

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 10, 2018
	)	2:53 p.m.
AT&T, INC., ET AL.,	)	
	)	Afternoon Session
Defendants.	)	
<hr/>		Day 11

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

(Closed session)

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MR. WELSH:

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(Recess from 3:15 p.m. to 3:41 p.m.)



1           A     Good afternoon.

2           Q     First of all, Mr. York, I just want to start off  
3 by asking you, when we broke with your testimony last week,  
4 His Honor spoke to you about your testimony and not --  
5 telling you you should not be speaking with others about it,  
6 and I wanted to just follow up on that.

7                     Have you spoken with anyone about the testimony  
8 that you gave last week, sir?

9           A     No, sir.

10          Q     And with respect to the upcoming testimony today,  
11 have you spoken with anyone, including your counsel, about  
12 that?

13          A     No, sir.

14          Q     Have you been provided any notes or any comments  
15 by anyone, including counsel, about your testimony?

16          A     No, sir.

17          Q     Okay. Great.

18                     Let's now just move on to questions I have for you  
19 today, which are very few.

20                     Mr. York, in 2014 -- I want to get us all  
21 situated. So back in 2014, you were familiar with the  
22 Dodgers channel; is that correct?

23          A     Correct.

24          Q     Okay. And that was SportsNet LA; is that correct?

25          A     That's the name of it, yes.



1 Q All right. And Time Warner Cable owns  
2 SportsNet LA and was licensing the rights out at that time;  
3 is that true?

4 A No. Guggenheim actually owns SportsNet LA.  
5 Time Warner Cable funds the network.

6 Q Okay. But Time Warner Cable is involved in the  
7 aspect of SportsNet LA, correct?

8 A Correct.

9 Q Okay. And now, back then, DirecTV did not carry  
10 the Dodgers channel, true?

11 A We did not carry SNLA, no.

12 Q SNLA, right, SportsNet LA, right?

13 A Correct.

14 Q And AT&T at that time also did not carry  
15 SportsNet LA, true?

16 A Correct.

17 Q And Charter also did not carry SportsNet LA, true?

18 A In 2014?

19 Q Yes, sir, uh-huh.

20 A Correct.

21 Q Okay. Again, in 2014, Cox did not carry  
22 SportsNet LA, true?

23 A Amongst others, yes.

24 Q Now, again, from your perspective at DirecTV at  
25 the time in content negotiations, you were interested in

1 getting the price of SportsNet LA down lower than what it  
2 was being offered to DirecTV at the time; isn't that fair?

3 A Yeah.

4 As we do in many negotiations, we try and get a  
5 good price.

6 Q And you had conversations with your boss,  
7 Mike White. He was a CEO of DirecTV. You had  
8 communications with him during that time frame about this  
9 situation involving SportsNet LA; isn't that right?

10 A Some, I believe so.

11 Q All right. And in your communications with  
12 Mr. White, Mr. White told you that DirecTV would have more  
13 leverage in the negotiations regarding SportsNet LA if  
14 DirecTV and the other distributors stuck together in those  
15 negotiations, true?

16 A I don't believe that's true.

17 MR. WELSH: Your Honor, I have an exhibit,  
18 consistent with Your Honor's order.

19 May I approach?

20 THE COURT: What's the number?

21 MR. WELSH: It's PX462, Your Honor.

22 THE COURT: Yes. Okay.

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

25 THE COURT: You may.

1 BY MR. WELSH:

2 Q Mr. York, you have Plaintiff's Exhibit PX462.  
3 Do you recognize that, sir, as an exchange of e-mails  
4 between yourself and your boss, Mr. White, March 15 and  
5 March 16, 2014?

6 A I do.

7 Q You see the bottom email is from Mr. White to you,  
8 and then you have your response; is that correct?

9 A Correct.

10 Q And the exchange that's occurring here, the "re"  
11 line is Dodgers, correct? Do you see at the very top of the  
12 exhibit?

13 A Yes.

14 Q And what's going on in your exchange with  
15 Mr. White on these, in these emails, on these two days  
16 relates to the status of the offers being made with respect  
17 to the Dodgers SNL -- SportsLeague -- SportsNet LA offering,  
18 correct?

19 A Yes. This email is primarily about suggestions on  
20 new proposals that we could make for carriage.

21 Q But it had to do with the Dodgers channel --

22 A Correct.

23 Q -- simply put, correct?

24 A That -- yes.

25 MR. WELSH: Okay. Your Honor, I move for

1 admission of PX462.

2 MR. WALTERS: Your Honor, we have no objection if  
3 it's under seal and that it be admitted on a basis that the  
4 Court has admitted pre-transactions since 2014 documents as  
5 well under that protocol. On that basis, we have no  
6 objection.

7 THE COURT: It will be admitted under seal and  
8 will be treated only as to the company he's worked for at  
9 the time -- the company he was working for at the time.

10 (Government's Exhibit PX462  
11 received into evidence under seal.)  
12 MR. WELSH: May I proceed, Your Honor?

13 THE COURT: You may.

14 MR. WELSH: Thank you.

15 BY MR. WELSH:

16 Q Now, Mr. York, Mr. White starts off the email at  
17 the bottom by talking about the Dodgers channel, correct?  
18 He's been thinking further about the Dodgers?

19 A Correct.

20 Q And Mr. White goes on to mention in his email to  
21 you, he states, "Seems like we may have more leverage if we  
22 all stick together."

23 He says that, correct?

24 A That's one of the sentences, yes.

25 Q And, again, what he was telling you in his email  
was that if the distributors all stuck together with

1 DirectTV, there would be greater leverage to get the price  
2 down from the offering by Time Warner Cable; isn't that  
3 true?

4 A I wouldn't say that definitively as what he meant  
5 at all.

6 Q Well, you see when he says there that he had  
7 not -- he had not realized that Time Warner only has  
8 something like a 35 percent share.

9 Do you see that?

10 A Yes.

11 Q And what he's talking about there and what you  
12 understood was that Time Warner only had a small share of  
13 the market for the Dodgers channel, correct?

14 A It depends on the definition of the market, the  
15 Dodgers footprint is very expansive. It goes to Hawaii,  
16 down almost, I believe, to the Mexican border, to Nevada.

17 Their footprint or their marketshare in that broad  
18 footprint was probably around this number. They probably  
19 have two-thirds marketshare actually in the Dodgers foot  
20 present, which is really Los Angeles, L.A. County.

21 Q But what he's referring to there is the 35 percent  
22 marketshare; isn't that true?

23 A Yeah, that's what it says.

24 Q And takeaway from that, at least from his  
25 understanding as it was communicated to you, was that with

1 the 35 percent marketshare, that left 65 percent with the  
2 other distributors; isn't that the case?

3 A That would be the math, yes.

4 Q Okay. And he's suggesting here that if the other  
5 65, including DirecTV, stuck together, then that could help  
6 drive price down, right?

7 A I don't -- it could have been about internal  
8 discussions that we were having. We had lot of debate about  
9 what to offer, how did we value it, finance, marketing, PR,  
10 external affairs.

11 We had a debate on how we were going to  
12 communicate internally and externally in trying to get  
13 everybody aligned on that. That could have been what he's  
14 referring to.

15 Q But that's not what you understood because that's  
16 not how you responded.

17 You didn't respond back to him to say, hey, well  
18 our internal folks, yeah, I agree our internal folks need to  
19 be on the same page.

