

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CV No. 17-2511
	)	
	)	Washington, D.C.
vs.	)	April 5, 2018
	)	10:50 a.m.
AT&T, INC., ET AL.,	)	
	)	Morning Session
Defendants.	)	
<hr/>		Day 9

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

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P R O C E E D I N G S

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

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

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

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

THE COURT: Welcome back.

MR. WELSH: Thank you.

MR. REICHER: Good morning, Your Honor. Lawrence Reicher for the United States.

THE COURT: Welcome.

MR. HUGHES: Good morning, Your Honor. Jared Hughes for the United States.

THE COURT: Welcome.

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

THE COURT: Welcome.

1 MR. CONRATH: Thank you.

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

4 THE COURT: Welcome.

5 MS. ELMER: Good morning, Your Honor. Julie Elmer  
6 for the United States.

7 THE COURT: Welcome.

8 MR. PETROCELLI: Good morning, Your Honor.  
9 Daniel Petrocelli for defendants.

10 THE COURT: Welcome.

11 MS. ROBSON: Good morning, Your Honor.  
12 Katrina Robson for defendants.

13 THE COURT: Welcome.

14 MR. OPPENHEIMER: Good morning, Your Honor.  
15 Randy Oppenheimer for the defendants.

16 THE COURT: Welcome.

17 MR. WALTERS: Good morning, Your Honor.  
18 Rob Walters here for Defendants AT&T and DirecTV.

19 THE COURT: Welcome.

20 MR. BARBUR: Good morning, Your Honor.  
21 Peter Barbur for Time Warner.

22 THE COURT: Welcome.

23 MR. ORSINI: Good morning, Your Honor.  
24 Kevin Orsini for Time Warner.

25 THE COURT: Welcome.



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THE COURT:

(Open court)

1 THE COURT: The witness can resume the stand.

2 Mr. York, you remain under oath, all right?

3 THE WITNESS: Yes.

4 THE COURT: Have a seat.

5 When you're ready, Mr. Welsh, you may proceed.

6 MR. WELSH: Thank you, Your Honor.

7 DANIEL YORK, ADVERSE WITNESS FOR THE GOVERNMENT, HAVING BEEN  
8 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS  
9 FOLLOWS:

10 DIRECT EXAMINATION (CONTINUED)

11 BY MR. WELSH:

12 Q Good morning, Mr. York.

13 A Good morning.

14 Q Mr. York, I just want to get us back to where we  
15 were at the break yesterday.

16 So I think when we stopped, we were talking about  
17 Turner's innovation that they have with that split-screen TV  
18 for March Madness viewing, which they provided to Apple TV.  
19 And then your and Mr. Stankey's negative visceral reaction,  
20 I guess is how you phrased it, to that development, okay?

21 A Okay.

22 Q And when you received that email from Mr. Stankey  
23 and you responded back with your visceral reaction, you went  
24 ahead and you drafted a proposed letter, note, I think, is  
25 how you described it, to Mr. Jeff Bewkes, right?



1 A Yes.

2 Q And what you proposed to have Mr. Stankey write to  
3 Mr. Bewkes was to chastise Time Warner for its poor judgment  
4 of providing such rights to a company that, to date, had had  
5 a negative impact on your lucrative pay-TV business; isn't  
6 that true?

7 A May I look at the document.

8 Q Can you answer my question?

9 A I don't recall the exact wording.

10 Q That was the essence of what you told Mr. Stankey  
11 or that you proposed Mr. Stankey send to Mr. Bewkes.

12 A In that case, do you mind repeating the sentence.

13 Q That you were chastising Mr. Bewkes and  
14 Time Warner for its poor judgment in providing such rights  
15 to a company that has, to date, had a negative impact on the  
16 lucrative pay-TV business.

17 A I don't know if it's chastising other than just  
18 expressing our frustration and disappointment.

19 Q Well, look at PX40 in your binder.

20 And I'm going to direct you to your note that you  
21 wrote where it says "Dear Jeff."

22 Do you see that?

23 A Yes.

24 Q And what you wrote midway down in that paragraph  
25 was, "Beyond the poor judgment of providing such rights to a

1 company that, to date, has had a negative impact on the  
2 lucrative pay-TV business."

3 Do you see those words?

4 A Yes.

5 Q Now, you went on and you told Mr. Stankey that you  
6 were proposing that he also tell Mr. Bewkes that AT&T was  
7 concerned because Time Warner's recent actions of giving the  
8 exclusive March Madness deal to Apple and introduction of  
9 HBO Now, that that suggested that they were taking the  
10 relationship that they had with AT&T for granted, right?

11 A Yes.

12 Q And you also suggested that he tell Mr. Bewkes  
13 that not only were they taking the relationship with AT&T  
14 for granted, but that they were taking for granted pay TV in  
15 general; isn't that true?

16 A That's what the sentence says, yes.

17 Q Now, a year earlier, you had a similar negative  
18 reaction, didn't you, when you learned that programmers were  
19 providing content to Dish Sling, which is a skinny bundle;  
20 isn't that true?

21 A I may have. I don't recall.

22 Q Look at PX42 in your binder, if you would.

23 Mr. York, PX42 is a series of emails between  
24 yourself and Mr. White, the CEO of DirecTV, in July of 2015,  
25 true?

1 A True.

2 Q The topic of these email exchange here relates to  
3 Dish Sling, correct?

4 A Correct.

5 MR. WELSH: Your Honor, I move for admission of  
6 PX42.

7 THE COURT: Any objection?

8 MR. WALTERS: Same basis as the prior ruling,  
9 Your Honor.

10 THE COURT: Same basis.

11 MR. WALTERS: Business record and not the  
12 admission against interest.

13 THE COURT: Right. It will be admitted as a  
14 business record.

15 MR. WELSH: Thank you, Your Honor.

16 (Government's Exhibit PX42  
17 received into evidence.)

18 THE WITNESS: May I ask for -- we had a bottle of  
19 water yesterday, right?

20 THE COURT: Oh, sure.

21 MR. WELSH: Absolutely. Yes, sir.

22 THE COURT: If you can give him one, please.

23 MR. WELSH: May I approach the witness,  
24 Your Honor?

25 THE COURT: You may.

THE WITNESS: My apologies. Thank you.

1 MR. WELSH: You're welcome.

2 May I proceed?

3 THE COURT: You may.

4 BY MR. WELSH:

5 Q Mr. York, so PX42 is a series of emails between  
6 yourself and Mr. White. And Mr. White begins the exchange  
7 by asking the question about Sling and the programmers  
8 providing content to Sling to say, how can the programmers  
9 license their content with that kind of attack on the  
10 industry?

11 Do you see that comment at the bottom?

12 A Yes, I do.

13 Q And then you had an exchange and a response. And  
14 then Mr. White clarified his question and said that he  
15 wasn't referring to the content in the ad, the Sling ad, but  
16 that he was referring to the licensing of content to Sling  
17 more generally, right?

18 A Yes.

19 Q Okay. And then you provided your response to the  
20 CEO of DirecTV, didn't you?

21 A I did.

22 Q All right. And your response there was that, was  
23 a negative response about what was happening with Sling,  
24 wasn't it?

25 A I think I balanced my negative comments with just

1 a statement of the overall state of the industry at that  
2 point in time and today.

3 Q What you told Mr. White was that content providers  
4 are generally shortsighted whores to whomever is willing to  
5 write them a new check for their content.

6 You wrote that, didn't you?

7 A I did.

8 Q And that's because the content, the programmers,  
9 the content providers, were giving Sling, the skinny bundle,  
10 content that was then undermining the pay-TV ecosystem;  
11 isn't that true?

12 A I didn't put it in that context, no.

13 Q But that was your sentiment when you wrote this  
14 email, when you called the programmers being content -- that  
15 the programmers were being shortsighted whores, is because,  
16 like with Apple TV and Turner giving Apple that innovation,  
17 they were undermining the pay-TV model, the pay-TV  
18 ecosystem.

19 A No. I think I said in the -- in the next sentence  
20 is really the context for that statement. "It illustrates  
21 how quickly the product and category definitions have all  
22 blurred." That is the point of that sentence.

23 Q And it's been driving things down, it's been  
24 driving the price down so that your large bundles that you  
25 have at DirecTV and at AT&T are being undermined?

1           A     I disagree with that. We have skinnier bundles as  
2 well.

3           Q     And Your DBS satellite business, that's not a  
4 skinny bundle, is it?

5           A     We have a package called Select that's quite  
6 affordable.

7           Q     Let's change subjects. I want to talk about --  
8 and this is the final subject I want to talk with you about  
9 today. I want to talk about MFN provisions, okay?

10          A     Okay.

11          Q     Now, His Honor has heard a bit about these. These  
12 are most favored nations provisions, correct?

13          A     Correct.

14          Q     And we've heard that there are pricing-term MFN  
15 provisions, and then there are MFN provisions that have  
16 non-pricing terms, right?

17          A     There are a multitude of MFN structures in our  
18 deals.

19          Q     Okay. Now, MFN provisions -- and AT&T and DirecTV  
20 have MFN provisions with programmers, correct?

21          A     Generally, yes.

22          Q     Now, MFN provisions allow AT&T, DirecTV to see  
23 into the terms of competitors' contracts with programmers;  
24 isn't that true?

25          A     Not -- I wouldn't say with specificity. They're

1 really intended to tell us if someone else gets a better  
2 term than what we bargained for, under what terms would we  
3 get those -- under what terms and conditions would we be  
4 offered those terms.

