

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CV No. 17-2511
	)	
	)	Washington, D.C.
vs.	)	March 28, 2018
	)	10:30 a.m.
AT&T, INC., ET AL.,	)	
	)	Morning Session
Defendants.	)	
<hr/>		Day 4

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

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WITNESS INDEX

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WITNESSES

DIRECT CROSS REDIRECT RECROSS

GOVERNMENT'S:

JOHN KEVIN MARTIN, JR. 518 595

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

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

7 Your Honor, good morning. We have Civil Action  
8 No. 13-2511, the United States of America v.  
9 AT&T, Inc., et al.

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

12 MR. WELSH: Good morning, Your Honor. Eric Welsh  
13 for the United States.

14 THE COURT: Welcome back.

15 MR. SCHWINGLER: Good morning, Your Honor.  
16 Peter Schwingler for the United States.

17 THE COURT: Welcome back.

18 MR. FINCH: Good morning, Your Honor.  
19 Andrew Finch for the United States.

20 THE COURT: Welcome back.

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

23 THE COURT: Welcome back.

24 MR. CONRATH: Thank you.

25 MR. CHU: Alvin Chu for the United States.

1 THE COURT: Welcome back.

2 Good morning, Your Honor.

3 MR. CARSON: Dylan Carson for the United States.

4 THE COURT: Welcome back.

5 MR. PETROCELLI: Good morning, Your Honor.

6 Daniel Petrocelli for defendants.

7 THE COURT: Welcome back.

8 MS. ROBSON: Good morning, Your Honor.

9 Katrina Robson for the defense.

10 THE COURT: Welcome back.

11 MR. OPPENHEIMER: Good morning, Your Honor.

12 Randy Oppenheimer for the defendants.

13 THE COURT: Welcome back.

14 MR. BARBUR: Good morning, Your Honor.

15 Peter Barbur representing Time Warner.

16 THE COURT: Welcome back.

17 MR. WALTERS: Good morning, Your Honor.

18 Rob Walters here for AT&T and DirecTV.

19 THE COURT: Welcome back.

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

22 THE COURT: Welcome back.

23 MR. ORSINI: Good morning, Your Honor.

24 Kevin Orsini for Time Warner.

25 THE COURT: Welcome back.

1 All right, the witness can resume the stand.

2 Mr. Martin, good morning. You remain under oath,  
3 okay?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Have a seat.

6 You may proceed whenever you're ready.

7 MR. WELSH: Thank you, Your Honor.

8 JOHN KEVIN MARTIN, JR., WITNESS FOR THE GOVERNMENT, HAVING  
9 BEEN PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED  
10 FURTHER AS FOLLOWS:

11 DIRECT EXAMINATION (CONTINUED)

12 BY MR. WELSH:

13 Q Mr. Martin, good morning.

14 A Good morning.

15 Q Mr. Martin, I want to come back to the subject of  
16 Turner's affiliate rates and the value of Turner's networks.

17 But before I do that, I just want to follow up on  
18 the Court's direction to you last night. I just wanted to  
19 confirm that you have not spoken to anyone about your  
20 testimony either yesterday or what you'd be testifying to  
21 today to; is that correct?

22 A That's correct. I've spoken with no one.

23 Q Okay. And you weren't provided any information  
24 about what might be shown to you or discussed with you  
25 today?

1           A     That's also correct.

2           Q     Okay. Thank you. I just -- I assumed that was  
3 the case; I just wanted to make sure.

4                     Let's come back and talk about your affiliate  
5 rates, then, if we can, sir, and the value of Turner's  
6 networks.

7                     Now, Mr. Martin, it's correct, isn't it, that  
8 Turner secures above-industry-average affiliate rates from  
9 its distributors?

10          A     I'm not sure I understand the question of "above  
11 average."

12          Q     Sure.

13                     Have you seen in the Turner documentation going to  
14 your Board of Directors at Time Warner the fact that Turner  
15 secures above-industry-average affiliate rates?

16          A     We had above-average growth for a three-year  
17 period, if that's what you're referring to.

18          Q     Well, let's look at your binder in front of you,  
19 if we can. Maybe I can help you out there, sir.

20                     If you look at the exhibit binder with PX8.

21                     And tell me when you're there, sir.

22          A     I'm there.

23          Q     Okay. Now, this is a strategy briefing book for  
24 the board of Time Warner for 2016, correct?

25          A     Yes, that's correct.



1 Q And you and your team at Turner contributed to  
2 this presentation, correct?

3 A Correct.

4 Q Okay. And you're familiar with the content of it,  
5 right?

6 A Yes.

7 MR. WELSH: Okay. Your Honor, I move for  
8 admission of PX8 for the record.

9 THE COURT: Any objection?

10 MR. PETROCELLI: No objection, although I think  
11 this may be kept filed under seal.

12 MR. WELSH: We're happy to file it under seal.  
13 I don't know if it was indicated as such. But if that's  
14 what they want, that's fine.

15 THE COURT: It will be admitted at least for now  
16 under seal; and if there's some decision otherwise, we'll do  
17 that later.

18 MR. WELSH: That's fine, Your Honor.  
19 Thank you very much.

20 BY MR. WELSH:

21 Q Mr. Martin, if I could direct you to the bottom  
22 page, which is PX0008-36.

23 Again, tell me when you're there.

24 A I'm here.

25 Q Okay. And do you see the section there,

1 Mr. Martin, where it says "Executing Deals with Affiliates"?

2 A Yes, I see that.

3 Q Okay. And if we look down in that section in the  
4 third paragraph, it sets out Turner's priorities and  
5 negotiations which were being presented to the Time Warner  
6 board, correct?

7 A Yes, correct.

8 Q All right. And there are a couple of items there.  
9 And we'll talk about some of this later as well.

10 But one of the items is listed. In fact, I think  
11 it's the first. It says, "Continuing to achieve above  
12 average increases in affiliate rates," correct?

13 A Yes, that's correct.

14 Q Okay. And the above-average increases in  
15 affiliate rates, that's as compared to your competitors,  
16 right?

17 A Yes, that's correct.

18 Q You can put that document to the side.

19 So let me ask you, if I can, to turn to PX153 in  
20 your binder.

21 Again just tell me when you're there, sir.

22 A I'm here.

23 Q Now, this is a memorandum that you sent to the  
24 Board of Directors to Time Warner, correct?

25 A Yes.

1 Q And this was dated January 21, 2016; am I correct?

2 A Yes.

3 Q And you were involved in the preparation of this  
4 material that went to the Time Warner board;  
5 is that correct?

6 A Yes.

7 MR. WELSH: Your Honor, I'd move for admission of  
8 PX153 into the record.

9 MR. PETROCELLI: There's no objection. There are  
10 a couple of figures in here which have been marked as  
11 confidential, but we can work this out later on.

12 THE COURT: All right. Well, for now, we'll admit  
13 it as confidential, and then just be cautious about going  
14 into those, obviously, in open court anyway.

15 MR. WELSH: I plan on doing so, all right.

16 THE COURT: Yeah.

17 (Government's Exhibit PX153  
18 received into evidence.)

18 BY MR. WELSH:

19 Q All right. Mr. Martin, let me have you look at  
20 PX153003 if you would.

21 A I'm there.

22 Q Okay. Great.

23 Now, we see on this page, and this is one of the  
24 pages that defense counsel had mentioned is confidential or  
25 has confidential information designated by Time Warner. So

1 I'm going to be careful, and I think we all need to be  
2 careful about how we talk about this.

3 But you see figure 2 on this page, correct?

4 A Yes, that's correct.

5 Q Right. And what we have here is the viewing,  
6 advertising revenue, and affiliate rates for some of your  
7 Turner networks as compared to your competitors for 2015;  
8 is that right?

9 THE COURT: Which page is this, Mr. Welsh?

10 MR. WELSH: I'm sorry, Your Honor. It's PX153003.

11 THE COURT: 153003. Okay. Thank you.

12 MR. WELSH: You're welcome.

13 THE COURT: Go ahead.

14 BY MR. WELSH:

15 Q Okay. And, again, so we have the 2015 comparisons  
16 of some of your Turner networks in terms of viewing  
17 advertising revenue and affiliate rate, as compared to your  
18 competitors, correct?

19 A Toward general entertainment competitors, that's  
20 correct.

21 Q Okay. And, again, I can't get into the specific  
22 numbers here because I think those have been designated as  
23 confidential, so we'll just talk maybe more generally about  
24 it.

25 A Okay.

1 Q When we look at the viewing on the left, this,  
2 again, compares some of your networks. And TBS is listed as  
3 being at the top of that comparison against your competitors  
4 in the general entertainment area, correct?

5 A Yes.

6 Q And if we look over at the advertising revenue, we  
7 see TNT being at the top, as compared to your competitors in  
8 the general entertainment area; is that correct?

9 A Yes, that's correct.

10 Q All right. And then if we look over at the  
11 affiliate rates -- so this is, again, what you're charging  
12 your distributors for the carriage of your networks,  
13 correct? That's what affiliate rates are?

14 A Yes.

15 Q And if we look at the affiliate rates, we see that  
16 TNT is, by far, well above the affiliate rates that your  
17 competitors have; isn't that's true?

18 A For the general entertainment competitors, that's  
19 correct.

20 Q Okay. And, again, I can't talk about the specific  
21 numbers, but we're looking at a magnitude that's pretty  
22 substantial in comparison to your competitors; that's a fair  
23 statement, isn't it?

24 A I think that's fair.

25 Q All right. And the information that we're looking

1 at here in figure 2, that was accurate to the best of your  
2 understanding and knowledge, correct?

3 A Yes.

4 Q And you see from your affiliate rates what you've  
5 been able to achieve during your tenure at Turner; that  
6 Turner has had some pretty good competitive success;  
7 isn't that true?

8 A Over the last several years, that's correct.

9 Q So, in fact, if we look at just the next  
10 paragraph, you go on to report about your competitive  
11 success, correct?

12 A Which paragraph are you referring to? I'm sorry.

13 Q Where it starts, I think, "In addition to the  
14 competitive success," right?

15 A Oh.

16 Q Is that correct, sir?

17 A Just give me a moment to read it you don't mind.

18 Q Absolutely.

19 A Okay.

20 Yes, I would agree with that.

21 Q And the paragraph there -- so it starts off by  
22 saying that in addition to the competitive success, so it's  
23 referring to the rates success that you've had for TNT and  
24 TBS above, right?

25 A Right.

1 Q Okay. And then it goes on to say that TNT and TBS  
2 produced strong financial performance, both growing revenue  
3 by an average in the middle single digits and operating  
4 income by the high single digits over the last five years.

5 And then it goes on to report about your operating  
6 income.

7 And those numbers have been designated as  
8 confidential by Time Warner, as I understand it, so I can't  
9 repeat those in open court.

10 But is the information that's there in that  
11 paragraph and those numbers, is that accurate, sir?

12 A I would assume it to be accurate, yes.

13 Q Okay. Now, if I could have you turn to PX148 in  
14 your binder.

15 And this is the document that we talked about  
16 yesterday. It's been admitted. This is the document that  
17 was shared with AT&T, that "get to know you" meeting that  
18 you had, correct?

19 A Yes, correct.

20 Q Okay. And if we could look at PX148-017.

21 A I'm at the page.

22 Q Okay. Great.

23 And, again, this is information that was shared  
24 with AT&T so that you could present what was Turner's  
25 business and how that was looking at that time, correct?

1           A     Yes, that's right.

2           Q     Okay.  And here, we have on 017, you're reporting  
3 on your compound annual growth, as compared to your  
4 competitors; isn't that's true?