20 You didn't say that, did you?

21 A I did not.

22 Q Right.

23 What you actually said in response was, "Agreed.  
24 Others holding firm is key."

25 Those are your words, sir, aren't they?

1           A     Yes.

2                     After many sentences about what the offer should  
3 be.

4           Q     Right.  But what you told him in exchange was,  
5 "Others holding firm is key."

6                     And then you went on to mention other  
7 distributors, didn't you?

8           A     I did, yes.

9           Q     And in 2014, you had communications with your  
10 counterparts at these distributors about the Dodgers  
11 channel, didn't you?

12          A     Yes.  There were many business issues that we  
13 discussed, yes.

14          Q     And that would include Mr. Slater at AT&T before  
15 the merger, correct?

16          A     That's correct.

17                     MR. WELSH:  No further questions, Your Honor.

18                     Thank you.

19                     THE COURT:  All right.

20                     Cross-exam or redirect?

21                     MR. WALTERS:  Very briefly, Your Honor.

22                     THE COURT:  I don't know what to call it, really.

23                                     - - -

24                                     CROSS-EXAMINATION

25                     BY MR. WALTERS:

1           Q     Mr. York, was it your view during this time frame  
2 that -- well, let me back up.

3                     Why is it that you ultimately, at DirecTV, decided  
4 not to sign up the Dodgers?

5           A     It, in my 30 years of doing content licensing,  
6 I have never seen a worse deal than the deal that was  
7 presented to us to carry the Dodgers.

8                     Just before that offer came in, we carried a  
9 network that had the Dodgers, the Clippers and the Ducks on  
10 it that cost us probably almost a dollar less per subscriber  
11 per month than the offer we got from SNLA for carriage of  
12 the Dodgers. It was an insane offer.

13                    We made a very aggressive set of counterproposals,  
14 got no movement whatsoever, and couldn't come to terms to  
15 carry it.

16                    We desperately wanted to carry the Dodgers and  
17 still do.

18           Q     Do you carry the Dodgers to this day?

19           A     We do not.

20           Q     How is it that you came to understand or believe  
21 that others might not likewise sign up the Dodgers during  
22 this time frame?

23           A     Numerous sources, starting with Time Warner Cable  
24 themselves. In the very first meeting that we had where  
25 they pitched the network to us, they said, these are our



1 economics; we assume that there will never be Dish carriage.

2 It was widely reported in the press. I think Dish  
3 was out with a public statement.

4 We had multiple reporters calling us saying that  
5 it appears they're not having any luck with carriage.

6 We had Time Warner Cable coming after us saying,  
7 it's really about you.

8 We had Time Warner Cable run a full-page ad in the  
9 L.A. Times touting examples or specific confidential points  
10 in our proposal to them, only about DirecTV.

11 It was pretty obvious that they were not having  
12 much luck getting distribution with anybody but  
13 Time Warner Cable themselves.

14 Q In your email with Mr. White, you write that it  
15 was -- that it didn't look like Dish was going to carry the  
16 Dodgers.

17 Do you recall that?

18 A Yes.

19 Q Okay. How did you come to believe that was the  
20 case?

21 A This was a few months after, two and a half months  
22 after Time Warner told us that. And it was, I believe it  
23 was out in the press where Dish had made some statement that  
24 they didn't intend to care the Dodger network.

25 MR. WALTERS: Your Honor, I'd like to mark, just

1 for identification, DX933.

2 THE COURT: What's the number?

3 MR. WALTERS: 933.

4 THE COURT: For identification?

5 MR. WALTERS: Yes, sir.

6 May I approach, Your Honor?

7 THE COURT: You may.

8 BY MR. WALTERS:

9 Q Now, Mr. York, this is a March 4th L.A. Times  
10 article regarding the issue of the Dodgers.

11 Do you see that?

12 THE COURT: What year?

13 MR. WALTERS: March 4th of 2014, Your Honor.

14 THE COURT: '14?

15 MR. WALTERS: Yes, sir.

16 THE COURT: All right.

17 BY MR. WALTERS:

18 Q And could you recall for us the date of the other  
19 exhibit, the Exhibit 462. I believe that's dated  
20 March 16th?

21 A March 16th, yes, 2014.

22 Q So this March 4th article in the L.A. Times  
23 relates that -- do you see in the second full paragraph, it  
24 begins "negotiations"?

25 A Yes.

1           Q     In the second sentence, it says, "But one provider  
2 is unlikely to carry the channel, according to Joe Flint of  
3 the L.A. Times. Dish Network Executive Vice President  
4 David Shull discussed their stance."

5                     It goes on to say, "Satellite broadcaster  
6 Dish Network isn't interested in playing ball with the  
7 Dodgers. In an interview, David Shull said the majority of  
8 Dish's LA customers don't care about getting SportsNet LA,  
9 the new Dodger-owned pay-TV channel that launched last  
10 month."

11                    Do you see that?

12           A     I do, yes.

13           Q     Do you recall this article as being one of several  
14 that announced what Dish's position was at the time?

15           A     Yes.

16           Q     And was it on that basis that you communicated to  
17 Mr. White some two weeks later?

18           A     Absolutely.

19           Q     One last question.

20                    To the very best of your recollection, Mr. York,  
21 did you in any way coordinate, collude, or conspire  
22 regarding the terms of carriage of the L.A. Dodgers with any  
23 other distributors?

24           A     Absolutely not.

25                    MR. WALTERS: Thank you, sir.

1 THE COURT: You're excused.

2 THE WITNESS: Thank you.

3 THE COURT: You may step down.

4 All right. We have some deposition excerpts that  
5 the defense would like to be read out of order as part of  
6 its case, and the government is going to read some of its  
7 own from the same deposition.

8 Correct?

9 MR. PETROCELLI: Yes, that's correct, Your Honor.

10 THE COURT: So this is a deposition of -- let's  
11 put the name on the record there of who.

12 MR. WALTERS: His name is Randy Sejen, S-e-j-e-n.

13 THE COURT: And what's his position?

14 MR. WALTERS: He was the content negotiator at  
15 Cable ONE, which is based in Phoenix. It's a mid-sized  
16 MVPD, and he was the content negotiator until March of 2017.

17 THE COURT: All right.

18 And he was deposed when?

19 MR. WALTERS: He was deposed earlier this year.

20 MR. JONES: February 13th, 2018, Your Honor.

21 THE COURT: All right. He couldn't be with us  
22 today, unfortunately. We would like to get this -- the  
23 parties would like to get this in before the expert  
24 witnesses testify in the next two days.

25 So who's going to be playing the role of

1 Mr. Sejen.

2 MR. WALTERS: We have Mr. Rich Roschen.

3 THE COURT: Come on up, Mr. Roschen.

4 THE WITNESS: Thank you.

5 THE COURT: We're going to swear you to read it  
6 exactly as it's in that -- read it exactly like it's in  
7 there, all right?

8 THE WITNESS: To the best of my ability,  
9 Your Honor.

10 THE COURT: All right.

11 And who's going to be questioning him?

12 MR. WALTERS: So, at Your Honor's direction, both  
13 I and --

14 MR. CONRATH: Your Honor, from our side, my  
15 colleague, Fred Young will be handling the questions.

16 THE COURT: All right. Mr. Young.

17 MR. WALTERS: And unless you prefer to do  
18 otherwise, we understand the way we will do this is I will  
19 ask our questions, and the DOJ will then ask their  
20 questions. And we'll just do this in sequence in the way  
21 that the testimony appears in the deposition. And we're  
22 prepared to do so if that works for you.