5 Q Well, let's talk more about that in the level of  
6 specificity.

7 Let's look at PX180 in your binder.

8 A You said 180?

9 Q Correct, sir.

10 MR. WELSH: PX180 has been marked for  
11 identification, Your Honor. It's been provided to defense  
12 counsel.

13 May I proceed?

14 THE COURT: Yes.

15 (Government's Exhibit PX180  
16 was marked for identification.)

16 BY MR. WELSH:

17 Q So, Mr. York, PX180 starts with an email from  
18 Kerry Brockhage to Robert Thun.

19 Mr. Thun works for you, correct?

20 A Correct.

21 Q He's right under you in the content group,  
22 correct?

23 A Correct.

24 Q And this email is December 22, 2014, correct?

25 A Correct.

1 Q And this is providing an offer for, as related to  
2 an MFN provision that DirecTV had at the time; isn't that  
3 true?

4 A I'm not sure if this was triggered by an MFN  
5 provision. I'm not sure of those sections of the agreements  
6 that are referenced in the next page.

7 Q When you see that this is a letter on page 2  
8 that's directed to you, correct, as the chief content  
9 officer of DirecTV?

10 A Correct.

11 Q All right. And it's from one of the programmers.  
12 I'm not going to mention the name. I'm not sure if this has  
13 been designated as confidential. But you see that from one  
14 of the programmers?

15 A Yes.

16 Q And this is talking about an offer that's being  
17 made in that first paragraph under the affiliation  
18 agreement, correct?

19 A Yes. It's described as an OVD distribution notice  
20 and not an MFN offer.

21 Q So this OVD notice, though, is attached, right?

22 A A summary of terms is attached.

23 MR. WELSH: Your Honor, I move for admission of  
24 PX180.

25 MR. WALTERS: Your Honor, we have no objection as



1 long as it's admitted on the same basis as the previous  
2 exhibit, pre-acquisition document.

3 THE COURT: Okay. It will be admitted as a  
4 business record, not as an admission.

5 (Government's Exhibit PX180  
6 received into evidence under seal.)  
7 BY MR. WELSH:

8 Q Now, under this summary OVD agreement here,  
9 DirectTV is being provided by the programmer with terms that  
10 it has with other distributors; is that correct?

11 A I'm sorry. Repeat the question.

12 Q Yes.

13 The terms that are being offered, that are being  
14 presented here to DirectTV to you in this letter are terms  
15 that the programmer that we're talking about here had with  
16 another distributor; is that right?

17 A Like I said, I'm not certain if this notice was  
18 sent to us pursuant to an MFN or if this programmer might  
19 have had a legal obligation to offer these terms. I'm not  
20 sure what this section of the agreement is referring to.

21 Q But you understand that the terms that are  
22 provided to you, regardless of whether it's under an MFN or  
23 some other legal obligation, that these are terms that they  
24 had with another distributor; isn't that true?

25 A I don't know.

Q Well, let's look at PX29 in your binder.

1 PX29 is an email, starts off as an email from  
2 Michelle Barney to you, December 23, 2015, correct?

3 A PX -- I'm sorry. Which number?

4 Q 0029.

5 A Oh, sorry. I was looking at 229.

6 Yes.

7 Q And in this mail, Ms. Barney's providing --  
8 Ms. Barney works for you, correct?

9 A She does.

10 Q She worked for you at the time in December of  
11 2015, correct, at AT&T?

12 A Correct.

13 Q And Ms. Barney's providing you with information  
14 that had been obtained regarding MFN offers; isn't that  
15 true?

16 A It's a couple of things. It's a summary of deals  
17 and offers we've received.

18 Q And attached to this is the summary. It's called  
19 "Replicate OTT Rights Granted," correct?

20 A Yes.

21 Q And it's summarizing terms of deals and terms that  
22 come from MFNs on these pages; isn't that true?

23 A There are -- there's one page with four deals that  
24 it looks like either we've got an agreement in principle or  
25 have closed an agreement.

1 Q And this has been designated as confidential, so  
2 I'm not going to get into the substance of the comments.

3 MR. WELSH: Your Honor, first of all, I move for  
4 admission of PX29.

5 MR. WALTERS: Your Honor, we have no objection.  
6 This document should be -- because it has confidential  
7 information, we'd ask that it be admitted under seal.

8 Likewise, the previous exhibit, and I apologize  
9 for the omission, likewise has confidential information.  
10 We would ask that it be admitted under seal as well.

11 THE COURT: All right. And this one, is this one  
12 pre-merger?

13 MR. WALTERS: This one is post-merger, Your Honor.

14 THE COURT: Post?

15 MR. WALTERS: Yes.

16 THE COURT: All right. It will be admitted under  
17 seal well.

18 (Government's Exhibit PX29  
19 received into evidence  
under seal.)

20 BY MR. WELSH:

21 Q Mr. York, what's being provided to you by  
22 Ms. Barney here in this chart are terms that come from  
23 the -- that are linked up with the programmers here. And  
24 they're also tied to the distributors, aren't they?

25 A No. This page, "Replicate OTT Rights Granted," is

1 a list of just some high-level points of deals that we have  
2 closed on the first page.

3 Q What we have here, though, are a list of license  
4 fees, correct?

5 A Every one of these basically shows that our  
6 current license fees would apply if we were to launch a  
7 replicate OTT service. There's no specificity on any of  
8 these on any page.

9 Q What it reflects here are license fees,  
10 penetration, and replicate OTT packaging, for example,  
11 correct?

12 A For example, yes.

13 Q And it has that for each one of the programmers  
14 that are listed there, correct? They're at the top row.

15 A Yes.

16 Q And it has underneath that the OTT partner that's  
17 associated with that; isn't that true?

18 A No.

19 Q Do you see -- read into the record what's listed  
20 there on the first line under -- on the left, under the  
21 shaded box.

22 A Right. It --

23 Q What does it say there, sir?

24 A "OTT Partners."

25 Q And then going across that column, there are a

1 list of names there, are there not?

2 A There are.

3 Q And those are companies that are what are called  
4 OTT distributors, correct?

5 A I -- yes.

6 Q Thank you.

7 A I think you're confused.

8 Q Thank you.

9 A Okay.

10 THE COURT: Your counsel will get to ask you  
11 questions.

12 THE WITNESS: Okay. Sure.

13 THE COURT: If he doesn't want you to explain  
14 something, your counsel can give you a chance to explain it.

15 THE WITNESS: I apologize.

16 BY MR. WELSH:

17 Q Let's look at another example, if we can, 487 in  
18 your binder, sir.

19 A Repeat again. Which tab?

20 Q PX487.

21 Mr. York, this is an e-mail from Mr. Thun to you  
22 in June of -- June 25, 2016, correct?

23 A Correct.

24 Q And you testified a few minutes ago Mr. Thun  
25 worked for you at that time, correct?

1 A Correct.

2 Q And this has to do with -- I'm not going to  
3 mention the name of the programmer and the deal that the  
4 programmer had, but it is one of the programmers that you do  
5 business with, correct, at AT&T?

6 A Correct.

7 Q And it's one of the -- the company that your  
8 programmer was doing business with and this email is about  
9 is what would be one of the over-the-top distributors,  
10 correct?

11 A Yeah. It references one by name, but it also  
12 talks about what would be a marketplace condition, which  
13 would be two deals.

14 MR. WELSH: Okay. Your Honor, move for admission  
15 of PX487 into the record.

16 MR. WALTERS: No objection, Your Honor. We would  
17 ask that it be admitted under seal, though.

18 THE COURT: All right. It will be admitted under  
19 seal.

20 (Government's Exhibit PX487  
21 BY MR. WELSH: received into evidence.)

22 Q Now, what Mr. Thun has stated to you in this  
23 email, saying he's reporting on what the programmer has  
24 agreed to do with AT&T, correct?

25 A It appears to be what their offer would be to us

1 to grant these rights.

2 Q What the programmer has said or what Mr. Thun said  
3 in the first paragraph was that the programmer had agreed to  
4 grant AT&T access to the over-the-top company's MFN;  
5 isn't that true?

6 A No. It's our MFN.

7 Q But he said it wasn't going to happen until after  
8 the DOJ merger conditions sunset on NBCU, true?

9 A That's what that sentence says, yes.

10 Q Because the concern was that they didn't want  
11 to -- the programmer didn't want to create what's called a  
12 marketplace condition. That's a benchmark, right?

13 A I can't speak to what the programmer's concern  
14 was.

15 Q But that sentiment was communicated to you by  
16 Mr. Thun in June of 2016, that they weren't going to go  
17 ahead and let you have this provision till after the Consent  
18 Decree had sunsetted, correct?

19 A That's what this sentence says, yes.

20 Q But the programmer was going to go ahead, even  
21 though they couldn't do this, they were going to go ahead  
22 and give you some clarity into the term of their deal with  
23 this OTT distributor, true?

24 A There's a couple of sentences of kind of  
25 highlights of carriage obligations, yes.

1           Q     So they're telling you, we can't go into the  
2 specifics of this until that consent decree goes away. But  
3 let's go ahead and we're going to tell you -- we're going to  
4 give you some clarity into this deal right now so that we  
5 can all be on the same page; isn't that right?

6           A     I don't see it that way.

7           Q     When you got this email from Mr. Thun, you didn't  
8 express any sort of alarm when you received it, did you?