5           A     Yes, that's true.

6           Q     Okay.  And so from 2012 to 2016, we're seeing that  
7 Turner, as compared to your competitors, has a superior  
8 annual growth, compounded annual growth; isn't that's true?

9           A     Yes, that's true.

10          Q     And according to this, the numbers are actually  
11 far superior to Viacom, which is on the right; isn't that  
12 true?

13          A     Yes, through 2016, that's correct.

14          Q     And you're also reporting to AT&T on this page  
15 about Turner's margins and how they compare to your  
16 competitors, correct?

17          A     Yes, that's correct.

18          Q     And, again, looking at 2016, Turner's margins were  
19 superior to all of your competitors that are listed there,  
20 correct?

21          A     Yes.

22          Q     You can put that one to the side for now.

23                 Mr. Martin, your success that you've achieved at  
24 Turner with your -- that we've just looked at in terms your  
25 rates and your margin, your success is attributable to your



1 success with your affiliate contracts; isn't that's true?

2 A The affiliate contracts were an important  
3 component of that success, but not the only one.

4 Q Okay. But it was an important component, right?

5 A Yes.

6 Q Okay. And your affiliate rates that we've been  
7 talking about, your affiliate rates that you get for your  
8 networks, CNN, TBS, TNT, those rates reflect the value that  
9 distributors see in your networks, right, and that's why  
10 they pay it?

11 A Yes.

12 Q Okay. Now, Turner's affiliate rates -- during  
13 your tenure, Turner's affiliate rates have increased year  
14 over year, correct?

15 A Yes, that's correct.

16 Q And your margins have increased during this time  
17 year over year as well, correct?

18 A Also correct.

19 Q Okay. And Turner's ability to obtain the superior  
20 affiliate rates that we're talking about as compared to your  
21 competitors, that's due, in large part, to your sports  
22 content, isn't it?

23 A In -- I don't -- I want to be careful about the  
24 characterization of "large." Sports is important, but there  
25 were other factors that drove those increases.

1           But, yes, sports is an important component of it.

2           Q     Okay. Well, sports is one of the big reasons why  
3 Turner's able to extract the type of affiliate rate  
4 increases that you're able to get, true?

5           A     It's an important factor.

6           Q     Let's go and talk about your NBA contract if we  
7 can, okay?

8           A     Sure.

9           Q     Now, you were involved in efforts to renew the NBA  
10 contract for Turner, right?

11          A     Yes.

12          Q     So you could get that content and then distribute  
13 it that through your network, correct?

14          A     Yes.

15          Q     If you look at PX20 in your binder.

16          A     I'm there.

17          Q     Now, PX20 is a memorandum from you to the  
18 Time Warner Board of Directors, correct?

19          A     Yes, it is.

20          Q     And it's dated September 16, 2014, right?

21          A     Yes.

22          Q     Now, the purpose of this memorandum was to secure  
23 or try to secure the Time Warner board's approval for the  
24 renewal of Turner's contract with the NBA, correct?

25          A     Yes, that's correct.

1 Q Okay. And you were personally involved in both  
2 the preparation of the memo, as well as providing it on to  
3 the Board of Directors of Time Warner; is that right?

4 A Yes.

5 Q And if I understood what you told me before in  
6 your deposition, you had to seek out this approval from the  
7 Time Warner board for this transaction because of the size  
8 of the annual fee that would be paid, right?

9 A Yes, that's right.

10 Q All right. And I think you told me in your  
11 deposition that the fee was annually \$1.1 billion?

12 A I'd have to re-review the memo, but that sounds  
13 approximately right.

14 THE COURT: Did you say billion?

15 MR. WELSH: Billion.

16 THE COURT: That was the fee to NBA?

17 MR. WELSH: Yes.

18 BY MR. WELSH:

19 Q Now, the amount that you're paying, this amount  
20 was over the threshold that you were allowed to do on your  
21 own, so you had to get the board's approval on that;  
22 is that correct?

23 A Yes, that's correct.

24 Q And this was an important decision for Turner to  
25 get this approval; is that fair?

1 A Yes.

2 MR. WELSH: Your Honor, I move for admission PX20.

3 MR. PETROCELLI: There's no objection. Again,  
4 there are some figures that are marked confidential, but  
5 virtually all these documents are. So I have to repeat  
6 myself, but no objection.

7 THE COURT: All right. It will be admitted under  
8 seal at the moment, subject to cleanup.

9  
10 (Government's Exhibit PX20  
received into evidence.)

11 MR. WELSH: Thank you, Your Honor.

12 BY MR. WELSH:

13 Q Now, Mr. Martin, first off, Turner successfully  
14 renewed this agreement, correct?

15 A Yes, that's right.

16 Q You got the approval, and then you renewed it with  
17 NBA?

18 A Yes.

19 Q And the NBA contract here with Turner, that runs  
20 until the year 2024; is that correct?

21 A Yes, that's true.

22 Q So from now up until that time, you've got the  
23 rights that are set out in that contract to be able to carry  
24 NBA playoff games, for example, correct?

25 A Regular season and playoff games, yes.

1 Q Now, locking in the NBA season rights for all the  
2 way through that 2024-2025 season, that was important to  
3 Turner, correct?

4 A Yes, correct.

5 Q And let me come back to one thing here.

6 So let's look at PX20, and I'll have you look at  
7 002.

8 A I'm there.

9 Q Okay. And this is your lead-in hearing. And  
10 I want to direct you to the first paragraph where you're  
11 asking the board to authorize Turner to enter into the  
12 renewal contract.

13 Do you see that paragraph?

14 A Yes. May I have just a second to read it?

15 Q Please.

16 A Yes, I've read it now.

17 Q Okay. And what you told the board to get this  
18 approval -- because I'm assuming that you wanted to be as  
19 accurate as you could possibly be to the board to obtain  
20 this approval; is that right?

21 A Yes, that's correct.

22 Q Because this was a very important decision for  
23 Turner to get the renewal of the NBA rights, correct?

24 A Yes.

25 Q Because you're paying \$1 billion for 64 games a

1 year. This was pretty darned important to Turner, true?

2 A True.

3 Q And what you told the board in this paragraph,  
4 this lead-off paragraph, is you said, "Our current agreement  
5 expires in 2016, and this renewal will provide Turner with  
6 regular-season and post-season NBA telecasts through the  
7 2024-2025 NBA season, thereby locking in long-term rights to  
8 NBA programming that is a cornerstone, cornerstone, of the  
9 overall programming, branding, affiliate renewal, and  
10 advertising strategies for TNT."

11 That's what you told the board, right?

12 A Yes.

13 Q So it's the cornerstone of your strategies.

14 Now, Mr. Martin, we talked about Premium Sports  
15 yesterday, the NBA, its Premium Sports.

16 Now, Premium Sports are scarce in this industry,  
17 aren't they?

18 A Yes.

19 Q And, in fact, you told your board -- let me direct  
20 you to the third paragraph of that page about mid-way down.  
21 You told the board -- you see the paragraph that says "under  
22 the proposed terms?

23 Do you see that paragraph, sir?

24 A Yes. I'm just taking a second to read if that's  
25 okay.

1 Q That's okay.

2 A Okay. I've read it.

3 Q Okay. So what you told your board about mid-way  
4 down in that paragraph, you said that, as the board  
5 discussed in its strategy session in June, the NBA rights  
6 are coming up for renewal during a period of extreme  
7 scarcity of available Premium Sports rights, correct?

8 A Correct.

9 Q All right. And then that was what you told them  
10 so that they would approve your transaction here, right?

11 A Yes.

12 Q Okay. And so the types of sports where we're  
13 going to see the Premium Sports, again, that you have the  
14 NBA being one, March Madness being another, correct?

15 A Yes.

16 Q All right. And now you see the NBA rights as  
17 being valuable to Turner, and that's why you got this  
18 approval, correct?

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

20 Q You also see that the distributors that you do  
21 business with, that they also place great value on this  
22 content too, don't you?

23 A I believe the NBA is valuable content for the  
24 distributors.

25 Q Okay. And, in fact, if we look at that page at

1 the bottom --

2 THE COURT: You're still on 002?

3 MR. WELSH: Yes, Your Honor.

4 THE COURT: All right.

5 BY MR. WELSH:

6 Q If you look at the bottom there, the very last  
7 sentence, you say to your board, "In addition, Turner would  
8 stand to lose substantial affiliate revenue without these  
9 NBA rights." And you emphasize the "without," correct?

10 A That's correct.

11 Q All right. And you then said, "As certain  
12 affiliates place such importance on this renewal, that  
13 their" -- and there's a term there that I can't go into in  
14 open court because it's been designated as confidential.  
15 It's got one of those little red boxes around it.

16 But what you listed there is accurate, correct?

17 A Are we referring to the last sentence of that  
18 paragraph?

19 Q That's correct.

20 And I can't say it in open court, because  
21 Time Warner's designated it as confidential.

22 A Yes, I believe that's accurate.

23 Q Okay. So the last sentence on 02, when it carries  
24 over to 03, that's what I want to make sure we're all  
25 talking about the same thing, that sentence is accurate,



1 correct?

2 A Yes, that's what we believe.

3 Q Okay. Thank you, sir.

4 Now, having Premium Sports, Turner's having  
5 Premium Sports, that matters to Turner for affiliate rates;  
6 but it's also, it matters because of what you can get from  
7 advertisers; isn't that right?

8 A Yes, that's correct.

9 Q And, in fact, Turner has found that it gets more  
10 from advertisers, gets paid more from advertisers because of  
11 your Premium Sports content than not, right?

12 A Yes.

13 Q All right. The NBA, in particular, you found that  
14 that drives premium advertising rates that simply are not  
15 attainable from your other program -- in your general  
16 entertainment programming, true?

17 A True.

18 Q And, in fact, if we look at PX20-006 -- and  
19 there's a black bullet point there that's titled "Attracts  
20 top-tier advertising and grows advertising pricing."

21 Do you see that paragraph there?

22 A I do see that paragraph.

23 Q And the point that we're just talking about, about  
24 how the NBA -- driving premium advertising CPMs, they're not  
25 attainable by other entertainment programming, that's set

1     forth in your justification to the Time Warner board for the  
2     approval of this transaction, correct?

3             A     Yes, that's true.

4             Q     And the numbers that are there, again, I can't go  
5     into those numbers because they've been designated as  
6     confidential by Time Warner, but the numbers that are there  
7     were accurate; is that correct?

8             A     Yes.

9             Q     Thank you, sir.

10            So Turner can charge for more advertising because  
11   the NBA games are valued more by advertisers, correct?

12            A     Yes.

13            Q     And you found that viewers that want live sports  
14   are engaged, correct?

15            A     Correct.

16            Q     They're engaged with that content, right?

17            A     Yes.

18            THE COURT: What does that mean, "they're  
19   engaged"? They're watching it?

20   BY MR. WELSH:

21            Q     You find that they're more passionate about the  
22   content; is that right?

23            A     They're fans, you're right. So they tend to pay  
24   attention to the live event. Plus they'll watch more of  
25   this event live than they will our other entertainment

1 programming where they're watching it more and more on a  
2 delayed basis. That's valuable to advertisers.

