't seen League contracts with MVPD's</b></p> <p>19 <b>for out-of-market packages?</b></p> <p>20 A. No, I haven't.</p> <p>21 <b>Q. Do you know how those contracts are</b></p> <p>22 <b>structured?</b></p> <p>23 A. No, I don't.</p> <p>24 <b>Q. You don't.</b></p> <p>25 <b>Now, when you modeled -- we</b></p>	<p style="text-align: right;">Page 115</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 ---</p> <p>3 CONTINUATION</p> <p>4 BY MR. DIVER:</p> <p>5 <b>Q. All right.</b></p> <p>6 <b>Now, if -- if the prices in</b></p> <p>7 <b>Dr. Noll's model are not, in fact, profit maximizing,</b></p> <p>8 <b>would that effect your modeling?</b></p> <p>9 MR. KARASIK: Incomplete</p> <p>10 hypothetical.</p> <p>11 THE WITNESS: Again, I don't have a</p> <p>12 model. I'm taking Dr. Noll's model, and moving it</p> <p>13 one step towards reality at a time, and seeing if the</p> <p>14 major results change.</p> <p>15 So, when you refer to my model, I'm</p> <p>16 not sure what you're talking about.</p> <p>17 ---</p> <p>18 CONTINUATION</p> <p>19 BY MR. DIVER:</p> <p>20 <b>Q. In Dr. Noll's model, if -- if you</b></p> <p>21 <b>knew that the current prices for the packages were</b></p> <p>22 <b>not profit maximizing, would you think that that</b></p> <p>23 <b>needed to be accounted for in his model?</b></p> <p>24 MR. KARASIK: Vague and ambiguous.</p> <p>25 Incomplete hypothetical.</p>
<p style="text-align: right;">Page 114</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 <b>discussed this, I think, earlier with the</b></p> <p>3 <b>automobiles.</b></p> <p>4 <b>When you modeled your models in this</b></p> <p>5 <b>case, do you take it that the observed prices for the</b></p> <p>6 <b>packages are matching prices?</b></p> <p>7 MR. KARASIK: Could you repeat the</p> <p>8 question? I didn't --</p> <p>9 MR. DIVER: Huh-huh.</p> <p>10 ---</p> <p>11 CONTINUATION</p> <p>12 BY MR. DIVER:</p> <p>13 <b>Q. Is it your understanding that the</b></p> <p>14 <b>current prices for the out-of-market packages are</b></p> <p>15 <b>profit maximizing?</b></p> <p>16 COUNSEL: Objection.</p> <p>17 Foundation.</p> <p>18 THE WITNESS: You know, I -- I -- I</p> <p>19 haven't examined those prices or, you know, I've</p> <p>20 based -- you know, I have taken Dr. Noll's report</p> <p>21 which assumes that --</p> <p>22 MR. DIVER: Huh-huh.</p> <p>23 THE WITNESS: -- and I've taken it</p> <p>24 verbatim, and then asked what would happen if I move</p> <p>25 some of the assumptions?</p>	<p style="text-align: right;">Page 116</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I don't see how I</p> <p>3 would know that.</p> <p>4 Let me put it a different way.</p> <p>5 And, you know, the reason, if I knew</p> <p>6 a reason here I might think about it, but --</p> <p>7 ---</p> <p>8 CONTINUATION</p> <p>9 BY MR. DIVER:</p> <p>10 <b>Q. Do you know if the Leagues currently</b></p> <p>11 <b>set their profit packages at profit maximizing?</b></p> <p>12 COUNSEL: Objection to foundation.</p> <p>13 MR. KARASIK: Yeah. Assumes facts</p> <p>14 not in evidence. Vague and ambiguous.</p> <p>15 THE WITNESS: I have not checked</p> <p>16 that.</p> <p>17 MR. KARASIK: You're talking about</p> <p>18 the Internet out-of-market packages?</p> <p>19 MR. DIVER: TV and Internet.</p> <p>20 ---</p> <p>21 CONTINUATION</p> <p>22 BY MR. DIVER:</p> <p>23 <b>Q. Now, if you knew that the Leagues</b></p> <p>24 <b>did not price their packages at a profit maximizing</b></p> <p>25 <b>price, would that change your assumption about how</b></p>