9           A     I don't know if I ever read this email till just  
10 now.

11          Q     Do you have a practice of not reading emails that  
12 you receive from your colleagues?

13          A     I get hundreds of emails every day. I don't read  
14 them all.

15                   I don't recall seeing this one. I'm sorry.

16          Q     You think, sir, don't you, that NBCU is only  
17 philosophically bound by the Comcast-NBCU decree, don't you?

18          A     No, I don't.

19          Q     Look at PX486 in your binder, if you would.

20                   Are you there, sir?

21                   MR. WELSH: Your Honor, PX486 is marked for  
22 identification and has been provided to defense counsel.

23

24

25



(Government's Exhibit PX486  
was marked for identification.)

1  
2 BY MR. WELSH:

3 Q Mr. York, this is, again, a series of emails  
4 between you and Mr. Stankey in April of 2016, correct?

5 A Correct.

6 Q And the subject of the email exchange here is MFN,  
7 most favored nations, correct?

8 A Correct.

9 MR. WELSH: Your Honor, move for admission of  
10 PX486.

11 MR. WALTERS: No objection, Your Honor. We'd ask  
12 it be admitted under seal.

13 THE COURT: It will be admitted under seal.

14 (Government's Exhibit PX486  
15 received into evidence  
under seal.)

16 BY MR. WELSH:

17 Q Now, Mr. York, in your discussions with  
18 Mr. Stankey in this email on April 22, 2016, you respond  
19 back where you start off by saying, sorry. I misunderstood  
20 the question.

21 Do you see that?

22 A Yes.

23 Q And then you go on in that next paragraph. In the  
24 last sentence of that paragraph, you say, "Also, NBCU has  
25 their merger conditions which keep some reins on them, at

1 least philosophically."

2 Right?

3 A Yes.

4 Q Those were your words, right?

5 A Yes.

6 Q Now, Mr. York, during your time with AT&T and  
7 DirecTV, you do talk with your counterparts at the other  
8 companies, the other distributor companies, don't you?

9 A I have in the past, yes.

10 Q And you talk to them about contract terms that are  
11 in place that they have with their programming, don't you?

12 A Not about specific contract terms, confidential  
13 contract terms, no.

14 Q Well, you talk with them about getting the  
15 information regarding their costs, don't you?

16 A I don't believe so, no.

17 Q Look at PX48 in your binder.

18 THE COURT: 480.

19 MR. WELSH: Oh, 0048, Your Honor.

20 THE COURT: 48?

21 MR. WELSH: 48, yes.

22 Your Honor, PX48 has been marked for  
23 identification and provided to defense counsel.

24 THE COURT: Yes.

25 MR. WELSH: May I proceed?

1 THE COURT: You may.

2 (Government's Exhibit PX48  
3 was marked for identification.)

4 BY MR. WELSH:

5 Q Mr. York, PX48 is an exchange of emails between  
6 yourself and your colleagues at DirecTV on April 21, 2015,  
7 correct?

8 A Correct.

9 Q And the exchange of emails here relates to the  
10 FiOS TV packages, correct?

11 A Correct.

12 Q And you had, for context, you had seen an  
13 announcement publicly about the FiOS package, right?

14 A Yes. It was public and discussed in our company.

15 Q When you got, when you saw that, when you saw that  
16 announcement, you then wanted to have your team to look at  
17 getting under this offering to look at the penetration rates  
18 of the existing files FiOS packages and what the contract  
19 language would look like so that you could gauge the caps,  
20 the ACPU, the AMPU, et cetera, right?

21 A That's what it says, yes.

22 Q And ACPU is what?

23 A ACPU, that would be the average content cost per  
24 unit per subscriber.

25 Q So you sent your team off to try to get that  
information, right?

1           A     Using our data and our language, yes.

2           Q     And then you, instead of waiting for your team,  
3 you decided that you were going to go to -- FiOS is Verizon,  
4 correct?

5           A     Correct.

6           Q     So instead of waiting for your team, you decided  
7 you were going to go right to Verizon to talk with your  
8 counterpart, didn't you?

9           A     I was under pressure to find out how they could  
10 launch something that we didn't, that our marketing folks  
11 didn't think we had the rights to do, even though I told  
12 them we did and we already have.

13          Q     So when you wanted to find out about the contract  
14 terms and about the ACPU, you decided, you know what? I'm  
15 going to go ahead and just pick up the phone and call  
16 Terry D. at Verizon, right?

17          A     I found out nothing about contract terms or ACPU,  
18 nothing confidential.

19          Q     What you wrote here is, "I'll call Terry D. today,  
20 to see if I can get more color," right?

21          A     More color, correct.

22          Q     Terry D. is Terry Denson of Verizon, right?

23          A     Correct.

24          Q     And then you report back to your team on the top  
25 email, "Just got it from the horse's mouth."

1 Right?

2 A Correct.

3 Q So you can pick up the phone when you want and  
4 call your counterparts at the competitors and talk to them  
5 about the terms and the underlying information regarding  
6 their offers; isn't that right?

7 A The terms and the information underneath them?  
8 No.

9 Q Mr. York, I just have a couple final questions for  
10 you.

11 Mr. York, you don't use the term "fair market  
12 value" in connection with your carriage contracts; isn't  
13 that true?

14 A I don't use it. I may have in the past.

15 MR. WELSH: May I approach, Your Honor?

16 THE COURT: You may.

17 MR. WELSH: May I approach the witness,  
18 Your Honor?

19 THE COURT: You may.

20 MR. WELSH: Thank you.

21 BY MR. WELSH:

22 Q Mr. York, we've handed you a binder which has your  
23 deposition transcripts that you -- of the depositions you  
24 gave in this case.

25 I'm going to direct you to the second tab, which

1 is the transcript of your deposition in the CID portion of  
2 the investigation, dated April 14, 2017.

3 MR. WELSH: Your Honor, it's been designated as  
4 Exhibit 540. It's 540 for identification.

5 THE COURT: All right.

6 What page?

7 MR. WELSH: May I proceed, Your Honor.

8 THE COURT: What page?

9 MR. WELSH: 73, Your Honor.

10 THE COURT: All right.

11 BY MR. WELSH:

12 Q Mr. York, I'm going to direct you to page 73, and  
13 I'm going to direct you to line 14 of your deposition.

14 You were asked a question that day: "When you're  
15 looking at all of the parts of a contract, do you use a term  
16 'fair market value' to estimate the value of the company?"

17 And your answer was, "Are you asking if it's a  
18 term that I personally use?"

19 Then on line 19, question was, "Yes."

20 And then your answer was, "I would say it's a term  
21 that I very rarely use in that context personally."

22 Do you see that?

23 A I do.

24 Q Is that your testimony you gave that day?

25 A I believe it is.

1 Q And the term "fair market value" is not one --  
2 it's one that you've rarely heard used at AT&T internally;  
3 isn't that true?

4 Can you answer my question, sir?

5 A I'm just looking at my testimony.

6 True.

7 MR. WELSH: Your Honor, I don't believe I moved  
8 for admission of PX48, and I'll go ahead and do that at this  
9 point in time.

10 THE COURT: 48?

11 MR. WELSH: Yes, PX48. We were just looking at  
12 that.

13 THE COURT: Oh.

14 MR. WALTERS: Your Honor, this is pre-acquisition  
15 so -- this document was before the acquisition of DTV, and  
16 we believe it should be admitted under the protocol,  
17 Your Honor, that were done previously.

18 THE COURT: So under seal?

19 MR. WALTERS: Yes, sir, Your Honor.

20 THE COURT: Okay. Under seal, it's an admission,  
21 but only as against DirectTV.

22 (Government's Exhibit PX48  
23 received into evidence  
under seal.)

24 MR. WELSH: That's all I have at this time,  
25 Your Honor. Thank you.

1 THE COURT: All right.

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

3 THE COURT: When you're ready.

4 CROSS-EXAMINATION

5 BY MR. WALTERS:

6 Q Good morning, Mr. York.

7 A Good morning.

8 Q I just have a handful of items I want to follow up  
9 on this morning, and I think we can be brief.

10 Mr. Welsh asked you about the issue with the split  
11 screen and Apple.

12 Do you recall that discussion?

13 A Yes.

14 Q And do you recall the discussion where you had a  
15 visceral reaction, you and Mr. Stankey, to that offer?

16 A Yes.

17 Q Could you explain for us, what was the offer? And  
18 why did you have the reaction you did?

19 A I had the reaction for several reasons. First of  
20 all, there was no offer to us at all.

21 AT&T has been the presenting sponsor of  
22 March Madness for many years. And we -- I personally made  
23 very earnest attempts to get Turner to give us an  
24 interesting, innovative experience around March Madness.

25 Split screens, interactivity, we tried to get them



1 to do 4K ultra-high def for March madness and even called  
2 the President of Turner and got a resounding no.

3 And then didn't get a call when I found out from  
4 Mr. Stankey that they had done a split screen with Apple.  
5 I was quite disappointed.

6 Q Now, at the time, how many subscribers did DTV  
7 have and for Turner's broadcasts?

8 A Much like we do today, around 25 million  
9 subscribers across our platforms.

10 Q And was it your view that with that level of  
11 subscribership, that you would at least be entitled to what  
12 they were offering to Apple, by way of this split screen?

13 A As I said in the note, the courtesy of a call  
14 would have been nice.

15 Again, these were our customers going to another  
16 device to experience the subscription that they pay us for.  
17 And if it doesn't work, they're probably going to call us.

18 We never even knew it was going on, after all of  
19 our attempts to try and innovate.

20 Q Now, there was another line of questioning that  
21 Mr. Welsh pursued with you about your frustrations on skinny  
22 bundles.