3 THE COURT: How do you know this?

4 THE WITNESS: Excuse me, Your Honor?

5 THE COURT: How do you know this kind of thing?

6 THE WITNESS: We --

7 THE COURT: How do you evaluate that? How  
8 do you know that that's true?

9 THE WITNESS: We look at just the aggregate number  
10 of audiences that tune in for these events, and then we'll  
11 actually do surveys to try to evaluate what we call  
12 "fandom" --

13 THE COURT: Okay.

14 THE WITNESS: -- which is how passion this  
15 audience is and engaged as it is.

16 THE COURT: So you're doing a statistical analysis  
17 of the data --

18 THE WITNESS: To the best we can --

19 THE COURT: -- that you have.

20 THE WITNESS: To the best we can, Your Honor.

21 MR. WELSH: Thank you, Your Honor.

22 BY MR. WELSH:

23 Q Now, you found that sports drives the value to  
24 distributors and to advertisers because of its popularity  
25 with consumers and this engagement that you're just talking

1 about, true?

2 A Yes, that's true.

3 Q And live viewing, the live viewing aspect of your  
4 content at Turner, that remains an important component of  
5 Turner's business model today and into the future;  
6 is that fair?

7 A We would like it to be.

8 Q Okay. And having the NBA, for example, as one of  
9 your Premium Sports content, now that's good for Turner  
10 because of it being resistant to this time-shifted viewing,  
11 I think you were just referring to; is that right?

12 A Yes, that is right.

13 Q All right. So consumers, they value it because  
14 they want to watch it live and they want to watch it live on  
15 your linear programming, right?

16 A Yes, that's true.

17 Q They don't want to look at it two hours later, but  
18 they want to catch it live, right?

19 A Yes.

20 Q And as a result of their wanting it live, you're  
21 going to get paid more from your distributors and get paid  
22 more by your advertisers, right?

23 A True.

24 Q And we talked earlier, there's a reference to  
25 CPMs, but I just want to get that into the record.

1 I'm not sure we talked about it earlier in this trial.

2 What are CPMs?

3 A CPM is industry jargon for costs per thousand  
4 viewers. And it's essentially how the advertising currency  
5 is quoted.

6 Q And so if you get a higher CPM, that's a good  
7 thing for Turner; you're getting paid more by the  
8 advertisers for that content, correct?

9 A Yes, that's true.

10 Q So in your documents submitted to the Time Warner  
11 board for the NBA approval, you told them that it would  
12 drive higher -- getting the approval with the NBA rights  
13 would drive higher CPMs for Turner, correct?

14 A That's correct.

15 Q And going back to the affiliate rates for a  
16 second, it's true that in the past, even before this period  
17 when you got the renewals, that the NBA programming rights  
18 had enabled Turner to increase TNT's carriage and affiliate  
19 rates; isn't that's true?

20 A It's an important component but not the only  
21 component.

22 Q Well, you told the board -- correct me if I am  
23 wrong, but you told the board when you got the approvals  
24 that it was actually critical to Turner for maintaining  
25 carriage and achieving the planned affiliate rate increases

1 for TNT, didn't you?

2 A Yes, we did.

3 Q Okay. And it's in the memorandum that we have in  
4 front of us, PX20, correct?

5 A I saw that.

6 Q You also told the board that the top-tier sports  
7 programming has been and will continue to be a key factor in  
8 allowing networks to receive the highest subscription rates.  
9 That was the statement that you made to your board, right?

10 A That's correct.

11 Q Okay. And that was an accurate statement, right?

12 A Yes.

13 Q Let's switch to talk about March Madness, if we  
14 can, for a few minutes, okay?

15 Now, you were involved in the contract  
16 negotiations for Turner for the right to -- when you renewed  
17 that contract, to get those rights for March Madness; is  
18 that right?

19 A I was the CEO of the company, but I had a team  
20 that was doing actual negotiation. But, yes, I oversaw  
21 that.

22 Q Okay. Sure. You were the CEO, chairman of the  
23 company at the time of those negotiations, correct?

24 A That's correct.

25 Q And this contract was, in fact, renewed in 2016;

1 is that right?

2 A Yes.

3 Q And the contract was extended -- these rights to  
4 March Madness were extended out to the year 2032;  
5 is that right?

6 A That's correct.

7 Q Okay. So from this point all the way through  
8 2032, Turner's got the rights that are set out in that  
9 contract for March Madness for TNT, TBS, TruTV?

10 A Yes. In partnership with CBS.

11 Q Right.

12 Okay. And under that agreement, again, you would  
13 alternate with CBS in terms of the final four and the  
14 finals; is that correct?

15 A Yes.

16 Q Now, to get that extension, you had to do a  
17 memorandum to your board, the Time Warner board, for that  
18 approval as you did with the NBA contract; is that right?

19 A Yes, that's correct.

20 Q And if we look at PX21 in your binder sir, and  
21 just tell me when you're there.

22 A I'm there.

23 Q Now, PX21 is a memorandum from you to the Board of  
24 Directors, dated January 21, 2016, right?

25 A Yes.

1 Q And that would be the Board of Directors of  
2 Time Warner, correct?

3 A Yes, correct.

4 Q Okay. And the purpose of this memorandum that we  
5 have here, similar to what you did with the NBA, was to get  
6 the Time Warner board's approval of this renewal for the  
7 NCAA men's tournament, basketball tournament, March Madness;  
8 is that right?

9 A Sure.

10 Q And, again, you had to submit this memorandum  
11 because it exceeded the threshold that you could get -- that  
12 you could do on your own. You had to get board approval,  
13 right?

14 A Yes, that's correct.

15 Q And I think the amount here was, again, in the  
16 approximates of a billion dollars annually; is that right?

17 A It would be somewhere close to that. I'd have to  
18 refresh my memory by looking at the memo again.

19 THE COURT: That's just for your eight years?

20 You're only doing half. CBS is doing half, right?

21 THE WITNESS: Correct.

22 THE COURT: So CBS is doing a billion too? So the  
23 NCAA is getting \$2 billion?

24 THE WITNESS: I'd have to refresh my memory by  
25 reading the memo.



1 THE COURT: Well, the 1 billion is just your piece  
2 of the contract, right?

3 THE WITNESS: Well, the billion dollars was  
4 correct for the NBA. I'm just trying to find the part of  
5 this memo --

6 THE COURT: All right. Take a look.

7 THE WITNESS: -- that talks about --

8 BY MR. WELSH:

9 Q Does it sound to you to be approximately correct,  
10 that it was a billion dollars, sir?

11 A I see something here that says \$771 million  
12 average per year.

13 I do know at Turner that we spend approximately  
14 \$2 billion annually on sports rights.

15 That's all sports.

16 BY MR. WELSH:

17 Q If I could direct you to the third paragraph on  
18 PX21. Does it say under the proposed renewal terms the  
19 average annual rights fee from 2025 to 2032 would be  
20 \$1.1 billion?

21 A Yes. But it says "paid by Turner and CBS."

22 Q And this would be a total payment, then, of  
23 \$8.8 billion?

24 A I believe that's correct.

25 Yes.

1 Q So Turner was interested and willing and paying a  
2 very large sum of money for the rights for March Madness,  
3 correct?

4 A Yes.

5 Q Because you saw value in that, right?

6 A Yes.

7 Q And you saw value here because, as with the NBA,  
8 the live-sports viewership was driving value to distributors  
9 of Turner programming, correct?

10 A Yes.

11 Q So if we look at, again, PX21 and you look at  
12 page 1, paragraph 2 -- and I'll direct you to the second  
13 sentence.

14 And you say there, "Our view is that  
15 Premium Sports will continue to be unmatched in terms of  
16 consumer demand and live viewership, driving ongoing value  
17 to distributors and advertisers."

18 Correct?

19 A Yes.

20 Q And when you say that it's going to drive ongoing  
21 value to distributors, the distributors' value that you're  
22 talking about is gaining subscribers in the marketplace,  
23 right?

24 A Presumably, yes.

25 Q Now, Turner's March Madness basketball

1 programming, that drives affiliate rate increases for Turner  
2 were, correct?

3 A It's certainly helpful.

4 Q And March Madness has been an important factor in  
5 Turner's ability to drive affiliate rate increases for TBS,  
6 TNT, and TruTV; isn't that's true?

7 A It's been an important factor.

8 Q Well, you told your board, I think, that the NCAA  
9 March Madness has been an important factor in Turner's  
10 ability to drive affiliate rate increases for those three  
11 channels, didn't you?

12 A Yes. I just -- I thought I just said it's an  
13 important factor.

14 Q Okay. And if we look at PX21-003 --

15 MR. WELSH: Oh, Your Honor, move to admit PX21.  
16 I apologize. I thought I had done that.

17 MR. PETROCELLI: No objection, Your Honor.

18 THE COURT: All right. Does that need to be under  
19 seal because of the information in it?

20 MR. PETROCELLI: Yes.

21 THE COURT: All right. Subject to modification,  
22 it's admitted.

23 MR. WELSH: Thank you, Your Honor.

24 (Government's Exhibit PX21  
25 received into evidence.)

1 BY MR. WELSH:

2 Q So if we look at PX21-003, and here, you've got  
3 Turner Entertainment affiliate revenue.

4 Do you see that graph there?

5 A Yes, I do.

6 Q And, again, these numbers have been designated as  
7 confidential by Time Warner, so I'm not going to go into the  
8 actual numbers.

9 But it's reflecting that from 2010 to 2015, that  
10 your affiliate revenues increased as to those amounts; is  
11 that true?

12 A Yes.

13 Q Okay. And you were projecting now for the  
14 board -- as part of getting your approvals for the  
15 March Madness renewal, you were projecting out that your  
16 affiliate revenues would increase again to 2019 by the  
17 amount that's listed there; is that correct?

18 A Yes. That was our forecast at the time.

19 Q Okay. And the information that's there, both as  
20 to your current numbers, so 2010, 2015, as well as your  
21 forecast, those were accurate to the best of your  
22 understanding; is that correct?

23 A Yes, that's correct.

24 Q And we talked about profitability a bit yesterday  
25 for March Madness.

1           Now, you told your board that Turner believes that  
2 with the incremental affiliate revenue that would be derived  
3 from March Madness here, that that would take care of and  
4 offset the cost that would be associated with obtaining the  
5 content, correct?

6           A     Yes. We had made assumptions about increases in  
7 affiliate fees, and we attributed them to -- somewhat  
8 arbitrarily to March Madness.

9           Q     But the affiliate rates and revenues that we've  
10 talked about yesterday and today, those have been increasing  
11 over the course of time, as have your margins, correct?

12          A     Yes, that's correct.

13          Q     Okay. And March Madness plays a critical role in  
14 Turner's targeted affiliate rate increases; isn't that true?

15          A     Yes, it's an important factor.

16          Q     Well, it's not just an important fact; it has a  
17 critical role in what you're doing in your business at  
18 Turner, true?

19          A     As do all of our sports, yes.

20          Q     Now, remind me, sir, when does your contract with  
21 March Madness expire?

22          A     2032.

23          Q     And when does your NBA contract expire?

24          A     2024.

25          Q     And when does your Major League Baseball contract

1 expire?

2 A 2021.

3 Q Now, it was suggested, I think, last week in this  
4 courtroom that, by defense counsel, that the words "must  
5 have," they don't really mean anything; that everyone uses  
6 it. You don't agree with that, do you?

7 A I do believe -- as it's used in the industry, I do  
8 believe we have must-have programming, as do other  
9 programmers.

10 Q Right.

11 But you view the Turner networks as being  
12 must-have programming for distributors and for the consumer,  
13 don't you?

14 A "Must have" is a term that is often used in the  
15 industry by us and other programmers. And whether it means  
16 must have -- do distributors absolutely need our  
17 programming? I don't think I would agree with that  
18 statement.