<p style="text-align: right;">Page 129</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                   A. Yes.</p> <p>3                   <b>Q. And is that not what Dr. Noll is</b></p> <p>4                   <b>doing here.</b></p> <p>5                   A. No. In fact, they are different</p> <p>6                   industry structures.</p> <p>7                   So, in this market, okay, in the car</p> <p>8                   market, okay, what GM does or its various divisions</p> <p>9                   do is set an inventory price, perhaps, and I can't</p> <p>10                  remember this exactly, there might be a travel cost</p> <p>11                  from -- you know, that they add on to depending on</p> <p>12                  how far, but those prices are set by GM. Okay.</p> <p>13                  They also give you a suggested MSRP.</p> <p>14                  Those prices are set by GM, and the variance around</p> <p>15                  those prices is very small among consumers for a</p> <p>16                  given car with the same --</p> <p>17                  <b>Q. But structurally the modeling is the</b></p> <p>18                  <b>same?</b></p> <p>19                  A. No.</p> <p>20                  <b>Q. The difference is that your pricing,</b></p> <p>21                  <b>the difference is smaller in yours?</b></p> <p>22                  MR. KARASIK: Objection.</p> <p>23                  Asked and answered.</p> <p>24                  THE WITNESS: It is asked and</p> <p>25                  answered, but I don't mind answering it again.</p>	<p style="text-align: right;">Page 131</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                   good it considers its impact on the other goods that</p> <p>3                   it's marketing, including the League bundle and the</p> <p>4                   other teams.</p> <p>5                   That's nowhere in Dr. Noll's</p> <p>6                   pricing. Okay. And that's in -- virtually in every</p> <p>7                   paper since BLP.</p> <p>8                   Not every paper. That's too</p> <p>9                   strong --</p> <p>10                  <b>Q. Okay.</b></p> <p>11                  A. -- but every paper that I've</p> <p>12                  accepted at the journal since BLP, and that will tend</p> <p>13                  to raise prices.</p> <p>14                  It's also true, by the way, in C&amp;Y.</p> <p>15                  <b>Q. Let me ask you a question about</b></p> <p>16                  <b>that.</b></p> <p>17                  Now, in your model of DIRECTV's</p> <p>18                  pricing, DIRECTV isn't facing any competition of any</p> <p>19                  kind; correct?</p> <p>20                  A. In Dr. Noll's model of DIRECTV</p> <p>21                  pricing isn't facing. So, I repeated Dr. Noll's</p> <p>22                  assumptions, and relaxed parts of it.</p> <p>23                  <b>Q. Okay.</b></p> <p>24                  And as a result you saw the price go</p> <p>25                  up because DIRECTV was pricing as a pure monopolist?</p>
<p style="text-align: right;">Page 130</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                   MR. DIVER: That's fine.</p> <p>3                   ---</p> <p>4                   CONTINUATION</p> <p>5                   BY MR. DIVER:</p> <p>6                   <b>Q. On the second -- the second -- the</b></p> <p>7                   <b>way you ultimately modeled DIRECTV's pricing you --</b></p> <p>8                   <b>you -- you -- you abandon those prices, and you</b></p> <p>9                   <b>assume that DIRECTV input costs are the marginal</b></p> <p>10                  <b>costs; correct?</b></p> <p>11                  A. I believe I do both. That was my</p> <p>12                  second one.</p> <p>13                  <b>Q. And in that case there is no double</b></p> <p>14                  <b>marginalization; correct?