23 Do you recall that?

24 A Yes.

25 Q Okay. What was your frustration there?

1           A     What are you referring to specifically.

2           Q     Well, it was, I think it was -- pull up  
3 Plaintiff's Exhibit 42 in front of you, if you don't mind.

4                     What's the issue in Plaintiff's Exhibit 42?

5           A     The issue here is Mr. White had seen the ad, and  
6 we saw Sling bashing what they called "old TV," even though  
7 Sling is owned by Dish, who -- and as I said in the note,  
8 that is still Charlie's core business.

9                     But I go on to say that illustrates how quickly  
10 the product and category definitions have all blurred, and  
11 virtually every relationship between the players is now one  
12 of frenemies.

13                     So it's really just the macro situation that's  
14 going on. Just trying to give Mr. White, who was relatively  
15 new to the media business, a sense of how the world is  
16 changing.

17           Q     And you mentioned to Mr. Welsh that, indeed, you  
18 are now offering skinny bundles. Can you say more about  
19 that?

20           A     We were already offering skinny bundles. This  
21 isn't about bundles and size of packages. We had tried --  
22 we continue to try -- we have always tried, as long as I've  
23 been involved in the business, at least at DirecTV, to get  
24 rights that make the content available over the top, over  
25 the Internet, not just tethered to satellites. And we did

1 not have success.

2 The best we could ever get were very tightly  
3 controlled most favored nations provisions.

4 Q Now, if you'll look at Plaintiff's Exhibit 29,  
5 this is that exhibit that talks about the over-the-top  
6 summary and the different OTT MFN offer summary.

7 Do you see that?

8 A I do.

9 Q Now, it seemed to me that you wanted to explain  
10 something about this document to Mr. Welsh.

11 Do you recall that?

12 A Correct.

13 Q Could you explain to us now what you wanted to  
14 explain then?

15 A He was trying to imply that this was -- this  
16 document was saying, here are all the terms of other  
17 people's deals. It is far from that.

18 It is handful, a couple of, basically, our  
19 requirements to get other programmers in to be able to even  
20 launch an over-the-top service.

21 It's our packaging requirements.

22 There's no real specificity on any economics,  
23 other than some minimum payments from maybe one of the  
24 programmers.

25 And to allude that this is basically the deal with

1 others is not what this document says.

2           It does list their -- it does list OTT partners  
3 that they currently have. And in some cases, it's multiple  
4 partners. It gives us no real insight into anybody else's  
5 deal at all.

6           Q     Mr. Welsh did ask you about MFNs. So could you  
7 explain for us exactly what MFNs are. And how do you use  
8 them at DirecTV?

9           A     And we've used them in my experience at AT&T when  
10 we did deals with zero subscribers.

11                   They're really just intended to give our customers  
12 parity with their neighbors who might get their pay-TV  
13 service from a different provider. That is really what  
14 they're about. It's about fairness.

15                   And the way they tend to work -- and they can run  
16 a gamut. You know, we do hundreds of deals, and we have  
17 hundreds of flavors of most favored nations.

18                   If there's one particular material term that is  
19 protected by an MFN, the programmer would have an obligation  
20 to notify us of that, but tell us all the terms and  
21 conditions we would have to meet to be able to afford that  
22 to our customers.

23                   In almost every case, all the bells and whistles  
24 that get attached to it are such that it probably isn't  
25 worth it.

1 Q Okay. Well, just say a little bit more about  
2 that.

3 So what does a programmer send you when they have  
4 an obligation under an MFN?

5 A They will send a letter with an attached outline  
6 of the condition that's better, the term that's better and  
7 all the terms and conditions, no insight, no statement as to  
8 who the other provider may be that got this one or two  
9 different term, different, more beneficial term.

10 And usually we have a window to respond whether we  
11 want to take them up on the offer.

12 Q And does that give you any transparency or any  
13 visibility into the full array of specific terms that a  
14 programmer might have with another distributor?

15 A No.

16 Q Now, Mr. Welsh also asked you -- and if you'll  
17 look at PX48, he asked you about this document. And it was  
18 an email regarding the new FiOS TV package.

19 Do you recall that?

20 A I do.

21 Q Now, let's go to the language that Mr. Welsh  
22 focused on where you write, "Just got it from the horse's  
23 mouth. My outline of their POV is accurate."

24 Do you see that, the first line?

25 A Yes.

1           Q     And then you write further, "Like all affiliates,  
2 they have floor pen rates they have to maintain, and they  
3 still plan to do just that, just as we do with our new  
4 packages."

5                     Do you see that?

6           A     Yes.

7           Q     So when you write, "My outline of the POV is  
8 accurate," what are you saying? What are you communicating?

9           A     So what he didn't reference is my earlier email  
10 that day, where I said they probably have a few percentage  
11 points to be able to set up new packages to manage down to  
12 their penetration minimum, as we had done, as I said in the  
13 note, at DirecTV, when we launched our entertainment package  
14 and our select package and other packages that we've  
15 launched.

16                     I can explain how this concept works more if you'd  
17 like.

18           Q     Well, what I'm interested in in that, in what you  
19 write there, "Like all affiliates, they have floor pen rates  
20 they have to maintain," do you see that?

21           A     Yes.

22           Q     In securing that basic sentiment, did that divulge  
23 any confidential information about the specifics of their  
24 arrangement?

25           A     No.

1           And, again, if I can just explain a little bit.

2           Q     Please.

3           A     You take a channel that their contract says we  
4     need to be carried to no less than, let's say, 70 percent of  
5     your customers; if we have that channel carried in a package  
6     that's to 95 percent of our customers, that would afford us  
7     the ability to set up another package that doesn't have that  
8     channel in it that could go up to 20 percent penetration to  
9     manage down to that minimum penetration rate.

10           We've done it multiple times. Verizon set up a  
11    new package. I explained to everyone this is pretty obvious  
12    what they're doing.

13           But folks just didn't quite believe it. And  
14    I just said, let me just call and see if I'm missing  
15    something. And that's exactly what I put in the note.

16           Q     Thank you.

17           Just two more quick things and we'll be done.

18           You mentioned to Mr. Welsh yesterday and again  
19    this morning briefly this, in negotiations with programmers,  
20    this concept of frictions.

21           Do you recall that?

22           A     Yes.

23           Q     Okay. What are you alluding to there? What are  
24    you talking about?

25           A     By friction or maybe kind of negotiation or

1 bargaining friction, we're always trying to find ways to get  
2 more value for the prices that we pay for our customers and  
3 try to innovate.

4 Now, I don't fault the person on the other side of  
5 the table whose job it is to try to get more consideration,  
6 money for those incremental rights.

7 But what I've seen in 30 years of doing this is  
8 this friction just is constant, and nothing truly innovative  
9 really gets done when we have an arm's-length commercial  
10 negotiation like this.

11 I see innovation with Netflix and Amazon and Apple  
12 and others that are more vertical, and they can do things  
13 with their own content.

14 So it's really both parties not knowing what this  
15 innovation or new grant of rights will deliver in the  
16 future. It's the uncertainty; it's the risk. We both have  
17 it.

18 But because we can't assign a value around that  
19 uncertainty, nothing gets done. And you've got constant  
20 friction.

21 Q Well, help me with that a little bit.

22 When you say that there's uncertainty about the  
23 value, just unpack that a little bit. What do you mean?

24 A So if you think about TV Everywhere, TV Everywhere  
25 is a very simple, consumer-friendly, good thing to do. It



1 has taken this industry over a decade to get to the, I would  
2 say, rather mediocre state of TV Everywhere today. A lot of  
3 analysts call it "TV Nowhere." That is inherent friction  
4 because no one's been able to figure out what really is the  
5 value to the parties -- we know there's value to the  
6 consumers. So that would be an example of trying to just  
7 unpack the value.

8 I went through it in so many cycles with so many  
9 content providers trying to figure out how they could  
10 extract more to grant something that's just so easy to do.

11 Q All right. Now I'm about to embarrass myself with  
12 my clicker, which is, what is TV Everywhere?

13 A So TV Everywhere, the general concept is, if you  
14 subscribe to cable or satellite, you have a set-top box and  
15 you watch it on your television. The notion is, using your  
16 password on your phone, your laptop, your computer, you  
17 would be able to enjoy your pay-TV subscription everywhere.  
18 It's TV Everywhere, across any device.

19 Q Are there other examples where these -- this  
20 uncertainty of how do you value the incremental right is  
21 what I hear you saying.

22 A Sure.

23 Q How do you do that, the uncertainties around that,  
24 where it has, those frictions have led to a lack of  
25 innovation that you have experienced, specific examples?

1           A     Okay.

2                     DirecTV Now is a good example. Even though folks  
3 call that innovative, the fact of the matter is it took us  
4 well over a year to just secure the rights that are  
5 basically the same offering that we have on DirecTV. But,  
6 in truth, it's less innovative than DirecTV, because  
7 programmers, for those incremental grant of rights,  
8 restricted our ability to offer that select package, that  
9 skinnier package.

10                    It is less innovative at the end of the day. It  
11 has other -- a lot of restrictions around how many different  
12 people can enjoy the subscription at the same time, how many  
13 streams at the same time, advertising restrictions, DVR  
14 restrictions.

15                    And the other very frustrating thing about  
16 DirecTV Now, when we went to programmers, we tried to do  
17 something a little innovative called DirecTV mobile. And  
18 the concept there was, maybe we could give them their  
19 pay-TV subscription but only on a mobile device. We -- you  
20 know Millennials tend to consume their younger markets.