19 "Must have" is another way of saying, we have  
20 popular programming.

21 Q You have said, both internally at Turner and  
22 externally to the financial media, that Turner is must-have  
23 content for distributors; isn't that's true?

24 A I have said that.

25 Q You told, in an interview on CNBC in January of

1 2016, that your sports at Turner cements the must-have value  
2 that our networks bring to distributors and consumers.

3 Correct?

4 A I don't specifically remember that interview, but  
5 I've used the term "must have" a number of times.

6 Q Well, I'm happy to play the interview for you if  
7 that would refresh your memory.

8 THE COURT: You can approach. You can step down.

9 (Sealed bench conference)

10 THE COURT:

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16 MR. WELSH:

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19 THE COURT:

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21 MR. WELSH:

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1 MR. WELSH:

2 THE COURT:

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5 MR. WELSH:

6 THE COURT:

7 MR. WELSH:

8 (Open court)

9 THE COURT: The last line of questioning will be  
10 stricken.

11 Move forward.

12 MR. WELSH: Thank you, Your Honor.

13 BY MR. WELSH:

14 Q Let's look at PX21-005, if you would.

15 A I'm there.

16 Q All right. If you look at the second paragraph.  
17 Are you ready, sir?

18 A I am ready, yes.

19 Q In that second paragraph, you told your board at  
20 Time Warner that by renewing the NCAA March Madness  
21 agreement, Turner was ensuring it will have access to the  
22 must-have video programming for an extended period at  
23 attractive annual price increases.

24 Do you see that?

25 A I do see that.



1 Q So that's what you told your board again to get  
2 your approval of this contract, right?

3 A Yes.

4 Q And let's go back to PX20 if we can briefly.

5 A I'm there.

6 Q Now, if you look at PX20-005.

7 A I see that.

8 Q And we have the strategic rationale listed there,  
9 correct?

10 A Yes, that's correct.

11 Q Okay. And there, you say -- in the paragraph  
12 above that, you say by renewing the rights to televised NBA  
13 games on TNT, Turner is ensuring that the network will  
14 continue to have high value, "must have" programming for  
15 many years to come, right?

16 MR. PETROCELLI: "Must have" is in quotes in both  
17 documents.

18 THE WITNESS: Yes, I see that.

19 BY MR. WELSH:

20 Q That's, again, what you told your board to get the  
21 approvals for the NBA contract, correct?

22 A Correct.

23 Q You can put that to the side for now.

24 Thank you, sir.

25 Now, we talked a little bit about the work that

1 Turner does to track viewership and that sort of thing with  
2 its networks in response to His Honor's question to you.

3 Turner tracks its networks and how consumers  
4 perceive them out in the marketplace, correct?

5 A We track them daily in terms of using  
6 Nielsen-rated data. And from time to time, we'll do brand  
7 studies.

8 Q I'm sorry. I missed that.

9 A We'll do brand perception studies.

10 Q Okay. Well, Turner does do Nielsen ratings  
11 studies. It also looks at something called a quadrant  
12 analysis; is that right?

13 A I'm unfamiliar with what it's called, but  
14 I think -- I think I may know what you're referring to, but  
15 I don't know what it's called.

16 Q Well, let's look at PX150 in your binder. Again,  
17 tell me when you're there, sir.

18 A I'm there.

19 Q Now, PX150 is, it's an email from Tom Cattapan;  
20 is that right?

21 A Yes.

22 Q October 17, 2017, to you and a number of other  
23 people at Time Warner, including Mr. Zucker. And he's the  
24 President of CNN; is that right?

25 A Yes, that's right.

1 Q And then also Mr. Levy, he's the President of TBS;  
2 is that right?

3 A He's the President of all of Turner, yes.

4 Q Thank you.

5 And Mr. Cattapan was head of Turner Research; is  
6 that right?

7 A He didn't head up -- he was a VP in the research  
8 group. He was not the research head.

9 Q And the email that Mr. Cattapan sent to you had a  
10 document attached to it, what's called a quadrant analysis.

11 Do you see that?

12 A I do.

13 MR. WELSH: Your Honor, I move for admission of  
14 PX150 into the record.

15 MR. PETROCELLI: No objection.

16 THE COURT: It will be admitted.

17 MR. WELSH: Thank you.

18 (Government's Exhibit PX150  
19 received into evidence.)

19 BY MR. WELSH:

20 Q Now, Turner Research, the email indicates that  
21 Turner, that this was the second year that Turner Research  
22 had provided this sort of an analysis.

23 Do you see that?

24 A I do.

25 Q Okay. And you were aware of this analysis, having

1 looked at an earlier, the earlier year's version of that,  
2 correct?

3 A I don't remember seeing two versions, but I  
4 remember seeing one version.

5 Q Well, on this version, again, looking at this  
6 quadrant analysis, what's going on here is that  
7 Turner Research is trying to place the different networks  
8 into these quadrants based upon the viewership, the time  
9 spent viewing, as well as by the reach of the networks; is  
10 that right?

11 A Yes, that's right.

12 Q Okay. And so by "reach of the networks," we're  
13 talking about essentially how many people are viewing those  
14 networks; is that true?

15 A Yes; the unique number of individuals that will  
16 view the network.

17 Q And then the spent time viewing is the actual time  
18 spent by the individual watching the network, correct?

19 A Yes.

20 Q Okay. And so then you have your quadrants broken  
21 out with your high-reach, your high-time viewing in your  
22 upper-right quadrant. And then it breaks down whether it's  
23 lower time, lower reach and et cetera, correct --

24 A Yes, that's right.

25 Q -- all four combinations? Okay.

1           And if we look at 150-002, we see the layout of  
2 what Turner's research department had done at that time for  
3 the quadrant analysis; is that right?

4           A     Yes, that's right.

5           Q     And it's looking at the Q316 to Q217 time frame;  
6 is that right?

7           A     Yes.

8           Q     Okay. And over that time frame, what the research  
9 department of Turner had found is that TNT, TBS,  
10 Cartoon Network, Adult Swim, Headline News, and CNN, all of  
11 those were within that high-reach, high-time -- high-viewing  
12 quadrant in this -- for these networks; is that right?

13          A     Yes, with different levels of success, but yes.

14          Q     Okay. And now, Turner's research department also  
15 concluded and advised you that the Turner networks, that  
16 they stacked up better than most of your competitors as well  
17 based on revenue coming out of these quadrants, correct?

18          A     Yes. Understanding that this is only the cable  
19 universe and doesn't include the broadcast networks.

20          Q     But looking at the cable universe here, they  
21 advised you of how your network stood up against the  
22 competitors when it came to the revenue by quadrant, right?

23          A     Where do you see that, sir?

24          Q     Sure.

25                 Let me direct you to PX150-005. Tell me when

1 you're there.

2 A Yes. I'm looking at it now.

3 Q So what we have here is a chart. And it says,  
4 percent of revenue from each quadrant, Q316 to Q217.

5 Do you see that chart?

6 A Yes, I do.

7 Q Okay. And what's reflected here is that Turner,  
8 for the high-viewing, high-reach category, so that  
9 upper-right quadrant that we were just talking about, Turner  
10 has 93.5 percent in that area, is that correct, for revenue?

11 A Yes.

12 But can I -- is it okay to clarify?

13 Q Is that correct, that it's 93.5 percent?

14 A I don't know if the way you asked the question is  
15 correct.

16 Q What it lists for Turner in this chart -- again,  
17 looking at that top-right quadrant -- is that it's  
18 93.5 percent for Turner, correct?

19 A It says that we derive 93.5 percent of our  
20 revenues from networks that are in that top-right quadrant.

21 Q And that's higher than what your competitors have,  
22 right, for that high-reach, high-viewing quadrant?

23 A Correct.

24 Q Okay. And that was the point that was being made,  
25 as you understood it from this memorandum, right?

1           A     That we have a concentrated portfolio of networks.

2           Q     Okay. And your research department actually  
3 concluded and advised you that the Turner networks are among  
4 those that viewers see as being essential, correct?

5           A     I'm sorry. Where do you see that, sir?

6           Q     If you look at PX150-006 and look at the last  
7 paragraph on that page.

8                     Do you see that?

9           A     Yes, I see that.

10          Q     Your Turner research department said Turner  
11 networks cost the consumer money, but cable viewers have  
12 voted with their eyeballs and their remotes. Turner  
13 networks are among those for whom the cable viewers regard  
14 as essential.

15                     Correct?

16          A     I do see that, yes.

17          Q     That was the statement made by Turner Research to  
18 you, to Mr. Zucker, and Mr. Levy, among others; is that  
19 right?

20          A     Yes.

21          Q     And you don't dispute that statement?

22          A     It's a bit of a qualitative statement.

23          Q     You didn't come back and talk to your research  
24 department to say that that was wrong?

25          A     I didn't think it was important enough to do that.

1 Q And, in fact, am I correct, sir, that you've told  
2 the media outside that if you have high-reach,  
3 high-time-spent viewing in this quadrant analysis, if you  
4 have those two and you're in that upper-right category  
5 there, you're valuable?

6 A Yes.

7 Q Let's talk about your contract negotiations with  
8 distributors, move to that subject if we can.

9 A Okay.

10 Q Now, in your deposition, I think you described  
11 negotiations with distributors over these affiliate  
12 agreements as being trench warfare.

13 Do you remember that?

14 A I do remember that.

15 Q And that's your perception of it, that it's akin  
16 to trench warfare?

17 A I've never been in the military, so I can't  
18 specifically say. But these are difficult negotiations.

19 Q And as part of those negotiations, you do consider  
20 the possibility of not concluding a contract; is that true?

21 A I think in every negotiation, we consider the  
22 possibility of not concluding, although we always try to  
23 conclude.

24 Q And part of that is the possibility that you would  
25 end up going dark with the distributor; is that right?



1 A Yes.

2 Q Now, Dish is one of Turner's distributors,  
3 correct?

4 A Yes, that's correct.

5 Q And Turner, back in 2014, Turner had a contract  
6 with Dish that was set to expire; is that right?

7 A That's correct.

8 Q And Turner and Dish, you ended up going dark, I  
9 think it was in October of 2014; is that right?

10 A Yes. They pulled us dark, I believe, on  
11 October 21st.

12 Q Right. And that was for about a three-week  
13 period; is that right?

14 A I believe it was 31 days.

15 Q And that did not include that when the network  
16 went down -- that was CNN -- it didn't include TBS and TNT,  
17 correct?

18 A That is correct.

19 Q Now, the contract, then, ended up getting extended  
20 to March 31 of 2015, true?

21 A True.

22 Q And that happened to coincide with March Madness;  
23 is that right?

24 A Yes.

25 Q And the fact that the contract negotiations that

1 were leading up to this termination date that coincided with  
2 March Madness and the finals, that wasn't an irrelevant  
3 point to Turner in its negotiations, was it?

4 A This was -- we knew -- well, yes. It was not  
5 irrelevant.

6 Q You had, during the -- you were involved in those  
7 negotiations with Dish, correct?

8 A Yes, I was.

9 Q And you were involved personally in communications  
10 with Dish, as well as with your colleagues at Turner and  
11 Time Warner about those negotiations; is that right?

12 A Yes.

13 Q Okay. If you could turn to PX131 in your binder.  
14 And tell me when you're there, sir.

15 A I am there.

16 Q Okay. Great.

17 Now, PX131, that's an email from you, March 16,  
18 2015; is that right?

19 A Yes, that's correct.

20 Q And you sent the email to Mr. Bewkes, Jeff Bewkes.  
21 You testified yesterday he's the chairman and CEO of  
22 Time Warner, correct?