</b></p> <p>15                  A. Again -- so, let me take a step back</p> <p>16                  if I may. Okay.</p> <p>17                  So, there are two issues with the</p> <p>18                  pricing that has been done in Dr. Noll's. One issue</p> <p>19                  is, he doesn't have the cost right because he hasn't</p> <p>20                  done bargaining on the cost side.</p> <p>21                  There's a second issue, which is</p> <p>22                  striking that he didn't do it because it is done in</p> <p>23                  every paper I know in the last few years, okay, which</p> <p>24                  is, they -- the MVPD charges is now marketing a full</p> <p>25                  bundle of goods, and when it sets its price for one</p>	<p style="text-align: right;">Page 132</p> <p>1                   <b>HIGHLY CONFIDENTIAL</b></p> <p>2                   MR. KARASIK: Asked and answered.</p> <p>3                   Misstates prior testimony.</p> <p>4                   ---</p> <p>5                   CONTINUATION</p> <p>6                   BY MR. DIVER:</p> <p>7                   <b>Q. Do you agree that DIRECTV faces</b></p> <p>8                   <b>competitive pressure in reality?</b></p> <p>9                   A. Oh, I -- which competitor pressure</p> <p>10                  are you referring to?</p> <p>11                  <b>Q. Does it face competitive pressure</b></p> <p>12                  <b>from Comcast?</b></p> <p>13                  A. In some markets I imagine that's</p> <p>14                  true.</p> <p>15                  <b>Q. And would it face competitive</b></p> <p>16                  <b>pressure from Internet products in the but-for world?</b></p> <p>17                  MR. TOSCANO: Objection to form.</p> <p>18                  THE WITNESS: So, in the but-for</p> <p>19                  world?</p> <p>20                  ---</p> <p>21                  CONTINUATION</p> <p>22                  BY MR. DIVER:</p> <p>23                  <b>Q. Let's start with the real world.</b></p> <p>24                  <b>Does it face competition from</b></p> <p>25                  <b>Internet products?</b></p>

<p style="text-align: right;">Page 133</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 MR. TOSCANO: Same objection.</p> <p>3 Vague.</p> <p>4 MR. KARASIK: Vague and ambiguous.</p> <p>5 THE WITNESS: All right.</p> <p>6 I'm not sure what competition means</p> <p>7 in this context.</p> <p>8 COUNSEL: What are the products?</p> <p>9 ---</p> <p>10 CONTINUATION</p> <p>11 BY MR. DIVER:</p> <p>12 <b>Q. Do you recall that Dr. Yurukoglu</b></p> <p>13 <b>justified the assumption of linear cost on the fact</b></p> <p>14 <b>that the MVPD's faced competition?</b></p> <p>15 A. Dr. -- which Dr. Yurukoglu paper?</p> <p>16 <b>Q. I'm referring to the footnote that</b></p> <p>17 <b>we looked at earlier. If you want to --</b></p> <p>18 A. I thought the footnote was a, by the</p> <p>19 way, and the real reason was in the paragraph, which</p> <p>20 is in the text. This gives you an additional reason,</p> <p>21 which is in the footnote, but the major reason is,</p> <p>22 that's what they do.</p> <p>23 <b>Q. Right.</b></p> <p>24 <b>But he's -- he's talking about a</b></p> <p>25 <b>hypothetical world; correct?</b></p>	<p style="text-align: right;">Page 135</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 <b>double marginalization is -- situation, isn't that</b></p> <p>3 <b>an increase in the double marginalization problem?</b></p> <p>4 COUNSEL: Objection.</p> <p>5 Vague.</p> <p>6 MR. KARASIK: Vague and ambiguous.</p> <p>7 Incomplete hypothetical. No foundation.</p> <p>8 THE WITNESS: So, I'm trying to</p> <p>9 understand what you're saying, and I'm not.