21                    The notion was we would discount the price, just a  
22 straight percentage to consumers, good for them, with  
23 limitations. We would discount what we pay the programmers,  
24 and that was dead on arrival. So there was no  
25 DirecTV mobile.

1           Q     So what are the kinds of things that you would  
2 like to do? And what are the kinds of things that you're  
3 thinking about doing? And would it help to have both the  
4 rights and those innovation opportunities under the same  
5 tent?

6           A     We have a laundry list of things that the  
7 technology would permit us to do, a couple sitting here  
8 right now. One would be something called download,  
9 download-and-go rights. To explain that, if you have your  
10 pay-TV subscription, while you're on a plane or don't have  
11 access to the Internet or don't want to use your data plan,  
12 you could download a movie or TV show or game and watch it  
13 loaded onto your device.

14                     We have gotten a tiny amount of rights of all the  
15 channels and content that we offer for download rights.

16                     Meanwhile, Netflix, with all the content that they  
17 own and produce, has full downloading rights to all their  
18 content.

19           Q     Hang on, though.

20           A     Yeah.

21           Q     Why have you been unable to secure those rights?

22           A     Friction. Risk, unknown value, uncertainty. It's  
23 just, we just really haven't been able to get much traction  
24 with the way that we're set up negotiating arm's length with  
25 programmers.

1           Q     Any others that come to mind of things you'd like  
2 to do where you haven't been able to do them?

3           A     I would say we'd like to have more interactivity  
4 as you watch a movie or TV show or game, whether it's on the  
5 screen itself.

6                     There's a concept of second screen experiences.  
7 So if you're watching a movie and you want to just kind of  
8 know about the actors on the screen, with the press of a  
9 button, that stuff could come up on the screen or on a  
10 second screen.

11                    We've had very little success doing that.

12                    And I look at what Amazon does with their  
13 experiences. It's great. They tend to do it more with the  
14 content that they own and create themselves.

15                    We've really gotten nowhere on that.

16                    Oh, boy. There's a lot of stuff.

17                    I said download, interactivity, second screen.  
18 Those would be just a couple things off the top of my head.

19           Q     Okay. And so, again, what is it about having the  
20 rights to do these things and then also the ability to do  
21 these things in the same entity, that vertical integration,  
22 what is it about that that will enable you to do these  
23 things, in your judgment?

24           A     You get a little bit more alignment and  
25 willingness to experiment, to trial and see if there's value

1 and prove these concepts out.

2           This whole thing is a chicken and the egg. And  
3 when you kind of just take that out of it and just see if  
4 something will work, you get a chance to try and innovate  
5 and better serve your customers.

6           Q     Okay. One last issue, one last question. You've  
7 been now in the content negotiation business for how long?

8           A     Some context since 1987.

9           Q     And so when you go about negotiating poor content,  
10 what do you focus on in deciding how much you're willing to  
11 pay and what terms you're willing to agree to secure that  
12 content?

13          A     There's a variety of factors. You know, it  
14 depends on what we're trying to accomplish in the deal, what  
15 deal did we have before. I mean, there's a multitude.

16                What rights do we get? Can we innovate? How are  
17 we trying to serve customers? How can we differentiate our  
18 service? What is the price that we're getting? What are  
19 the parity protections that we're getting.

20                There's a multitude -- there's literally, if you  
21 ask our marketing department who we represent, they've got  
22 marketing priorities that they would like, our technology  
23 and product folks, legal, finance. There's literally  
24 hundreds of items that go on kind of a priority list on  
25 what's the right deal.

1           Q     And in all this time that you have negotiated  
2 content for a distributor, most recently DTV, has it ever  
3 mattered to you who owns the program -- programmer or, more  
4 particularly, who the programmer might own as you grow out  
5 the business assessing what are you prepared to do for the  
6 benefit of your consumers?

7           A     I have engaged in those types of negotiations many  
8 times, and I don't give that -- I personally don't give that  
9 any consideration whatsoever.

10                     It's all about what is the content, what is the  
11 right deal for our customers.

12                     MR. WALTERS: Thank you, Mr. York. That's all  
13 I have.

14                     THE WITNESS: Thank you.

15                     THE COURT: Mr. Welsh, do you have any redirect?

16                     MR. WELSH: Yes, I do, Your Honor.

17                     THE COURT: How much?

18                     MR. WELSH: Probably 15 minutes or so.

19                     THE COURT: We'll take the morning recess, then.  
20 All right. You're a witness under oath in the  
21 case.

22                     THE WITNESS: Yes.

23                     THE COURT: You know the rules. Refrain from  
24 discussing your testimony with anyone, including your  
25 counsel --

1 THE WITNESS: Right.

2 THE COURT: -- until we get back. See you in  
3 15 minutes. All right.

4 DEPUTY CLERK: All rise. This Honorable Court  
5 will now take a brief recess.

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

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

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

14 THE COURT: All right. Witness remains under  
15 oath.

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

17 THE COURT: You may.

18 MR. WELSH: Thank you.

19 REDIRECT EXAMINATION

20 BY MR. WELSH:

21 Q Mr. York, I'm going to start with -- you were  
22 asked some questions, and I want to start off with the  
23 split-screen issue with Turner and Apple TV. Do you recall  
24 you were asked some questions by defense counsel about that?

25 A Yes.

1 Q Okay. Now, if I got your testimony correct,  
2 I think you said that, despite all your efforts, you're  
3 engaged in all these efforts to try to get that split screen  
4 from Turner, despite all that, you couldn't get it, right?

5 A Yes.

6 Q Okay. Now, Apple TV, though, they got it, didn't  
7 they?

8 A Yes.

9 Q All right. And there's no bargaining frictions  
10 that prevented Apple TV from offering whatever they offered  
11 so that they could get those rights; isn't that true?

12 A I don't know how that negotiation went, but I  
13 would assume there were frictions.

14 Q Well, you would assume that they did a deal,  
15 right? They concluded that deal, which is what you had your  
16 visceral reaction to, correct?

17 A They did a deal, yes.

18 Q And is it your testimony that Turner is not going  
19 to take more money from AT&T to give the rights for  
20 something like that to them -- to you?

21 A Whether -- we offered to pay for the 4K. We  
22 didn't even get an offer on trying to do an interactive  
23 split screen.

24 Q I'm talking about the split screen, though. It's  
25 not your testimony that you couldn't offer more money to



1 Turner to get those rights so that they wouldn't give them  
2 top Apple; that's not your testimony, is it, today?

3 A We may have offered more money for more rights. I  
4 don't recall the specific of the negotiation.

5 Q The bottom line is, though, that Apple took away  
6 those rights and they're not integrated with Turner,  
7 correct?

8 A That is correct.

9 Q All right. Now, you also talked about, I think  
10 you threw out a couple things that you claimed were  
11 innovations that you just couldn't do today but, boy, down  
12 the road, you might be able to do it. And I think you  
13 talked about a download to go, right?

14 A Correct.

15 Q Now, it's the case, isn't it, that Netflix and  
16 Amazon both do download to go?

17 A I believe they do.

18 Q And Netflix, though, they don't own any of the  
19 pipes to transmit their signal, their content, do they, to  
20 the consumer?

21 A I don't believe so.

22 Q Right. So what they require is they require AT&T  
23 and Verizon, those pipes, to be able to get that content out  
24 there; isn't that right?

25 A Any ISP or wireless carrier, their content would

1 flow over those pipes, as you call them, yes.

2 Q And the same is true with Amazon; they don't own  
3 the pipes that get their content out to the consumer, right?

4 A I don't believe so. They may.

5 Q So they have to go through DirecTV -- or,  
6 excuse me, through AT&T or Verizon, as examples; isn't  
7 that's true?

8 A Or cable or other wireless carriers, any ISP or  
9 wireless carrier, yes.

10 Q Let's look at PX29 in the binder, if we can.

11 Now, you were asked some questions by defense  
12 counsel about PX29. This is the OTT high-level summary page  
13 from Michelle Barney to you, right?

14 A Correct.

15 Q Now, I want the record to be clear here.  
16 Ms. Barney writes to you in her email on December 23, does  
17 she not, that pages 2 to 4 of the attachment summarize the  
18 MFN offers we've received to date, and is updated to reflect  
19 the revised MFN we received yesterday. And then there's a  
20 programmer's name listed there, correct?

21 A Correct.

22 Q And if we look at the attachment and look at those  
23 pages, there are term after term after term that are listed  
24 there pursuant to what Ms. Barney just mentioned, 'isn't  
25 that true?

1 A There are generally six terms on this spreadsheet.

2 Q Right. There are over 20 categories that are  
3 listed on the spreadsheet, isn't that true, of information  
4 regarding the programmers that are associated with the  
5 distributors there, true?

6 A In terms of terms, on pages 2 through 4, I  
7 count one, two, three, four, five, and other key terms would  
8 be six.

9 Q And it does include other key terms, correct?

10 A Yes. Only one of them has any other key terms.

11 Q And this is information that AT&T compiles and  
12 keeps track of in your business in the content group; isn't  
13 that true?

14 A We keep track of the deals and offers that we  
15 receive, yes.

16 Q Let's look at PX180, if we can.

17 Now, I want to make sure that I understand your  
18 testimony with respect to PX180, Mr. York.

19 Is it your testimony that, as to the terms that  
20 are attached here, pursuant to this distribution notice, is  
21 it your testimony that you're unaware of who the distributor  
22 is that's listed -- or the provider of this information?  
23 Excuse me.