23 THE COURT: I thought the idea was that you were  
24 going to read them in the order in which they appear.

25 MR. WALTERS: Yes, sir. In the deposition.

1           So we'll go back and forth as they appear in the  
2 deposition.

3           THE COURT: Right.

4           So you'll read the ones you want in, and he'll  
5 read the ones he wants in as they appear throughout the  
6 text?

7           MR. JONES: Jones, that's correct, Your Honor.

8           MR. WALTERS: That's correct, Your Honor.

9           THE COURT: Very good.

10          MR. WALTERS: If that's your pleasure.

11          THE COURT: That would be great.

12          MR. WALTERS: We'll do that.

13          We also have, for the Court, copies of the  
14 transcript and a coversheet that actually identifies the  
15 particular pages.

16          I thought the court reporter would prefer that; as  
17 well as there are four or five deposition exhibits that are  
18 discussed. They're used as point of departures. We don't  
19 intend to offer any of those into evidence. They're simply  
20 for context and reference.

21          THE COURT: Okay.

22          MR. WALTERS: And the number for the deposition  
23 transcript is DX930, marked for identification.

24          THE COURT: All right. What page are we starting  
25 on here?

1           MR. WALTERS: And happily, Your Honor, both sides  
2 have agreed there will be no -- nobody will interpose any  
3 objections. So we'll do this as efficiently as possible.

4           THE COURT: Okay.

5           (Randolph Sejen deposition read into the record.)

6 BY MR. WALTERS:

7           Q     Good morning, Mr. Sejen.

8           A     Good morning.

9           THE COURT: Very realistic courtroom.

10          MR. WALTERS: We're nothing if not literal,  
11 Your Honor.

12 BY MR. WALTERS:

13          Q     I'd like to learn a little bit about your  
14 background and how you fit into the content negotiation  
15 aspect of Cable ONE's business. But this might help focus  
16 and maybe even, with any luck, limit the deposition today.

17                 If I understand correctly, you're retired; is that  
18 right?

19          A     Yes. I retired in March of last year, so it's  
20 been almost a year now.

21          Q     So March of 2017?

22          A     '17, correct.

23          Q     Okay.

24                 Page 9.

25          A     Oh.

1           And the last four years I was at Cable ONE, I was  
2 the chief content negotiator.

3           THE COURT: Huh-uh. Chief contract negotiator.

4           THE WITNESS: Chief contract negotiator.

5 Thank you, Your Honor.

6           THE COURT: All right.

7           THE WITNESS: I apologize.

8           THE COURT: Let's get it right.

9           THE WITNESS: So I had dealt with Turner through  
10 two contract renewals, as well as virtually all other  
11 programmers had contracts expire or be renewed within that  
12 four-year period that I was overseeing the process.

13 BY MR. WALTERS:

14           Q     Let's turn to page 12, line 7.

15                     Okay. Well, that's helpful. Why don't -- this  
16 would also help me focus a little bit on the questioning.

17                     Can you just give me a brief description of your  
18 background in particular, how you got into content  
19 negotiations and what your role was here at Cable ONE.

20           A     Okay.

21                     I worked for Cable ONE for 31 years before  
22 retiring last year. And the first 27 of those years I was  
23 in finance department, primarily worked on budgets,  
24 forecasts, but also oversaw programming costs.

25           Q     Uh-huh.



1           A     And eventually or throughout a course of 15 years,  
2 I gravitated more and more toward the programming world,  
3 I think.

4           And I started out just providing financial  
5 analysis of potential deals to our chief negotiator at that  
6 point in time.

7           Q     Page 13, continue, please.

8           A     And gradually, like I said, over the course of  
9 15 years, I took on more and more responsibilities in the  
10 programming area.

11           And then, when Jerry retired or kind of moved on  
12 in his last year with Cable ONE, I became the chief  
13 negotiator for the last four years.

14           Q     Was that, were those your exclusive  
15 responsibilities, or did you also have finance  
16 responsibilities?

17           A     By the time I moved to programming for the last  
18 four years, that was all I did.

19           Q     Okay. All right.

20           Now, was there any particular training that went  
21 into that, or was it just sort of a learn on the job?

22           A     Primarily, learn on the job.

23           Like as I said, I had been involved in the process  
24 for many years, and I sat in on all the meetings with Jerry  
25 and took the lead in many of the negotiations.

1           I read some books about negotiating and whatever  
2 else, but I didn't have any formal training.

3           Q     Page 15, please, sir.

4           Okay. If I understand correctly -- and I'm not  
5 sure I do -- but were there under your tenure, if you will,  
6 were there three blackouts or takedowns or whatever you want  
7 to call it, Turner, Viacom, and maybe Northwest  
8 something-or-other; is that right?

9           A     Turner and Viacom, yes. I don't recall Northwest.

10          Q     Okay.

11          Okay. And maybe not. I could be wrong.

12          A     It could be a retran.

13          MR. WALTERS: All right.

14          BY MR. JONES:

15          Q     Okay. Did you have in mind when you went into a  
16 negotiation, based on those considerations and your own  
17 assessment, for what you were prepared to pay and what you  
18 were prepared to do; and then beyond that, you were prepared  
19 to potentially go dark on a particular network or channel?

20          A     Cable ONE had evolved to that point, yes, had  
21 evolved to that point.

22                   The concept of a cable operator just walking away  
23 from a programming family was somewhat unheard of until  
24 2013, 2014, I think.

25                   The industry had evolved to a point where I think

1 the partnership was honestly broken and that the programmers  
2 were just trying to raise rates to anything that they could  
3 get from you. And they were trying to force us to carry  
4 secondary or minor networks at very little significance just  
5 to earn more license fee money from us.

6 We knew going in, we knew what our programming  
7 budget and forecast was for costs, what we could afford, to  
8 some extent. It was a major decision, though, to draw a  
9 line in the sand and say, we're willing to walk away from  
10 this.

11 Q Sure.

12 THE COURT: What page are you on there?

13 MR. JONES: Page 24. I just read line 23,  
14 Your Honor.

15 THE COURT: 24. All right.

16 Because it's not highlighted in this one.  
17 Interesting.

18 It's not on the index either.

19 MR. WALTERS: That --

20 THE COURT: You better make sure you identify page  
21 and line number, because this -- the copy I have is not  
22 highlighted.

23 MR. JONES: Very well. Your Honor, we'll clean  
24 that up after.

25 MR. WALTERS: We provided the designations, our

1 designation. I think you guys have a list as well, don't  
2 you, of designations?

3 MR. JONES: I understood from our conversations,  
4 counsel, that you had put all of the designations into the  
5 copy that you were presenting to His Honor.

6 MR. WALTERS: There should be a version with that.  
7 We should double-check that.

8 THE COURT: If there is a version, you should  
9 probably have two different colors. The yellow would  
10 theirs, and yours would be the orange or something like  
11 that.

12 MR. WALTERS: I apologize. I think your Clerk has  
13 that version. We should switch.

14 THE COURT: Oh, well...

15 MR. WALTERS: Very good.

16 And the green is our designations. The pink is  
17 the government's. And the blue is counterdesignations.

18 THE COURT: Green, pink and --

19 MR. JONES: Yellow, I think, Your Honor.

20 MR. WALTERS: Yellow.

21 We're on page 24.

22 MR. JONES: And when I began reading, Your Honor,  
23 it was the bottom of page 23.

24 THE COURT: All right. Thank you.

25 So had government is in pink?

1           MR. JONES: I imagine so, Your Honor, if that's  
2 the color that you have. It's in blue in mine but --

3           MR. WALTERS: Yes, sir.

4           THE COURT: Blue excerpts.

5           All right. Go ahead.

6           MR. JONES: So, Mr. Roschen, picking up at line 23  
7 of page 24, I'll just repeat.

8           THE WITNESS: Sure.

9           It's a tremendous disruption for subscribers, and  
10 it's a tremendous operation or disruption to your operations  
11 team. And it's not an easy decision to make, not one  
12 we would take lightly.