23 A Yes, that's correct.

24 Q He's your boss, right?

25 A Yes.

1 Q And then to Mr. Plepler, Richard Plepler, now he's  
2 the CEO of HBO; is that right?

3 A That's correct.

4 Q Okay. And this email that you sent, this related  
5 to the Dish negotiations and discussions that were going on  
6 at that time frame; is that right?

7 A That's right.

8 Q And all of this related to the negotiations that  
9 were occurring at that time between Turner and Dish;  
10 is that right?

11 A That's right.

12 MR. WELSH: Your Honor, I move for admission of  
13 PX131.

14 MR. PETROCELLI: No objection.

15 THE COURT: It will be admitted.

16 MR. WELSH: Thank you, Your Honor.

17 (Government's Exhibit PX131  
18 received into evidence.)

18 BY MR. WELSH:

19 Q Now, Mr. Martin, you made it known to Dish at this  
20 time that you were prepared to go dark if you didn't strike  
21 a deal with them; isn't that true?

22 A I'm trying to read -- I haven't read the whole  
23 entire email.

24 THE COURT: Take a minute and look at it.

25 BY MR. WELSH:

1 Q Please.

2 A Thank you.

3 Okay. I'm finished reading.

4 Q You're ready?

5 A Yes.

6 Q Okay.

7 If you look at the, it says a few other points,  
8 and then there's a second bullet point.

9 Do you see that?

10 A Yes.

11 Q So what you communicated to Mr. Bewkes was that  
12 you warned Mr. Ergen that if we don't see meaningful  
13 movement on the document in the next 48 hours, then we're  
14 going to start communicating directly to the Dish customers  
15 (using March Madness), that there's a danger that they might  
16 miss the Final Four championship game that begins Thursday  
17 of this week.

18 Do you see that statement?

19 A I do see that statement.

20 Q Okay. And am I correct that the "him" that you  
21 referred to in that paragraph, that that's Mr. Ergen,  
22 Charlie Ergen, of Dish?

23 A Yes.

24 Q And the meaningful movement on the document,  
25 you're referring to the distribution contract;

1 is that right?

2 A Yes, that's correct.

3 Q And what you're communicating to Mr. Ergen that  
4 you relayed to Mr. Bewkes was that you were -- that you had  
5 used the March Madness point about going dark as part of  
6 your leverage in that negotiation with Dish; isn't that  
7 true?

8 A Well, we were going to use March Madness as a  
9 vehicle to warn customers that they may not be able to see  
10 the Final Four. Those would be viewers that are  
11 particularly interested in the tournament.

12 Q But you saw that as a point of leverage that you  
13 might be able to gain over Dish in those negotiations; isn't  
14 that true?

15 A I saw it as a way to try to reach conclusion,  
16 because I thought that the distributor would want to carry  
17 March Madness.

18 Q Right. Because if they didn't carry  
19 March Madness, they would lose their subscribers, and that's  
20 how you saw it?

21 A I don't necessarily know if they would have lost  
22 subscribers or not.

23 I mean, this was a very contentious negotiation  
24 where he had already dropped most of our networks once, and  
25 I was concerned that he would do it again.

1 Q Well, during this time frame that we're talking  
2 about here with these negotiations with Dish, you and your  
3 colleagues at Turner were talking internally about how many  
4 Dish subscribers would be impacted if Turner went dark,  
5 correct?

6 A Correct.

7 Q So if you look at PX130.

8 Tell me when you're there.

9 A I am there.

10 Q Great.

11 Now, PX130, there's an email from you to Mr. Levy.  
12 There's also an email before that, and that's on March 30th,  
13 2015.

14 And then there's an email from Mr. Levy to you,  
15 again, at 6:31.

16 Do you see that?

17 A Yes.

18 Q And some information is being provided to you by  
19 this email, correct? That's down below. It's being  
20 forwarded on to you?

21 A Yes, that's correct.

22 Q And what we see here in this series of emails on  
23 March 30th, this had to do with your, again, your contract  
24 negotiations with Dish; is that right?

25 A Yes, that's correct.

1 Q All right. And we've talked about Mr. Levy, and  
2 we also have Mr. Shimmel.

3 Do you see him there?

4 A Yes.

5 Q He was an employee Turner at the time, correct?

6 A Yes.

7 Q Was he head of Turner Research?

8 A Yes.

9 Q And, again, all the email chain that we're talking  
10 about here, this related to the Turner direct -- excuse me,  
11 Turner-Dish negotiations, right?

12 A That's correct.

13 MR. WELSH: Your Honor, I would move for admission  
14 of PX130 into the record.

15 MR. PETROCELLI: No objection.

16 THE COURT: It will be admitted.

17 (Government's Exhibit PX130  
18 received into evidence.)

19 THE COURT: Would this be a good time to take the  
20 morning recess?

21 MR. WELSH: Yes, Your Honor. That would be fine.

22 THE COURT: Mr. Martin, we're going to take a  
23 15-minute recess. You remain a witness under oath in the  
24 case. Refrain from discussing your testimony with anyone,  
25 including your own counsel. See you back in 15 minutes.

THE WITNESS: Yes, Your Honor.

1 THE COURT: You can step down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Let me see counsel.

4 (Sealed bench conference)

5 THE COURT:

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12 MR. WELSH:

13 THE COURT:

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MR. PETROCELLI :

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MR. PETROCELLI:

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THE COURT:

MR. WELSH:

(Open court)

1 DEPUTY CLERK: All rise.

2 This Honorable Court will now take a brief recess.

3 (Recess from 11:51 a.m. to 12:08 p.m.)

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

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

11 THE COURT: You may proceed when you're ready.

12 MR. WELSH: Thank you, Your Honor.

13 BY MR. WELSH:

14 Q Mr. Martin, before the break, we were talking  
15 about the Dish negotiations. I just want to spend a few  
16 more minutes on that, and then we'll move on to another  
17 topic.

18 And we were looking at PX130, which I think we  
19 just moved into the record.

20 Do you remember that exhibit?

21 A Yes, I do.

22 Q So let's just talk briefly about that one.

23 Now, Mr. Shimmel is reporting to you that their  
24 research has determined that 24 percent of the Dish homes  
25 will be watching either Final Four game on Saturday.

1 Do you see that reference?

2 A I don't see. Can you be more specific where you  
3 see that.

4 Q Yeah. Do you see Mr. Shimmel's email on  
5 March 30th, 2015, to Mr. Levy, which was then forwarded on  
6 to you?

7 A Yes. I see it now. Yes.

8 Q And he says, "Jay's team is estimating that  
9 24 percent of the Dish homes will watch either the  
10 Final Four games on Saturday."

11 Right?

12 A Yes.

13 Q And that was again coinciding with where you were  
14 on the negotiations.

15 And the Turner folks, under Mr. Shimmel, they were  
16 actually able to look at the geographic location of the  
17 subscribers to be able to determine what these, how many of  
18 the subscribers would be potentially impacted if the network  
19 were to go dark, correct?

20 A Yes, correct.

21 Q And if we could turn to PX120 in your binder.  
22 Just tell me when you're there, sir.

23 A I'm there.

24 Q All right. And this is another email exchange  
25 between yourself and Mr. Levy as it relates to the Dish

1 negotiations; is that correct?

2 A Yes, that's correct.

3 Q All right. And this was in March of 2015, right?

4 A Yes, that's correct.

5 MR. WELSH: Your Honor, I move for admission of  
6 PX120.

7 MR. PETROCELLI: No objection.

8 THE COURT: It will be admitted.

9 (Government's Exhibit PX120  
10 received into evidence.)

10 BY MR. WELSH:

11 Q All right. Mr. Martin, on this email exchange,  
12 you indicate to Mr. Coleman Breland, who -- he was your lead  
13 negotiator for Turner on Dish; is that right?

14 A Yes, that's right.

15 Q And you were commenting to him that there was an  
16 issue that was in negotiations with Dish that you felt was a  
17 go-dark issue, correct?

18 A Yes. I referred to something that we would --  
19 yes, that's correct.

20 Q Okay. So the provision that you were discussing  
21 was so important to you, you're willing to take the network  
22 down?

23 A Possibly, yes.

24 Q Okay. And then Mr. Levy responds back to you.  
25 And he says, "Agreed," with respect to that go-dark issue,

1 right?

2 A Yes.

3 Q And then he says, "The Sweet 16 starts Thursday,  
4 smile. I'm sure Charlie knows if the subscribers are  
5 watching it."

6 That was his comment to you?

7 A Yes, it was.

8 Q And Sweet 16 would be the basketball tournament,  
9 correct?

10 A Correct.

11 Q Okay. Now, let's change subjects here if we can.  
12 And I want to talk about -- and this, again, relates to  
13 Dish. But you felt that the Turner networks, that they  
14 provided great value to Dish, both as to Dish, the satellite  
15 company, but also Dish as to the Sling property that they  
16 were coming out with; isn't that's true?

17 A Yes, that's true.

18 Q All right. And I understand that the Sling  
19 negotiations were also involved with this, this time period;  
20 is that right?

21 A Yeah. They were happening at the same time.

22 Q Okay. And you actually, as part of this, when you  
23 were talking with your boss, Mr. Bewkes, you made a comment  
24 to him that Sling, Dish's Sling over-the-top product, that  
25 that was not worth much without Turner?



1 A Yes, that's correct.

2 Q If you look at PX4, if you would.

3 Are you there, sir?

4 A Yes.

5 Q Is this an email from you to Mr. Bewkes,  
6 January 6th, 2015?

7 A Yes, it is.

8 Q All right. And is the email that you sent to  
9 Mr. Bewkes related to the Dish Turner negotiations?

10 A Yes.

11 Q And --

12 MR. WELSH: Your Honor, I move for admission of  
13 PX0004.

14 MR. PETROCELLI: No objection.

15 THE COURT: It will be admitted.

16 (Government's Exhibit PX0004  
17 received into evidence.)

18 BY MR. WELSH:

19 Q Okay. Mr. Martin, in that email to your boss, and  
20 I won't say the profanity, but he used profanity when he  
21 talked about Dish's OTT as being crap without Turner, right?

22 A Yes.

23 Q And the OTT is Sling, correct?

24 A Yes.

25 Q Okay. You felt that the value of your networks  
were so great that Dish Sling would need Turner, right?

1           A     I thought the number of offerings of networks that  
2 they had were so skinny that they would have benefited  
3 clearly by having our networks, which I try to get all of  
4 our networks on, didn't succeed.

5           Q     But what you told your boss is listed here, right?

6           A     Correct.

7                     I was also trying to rally by boss, who was  
8 negotiating with Charlie, who's among the smartest and  
9 toughest negotiators in the industry, to not give in on some  
10 important points.

11          Q     I didn't ask you about that point. But what I  
12 asked you about was, what you put here is what you sent to  
13 your boss, right?

14          A     Yes, that's correct.

15          Q     Now, you also talked to your boss about, well,  
16 maybe there's a plan B which you call a nuclear option,  
17 right?

18          A     Yes.

19          Q     And that was to go exclusive with DirecTV,  
20 something that your folks were discussing?

21          A     Yes.

22          Q     And the idea was to go with DirecTV, because then,  
23 exclusively with DirecTV, then subscribers would end up  
24 leaving Dish, right, for DirecTV?