24 A I'm sorry. Who the --

25 Q Who the identity of the distributor to which the

1 information applies.

2 A Upon receipt of this in December of 2014?

3 Q Yes, sir.

4 A I don't know if I looked at it. It's not clear to  
5 me by looking at this who -- again, I don't know this is an  
6 MFN offer, what this provision in the agreement is.

7 I don't know if this programmer has a legal obligation  
8 because it's listed OVD distribution notice.

9 I'm not sure, sir.

10 It is not entitled an MFN offer.

11 Q My question was, is it your testimony, though, as  
12 to what's attached here that was provided to you  
13 December 21, 2014, pursuant to this distribution notice, is  
14 it your testimony that you're unaware of the identity of the  
15 distributor to which the information applies? That's my  
16 question.

17 THE COURT: At that time?

18 MR. WELSH: At that time, yes, Your Honor,  
19 December of 2014.

20 THE WITNESS: Almost four years later,  
21 I don't recall if I was aware at the time who this may have  
22 been, if I deduced it at that time.

23 BY MR. WELSH:

24 Q Were your colleagues that worked under you aware  
25 of it, sir?

1           A     I don't know what they were aware of at the time,  
2     sir.

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

4           THE COURT:   You may.

5           MR. WELSH:   Your Honor, we've marked this document  
6     as PX541 for identification purposes.

7           May I proceed?

8           THE COURT:   You may.

9   (Government's Exhibit PX541  
10    was marked for identification.)  
11     BY MR. WELSH:

12           Q     Mr. York, you see at the bottom of PX541, it's the  
13     same email, December 22, 2014, that we were just looking at,  
14     correct?

15           A     This is -- attached to this is the OVD  
16     distribution notice, yes.

17           Q     Correct.

18   And this went to Mr. Thun, as we established  
19     earlier, correct?

20           A     Yes.

21           Q     And Mr. Thun, then, is reporting right above that.  
22     I'd like you to read that to yourself on the OVD  
23     distribution notice there.

24           A     Okay.

25           Q     Does that refresh your recollection that Mr. Thun  
   is right under you at AT&T, that he was able to determine

1 who the distributor was, the OTT distributor was, from which  
2 this information came?

3 A I'm nowhere on this email thread, so this is the  
4 first time I've ever seen this.

5 So what is your question?

6 Q My question is, does reading this refresh your  
7 recollection that Mr. Thun is right under you at AT&T at the  
8 time, that he was -- that he had put together who -- which  
9 distributor, which OTT distributor had provided that  
10 information to AT&T?

11 A To answer your question, I recall that Mr. Thun  
12 reported to me at the time. I have no recollection of this  
13 email because I've never seen it before.

14 Q You were asked some questions -- final subject I  
15 want to get into. You were asked some questions about PX42.

16 And I think in response to defense counsel's  
17 questions, you talked about how all this is just, what  
18 you're trying to get across is that everything is blurred,  
19 right? Wasn't that the point that you made?

20 A Yeah, that was one of the points, yes.

21 Q And what, in fact, though, was troubling to you at  
22 the time was that the content providers, by giving their  
23 content to Sling, the skinny bundle, that that was upending  
24 your ecosystem with your big bundles; isn't that true?

25 A I didn't say that, and I wouldn't say that.

1 Q But you did say in PX48 that we looked at earlier  
2 that the content providers themselves are the ones, either  
3 owning or licensing their content to cheaper OTT options,  
4 which has triggered this pricing war and race to the bottom.  
5 right?

6 A That's what it says, yes.

7 Q And they're racing to the bottom, dropping price.  
8 And you said they made their own bed, right?

9 A Yes. That sentence is in here, yes.

10 Q And what your sentiment here to your colleague at  
11 DirectTV at the time is that they're upending your cash cow,  
12 right?

13 A I didn't say that at all.

14 Q That was what you were talking about, though, in  
15 this email when you said they're racing to the bottom here.  
16 They're foolish. They're upending your cash cow.

17 Isn't that right?

18 A I never said "foolish." I never said "cash cow."

19 Q So, Mr. York, you were also asked some questions  
20 about your offerings, and I think you talked about how  
21 DirectTV has a skinny bundle, right?

22 A We have a variety of different packages that we  
23 offer, some skinnier than others, yes.

24 Q Well, in fact, you don't have anything that's even  
25 remotely close to Dish Sling, isn't that's true, in terms of

1 skinniness?

2 A I can't sit here and recite the channel counts of  
3 some of our packages versus some of theirs. I'm sorry.

4 We probably have things that are very close and  
5 certainly close on retail price.

6 Q So you came to court today to talk about your  
7 bundles being skinnier, but you can't tell this Court how  
8 many channels that Sling has?

9 A No. There are hundreds of packages in the market.  
10 I can't recite to you Sling's channel count.

11 Q What you did tell, in 2017, in January 2017,  
12 though, you did comment to a representative of  
13 Major League Baseball that, unlike others who are going  
14 skinny, which is AT&T with DirecTV Now, is coming to a  
15 market with a replicate of its DirecTV DBS satellite  
16 packages; isn't that true?

17 A Without our skinnier package, that's correct.

18 Q So what you told back in January 2017 is that, as  
19 to DirecTV Now, that that was designed to be a replicate of  
20 your satellite channel package, your fat package, right?

21 A I have no idea what conversation you're referring  
22 to, sir.

23 MR. WELSH: May I approach, Your Honor?

24 THE COURT: You may.

25 MR. WELSH: Your Honor, this has been marked for



1 identification as PX542. It's been handed to defense  
2 counsel.

3 May I proceed?

4 THE COURT: You may.

5 (Government's Exhibit PX542  
6 was marked for identification.)

6 BY MR. WELSH:

7 Q Mr. York, I see that this is pretty small type.  
8 I apologize for that, but that's the way the document came  
9 to us.

10 But do you see that this is an email from you  
11 January 31, 2017?

12 A Yes.

13 Q You wrote this to a Bob Bowman. Is that right?

14 A Yes.

15 Q Mr. Bowman is who?

16 A Pardon me?

17 Q Mr. Bowman is who?

18 A He was an employee of Major League Baseball  
19 Advanced Media at the time.

20 Q And I'm going to ask you to look at the second  
21 paragraph of that. And if you'd read that to yourself.

22 Are you done reading that paragraph, sir?

23 A Yes.

24 Q Does reading that refresh your recollection that  
25 you told Mr. Bowman that you're providing an overview of

1 DirectTV Now offerings, which unlike others who are going  
2 more skinny, it's designed with a general intent of  
3 replicating their traditional DirectTV DBS packages that have  
4 been good for the pay-TV ecosystem.

5 Does that refresh your recollection of having said  
6 that?

7 A Yes.

8 MR. WELSH: That's all I have, Your Honor.

9 Thank you.

10 THE COURT: All right. Do you have anything  
11 limited to redirect?

12 MR. WALTERS: Nothing, Your Honor.

13 THE COURT: Oh, okay.

14 So there's a legal issue that the government and  
15 the defense have raised for me to consider about your  
16 testimony. But they want to do a little brief. Each side  
17 is going to do a brief on it.

18 And depending upon how it comes out in the next  
19 few days, there's a chance that you might have to be  
20 re-called.

21 THE WITNESS: Okay.

22 THE COURT: So I'm going to excuse you, subject to  
23 re-call. And what that means is this, basically.

24 And we'll know the answer to this question by  
25 Monday morning.

1 THE WITNESS: Okay.

2 THE COURT: So if you're going to have to come  
3 back for a limited questioning on the topic of this legal  
4 research that they're working on, it will be limited just to  
5 that. And we'll know it by Monday morning.

6 But between now and Monday, between now and your  
7 returning, if you have to return, you can't talk about your  
8 testimony which you've given so far.

9 THE WITNESS: Understood.

10 THE COURT: So you've got to stay independent of  
11 all others, including your own lawyers. You're going to  
12 have to be able to answer Monday morning the question that  
13 invariably you would get if you had to come back: Have you  
14 discussed your testimony so far with anybody? You have to  
15 able to say "no" under oath.

16 THE WITNESS: Right.

17 THE COURT: So stay independent of all others.

18 Tell family and friends it was a lot of fun.

19 THE WITNESS: That's true.

20 THE COURT: We're having a ball, you know. You're  
21 earning your hazardous duty pay. Whatever.

22 But you can't go into what you said. You can't go  
23 into what you might say. You just can't do it.

24 THE WITNESS: I understand.

25 THE COURT: You're excused, subject to recall.

1 THE WITNESS: All right. Thank you.

2 THE COURT: You can step down.

3 Call your next witness.

4 MR. CONRATH: Your Honor, the United States calls  
5 Tim Gibson as an adverse party witness.

6 THE COURT: All right.

7 MR. PETROCELLI: Your Honor, Ms. Robson will be  
8 handling the witness.

9 THE COURT: All right.

10 DEPUTY CLERK: Sir, please raise your right hand.  
11 (Witness is placed under oath.)

12 THE WITNESS: I do.

13 DEPUTY CLERK: Please be seated.

14 THE COURT: You're going to have to speak into  
15 that microphone because you'll be competing with our air  
16 conditioning system, which, by the way, it's a good thing to  
17 be competing with, because this room gets warm very quickly.