13 BY MR. JONES:

14           Q     Okay. So do I understand correctly, so would it  
15 be fair to say -- correct me if I am wrong -- but at least  
16 in the case of some of these negotiations, like Turner or  
17 like Viacom, where you did actually have a brief backout and  
18 then a more extended blackout, that Cable ONE made an  
19 internal decision about what it was prepared to pay; and if  
20 it couldn't get a deal on those terms, it was prepared to go  
21 ahead and go dark?

22           A     I don't know that we ever drew a line in the sand,  
23 like I said, that early in the process.

24                     We certainly would make a counteroffer that would  
25 be reflective of what we thought was a reasonable price to

1 pay. But we maintain flexibility throughout the process.  
2 And I am sure in every negotiation, we made subsequent  
3 counteroffers that were higher than our first one.

4 We were always looking for ways to come to an  
5 agreement, certainly.

6 Q Okay. In the end, you must have made the  
7 judgment, say in the case of Viacom, that you could perceive  
8 that your business was better off without the Viacom  
9 programming than with it at the pricing and terms they were  
10 demanding?

11 A That's true.

12 Viacom was looking for a very aggressive rate  
13 increase from us. Their ratings were low, and their ratings  
14 were it declining. Their channels were not popular channels  
15 in our markets.

16 Like I said before, we operated in smaller rural  
17 markets, and the programming just wasn't that relevant.

18 It was actually a very easy decision in the end  
19 when they refused to budge from what they were asking for,  
20 and we were prepared to put out replacement networks.

21 And I told numerous people after the fact that  
22 I think our channel lineup is stronger now than it was when  
23 we had the Viacom channels on, just because we put on some  
24 very popular networks that our subscribers had been asking  
25 for for years.

1 Q Okay.

2 And you as a company made the same judgment  
3 vis-à-vis the Turner network in the fall of 2013?

4 A Not really.

5 The Turner negotiations were very different than  
6 Viacom. We really had no intention of dropping any of the  
7 Turner networks. The negotiations were proceeding very  
8 normally for several months. And we got to the end of  
9 September, I guess it was, and we really were not  
10 100 percent satisfied with the deal terms.

11 And I had noticed what I can only describe as an  
12 oddity in the contract that Turner had with the NCTC, the  
13 National Cable Television Cooperative.

14 Q Uh-huh.

15 A There was a clause in that agreement that said  
16 that an NCTC member could sign up for Turner programming for  
17 any or all networks. And I look at -- I kind of read that  
18 and said, wow, what does that say? And I took it literally,  
19 and I checked with our in-house attorney.

20 And he said, well, yeah, you're reading it right.  
21 You can take one Turner network, or you can take ten Turner  
22 networks.

23 I called the NCTC, and they seemed a little  
24 surprised that that language was even in agreement. But  
25 everybody seemed to have agreed with it that, yes, you can

1 take some Turner networks and not all.

2 So more as a negotiating ploy, although it wasn't  
3 an idle bluff, we were more than willing to drop some of the  
4 Turner networks.

5 Q Uh-huh.

6 A We told Turner that we were going to join the NCTC  
7 for just three of their networks and discontinue carriage  
8 for the remaining five or six, whatever it was.

9 And I didn't really expect them to accept that  
10 offer, but I thought they would come back to me and say,  
11 well, let's talk. I mean, we can do this instead. What can  
12 we do to preserve the carriage of all networks?

13 Q Uh-huh.

14 A But instead, they went to great lengths to protect  
15 their bundle, at least in my opinion, went to great lengths  
16 to protect their bundle. And I think that would have been a  
17 major disruption to the business model if a cable operator  
18 was allowed to just carry three of their eight or nine  
19 channels, whatever the count was.

20 And then going on in the background during the  
21 last couple of months of this negotiation process was  
22 something I tried not to get involved in. But, like most  
23 programmers, they had done a financial audit of the license  
24 fees we had paid them for, I think it was 2011 or a couple  
25 of years prior. And they thought we had underpaid them here



1 and there some relatively insignificant amounts.

2 And they said, well, because you have these audit  
3 findings out there, we're not going to let you join the  
4 NCTC; and, therefore, we're just going to cut off all  
5 their -- all signals on September 30th. Boom, you're done.

6 Cable ONE was a very honest company, I think, in  
7 that we didn't try to fudge our license fees. We paid what  
8 we were owed -- what we're due, rather, what we owed. And  
9 we never had any significant audit findings.

10 And Turner had been dragging their feet for months  
11 on settling this audit, which I was aware of. And I tried  
12 to push them on it.

13 They wouldn't return phone calls, and they were  
14 just holding it out there as a weapon, I think, to use at  
15 the end of the negotiations, if necessary, and they  
16 certainly did that.

17 But in the end when we settled the contract, a  
18 month later, we settled the audit at the same time, and we  
19 paid them just over \$6,000. And we paid them over  
20 \$20 million in license fees during the audit period.

21 So it certainly was an insignificant thing, but,  
22 nonetheless, they used it against us.

23 MR. WALTERS: Bottom of page 30, line 24.

24 BY MR. WALTERS:

25 Q The programmers tend to bundle their product,

1 don't they?

2 A They do.

3 I mean, some will tell you they have an à la carte  
4 rate card where you can buy channels, à la carte rate card  
5 where you can buy channels individually, but usually by the  
6 time you buy even two networks out of eight or ten, it's  
7 going to cost them more on an à la carte basis than it would  
8 to buy the entire bundle that you're currently carrying. So  
9 the system is rigged, in other words.

10 BY MR. WALTERS:

11 Q Page 32, line 13.

12 Do I understand what you, as a distributor, are  
13 prepared to do or not prepared to do, what you're prepared  
14 to pay or not pay, or the terms you're prepared to enter  
15 into is, do I understand correctly that that's based on your  
16 assessment of the value and the quality and the quantity of  
17 the content for the purposes of your viewers? Is that a  
18 fair statement?

19 A Mostly, yes.

20 I mean, we certainly look at the ratings, and we  
21 look at the license fees per rating point, like I said  
22 earlier. And at some point in time, you've got to say,  
23 well, gee, this just isn't worth it. I mean, it is an  
24 overpriced network right now for what they're offering.

25 The ratings are declining, and they want a

1 20 percent rate increase. I mean, that just doesn't make  
2 any sense.

3 Q Okay. Now, here's what I'm getting at.

4 Is it fair that -- I mean, do you care what the --  
5 let's say the content provider, do you care who the content  
6 provider's owned by or any of their corporate affiliations  
7 or who they might own or any of -- does that enter into --  
8 is that relevant at all to your assessment of what you're  
9 prepared to pay and the terms you're prepared to pay to  
10 enter into with that content provider?

11 A Not really.

12 I mean, we know some programming entities are  
13 huge. I mean, like, NBCUniversal, and Comcast and Fox is  
14 certainly big.