25          A     Yes.

1 Q Okay. Let's change subjects here a little bit and  
2 talk about the virtual MVPDs.

3 Now, Turner has been pursuing getting contracts  
4 with virtual MVPDs; is that right?

5 A Yes, that's right.

6 Q And, as with the MVPDs, you see that Turner  
7 networks, that they drive ongoing value to even those  
8 virtual MVPDs as the television landscape continues to  
9 evolve, correct?

10 A I hope so.

11 Q Well, that's your belief?

12 A That's my belief.

13 Q All right. And that's what the Time Warner people  
14 say in their internal documents, right?

15 A Yes.

16 Q Now, if we could look at -- well, actually, so you  
17 believe that, and Turner believes that the virtual MVPDs are  
18 going to get this value and the evolving ecosystem.

19 But you also see the emergence of these virtual  
20 MVPDs as being a threat to traditional distributors, the  
21 traditional pay-TV companies, don't you?

22 A I see them as being additional competition.

23 Q You saw that back in 2015, you saw the virtual  
24 MVPDs, though, that the traditional pay-TV companies would  
25 perceive it as a threat, these virtuals, right?



1 March 1, 2015.

2 Do you see that?

3 A Yes.

4 Q And it carries over to the next page. We didn't  
5 get much on this one.

6 And what you told Mr. Bewkes in part in your email  
7 is that the, in the third paragraph on 002, that the  
8 traditional MVPDs will see this being Sony OTT and their  
9 virtual MPVD as being a threat, correct?

10 A Yes.

11 Q And in the time period that followed, sir, you had  
12 discussions with some of the traditional providers about  
13 going over the top with Turner; isn't that true?

14 A I don't believe we had any substantive discussions  
15 about Turner going over the top.

16 Q Well, about -- I'm sorry, about the traditional  
17 pay-TV companies going over the top. I misspoke.

18 A There have been on-and-off discussions about that  
19 possibility for some time.

20 Q If you look at PX203 in your binder.

21 A I may need to bring a magnifying glass in order  
22 to -- stronger --

23 Q I apologize. That's how the documents were  
24 presented to us.

25 A I understand.

1 Q Are you there, sir?

2 A I am there.

3 Q Okay. Great. Now, this is your email on  
4 September 7, 2016; is that right?

5 A Yes.

6 Q Again, to Mr. Breland and also was sent -- well,  
7 to Mr. Breland; is that correct?

8 A To -- am I -- 203, it's from John Martin to  
9 Pascal Desroches.

10 Q All right. So this one went to Mr. Desroches.  
11 And this is September 7, 2016, correct?

12 A Yes.

13 Q And you're describing a meeting that you had had  
14 with Mr. Tom Rutledge; is that right?

15 A Right.

16 Q Mr. Rutledge was the CEO of Charter?

17 A Yes.

18 Q And this was part of your responsibilities, again,  
19 at Turner, to have discussions with some of your  
20 distributors, such as Charter; is that right?

21 A Yes, that's correct.

22 MR. WELSH: Your Honor, move for admission of  
23 PX203.

24 MR. PETROCELLI: Your Honor, no objection;  
25 however, to the extent this is reporting statements of

1 Mr. Rutledge on that, I would object to hearsay and would  
2 offer it for the truth.

3 THE COURT: Well, I'll admit it at the moment, but  
4 not for the truth of the matters asserted as to  
5 Mr. Rutledge's statements.

6 MR. WELSH: Thank you, Your Honor.

7  
8 (Government's Exhibit PX203  
received into evidence.)

9 BY MR. WELSH:

10 Q Now, Mr. Martin, you're describing your  
11 conversation with Mr. Rutledge of Charter here, and you  
12 indicate in your email that you were urging him to be more  
13 innovative; is that right?

14 A Yes. I recall that as being part of the  
15 conversation.

16 Q And part of the discussion was whether they would  
17 go over the top, right?

18 A Yes.

19 Q And you were encouraging them to do so. In the  
20 process, though, you were telling them, you might have to  
21 make a choice; is that right?

22 A Yes.

23 Q So the choice was whether you would continue to  
24 support their traditional pay-TV providers or whether you  
25 would shift to the virtual?

1 A Or support both.

2 Q You were at a bit of a crossroads at the time,  
3 right?

4 A Yes. There was some general discussion about how  
5 we would need to support the new entrance.

6 Q You have entered into contracts with the virtual  
7 MVPDs, right?

8 A Many of them, yes.

9 Q So Sony Vue, you have a contract with them?

10 A Yes.

11 Q You have a contract with Dish Sling?

12 A Yes.

13 Q You have a contract with Hulu?

14 A Yes.

15 Q You have a contract with DirecTV Now, right?

16 A Correct.

17 Q Okay. And then just recently, you entered into a  
18 contract with YouTube TV, correct?

19 A Yes.

20 Q The virtual MVPDs that we talk about now, as with  
21 the traditional pay-TV distributors, it's your understanding  
22 that they would want to carry content that the subscribers,  
23 the consumer would want to see, correct?

24 A Yes.

25 Q All right. And the virtual MVPDs, they offer



1 packages that are a smaller number of channels, smaller  
2 number of networks, than the traditional pay-TV packages  
3 that we would see when I sit down and put on my remote with  
4 Charter or with Cox or with AT&T?

5 A That's true for most but not all.

6 Q Okay. And what they're doing, though, with the  
7 ones that do this is that they're offering these skinny  
8 bundles that we hear about, right, and the Court's heard  
9 about?

10 A Yes, that's correct.

11 Q And the skinny bundles are designed to bring these  
12 networks to the consumer at a lower price point, right?

13 A Yes.

14 Q Okay. And that would include the ones that we  
15 talked about here that you ventured into contracts with,  
16 correct?

17 A Right.

18 Q Okay. And I think you've made the point before  
19 that Turner's networks are actually well-positioned for the  
20 virtual MVPDs because of the fact that your four -- four of  
21 your key networks, TBS, TNT, CNN, and Cartoon Network,  
22 account for over 85 percent of your revenues, affiliate  
23 revenues, right?

24 A Right.

25 Q So that well positions you to get into the virtual

1 MPVDs who want fewer channels.

2 A We think so.

3 Q Okay. All right. And the virtual MVPDs, though,  
4 they pay -- for Turner, they pay a higher rate, though,  
5 compared to the MVPDs because of the fact that they just  
6 entered the market with no subscribers, right?

7 A Yes, initially, yes.

8 Q And I don't want you to reveal what the amount is,  
9 okay? But if we look at Sony Vue, they're paying a higher  
10 rate for the Turner networks than, say, the cable companies  
11 are with you, correct?

12 A Initially, that was true.

13 Subsequently, we've done a new contract with  
14 Sony Vue, where their rates are much more comparable with  
15 the equivalent small cable system that would have a  
16 comparable number of subscribers.

17 Q Now, Turner has -- let's change subjects. I want  
18 to talk about Turner's work and innovation.

19 Turner has tried to innovate; is that correct?

20 A Yes.

21 Q So if we look, I'll direct you to PX78.

22 Tell me when you're there, sir.

23 A Oh, I'm sorry. I am there.

24 Q Okay. Great.

25 So this an email from Mr. Sal Petruzzi to Mr. Levy

1 and Mr. Breland May 17, 2016.

2 Do you see that?

3 A Yes.

4 Q Mr. Petruzzi is who?

5 A He runs communications for all of David Levy's  
6 businesses.

7 Q Okay. And Mr. Petruzzi notes in his email that  
8 he's -- that you're going to be appearing before CNBC the  
9 next day.

10 Do you see that?

11 A Yes.

12 Q And attached to this email are some talking points  
13 for that interview; is that right?

14 A Yes.

15 MR. WELSH: Your Honor, I move for admission of  
16 PX78 into the record.

17 MR. PETROCELLI: There's no objection. I don't  
18 see Mr. Martin on the email, so --

19 THE COURT: That's what I'm trying to figure out.  
20 Is this something he --

21 MR. WELSH: He's listed in t he email itself. It  
22 says, "John Martin will appear on CNBC tomorrow at  
23 7:30 a.m."

24 THE COURT: Yeah, but that's not my question.

25 My question is, did he receive this email?

1 MR. WELSH: I'll ask, Your Honor.

2 BY MR. WELSH:

3 Q Mr. Martin, the email and the talking points that  
4 are attached, did those get to you for your interview with  
5 CNBC?

6 A I don't know. I don't recall ever receiving this,  
7 although it's possible. I received so much information.

8 Q You did participate in the interview with CNBC,  
9 correct?

10 A I believe so, yes.

11 Q Okay. And you typically receive interview --  
12 briefings for those interviews before you attend those?

13 A Sometimes, yes. Sometimes, not.

14 THE COURT: Subject to connection. I'll admit it  
15 subject to connection. But unless you can get some kind of  
16 foundation for its creation and its distribution, I'm not  
17 going to admit it completely.

18 MR. WELSH: Thank you, Your Honor.

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

21 BY MR. WELSH:

22 Q Mr. Martin, is it true that Turner, in this time  
23 frame of 2016, May 2016, that it was continuing to strive to  
24 innovate beyond the traditional television universe and  
ecosystem?

25 A Yes. That's been the strategy for some time.

1 Q Okay. So whether it's in this document or  
2 elsewhere, that's the strategy of Turner Your Honor,  
3 correct?

4 A Yes.

5 Q Okay. And in that regard, Turner launched  
6 FilmStruck; is that right?

7 A Yes, that's correct.

8 Q FilmStruck was the company's first  
9 direct-to-consumer product in the United States; is that  
10 right?

11 A For Turner, that's correct.

12 Q For Turner, right?

13 A Yes.

14 Q And it was all -- and you also added after that a  
15 product called Boomerang; is that right?

16 A Yes.

17 Q All right. And that's also a direct-to-consumer  
18 product for Turner?

19 A Yes, it is.

20 Q And you launched 22 over-the-top services;  
21 is that correct?

22 A Where does it say that?

23 Q Does that number sound right to you, that you've  
24 launched 22 over-the-top services?

25 A No.

1           Q     Turner was set to announce a portfolio-wide  
2 initiative to launch apps on set-top devices that would  
3 include Apple TV, Amazon Fire, Roku, and Google in May of  
4 2016; is that right?

5           A     Those, I would characterize those as absent.  
6 They're not over-the-top services.

7           Q     But you were moving forward with apps to get your  
8 network content out, correct?

9           A     Yes. We were striving to get our content to  
10 devices so consumers could see the content. A lot of it is  
11 this concept of authenticated, though. In other words,  
12 somebody would have to have an MVPD subscription in order to  
13 have access to our content on an app.

14          Q     You've been pursuing at Turner, though, going with  
15 the direct-to-consumer over-the-top, whether through these  
16 or FilmStruck or Boomerang, correct?

17          A     Yes, that's correct.

18          Q     Okay. And I think you told me in your deposition  
19 that you haven't pursued the over-the-top direct-to-consumer  
20 as much because you've had some other priorities that have  
21 taken issue?

22          A     We're still moving ahead and pursuing innovation,  
23 and some of the product roadmap does include over-the-top  
24 services.

25                THE COURT: I want to see counsel.

1 (Sealed bench conference)

2 THE COURT:

3 MR. WELSH:

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5 THE COURT:

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7 MR. WELSH:

8 THE COURT:

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10 MR. WELSH:

11 THE COURT:

12 (Open court)

13 BY MR. WELSH:

14 Q Mr. Martin, on another subject, innovation, Turner  
15 has also been innovating in the advertising area; is that  
16 right?