</p> <p>10 ---</p> <p>11 CONTINUATION</p> <p>12 BY MR. DIVER:</p> <p>13 <b>Q. Okay.</b></p> <p>14 <b>If the input prices rise to the</b></p> <p>15 <b>MVPD, that will cause -- okay -- then the MVPD will</b></p> <p>16 <b>add its own margin.</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. The quantity will go down.</b></p> <p>19 A. It is likely that part of the -- if</p> <p>20 the costs increase and the MVPD's pricing relative to</p> <p>21 those costs, it is likely that some of those costs</p> <p>22 will be passed through to the consumer.</p> <p>23 <b>Q. And is it possible that the result</b></p> <p>24 <b>would be a decrease in profits for the firms?</b></p> <p>25 MR. KARASIK: Incomplete</p>
<p style="text-align: right;">Page 134</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 A. So, you would have to tell me why</p> <p>3 the hypothetical world -- by the "hypothetical world"</p> <p>4 do you mean de-bundling?</p> <p>5 <b>Q. Right.</b></p> <p>6 A. You would have to tell me why the</p> <p>7 hypothetical world would change that.</p> <p>8 <b>Q. Wouldn't marginal costs rise for the</b></p> <p>9 <b>-- for the MVPD's?</b></p> <p>10 A. That's what the estimates say.</p> <p>11 <b>Q. And wouldn't that --</b></p> <p>12 A. Not --</p> <p>13 <b>Q. -- increase?</b></p> <p>14 A. Not all.</p> <p>15 <b>Q. And wouldn't that increase the</b></p> <p>16 <b>likelihood that double marginalization would -- would</b></p> <p>17 <b>cause the -- the profits to decrease?</b></p> <p>18 COUNSEL: Objection.</p> <p>19 Vague.</p> <p>20 THE WITNESS: No. Maybe.</p> <p>21 Why would it cause profits to --</p> <p>22 ---</p> <p>23 CONTINUATION</p> <p>24 BY MR. DIVER:</p> <p>25 <b>Q. If -- if -- if margins rise in a</b></p>	<p style="text-align: right;">Page 136</p> <p>1 <b>HIGHLY CONFIDENTIAL</b></p> <p>2 hypothetical.</p> <p>3 THE WITNESS: Which firms?</p> <p>4 MR. KARASIK: No foundation.</p> <p>5 THE WITNESS: Which firms?</p> <p>6 ---</p> <p>7 CONTINUATION</p> <p>8 BY MR. DIVER:</p> <p>9 <b>Q. Content providers and the MVPD's.</b></p> <p>10 A. No, not the content providers.</p> <p>11 Maybe to the MVPD. Maybe not.</p> <p>12 What -- why -- you just -- the costs</p> <p>13 to the MVPD are the revenues of the content</p> <p>14 providers. The MVPD is in the middle of this.</p> <p>15 <b>Q. Would the overall profits of the two</b></p> <p>16 <b>firms together?</b></p> <p>17 A. How -- why do you think that's true?</p> <p>18 <b>Q. Does marginalization ever cause the</b></p> <p>19 <b>overall profits of two firms to -- to fall --</b></p> <p>20 MR. KARASIK: Incomplete</p> <p>21 hypothetical. Lacks foundation. Vague and</p> <p>22 ambiguous.</p> <p>23 THE WITNESS: But it -- but I'm not</p> <p>24 understanding --</p> <p>25 MR. DIVER: -- relative to single</p>

<p style="text-align: right;">Page 137</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 marginalization?</p> <p>3 THE WITNESS: So, relative to an</p> <p>4 integrated firm. Is that what you're saying?</p> <p>5 MR. DIVER: Well, yes. That's one</p> <p>6 possibility.</p> <p>7 THE WITNESS: Okay.</p> <p>8 The answer is -- now, what is the</p> <p>9 question again?</p> <p>10 I can now interpret the question</p> <p>11 given that I know what you're trying to ask me.</p> <p>12 ---</p> <p>13 CONTINUATION</p> <p>14 BY MR. DIVER:</p> <p>15 <b>Q. To the extent the content provider</b></p> <p>16 <b>was able to increase the marginal costs, would that</b></p> <p>17 <b>not raise the possibility that the joint profits of</b></p> <p>18 <b>the two firms would be less?</b></p> <p>19 MR. KARASIK: Incomplete</p> <p>20 hypothetical. No foundation.</p> <p>21 THE WITNESS: Raises the possibility</p> <p>22 of less. Possibility it would be more. Raises all</p> <p>23 sorts of possibilities.