15 And we know that we're going to pay more dollars  
16 for that corporate entity than we are to say, like, an AMC  
17 or a Crown Media. But, nonetheless, we do recognize value  
18 in certain networks. And if the value's there and the  
19 license fee in place seems reasonable, well, if Disney gets  
20 paid twice as much as, say, Discovery Networks does, well,  
21 so be it.

22 I mean, they have twice as many channels maybe,  
23 and they have very important programming to our subscribers,  
24 and we have to pay it.

25

1 BY MR. WALTERS:

2 Q But who owns Disney or who Disney owns is not  
3 relevant. It's the considerations you've raised, the  
4 content and reach and those issues; is that right?

5 A Correct.

6 I mean, it doesn't matter to us who owns the  
7 network and what is the network.

8 Q Okay.

9 Or who the network owns?

10 A It really doesn't matter. It doesn't really  
11 matter.

12 BY MR. JONES:

13 Q Turning to page 36, line 5.

14 Make sure I understand what you're saying, so the  
15 increase in the number of the proliferation of distributors,  
16 you think, gave more negotiating prowess or power to the  
17 programmers?

18 A I think it did, yes, just because of competition  
19 amongst cable companies.

20 Q Turning to page 37, line 7.

21 Okay. Do you believe that from, that the  
22 programmers' most important source of leverage in  
23 negotiations is the ability to withhold content, to just go  
24 dark, if you will?

25 A I mean, that would certainly be their ultimate

1 weapon, but hopefully, most programmers still have or want  
2 to maintain some semblance of partnership with you.

3 I think in the case of the Turner blackout,  
4 I mean, that was more vindictive on their part. They were  
5 just going to say, well, you cannot break our bundle up, and  
6 they had to make a very strong stand against that. So they  
7 forced us to go dark for a period of time until we were able  
8 to get back together.

9 BY MR. WALTERS:

10 Q Yeah, and I do want to come back to Turner.  
11 I appreciate that. I want to come back to the Turner  
12 specifics.

13 But I'm just talking about in terms of your  
14 negotiation across with programmers. Is it your view that  
15 the, that if not the principal source of leverage in the  
16 negotiation is the ability to withhold programming itself?

17 A That's probably the ultimate weapon, like I said.  
18 I mean, other than that, what leverage do they have? I  
19 mean, they could ask you to carry channels, ask you to pay  
20 higher fees, but what's the option? Not carrying them.

21 MR. JONES: Turning to page 39, line 12.

22 BY MR. JONES:

23 Q Well, you're there with these, and maybe --  
24 I don't know. Did you ever, in the course of your  
25 negotiations, ever deal with NBCU between 2013 and '17?

1           A     I did twice, yes.

2           Q     Okay. Did you -- and you're aware you had the  
3 right, if you could not reach terms to insist on carriage  
4 and then invoke the arbitration mechanism? Were you aware  
5 of that?

6           A     We were aware of that, yes.

7           Q     Did you consider that to be of value to you in  
8 your negotiations with NBCU, that in the end, they couldn't  
9 go dark on you and you had the right to potentially  
10 arbitrate if you couldn't reach agreement?

11          A     Well, we were aware of it, but we never seriously  
12 considered doing that or invoking that clause. I did not  
13 want to subject the company to being saddled with a contract  
14 we didn't know the terms of.

15          Q     Right. Right.

16                 The -- have you ever been involved in this  
17 so-called baseball arbitration mechanism in one of those  
18 proceedings?

19          A     No, I have not.

20          Q     Okay. And as a distributor, would you rather have  
21 the right to guaranteed content, the so-called standstill,  
22 and, in an arbitration mechanism, than to not have it?

23          A     Well, I think it's a nice concept or idea, but  
24 I don't know how practical it is.

25                 Once again, I just would not want to cede my

1 control over the company's programming costs.

2 Q You could always -- you don't have to cede your  
3 own control, right? You can always negotiate it to a  
4 resolution?

5 A Well --

6 Q You don't have to invoke it, right?

7 A Well, you don't have to.

8 But I thought your question was, if we get to the  
9 point in time where we don't want to lose the content, we  
10 could use that as a fallback position.

11 But to me it's not a fallback position because I  
12 do not want to settle, for all practical purposes, an  
13 agreement without knowing what the terms are.

14 Q Continuing on line 17.

15 So if -- let me ask you this way to make sure, if  
16 a programmer's pricing power or ability to exact a price or  
17 raise a price stems from its -- the threat of blackout, that  
18 threat of termination, if they don't have that threat of  
19 termination, if they have to guarantee the content, does  
20 that eliminate the power over price?

21 A I don't think it does, no.

22 Just because at some point you reach a limit as to  
23 what you're willing to pay for content. And even if an  
24 arbitrator can point to instances where another cable  
25 company is paying fees that the programmer's asking you to

1 pay, that could still be too high for my company to pay.

2 Q Continue on page 45, line 18.

3 May I proceed, Your Honor?

4 THE COURT: You may.

5 BY MR. JONES:

6 Q Well, if I understand correctly, you were not  
7 passing on those rate increases that you were taking it out  
8 of margin or reducing your cost structure. And in the end,  
9 you got to the point where the video component of your  
10 business just wasn't profitable.

11 Is that a fair summary?

12 A Mostly.

13 I mean, like I said, we did not want to penalize  
14 our subscribers. I'm not sure what we thought the long-term  
15 solution was. But, I mean, it was a big move for a cable  
16 company that was always videocentric to get to the point to  
17 say, well, gee, I don't know that the video business is  
18 sustainable anymore.

19 We have another product out there, high-speed  
20 data; it's a very robust product, very much in demand,  
21 growing demand. It certainly did have a higher profit  
22 margin than video did. And the way the video business was  
23 trending, it just didn't make sense to continue to focus on  
24 it.

25 And we got to the point that we were going to,



1 perhaps, drop networks if we couldn't get a reasonable rate.  
2 And we decided we were no longer going to subsidize the  
3 video business with our HSD revenue.

4 BY MR. WALTERS:

5 Q During these years that you were, '13, '14, '15,  
6 '16, and into '17 that you were doing content negotiation,  
7 what percentage of the rate hikes were you passing on? Was  
8 it a quarter? a third? And to what extent was your  
9 margin -- and to what extent was your margin on video  
10 decreasing?

11 A Well, it probably changed over the course of my  
12 term. I think by 2016 into 2017, we were taking 8 and \$10  
13 increases on the video product, compared to maybe taking 5  
14 or \$6 rate increases every other year for several years.

15 So in '13 and '14, we might only have been passing  
16 along, I don't know, 25 percent of the increase. That's  
17 just a rough estimate on my part.

18 By '16 and '17, it was probably higher. But we  
19 still were not -- at best, we were breaking even on video by  
20 2017. There was no profit there.

21 Q No profit at all?

22 A Not in video, no.

23 BY MR. JONES:

24 Q Picking up again on page 48, line 21.

25 Okay. In your negotiations, did -- I mean,

1 did you regularly do drop analyses? Or when would you do  
2 them and when would you not do them?

3 A Oh, there were very few contract negotiations that  
4 I entered into, not really thinking we would come to an  
5 agreement.

6 I certainly thought all along we would come to an  
7 agreement with Turner.

8 Like I said, we never really thought we were going  
9 to drop Turner. But we didn't drop Turner; Turner dropped  
10 us.

11 But anyway, Viacom we knew, with the extent of  
12 what they were asking for on increases and given their  
13 ratings and their popularity in our markets, we knew fairly  
14 early on that it was a good chance we might walk away from  
15 Viacom. So we did drop analysis on that fairly early.