17 A Yes, that's correct.

18 Q So, for example, you've been doing work in  
19 targeted advertising; is that correct?

20 A Yes.

21 Q All right. And I think you reported publicly that  
22 you had, in the middle of 2017, that you -- I'm sorry.

23 You reported publicly in 2017 that you had a  
24 20 percent lift in your targeted audience delivery campaign;  
25 is that right?

1 A For that particular product, yes.

2 Q Okay. And you're continuing to implement  
3 innovative advertising products; isn't that's true?

4 A Yes, that's true.

5 Q Now, we've heard in this case that the parties  
6 claim there to be some efficiencies, synergies that would be  
7 achieved here. I want to talk briefly about this subject.

8 So a large percentage of the synergies the  
9 defendants are claiming here in this merger, they're  
10 actually already in Time Warner's long-range plan; isn't  
11 that's true?

12 A We had a long-range plan draft where we had very  
13 ambitious advertising targets.

14 Q Okay.

15 A That assumed that we would be able to develop new  
16 ad products to go to market.

17 Q Well, let's look at PX67 if we can.

18 This is an email from -- you're there, sir?

19 A Yes, I am.

20 Q All right. This is an email from Mr. Desroches to  
21 you, November 19, 2017; is that right?

22 A Yes.

23 Q And he's attaching the AT&T-Time Warner  
24 integration executive update; is that correct?

25 A Yes.



1 Q And Mr. Desroches, just for the record, is the  
2 Chief Financial Officer of Turner; is that right?

3 A Yes.

4 Q And he was working within the areas of his  
5 responsibility for Turner when this was sent to you?

6 A That's correct.

7 MR. WELSH: Your Honor, I move for admission of  
8 PX67.

9 MR. PETROCELLI: Your Honor, there's no objection  
10 to the email, but I would ask for foundation on whether --  
11 with respect to the deck. There's an attachment, and there  
12 needs to be foundation laid.

13 THE COURT: Sustained.

14 Why don't you lay some foundation for that.

15 BY MR. WELSH:

16 Q Was it your understanding that Mr. Desroches was  
17 working with the integration efforts with AT&T?

18 A Yes. Pascal, I had appointed him to lead the  
19 Turner integration efforts and coordinate with everybody  
20 else who was working on the various work streams.

21 Q Okay. And the document that's attached to this  
22 email that was sent to you relates to those efforts; isn't  
23 that's true?

24 A I assume so, although he and I never went through  
25 and reviewed this document.

1 Q Right.

2 But what you see attached is your understanding --  
3 even if you didn't review it with him, your understanding is  
4 it relates to the integration efforts that Mr. Desroches was  
5 tasked to lead for Turner -- Time Warner?

6 A Yes, although it was a work-in-progress draft,  
7 yes.

8 MR. WELSH: Your Honor, is that sufficient?

9 THE COURT: That's sufficient. It's admitted.

10 MR. WELSH: Thank you, Your Honor.

11 (Government's Exhibit PX67  
12 received into evidence.)

12 BY MR. WELSH:

13 Q If you could look at PX67-006.

14 And I think the numbers here are confidential, so  
15 I won't say it publicly. But we see here it has "Turner  
16 Estimates."

17 Do you see that on the left column?

18 A Yes.

19 Q And then we have "data driven" under that.

20 Do you see that?

21 A Yes.

22 Q All right. And then there's some numbers in three  
23 columns that follow that.

24 Do you see that?

25 A Yes.

1 Q For different time frames, right?

2 A Yeah.

3 Q And if you look, then, at the key outstanding  
4 issues below. And item 1 says, 80 to 90 percent of that  
5 number we just looked at above, of those columns up above on  
6 Turner's ad revenues already in our LRP.

7 Do you see that?

8 A I do see that.

9 THE COURT: What's LRP?

10 THE WITNESS: Long-range plan.

11 BY MR. WELSH:

12 Q And you can put that to the side for now. Thank  
13 you, sir.

14 Mr. Martin, right before the merger was announced,  
15 Turner was considering acquiring a number of data technology  
16 companies; is that correct?

17 A Yes, that's correct.

18 Q And this was for your advertising innovation  
19 effort that you were undertaking, correct?

20 A Yes.

21 Q And when the merger was announced, you put -- your  
22 boss, Mr. Bewkes, put the brakes on that, didn't you?

23 A Yes.

24 MR. WELSH: That's all I have for now, Your Honor.

25 Thank you very much.

1 THE COURT: All right.

2 Mr. Petrocelli.

3 CROSS-EXAMINATION

4 BY MR. PETROCELLI:

5 Q While we're on Exhibit 67, just for the  
6 convenience of the Court, since Mr. Welsh just asked you  
7 about it, the comment where it said 80 to 90 percent in the  
8 long-range plan?

9 A Yes.

10 Q Could you explain to the Court what data-driven  
11 advertising is?

12 A This would assume that we would have been able to  
13 develop new ad products, assuming that we would have had  
14 enough data to be able to create these products and bring  
15 them to the advertising marketplace and be able to derive  
16 higher CPMs, higher value for such products. It was an  
17 aspirational forecast.

18 Q And was that aspirational forecast included in,  
19 let's say, the first year of the budget?

20 A No.

21 Q So when was it included, if it wasn't in the first  
22 year?

23 A Well, I didn't go through the buildup of all of  
24 these numbers in any level of detail. I was assuming that  
25 they were in the out-years of the plan.

1 Q Now, you can put that aside.

2 So I'd like to clarify what your actual work  
3 experience is very quickly, because it didn't come out so  
4 clear on direct.

5 But from 1989 to 1983, what did you do?

6 A Until '93?

7 Q Yeah. '89 to '93.

8 A Yeah. I was an Auditor with Ernst & Young.

9 Q And your next job, from 1993 to 2000, what did you  
10 do?

11 A I was in various capacities within Time Warner,  
12 including managing SEC financial reporting, Chief of Staff  
13 for Dick Parsons, who was the then president of Time Warner,  
14 and I ran investor relations for a couple of years.

15 Q That was at the corporate level?

16 A Yes, Time Warner corporate.

17 Q And you then left the company for a couple of  
18 years?

19 A I did, yes.

20 Q And where did you go?

21 A I went to go work as a securities analyst on  
22 Wall Street.

23 Q And then you came back?

24 A I came back in February of 2002.

25 Q And what did you do from 2002 to 2005?

1 A I ran investor relations for Time Warner.

2 Q At the parent level?

3 A Yes.

4 Q What did you do from 2005 to 2007?

5 A I was the Chief Financial Officer of  
6 Time Warner Cable.

7 Q And could you tell the Judge what  
8 Time Warner Cable was and what its relationship with  
9 Time Warner, the parent company, was?

10 A So Time Warner Cable was a cable company,  
11 traditional MVPD, with approximately 11 million subscribers.  
12 And during that time, we took the company public; but it was  
13 a majority-owned subsidiary of Time Warner which owned  
14 85 percent of the company.

15 Q And then did there come a time when Time Warner,  
16 the parent company, spun out Time Warner Cable, the cable  
17 company?

18 A Yes; in 2009.

19 Q And so prior to spinning out Time Warner Cable in  
20 2009, Time Warner Cable was vertically integrated within the  
21 Time Warner family that included the Turner networks,  
22 correct?

23 A Yes, that's correct.

24 Q And it stopped being a vertically integrated  
25 company when it was spun out?

1           A     Correct.

2           Q     Okay.  We're going to come back to that in a  
3 minute.

4                     So you were Chief Financial Officer for a couple  
5 of years at Time Warner Cable, you said, ending in about  
6 2007.

7                     What was your next job?

8           A     The Chief Financial and Chief Administrative  
9 Officer of Time Warner, the parent company.

10          Q     From 2008 to 2013?

11          A     Yes.

12          Q     And then you went to your current job in 2014?

13          A     Yes, that's correct.

14          Q     And that is, as chairman and CEO of Turner, right?

15          A     Yes.

16          Q     Now, I want to talk about your experience, then,  
17 as a Chief Financial Officer of Time Warner Cable, an MVPD.  
18 Who were some of its competitors?

19          A     Comcast, Charter, Cox, Dish, DirectTV.  Every  
20 traditional MVPD that was in the United States.

21          Q     Okay.  And in your role as Chief Financial  
22 Officer, did you become, just generally, familiar with the  
23 carriage negotiations that we've heard so much about in this  
24 case?

25          A     Yes.

1 Q And then when you went up to the corporate parent  
2 and became CFO there, Turner was a wholly owned subsidiary;  
3 is that right?

4 A Yes, that correct.

5 Q And in your role as Chief Financial Officer of now  
6 the parent company, were you familiar with the negotiations  
7 that Turner had, for example?

8 A Yes.

9 Q And as well as Time Warner Cable until it got spun  
10 out, right?

11 A Yes.

12 Q Okay. Now, are you generally aware that the  
13 government in this case is claiming that if this merger were  
14 to go through and Turner and DirecTV would be in a vertical  
15 integration relationship -- first of all, do you understand  
16 that that would be the case if this merger goes through?

17 A Yes, I understand.

18 Q Now, do you understand, then, that if the merger  
19 goes through and there's now a vertical integration,  
20 it would be just like it was when Time Warner had  
21 Time Warner Cable?

22 A That's what I would expect.

23 MR. WELSH: Objection.

24 THE COURT: All right. You can approach.

25 (Sealed bench conference)



1 THE COURT:

2 MR. WELSH:

3

4 MR. PETROCELLI:

5

6

7

8 MR. WELSH:

9

10 MR. PETROCELLI:

11 THE COURT:

12

13 MR. WELSH:

14

15

16 THE COURT:

17

18 (Open court)

19 THE COURT: Come on up. You may proceed,  
20 consistent with the discussion at the bench.

21 BY MR. PETROCELLI:

22 Q Now, do you understand that the government is  
23 contending that if the merger goes through, that the Turner  
24 company will have more leverage with distributors in  
25 carriage negotiations by threatening a blackout of Turner,

1 thereby causing the distributors to pay more because they  
2 won't want to lose subs to DirectTV, which will be part of  
3 the same company as Turner?

4 MR. WELSH: Objection, Your Honor.

5 THE COURT: Overruled.

6 BY MR. PETROCELLI:

7 Q Do you understand that that is the theory of the  
8 government in this case?

9 A Yes, I understand.

10 Q So with that theory in mind, I want to ask you  
11 some questions about when you were in a vertically  
12 integrated company that had Turner and a very significant  
13 cable company, okay?

14 A Okay.

15 Q At any time, did you ever hear anyone suggest that  
16 Turner should use its relationship with Time Warner Cable to  
17 threaten to black out distributors in order to get higher  
18 prices?

19 A No.

20 Q Did that thought ever occur to you in your role as  
21 CFO of either Time Warner Cable or the parent company?

22 A No.

23 Q Did you ever hear anyone say that Turner would  
24 have more leverage because Time Warner Cable and Turner were  
25 in the same family?

1           A     No, I did not.

2           Q     Did you ever learn of or participate in any  
3 discussions about using Turner to divert subs of  
4 distributors to Time Warner Cable?

5           A     No, I have not.

6           Q     Did you ever form the view, as the Chief Financial  
7 Officer, that Turner's prices were kept higher, artificially  
8 higher, because it was affiliated with Time Warner Cable?

9           A     No, I did not.

10          Q     Did you ever hear that Turner had an incentive to  
11 demand higher prices or other concessions from distributors  
12 because it was affiliated with Time Warner Cable?