18 THE WITNESS: I'll do my best.

19 THE COURT: 150 people sitting out there. So  
20 trust me.

21 Mr. Conrath.

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

23 THE COURT: When you're ready.

24 MR. CONRATH: All right, thank you.

25

1 TIMOTHY GIBSON, ADVERSE WITNESS FOR THE GOVERNMENT, HAVING  
2 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. CONRATH:

5 Q Mr. Gibson, would you state your full name for the  
6 record.

7 A Timothy David Gibson.

8 Q Mr. Gibson, you are the vice president of strategy  
9 and business development for AT&T's entertainment group;  
10 is that correct?

11 A That's correct.

12 Q And you've held that position since the  
13 AT&T-DirectTV merger in July of 2015?

14 A Yes.

15 Q AT&T's entertainment group includes the company's  
16 broadband, mobile, and video products, correct?

17 A Yes.

18 Q Your responsibilities as VP of strategy and  
19 business development cover all of those products within the  
20 entertainment group; is that right?

21 A For the most part, I focus on our video products,  
22 but, generally, yes.

23 Q Prior to the close of AT&T-DirectTV merger, you  
24 were employed by DirectTV; is that right?

25 A Yes.

1 Q And you were the vice president of strategy and  
2 business development for the digital entertainment products  
3 group at DirecTV?

4 A Yes.

5 Q And that started around 2010 or 2011?

6 A That's about right, yes.

7 Q And so you've held strategy positions in the  
8 pay-TV industry at DirecTV and then at AT&T for more than  
9 seven years?

10 A Yes.

11 Q So I want to ask you questions about a project  
12 that was discussed in your deposition called the MVPD  
13 concessions scenarios.

14 Do you recall that?

15 A I do.

16 Q In June of 2016, you worked on this MVPD  
17 concessions scenarios project; is that right?

18 A Yes.

19 Q And at that time, you were the vice president of  
20 strategy and business development?

21 A Yes.

22 Q And you reported directly to Tony Goncalves?

23 A Tony Goncalves, yes.

24 Q Goncalves, it's an S?

25 A Soft C.

1 Q Soft C.

2 A Yes.

3 Q Thank you.

4 At that time, Mr. Goncalves was the senior vice  
5 president of strategy and business development?

6 A Yes.

7 Q And Mr. Goncalves asked you initially to look at  
8 what the scenarios might be for AT&T as a result of a  
9 consent decree involving Charter and Time Warner Cable,  
10 right?

11 A Yes.

12 Q And you suggested adding also, thinking about what  
13 would be the implications of the expiration of the  
14 Comcast-NBCU consent decree, right?

15 A At the time there was some because around those  
16 conditions, so yes.

17 Q I'd like to ask you to look -- well, I'd like to  
18 hand you a document.

19 Your Honor, may I approach?

20 THE COURT: You may.

21 MR. CONRATH: May I approach the witness?

22 THE COURT: You may.

23 THE WITNESS: Counsel, if it's no trouble, could  
24 I have some water?

25 THE COURT: We'll get you one of those.

1 THE WITNESS: Great.

2 MR. CONRATH: May I approach with water?

3 THE COURT: Yes.

4 THE WITNESS: Thank you.

5 BY MR. CONRATH:

6 Q Mr. Gibson, you have a document in front of you  
7 that's been marked for identification as  
8 Plaintiff's Exhibit 30.

9 The first page of PX30 is a cover email from you  
10 to Tony Goncalves on June 21st, 2016, correct?

11 A Yes.

12 Q And the subject is competitive merger  
13 implications, correct?

14 A Yes.

15 Q And the email has an attachment that is described  
16 as MVPD concessions scenarios V15, correct?

17 A Yes.

18 Q And if you turn to the attachment on page 2 of  
19 PX30, it has the title "MVPD Concessions Scenarios" and the  
20 date of June 2016, correct?

21 A Yes.

22 Q And this is work on a project your boss,  
23 Mr. Goncalves, had asked you to do?

24 A Yes.

25 Q And you were involved in the preparation of this



1 presentation that you sent to your boss?

2 A Yes. This was us trying to get educated about  
3 some merger conditions.

4 Q In fact, you had made extensive handwritten edits  
5 to an earlier draft of this document; is that right?

6 A It's very common. I make a lot of handwritten  
7 edits to things, yes --

8 Q Right.

9 A -- much to my team's chagrin.

10 Q All right. Well, we're glad to hear that you're  
11 on the job.

12 So you thought this document was at the right  
13 stage to send it to your boss, right?

14 A We send documents to my boss at various stages.

15 MR. CONRATH: Your Honor, the United States moves  
16 for the admission of PX30 into evidence.

17 THE COURT: All right.

18 MS. ROBSON: No objection, Your Honor. But we ask  
19 that be kept under seal.

20 THE COURT: It will be admitted under seal.

21 (Government's Exhibit PX30  
22 received into evidence under seal.)

22 BY MR. CONRATH:

23 Q Please turn, if you would, Mr. Gibson, to page 3  
24 of PX30.

25 This describes the project brief that you're --

1 about the project that you were working on, right? That's  
2 the title?

3 A Yes.

4 Q And under key questions, the second bullet reads,  
5 "As the CMCSA/NBCU merger Consent Decree expires, what are  
6 the potential scenarios and impact to AT&T's business?"

7 Do you see that?

8 A That's what it says, yes.

9 Q And CMCSA is Comcast?

10 A Yes.

11 Q So in this project, you were looking at the  
12 potential impact on AT&T's business of the Comcast-NBCU  
13 merger Consent Decree expiring?

14 A This probably, we were trying to understand what  
15 those merger conditions were.

16 Q Sure.

17 And if you see in the kind of lower left, it lists  
18 the project team.

19 A Yes.

20 Q And the first one there is Bill Belden;  
21 is that right?

22 A Yes.

23 Q And who's Mr. Belden?

24 A He used to work for me.

25 Q And what was his title at this time?

1 A He was the AVP of strategy.

2 Q AVP is assistant vice president?

3 A Assistant vice president.

4 Q And the key stakeholders described here are you  
5 and Mr. Goncalves, right?

6 A Correct.

7 Q Please turn to page 10 of PX30.

8 And in page 10, you're examining the impact of  
9 expiring conditions on Comcast-NBCU merger, correct?

10 A Again, we were trying to understand what these  
11 conditions were, and this was our attempt to try to lay that  
12 out.

13 Q And to look at the potential impact on AT&T?

14 A Again, brainstorm the what-ifs, sure.

15 Q And Comcast -- just to be clear, Comcast at this  
16 point, Comcast, a cable company, owns NBCU, a content  
17 company?

18 A That's correct.

19 Q Look in your -- look at the column under "Impact  
20 on Ecosystem." Do you see that, the center column?

21 A I do, yes.

22 Q And here you're analyzing what Comcast-NBCU may be  
23 able to do when the conditions that come out of the consent  
24 decree expire, right?

25 A Yeah, what they may be able to do.

1           Q     The first bullet under Impact Under -- on  
2 ecosystems says, "Option to raise price or withhold NBCU  
3 content from others."

4                     Do you see that?

5           A     I see that.

6           Q     And that's stated as an impact on the pay-TV  
7 ecosystem?

8           A     Yes. It's the direct inverse of the condition.

9           Q     And the second bullet says, "Withhold or re-price  
10 specific rights, e.g., stacking rights, library, catalog, in  
11 order to differentiate its own service."

12                     Correct?

13          A     Yes. Again, like all our programming partners.

14          Q     Well, it doesn't say anything about all of your  
15 other programming partners, does it?

16          A     It doesn't. I'm just trying to be helpful. But  
17 that's what we said.

18          Q     The next column over is "Impact to AT&T," right?

19          A     Yes.

20          Q     And the first bullet says, "NBCU could become a  
21 more formidable negotiating power."

22                     Correct?

23          A     That's what it says.

24          Q     And that was the view you reported to your boss at  
25 the time?

1           A     This was our, again, draft understanding of some  
2 pretty complicated merger conditions.

3           Q     And the second bullet under "Impact to AT&T" says,  
4 "Content costs could increase XB."

5                     X billion, is that?

6           A     Yes.

7           Q     So some unknown number of billion dollars in  
8 programming costs in 2016, correct?

9           A     Again, this was a draft. We hadn't finished this  
10 work.

11          Q     But that was the information that you reported as  
12 ready to send to Mr. Goncalves?

13          A     I sent this document to Mr. Goncalves.

14          Q     All right. You can set that document aside for  
15 the moment.

16                     MR. CONRATH: Your Honor, I have another document.  
17 May I approach?

18                     THE COURT: Yes.

19                     MR. CONRATH: May I approach the witness?

20                     THE COURT: You may.

21                     MR. CONRATH: May I proceed?

22                     THE COURT: You may.

23 BY MR. CONRATH:

24          Q     Mr. Gibson, you have in front of you PX11?

25          A     I do, yes.

1 Q And PX11 is an email chain. The top one is from  
2 Mr. William Belden?

3 A Yes.

4 Q Do you see that?

5 And that's the person who you told us a moment ago  
6 works for you?

7 A Correct.

8 Q And he was, at that time, the assistant vice  
9 president of business strategy?

10 A Yes.

11 Q And he sends this email to you on Friday,  
12 June 3rd, 2016?

13 A Yes.

14 Q And this is about -- the subject matter is about  
15 the same project that we were looking at in the previous  
16 document, correct?