16 We looked at potential replacement channels, but  
17 that was really the exception, not the norm.

18 BY MR. WALTERS:

19 Q Page 50, line 12.

20 Okay. So Viacom is one of the big six or seven  
21 major content networks; is that true?

22 A Yes, it is. It's probably within the top five.

23 Q And you did make the decision that you -- you  
24 could -- a decision in 2014, that you could run your video  
25 business, component of your business without Viacom, without

1 one of those five?

2 A Yes.

3 Given popularity in our markets of their channels  
4 and the rates they were asking us to pay and the  
5 availability of potential replacement networks, they made it  
6 a fairly easy decision for us.

7 BY MR. JONES:

8 Q Turning to page 51, line 17.

9 So in -- so I guess my question is a little  
10 different; make sure we're connecting on this.

11 If you really want to understand how many  
12 customers you're going to lose if you don't carry Disney or  
13 don't carry AMC or don't carry any particular -- and you're  
14 not going to carry them for a long period of time or  
15 indefinitely, wouldn't you also have to consider what you  
16 might do to intervene not to lose those customers?

17 A Well, traditionally, yes.

18 But once you realize you're not making any money  
19 on these customers, it's a different ballgame.

20 BY MR. WALTERS:

21 Q Well, I'm not just talking -- I'm not confining it  
22 to a circumstance where you're not making any money?

23 A Uh-huh.

24 Q But in a circumstance where you have a viable  
25 business and you're making money, to understand what the

1 impact of dropping any particular channel or particular  
2 network, wouldn't you also have to consider what you might  
3 do to keep those customers, such as promotions or price  
4 decreases or whatever it might be?

5 A In theory, yes, but that's not the situation we're  
6 operating under.

7 Q Because you weren't making money anyway?

8 A Correct.

9 Q Okay. But I'm talking about a hypothetical  
10 situation where you are making money.

11 A Sure. Well, hypothetically, yes, but reality, no.

12 Q For your reality?

13 A Uh-huh.

14 Q Because if you're not making any money, who cares  
15 whether you're losing them; is that right?

16 A Correct.

17 And, yeah, in my opinion, that's correct.

18 But Cable ONE was not the only cable operator in  
19 this position.

20 I mean, we paid similar rates to every mid- to  
21 small-sized cable operator, and the business had changed to  
22 the point where nobody was making money on video. And it  
23 really called for a new way of analyzing and thinking about  
24 the business, and a lot of cable companies were much slower  
25 than Cable ONE at coming to that realization.

1 BY MR. JONES:

2 Q If you did want -- if you lost a network and you  
3 did want to keep those customers, okay, and you weren't in  
4 the opposite mode where you're not making any money so you  
5 don't care whether you keep them or not but you actually  
6 want to keep them, what are the most effective ways of  
7 keeping them in response to losing content?

8 A I think you would have to keep the subscribers  
9 informed as to what's going on in the negotiating process  
10 and let them know that we're doing everything we can to  
11 resolve this as quickly as possible, things like this  
12 Walking Dead promo, I think, would have been helpful, if  
13 necessary.

14 I think it's more than just an information -- it's  
15 more just an information exchange.

16 I mean, I know during the Turner blackout, we were  
17 in constant contact with our subscribers through on-air  
18 commercials and whatever else, just stating that we were  
19 working diligently to resolve all this and we expect to come  
20 to a settlement in the near future. But -- and then you  
21 just hope they stick with you for a while.

22 But once again, the reality was, we weren't making  
23 any money; so if we lost them, well, okay.

24 Q Okay. And if you did want to keep those  
25 customers, presumably, you could offer price decreases,

1 right, because you're paying less for content because you're  
2 not taking some content; is that fair?

3 A Yes. We actually gave rebates to our subscribers  
4 for the month that Turner was off -- went off.

5 Q Did you do that in the Viacom instance?

6 A We did not, just because we replaced the Viacom  
7 channels with other networks that we thought were better  
8 networks.

9 Q Turning to page 57, last line, line 25.

10 Okay. But weren't the ratings on TBS, TNT, and  
11 the Cartoon Network, they were declining as well at this  
12 juncture, were they not?

13 A They probably were.

14 I don't remember the specifics, but Cartoon was  
15 targeted to a very narrow audience, obviously, and that was  
16 one we felt was worth keeping.

17 TBS and TNT had some very valuable sport  
18 programming content, especially during the month of March,  
19 with March Madness, the NCAA basketball tournament that we  
20 felt we had to continue to provide to our subscribers.

21 Q Okay.

22 A So we chose those three to keep.

23 BY MR. WALTERS:

24 Q Was there anything about what TNT and TBS offered,  
25 other than the sports program that you considered -- other

1 than the sports programming, that you considered to be  
2 necessary to keep?

3 A No. The only thing that was unique to those  
4 channels was their sports programming, both the NBA,  
5 Major League Baseball, and NCAA basketball.

6 Q Okay. But nothing else?

7 A Not in my view.

8 I mean, to me, it's --

9 Q I'm just asking about your view.

10 A It's run-of-the-mill dramas and whatever else.  
11 And it doesn't matter whether you watch them on U.S.A. or  
12 one of the four major networks or TNT.

13 I mean, it's very common, ordinary programming.

14 BY MR. JONES:

15 Q Okay. In this -- in fact, in the second  
16 paragraph, it says, Mr. Might, there's a quote attributable  
17 to him that says, "However, Turner's demand increase of  
18 nearly 50 percent for channels with steadily declining  
19 ratings.

20 Do you see that?

21 A Yes, I do.

22 Q Okay. Does that refresh your recollection about  
23 the ratings on these channels? Or is it -- do you know or  
24 do you recall?

25 A Well, I don't recall that. I'm sure Tom might

1 have looked at the data. We shared the data amongst us, and  
2 these were Nielsen, SNL Kagan. I'm sure they were correct.

3 And I remember the 50 percent for one particular  
4 network that they were asking for an increase for, and  
5 I know that's factual yes.

6 BY MR. WALTERS:

7 Q Okay. And in the first sentence, the penultimate  
8 paragraph, it says, the historical -- quote, "The historical  
9 video subscription business model is in decline, and a new  
10 video model is taking shape, built on the Internet and  
11 consumer choice."

12 Do you see that?

13 A Yes.

14 Q Did you agree with that sentiment?

15 A Yes, I do.

16 I mean, the old business model was certainly in  
17 decline and was broken. I think the new model taking shape  
18 was happening very slowly, but nonetheless, you could see a  
19 transition coming.

20 BY MR. JONES:

21 Q Skipping several pages, now to page 65, line 16.

22 What caused you to look at that NCTC agreement?

23 A The NCTC had an existing agreement at that point  
24 in time that was on a different timeline or term than the  
25 Cable ONE agreement. And as fallback position, I thought



1 we would just join the NCTC agreement, but there were some  
2 clauses or stipulations in that contract that were not  
3 attractive to us that we just couldn't abide by. So that  
4 really was not an option.

5 But when I saw that it also gave you the option to  
6 pick and choose which services you wanted to subscribe to,  
7 that was certainly of interest to me.

8 Q Were you -- I assume you were a member of NCTC?

9 A We were, yes.

10 Q Turning to page 67, line 4.

11 Okay. Now, of course, Turner's view was that that  
12 contractual provision did not permit programmers to take  
13 just the -- or to cherry-pick or to take just the particular  
14 channels that they wanted. That was at least their view;  
15 was it not?