13          A     No, I did not.

14          Q     Or that it had the ability to do so?

15          A     No, I did not.

16          Q     Now, at the time Time Warner spun off  
17 Time Warner Cable, you were involved in that?

18          A     Yes, I was.

19          Q     By the way, can you just briefly tell the Judge,  
20 why did the company get spun off.

21          A     Your Honor, at the time, a few factors.  
22 I don't think at the time we, at Time Warner, fully  
23 understood the importance of what data and customer  
24 information would mean in the future as it relates to  
25 advertising and making decisions. So that was something we

1 could not see at that time when we spun it off in 2009.

2           The second is that the way the company was being  
3 run, it was -- these were really companies that were being  
4 run for their own mutual benefit; in other words,  
5 Time Warner Cable would make decisions that was in its best  
6 interest, and Turner and HBO and Warner Brothers, for that  
7 matter, would make decisions in what was in their best  
8 interest.

9           And we thought having these companies  
10 unencumbered, at the time, we thought would have been the  
11 best for both companies.

12           Q     Now, did it also relate to what the stock  
13 valuation of the company might be?

14           A     Yes, that was taken into consideration.

15           Q     And what about streaming of video; was that  
16 happening back then?

17           A     No. We couldn't see that that was happening or  
18 would have happened.

19           Q     Now, at the time of the spin-off, were there any  
20 discussions that Turner's prices to distributors would go  
21 down after the disintegration on the theory that they were  
22 artificially propped up during the vertical integration?

23           A     No.

24           Q     And afterwards, did you observe that Turner's  
25 pricing, I mean after the spin-off, suddenly went down?

1           A     That did not happen.

2           Q     Now, can you explain to the Court why -- let me  
3 back up a second.

4                     The government is also, are you familiar with the  
5 fact that the government in this case is also alleging that,  
6 in coordination with Comcast, the merged company might try  
7 to withhold Turner networks, together with NBC networks,  
8 from virtual MVPDs? Are you familiar with that general  
9 allegation?

10          A     Yes, I am.

11          Q     Okay. Is it in Turner's interest, based on your  
12 role as the chairman and your vast experience, to withhold  
13 its networks from distributors?

14          A     Absolutely not.

15          Q     Is broad distribution of the Turner networks an  
16 imperative for Turner?

17          A     I believe that distribution is the most important  
18 variable for success for any programmer.

19          Q     Now, I want you to explain to the Court why that  
20 is so.

21          A     Because our business model is principally based on  
22 two revenue streams, one being subscription revenues and the  
23 second being advertising.

24                     Distribution affects both of those.

25                     In order to drive subscriber revenues, it's the

1 simple math of: How many homes are you in? How vastly are  
2 you distributed in? And then what are you getting paid by  
3 the virtual MVPDs, the MVPDs, or any other platform?

4 So that's simple math.

5 But maximizing distribution maximizes subscriber  
6 revenues.

7 On the other side, advertising, our goal is to  
8 have our networks in front of as many eyeballs as possible.  
9 So that a function of, again, distribution: Are we getting  
10 in front of as many people as possible?

11 And then it's up to us: Are we making popular  
12 programming so that people actually want to tune in and  
13 watch it?

14 And then we have to price the advertising high  
15 enough that we can make money.

16 But the one variable that actually affects both  
17 revenue streams is distribution, and distribution right now  
18 is under extreme pressure.

19 Q Why is distribution under extreme pressure?

20 A For a number of reasons.

21 One, there are more and more households in the  
22 United States who are, quote, unquote, cutting the cord.

23 Is the Court familiar with that term?

24 Q I believe the Court is familiar with cutting the  
25 cord.

1           A     Okay.

2                     So they're either cutting the cord or they're  
3 moving to skinnier bundles, these more economically priced  
4 bundles, which won't have as many networks in them.

5                     So Sling is a good example, where our job, my goal  
6 would be to sell in -- I would like every distributor to buy  
7 every network I have and agree to carry it at 100 percent  
8 penetration.

9                     The distributors are pushing back increasingly.  
10 They want the flexibility to carry at lower penetration  
11 levels to fewer homes.

12                    And Sling is a good example where we could only  
13 get four of our networks in on the initial go-round, and we  
14 really had to argue hard in order to get them to accept our  
15 four networks.

16                    All of this chips away at the breadth of our  
17 distribution and -- and means that we're going to be  
18 fighting upwind in terms of being able to grow our  
19 distribution revenues.

20                    And, in fact, our distribution revenue growth is  
21 decelerating.

22            Q     Is it your observation that, as the cord  
23 cutting -- and I guess there's also the cord nevers. What  
24 are the cord nevers?

25            A     Cord nevers are individuals that would never take

1 either an MVPD or a virtual MVPD package. They may be happy  
2 getting Netflix and getting Hulu and getting Sling, and  
3 that's good enough for them.

4 Q Is it your observation, that with the cord nevers  
5 and the cord cutting, that consumers are moving into the  
6 Internet distribution world?

7 A Yes.

8 Q And is that someplace where you want to go and  
9 take Turner as well?

10 A Yes.

11 Q Does Turner have an interest to hurt virtual MVPDs  
12 or other online distributors?

13 A No. It's actually the opposite. We're embracing  
14 virtual MVPDs and any other distributors that might enter  
15 the marketplace, because, again, we need to be distributed  
16 to as full distribution as possible.

17 In fact, if you look at the universe, virtual  
18 MVPDs today are the only source of growth in subscriptions.

19 Q So what's happening with the MVPDs?

20 A They are experiencing subscriber shrinkage.

21 Q Do you receive subscriber -- do you receive  
22 affiliation foes from online distributors like Sling and  
23 Sony and others just like you do from the MVPD distributors?

24 A Yes, we do.

25 Q Is it generally similar kind of rates?



1 A Generally, yes.

2 Q Are they a little bit higher in the beginning.

3 Counsel asked you about Sony Play Vue at some  
4 point. Do you recall that?

5 A Yes. It's --

6 Q When a new service launches, what is your pricing  
7 philosophy, brand-new service, no subs? That was the case  
8 with Sony, correct?

9 A Correct.

10 Q Explain to the Court.

11 A So our -- in some respects, the way to think about  
12 it is, this is a bit of a volume-discount business. So if  
13 you're in business with a distributor that has 25 million  
14 subscribers and you're partners with them, they would almost  
15 expect to pay slightly less than somebody who has zero  
16 subscribers.

17 THE COURT: All right.

18 THE WITNESS: The difference in pricing actually  
19 in absolute dollars doesn't tend to be all that much, but  
20 there are volume discounts for the biggest providers.

21 BY MR. PETROCELLI:

22 Q What about for someone brand new like when  
23 Sony Vue knocked on your door and they wanted the Turner  
24 networks?

25 A We charged them for some time a premium. And then

1 once they reached the number of subscriber levels, that  
2 premium comes down.

3 Q Is there any risk, by the way, in just giving the  
4 Turner networks to a brand-new virtual service that is  
5 unproven?

6 A Absolutely. There's reputational risk. There are  
7 administrative costs that we have to incur in order to, from  
8 a technology standpoint, make sure that we can make our  
9 networks available in the manner in which they need to  
10 distribute them.

11 So there are costs. That also gets taken into  
12 account as we think about the price that we charge.

13 Q What do you mean by "reputational risk"?

14 A We would prefer not to have our networks that is  
15 in a package that just -- that has no consumer acceptance.

16 Q Why?

17 A It just -- it makes it look like our networks are  
18 not that important.

19 Q I see.

20 Now, moving from distribution to advertising, you  
21 said that's the other source of your revenue, right?

22 A Yes.

23 Q Now, how many minutes in an hour on a TV show,  
24 let's say, does Turner get to sell advertising? And does it  
25 split any of those minutes with the distributor?

1           A     It's roughly 18 minutes per hour. And within each  
2 hour, in a typical situation, the distributors would receive  
3 two of those minutes. And the national network, such as  
4 ours, would get about 16 minutes.

5           Q     And can you briefly describe to the Court what the  
6 trend has been in your business with respect to advertising  
7 revenue?

8           A     Advertising revenue is under a lot of stress. For  
9 example, last year, our advertising revenues for the entire  
10 company did not grow. They were down 2 percent.

11                     The year before, they were either flat or up  
12 1 percent.

13                     The reason is that our viewership trends are  
14 declining due to an explosion of choice of programming that  
15 consumers have and the declining subscriber base that's  
16 happening in the United States amongst traditional MVPDs.

17                     And the fact that there really hasn't been lot of  
18 innovation in the advertising business in years and years  
19 and years.

20           Q     When your advertising revenue gets stressed, what  
21 effect does that have on, let's say, the affiliate fee  
22 revenue?

23           A     It puts more stress on the other revenue stream.

24           Q     And is it the affiliate fees that the distributors  
25 end up passing on to the consumer?

1           A     Yes.

2           Q     Is it the case, then, that if you were able to  
3 increase your advertising revenue, that would cause less  
4 pressure on programming costs and, hence, consumer prices?

5           A     Absolutely.

6                     We need to make advertising better. In fact, what  
7 I'm calling it internally is we're going to have to do more  
8 with less. So what does that mean.

9                     We're also competing as an ad-supported network  
10 against platforms like Netflix that has no ads. And people  
11 like to watch platforms that have no ads.

12                    We have too many ads, in my opinion, on our  
13 networks to be able to effectively compete.

14                    So we've already made announcements that we're  
15 going to reduce the amount of advertising units or numbers  
16 of minutes during the program that will be dedicated to  
17 advertising.

18                    So that means every unit that we have has to  
19 become significantly more valuable for us to not experience  
20 a meaningful decline in our ad business.

21           Q     So will this merger help Turner derive greater  
22 advertising revenue and help relieve pressure on consumer  
23 prices?

24           A     Yes, I believe so.

25           Q     Can you explain to the Court how that is so?

1           A     At Turner, we don't have much -- you hear the word  
2 "data" a lot. Let's call it "customer information."

3                     We're a wholesaler sort of stuck in the middle.  
4 We don't know who our viewers are.

5                     And as a result of that, we can't market directly  
6 to them. We can't speak to them. We don't even know how to  
7 make programming that we know for sure that they will like.

8                     And we certainly don't know what type of  
9 advertisements might resonate with them where they actually  
10 might like that.

11                    So if we had access to AT&T's customer  
12 information, I think it would give us a tremendous  
13 jump-start to improving our advertising capabilities to try  
14 to make more relevant advertising for the benefit of  
15 consumers.

16            Q     Well, let me follow up on that.

17                    You said you don't know who your viewers are.  
18 I take it from that that that's because you're the  
19 wholesaler and the distributors know?

20            A     Yes.

21            Q     Well, why don't you just ask the distributors to  
22 tell you?

23            A     We do.

24            Q     And what is the response?

25            A     "No."

1 THE COURT: That might be a good point to take the  
2 lunch break.

3 MR. PETROCELLI: This is a good time, Your Honor?

4 THE COURT: All right. We're going to take the  
5 luncheon recess.

6 THE WITNESS: Okay. Thank you, Your Honor.

7 THE COURT: So you remain a witness under oath.  
8 You know the rules.

9 THE WITNESS: Yes.

10 THE COURT: Don't discuss your testimony with  
11 anybody.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Either what you've said or what you  
14 might say, and we'll come back. All right?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: See you at 2:30.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: All right. We're going to go till  
19 5:30 today. We'll reconvene at 2:30. We'll take a break  
20 somewhere in the middle of the afternoon.

21 Enjoy your lunch.

22 DEPUTY CLERK: All rise.

23 This Honorable Court now stands in recess until  
24 the return of court.

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

## C E R T I F I C A T E

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

Date: March 28, 2018      /S/ William P. Zaremba

William P. Zaremba, RMR, CRR