</p> <p>24 ---</p> <p>25 CONTINUATION</p>	<p style="text-align: right;">Page 139</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 <b>Q. You say, "to the extent that</b></p> <p>4 <b>consumers would substitute away from DIRECTV in</b></p> <p>5 <b>response to price increases on these products, this</b></p> <p>6 <b>convention will likely overstate the price of the BFW</b></p> <p>7 <b>League Package, all else equal".</b></p> <p>8 A. I did say that.</p> <p>9 <b>Q. Huh-huh.</b></p> <p>10 <b>So, if you incorporate competition</b></p> <p>11 <b>that induced consumers that recognized that consumers</b></p> <p>12 <b>may substitute DIRECTV, their prices would be lowered</b></p> <p>13 <b>in your report.</b></p> <p>14 A. So, again --</p> <p>15 MR. KARASIK: Objection. Ignoring</p> <p>16 part of the footnote that you're referring to.</p> <p>17 THE WITNESS: C&amp;Y and FCC reports</p> <p>18 suggest that, in general, switching costs are</p> <p>19 non-trivial.</p> <p>20 So, again, I'm going to keep going</p> <p>21 back to this, but I was asked to look at Dr. Noll's</p> <p>22 model which doesn't consider this competition. It</p> <p>23 makes claims based on -- without this competition.</p> <p>24 Okay.</p> <p>25 My understanding is -- from what I</p>
<p style="text-align: right;">Page 138</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 BY MR. DIVER:</p> <p>3 <b>Q. Do you doubt that DIRECTV faces</b></p> <p>4 <b>competition that constrains its pricing?</b></p> <p>5 A. No. Actually, I don't doubt -- I</p> <p>6 don't know what "constrains pricing" means. I don't</p> <p>7 doubt that it faces competition.</p> <p>8 <b>Q. And you agree that -- that even</b></p> <p>9 <b>taking into account the pricing strategy that you</b></p> <p>10 <b>include in your model, if we added in competition</b></p> <p>11 <b>that constrained its -- its pricing power, the prices</b></p> <p>12 <b>would -- would go down relative to the prices you</b></p> <p>13 <b>have listed?</b></p> <p>14 A. I'm not sure. It depends what</p> <p>15 you're asking me. If you give me a particular</p> <p>16 hypothetical, I can try and answer.</p> <p>17 <b>Q. Well, I think you say this.</b></p> <p>18 <b>I just want to make sure that we're</b></p> <p>19 <b>-- all right.</b></p> <p>20 (Pause)</p> <p>21 A. Are you going to direct me to the</p> <p>22 page?</p> <p>23 <b>Q. Yeah. I'm looking. I'm sorry.</b></p> <p>24 (Pause)</p> <p>25 <b>Q. You see the footnote on page 17?</b></p>	<p style="text-align: right;">Page 140</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 know of the literature, is that it is very difficult</p> <p>3 to switch. If you're talking about -- I thought you</p> <p>4 were talking about Internet or Comcast, doesn't</p> <p>5 matter, versus DIRECTV, and they're switching their</p> <p>6 whole, you know, bundle of things. They're switching</p> <p>7 -- typically switching Comcast will deliver phone</p> <p>8 service and Internet service and, you know, a</p> <p>9 different, quote, "criteria of programming".</p> <p>10 I thought that there -- and I think</p> <p>11 I actually said, the reason that I think it is in its</p> <p>12 --- although I'm not sure is, I believe one of the</p> <p>13 things I cite tells you that DIRECTV actually did a</p> <p>14 -- a survey of consumers asking how many would switch</p> <p>15 at different prices. I can't remember the total</p> <p>16 survey. I didn't look at this. I came to the</p> <p>17 conclusion that it was very small.</p> <p>18 MR. DIVER: But --</p> <p>19 THE WITNESS: But -- can I say one</p> <p>20 more thing?</p> <p>21 MR. DIVER: Sure.</p> <p>22 THE WITNESS: You have to understand</p> <p>23 that it's not the substitution that you think.</p> <p>24 The RSN's is pricing both products.</p> <p>25 It's not going to kill the price -- kill the profits</p>