16 A No, they never told us that was the reason they  
17 weren't allowing us to join the NCTC.

18 They told us they weren't allowing us to join the  
19 NCTC because we owed them money from 2011 due to this audit.

20 Q Uh-huh.

21 A That was their way of escaping this.

22 Q Okay. But you don't recall them articulating  
23 that, that they disagreed with that contractual  
24 interpretation?

25 A No, there was no way they could do that.

1 BY MR. WALTERS:

2 Q Page 69, line 16.

3 Okay. And so they were -- the programming was  
4 discontinued for how long?

5 A About 30 days.

6 Q About 30 days. Okay.

7 And if you'll go to the bottom of page 71,  
8 line 25.

9 And so do I understand correctly, then -- correct  
10 me if I am wrong, so the absence of Turner really didn't  
11 have any real impact; I mean the loss of a few video  
12 subscribers, but that was about it?

13 A That's pretty much true. I mean, this was during  
14 the period in time when Cable ONE, like most cable  
15 operators, was losing video subscribers anyway. And it was  
16 always very difficult to determine why you lost a  
17 subscriber. Was it just because of general, circumstances,  
18 what you're charging, or had they moved to DirecTV.

19 I mean, they often wouldn't tell you exactly why  
20 they were leaving.

21 But there was no seismic shift in subscriber loss  
22 during the month that Turner was off.

23 Q Okay. And so did that tell you that the absence  
24 of Turner was sort of not a big deal to your subscriber  
25 base, that it wasn't really causing any real departures to

1 worry about?

2 A Well, yes and no.

3 I mean, during the month of September, there were  
4 Major League playoff -- Major League Baseball playoff games  
5 on TBS and TNT, but, fortunately, there were no teams from  
6 our markets participating that season in the playoffs.

7 So, once again, there was no real must-have  
8 programming on Turner during that month. If a blackout had  
9 occurred during the month of March, I mean, I think you  
10 would have seen a whole different story, then, given the  
11 popularity of the NCAA basketball tournament.

12 Q Page 74, line 20.

13 And then on the third bullet, you talk about, we  
14 had a bunch of volunteers ready to work, but we ended up  
15 sending them home. Is that just because you, perhaps,  
16 overestimated the impact of losing, of going dark on Turner?

17 A Probably, yes.

18 I mean, we wanted people there to man the phones,  
19 and the call volume was just not that significant.

20 BY MR. JONES:

21 Q Okay. Now, in the fourth bullet you say, The loss  
22 of MLB playoffs was not a significant event, as we planned  
23 for it being.

24 And then you say in that second bullet, we were  
25 successful in pointing fans to mlb.com, where all the games

1 are available.

2 A Uh-huh.

3 Q Do you see that?

4 A Yep.

5 Q So talk about that a little bit, about -- is that  
6 one of those mitigation efforts that we talked about earlier  
7 to sort of help customers deal with the eventuality of not  
8 particular content?

9 A I think so, yes.

10 It was just a way of informing our subscribers of  
11 what alternatives were available.

12 And I mean, once again, in the background,  
13 I'm sure we were always saying, we believe this is a  
14 temporary situation; but in the meantime, there are other  
15 alternatives available for you.

16 Q So at least in the event of Turner and MLB  
17 consumers -- of Turner and MLB, consumers were able to wire  
18 around this by accessing mlb.com if they needed to see a  
19 particular playoff game that would not be available?

20 A Correct.

21 BY MR. WALTERS:

22 Q And in the final bullet, you say, we promise  
23 customers a credit, and it will show up in their November  
24 bills. Most customers thought that was a strong gesture on  
25 our part. That's yet again another mitigation effort, is it

1 not?

2 A Sure.

3 Q And you could envision that if you had lost Turner  
4 indefinitely, that you could have done something like that  
5 through a price decrease; that would have been a mitigation  
6 effort as well?

7 A Either that or adding replacement networks like we  
8 did for Viacom.

9 BY MR. JONES:

10 Q And what kind of replacement networks would you  
11 envision adding if you had lost Turner indefinitely or would  
12 you have to, given U.S.A. and other networks' availability,  
13 AMC, whatever it might be?

14 A Well, given the popularity of certain months of  
15 the year of some of the Turner programming, we never  
16 honestly considered a longtime drop -- a long-term drop of  
17 Turner.

18 BY MR. WALTERS:

19 Q And the popularity you're talking about is, first  
20 and foremost, March Madness; is that right?

21 A Absolutely, yes.

22 Q Okay. Anything, anything beyond that?

23 A Not really.

24 I mean, Turner did have some other sports  
25 programming, MLB and NBA, but there were other outlets for

1 that.

2 Q Okay.

3 A I mean, ESPN and your local regional sports  
4 networks.

5 Q So other than -- other than March Madness,  
6 everything else was pretty fungible?

7 A I believe so, yes.

8 Q Mr. Sejen, this is --

9 MR. WALTERS: And this is on page 78, Your Honor.

10 BY MR. WALTERS:

11 Q Mr. Sejen -- at line 12 -- it looks like an  
12 SNL Kagan interview with Julie Laulis.

13 Do you see that?

14 A Uh-huh.

15 Q Who is Ms. Laulis?

16 A She was our Chief Operating Officer at the time.

17 Q Is she now the CEO?

18 A She is, yes, as of January 1st.

19 Q On page 80, at line 10, she says, quote, "Given  
20 that, we made the decision about Turner. The effect really  
21 hasn't been that big, okay? The worst part of this was  
22 it happened around Major League Baseball. Once we told our  
23 customers about mlb.com and that they could get the games,  
24 they got it. No one was denied their baseball."

25 Do you see that?

1 A Uh-huh, yes.

2 Q Is that a fair, accurate statement?

3 A Yes, it is.

4 Q Okay.

5 And what she's saying there is, in effect, the --  
6 I'm sorry.

7 What she is saying there is the effect of losing  
8 Turner really hasn't been that big on Cable ONE, consistent  
9 with our previous conversation.

10 A Uh-huh, that's true.

11 Q By the way, today, isn't it available in the  
12 marketplace that if you don't have a cable subscription or  
13 your cable provider doesn't provide, if it doesn't have  
14 Turner, that you can go elsewhere for March Madness?

15 A I believe most of the content was available online  
16 last year, yes.

17 Q Okay.

18 A That probably was not the case several years ago.

19 But just, once again, the evolution of technology  
20 and so forth, so...

21 Q Right. So this was back in 2013, correct?

22 A Yes.

23 BY MR. JONES:

24 Q Okay.

25 So presumably, if you were confronted with the

1 same situation today and it were March, you could just, a  
2 distributor could do the same thing and point customers to  
3 online availability of March Madness?

4 A Potentially.

5 I think it's fair to say that most content  
6 providers want to monetize their content. And I know at  
7 least last year, the viewing of March Madness did not  
8 require -- did not require authentication through your cable  
9 operator.

10 But at some point in time, that's bound to change,  
11 I think. I mean, Turner is not going to broadcast these  
12 games for free, obviously.

13 Q Right.

14 When you say "the content provider," are you  
15 talking about the NCAA or are you talking about Turner?

16 A Turner.

17 BY MR. WALTERS:

18 Q Okay. But in any event, if you didn't have  
19 Turner, if you didn't have TNT or TBS, whoever does  
20 March Madness today, a consumer could do what they did back  
21 in 2013 with Major League Baseball by finding March Madness  
22 online?