17 A Yes.

18 Q And this email is earlier in time than the  
19 document we looked at previously, correct?

20 A Yes. This is his first very rough understanding  
21 of these conditions.

22 Q And you had asked Mr. Belden to work on this  
23 project of MVPD concession scenarios?

24 A Yes.

25 Q And as AVP of strategy Mr. Belden took the lead on

1 pulling together information for this project?

2 A Yes.

3 Q And in Plaintiff's Exhibit 11 Mr. Belden is  
4 reporting to you about MVPD concession scenario project?

5 A Yes. And I think, just to, again, to be helpful,  
6 this is pretty early in that process, as evidenced by his  
7 lots of holes in here, statement upfront.

8 MR. CONRATH: Your Honor, the United States moves  
9 for admission of PX11 into evidence.

10 MS. ROBSON: No objection, Your Honor.

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

12 (Government's Exhibit PX11  
13 received into evidence.)

14 BY MR. CONRATH:

15 Q Mr. Gibson, on the first page of PX11, below the  
16 first paragraph, there's a heading "Comcast-NBCU  
17 Assessment," correct?

18 A Yes.

19 Q And the first topic in that outline is  
20 "arbitration for linear programming," correct?

21 A Yes.

22 Q And below that at Ai, Mr. Belden writes to you,  
23 "Expiration of condition means NBCU can play hardball and  
24 threaten blackout if they do not get the terms from MVPDs  
25 that they want."

Is that correct?

1           A     I see that statement, yes.

2           Q     And the second topic in the outline is "online."  
3 Mr. Belden there is analyzing the expiration of the  
4 Comcast-NBCU Consent Decree on online video distribution,  
5 correct?

6           A     I believe that's what he interpreted the condition  
7 to be, yes.

8           Q     And below that at Ai, Mr. Belden wrote to you,  
9 "Expiration means NBCU can choose not to license content  
10 online to some players or may discriminate on price."

11                     That's what he wrote to you, right?

12          A     That's what he said, yes.

13          Q     And the statements that he's writing to you is  
14 what he understood at that time would be the implications of  
15 NBCU and Comcast no longer having conditions on the way they  
16 behave in the marketplace, correct?

17          A     These were the statements of an individual who  
18 reported to me reading merger conditions for the first time.

19          Q     And at Bi under "online," Mr. Belden write to you,  
20 "Expiration means OVDs could be looking at different terms  
21 for NBCU content. DirectTV Now may not get the content or  
22 the rates that DirectTV gets."

23                     Do you see that?

24          A     Yes.

25          Q     And that's, again, what Mr. Belden was reporting



1 to you as a result of expiration of the Consent Decree?

2 A Again, this is someone junior to me reading some  
3 pretty complicated merger conditions for the first time.

4 Q And you understand that if this merger goes  
5 through, AT&T will be in one company, combining a  
6 distribution company with a content company, correct?

7 A Yes.

8 Q It would be -- do you know the term "vertically  
9 integrated"?

10 A Yes.

11 Q And that is what Comcast and NBCU are;  
12 is that correct?

13 A That is what Comcast and NBCU are, yes.

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

15 THE COURT: Okay Ms. Robson.

16 MS. ROBSON: May I proceed?

17 THE COURT: When you're ready.

18 MS. ROBSON: Thank you.

19 CROSS-EXAMINATION

20 BY MS. ROBSON:

21 Q Mr. Gibson, the government showed you two  
22 documents. The first was MVPD concession -- or, excuse me,  
23 the second was the MVPD concession scenarios marked PX11.

24 And I think you were explaining to the Court that  
25 this was a very early email in the process. Could you

1 describe the Court where this was in the process?

2 A I believe this may have been one of the first  
3 things my team did to try to understand what these  
4 conditions were all about. As I'm sure you know, they're  
5 quite complicated. And it wouldn't be uncommon for my team  
6 to spit out an email like this to me with their initial  
7 thoughts.

8 Q Now, Mr. Gibson, are you a regulatory expert?

9 A I'm not.

10 Q Are you a lawyer?

11 A No.

12 Q Ever studied law?

13 A No.

14 Q Is Mr. Belden a regulatory expert?

15 A No.

16 Q Is he a lawyer?

17 A No.

18 Q Has he ever studied law?

19 A No.

20 Q Did you and Mr. Belden actually read the  
21 Comcast-NBC conditions?

22 A We did not.

23 Q Now, the second document that he showed to you,  
24 PX30, this draft set of slides -- and I think you mentioned  
25 it was a draft earlier. Could you point the Court to the

1 language in this slide deck that indicates that it is a  
2 draft.

3 A If you look at the top right-hand corner of the  
4 document, it says "Preliminary Draft."

5 And I should note for the Court that if you look  
6 at our footer as well, it says "Strategy Group Opinion  
7 Only," which, again, is very typical for this type of  
8 document that is intended to be our team seeking to educate  
9 itself about a complicated topic.

10 Q And the next line in that footer that you pointed  
11 us to says, "Subject to contradiction, our alternate  
12 evaluation by other organizations."

13 Could you explain to the Court what that means.

14 A Well, typically, once something got to the point  
15 of being more official for the company, it would go through  
16 a series of experts -- clearly, in this case, someone who  
17 understands merger conditions, who would vet the conclusions  
18 and make it more of an official, final work product.

19 Q And I think you mentioned that PX30 was the  
20 document that was sent to your boss, Mr. Goncalves?

21 A Yes.

22 Q And after you sent this document to your boss,  
23 Mr. Goncalves, did the slide, draft slides change?

24 A These slides changed dramatically.

25 If you'd like me to explain how, I can.

1 Q Please.

2 A You know, part of what we do, Your Honor, is look  
3 at competitive trends, technology trends, regulatory trends.

4 In my role, it's kind of see where the puck is  
5 going.

6 And what we concluded from our high-level  
7 understanding of these merger conditions is that it was  
8 apparent that there were regulatory tailwinds in support of  
9 the proliferation of online video.

10 That was great, and we had just decided to do  
11 DirectTV Now, go over the top ourselves with online video,  
12 and this strengthened our conviction.

13 Q Now, the government read some language to you from  
14 both of these documents. Did that language remain --  
15 I understand that you continued to iterate on these slides;  
16 is that correct?

17 A Yes.

18 Q Did the language that the government read to you  
19 remain in the subsequent iterations of slides after your  
20 boss saw this?

21 A No, it didn't.

22 MS. ROBSON: Thank you.

23 Thank you, Your Honor. No further questions at  
24 this time.

25 THE COURT: All right. Any redirect?

1 MR. CONRATH: Yes, if I may proceed, Your Honor.

2 THE COURT: All right.

3 REDIRECT EXAMINATION

4 BY MR. CONRATH:

5 Q You were asked some questions about the  
6 proposition that you're not a regulatory expert or a lawyer,  
7 correct? Do you remember that discussion?

8 A I do.

9 Q And it is the job of the strategy group, right, to  
10 understand the industry and what's going on in the industry?

11 A We do a good deal of brainstorming about our  
12 industry, yes.

13 Q You remember the footer in the document that you  
14 were pointed by Ms. Robson?

15 A Yes.

16 Q It's says "subject to change"?

17 A Yes.

18 Q In fact, you sent the PX30, the first document I  
19 showed you, shortly after you sent it -- you sent it to the  
20 legal department for review, correct?

21 A That wouldn't be uncommon. Yes.

22 Q And after -- do you know that after the versions  
23 that were sent to the legal department and were -- that came  
24 back were blacked out when they were produced to the  
25 Department of Justice so that we couldn't see what was said?

1           A     I'm not sure what -- about any of that.

2           Q     And you understand, there is a legal -- an  
3 attorney-client privilege that permits that?

4           A     I understand the concept of attorney-client  
5 privilege, yes.

6           Q     And after the review with the legal department,  
7 then you got to go over to what Ms. Robson said was a  
8 changed version that doesn't include the statements that  
9 we're looking at here?

10          A     The final version of this work was substantially  
11 different than this.

12                 MR. CONRATH: Okay. No further questions,  
13 Your Honor.

14                 THE COURT: Do these disclaimers usually appear in  
15 these kind of early documents?

16                 THE WITNESS: Yes, they do.

17                 THE COURT: Subject to contradiction or alternate  
18 evaluation by other organizations; that means within AT&T,  
19 right?

20                 THE WITNESS: Exactly, Your Honor.

21                 We throw things against the wall, a series of  
22 what-ifs, try to cause some discussions.

23                 Certainly, nothing we write is the gospel.

24                 THE COURT: So internal use only?

25                 THE WITNESS: Absolutely, yes.

1 THE COURT: You're excused.

2 THE WITNESS: Thank you.

3 THE COURT: You can step down.

4 All right. We're going to take the luncheon  
5 recess. I believe Mr. Manty will be the witness after  
6 lunch?

7 MR. CONRATH: That's correct, Your Honor.

8 THE COURT: Based on the estimates previously  
9 given, you should take the rest of the afternoon.

10 MR. CONRATH: That sounds right to us.

11 THE COURT: We're breaking early today at 4:00.

12 MR. CONRATH: I recall that, Your Honor.

13 THE COURT: Any other issues or questions at this  
14 time, Counsel?

15 MR. CONRATH: Not from us, Your Honor.

16 MR. PETROCELLI: No.

17 THE COURT: No?

18 All right. Have a good lunch.

19 DEPUTY CLERK: All rise.

20 This Honorable Court will stand in recess until  
21 the return of court.

22 (Proceedings concluded at 12:56 p.m.)

23

24

25

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

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

Date: April 5, 2018                      /S/ William P. Zaremba

William P. Zaremba, RMR, CRR