23 A If it's available, yes.

24 BY MR. JONES:

25 Q Okay.



1           And presumably, that would address the sort of  
2 must-have nature of March Madness, in the same way it did  
3 with MLB back in 2013?

4           A     It could, as long as the content is available and  
5 does not require authentication, yes.

6 BY MR. WALTERS:

7           Q     Page 83, line 18.

8                     But it sounds like, at least in terms of Turner  
9 sports programming, what they do, it's either replaceable,  
10 fungible with others, or you can somehow wire around and  
11 find it on the Internet.

12                    Is that what I'm hearing?

13           A     That was true for March Madness in 2017, yes.

14           Q     Line 17, I just want to ask you a couple questions  
15 about the Viacom drop, and I literally, this is -- looks  
16 like a Cable ONE conference call.

17           A     Uh-huh.

18           Q     And I really just have a question about something  
19 at the top of page 2, which is part of Mr. Might's comments.

20           A     Uh-huh.

21           Q     Now, he says at the very top, he says, at the top  
22 of page 2, 2, dropping Viacom was not your strategy. It was  
23 a small tactic that fit our strategy very well. It costs  
24 just 2 percent of our video subs, not 20 percent.

25                    Do you see that?

1           A     Yes.

2           Q     What is he talking about there, if you know?

3           A     Well, what I think he's trying to indicate is that  
4 we didn't necessarily plan to drop Viacom. That was not a  
5 strategy in and by itself. But our strategy is to focus  
6 more on high-speed data and not video. And within that  
7 strategy, you need to be somewhat selective in what video  
8 content you carry.

9                     And then the second part of the sentence is,  
10 I think, pretty self-explanatory. The losses attributable  
11 to Viacom are very, very small in the general and were not  
12 significant.

13           Q     So he's saying, look, because the way -- you tell  
14 me if I misread this, but the -- we choose, we do not carry  
15 Viacom. We choose not, and the losses of subscribers as a  
16 consequence were very, very small. And it's not a  
17 technically profitable business anyway.

18                     So it makes perfect sense for us to go this  
19 direction and not carry that network. Is that the thrust of  
20 it?

21           A     Yes.

22                     With also the knowledge that there were very good  
23 replacement channels available for Viacom, so we could still  
24 offer a great product for our customers.

25           Q     Let me show you what we'll mark as Exhibit 6.

1 BY MR. JONES:

2 Q Okay. Turning to page 87, line 8. Okay.

3 Okay. How did that -- how did Viacom get back on  
4 Cable ONE?

5 A Viacom, to this day, is not back on Cable ONE.

6 Q Oh, so still don't carry it?

7 A Correct.

8 BY MR. WALTERS:

9 Q And so consistent with Mr. Might's observation,  
10 the elimination of Viacom portfolio of channels in their  
11 network, did that, in retrospect, was that a good business  
12 judgment for Cable ONE to make, the savings you achieve,  
13 minus the negligible effect?

14 A In my mind, yes, it was.

15 BY MR. JONES:

16 Q Continuing at the bottom.

17 How would you -- how did you go about, or if you  
18 did at all, to try to figure out if people are actually  
19 dropping as a result of the loss of Viacom?

20 A Well, as part of standard operating procedure, any  
21 time a subscriber called to discontinue the subscription, we  
22 asked them why. Most subscribers would, like I said, they  
23 just tell you, oh, we're moving, or make some story up just  
24 to get off the phone.

25 At that point in time, they've already made the

1 decision. They don't want to get transferred to a retention  
2 specialist.

3 I mean, they just want to make it quick and easy  
4 and get off the phone.

5 So it's very hard to track the impact, so  
6 especially when we were all ready in a declining  
7 environment, like I said earlier.

8 Q Turning to page 91 at the bottom.

9 Okay. So this I want to ask you. Have you ever  
10 seen this, the chart that's -- this is a correspondence  
11 between Mr. Jimenez of Cable ONE and the Department of  
12 Justice on some data that was provided to them as part of  
13 DOJ's investigation. And I just had some questions about  
14 the attached page.

15 And are you familiar with this page at all?

16 A I don't recall seeing this before, no.

17 Q Okay. Let me ask you a couple of questions and  
18 see if you can help me understand it a little bit.

19 And there is some explanation on page 1 about what  
20 it is. Why don't you glance at that, and then I'll ask you  
21 a question or two and see if you can help me.

22 A Well, I can try to answer your questions. But,  
23 like I said, this document was prepared after I left  
24 Cable ONE, and I've never seen it before, but --

25

1 BY MR. WALTERS:

2 Q But if you'll look at the chart itself, what it  
3 seems to purport to do is for 2013, you'll see in October --  
4 I guess that is the period of the Turner blackout, right?

5 A Yes, yes, October 13.

6 Q And then the 2014 in April is the start of the  
7 cessation of Viacom; is that right?

8 A Yes, in April.

9 Q And it looks like there's a sort of percentage,  
10 monthly churn. And then there's some total residential  
11 video numbers below.

12 Do you see that?

13 A Uh-huh.

14 Q But look in the upper right-hand column. The  
15 text, it says, Turner, the churn rates jump by .6 seasonally  
16 during the month of dropping Turner. Loss stabilizes after  
17 two months.

18 Do you see that?

19 A Some of those words I see, yeah.

20 Q Okay. Page 94, line 23.

21 So is that number of .6 seasonally during the  
22 month of dropping Turner, Mr. Sejen, is that consistent with  
23 your recollection of the impact of the Turner drop during  
24 October 2013?

25 A Well, .6 percent sounds very small to me. And

1 I know, or I believe anyway, that our subscriber losses were  
2 fairly insignificant, so it sounds about right.

3 BY MR. JONES:

4 Q Okay.

5 A But I'm not sure how the math was done, I guess.

6 Q Continuing on page 96.

7 And then -- but if you look at it in 2014,  
8 September to October, that pops up a little bit. So I guess  
9 the idea would be -- and I'm not asking you to verify the  
10 numbers, but the idea would be that if you just, that if you  
11 adjust it for what normally occurs, the increment associated  
12 with Turner would be .6 of a percent; is that at least the  
13 idea? I'm not asking you to vouch for the numbers.

14 A I think that's the idea, but I can't tell you how  
15 the numbers were calculated, so --

16 Q Okay.

17 A I mean, I don't know where the .6 came from, so --

18 Q Can you tell from the cover information sort of  
19 who did these numbers?

20 A No.

21 Q Phil Jimenez referred to our analyst.

22 Phil Jimenez is one of our in-house attorneys, but  
23 I don't know who the analyst was.

24 BY MR. WALTERS:

25 Q And I know you're at Cable ONE for 31 years.

1 Would you expect that Cable ONE, in generating these numbers  
2 for a Department of Justice investigation, would endeavor to  
3 make them as accurate as possible?

4 A I would certainly think so.

5 Q And would you expect that this information would  
6 be generated based on the records and information kept in  
7 the normal course of business by Turner -- I'm sorry,  
8 Cable ONE?

9 A I would, yes.

10 Q Top of page 98.

11 And to the best of your knowledge, the data and  
12 records and information that Cable ONE keeps that would  
13 underlie these tables, to the best of your knowledge based  
14 on your experience at Cable ONE, would be accurate numbers?

15 A I have no reason to doubt it.

16 Q Okay. Thank you.

17 If you look at the second line below the Turner --  
18 below Turner, it says Viacom, "Viacom, the impact of  
19 dropping Viacom was seen over four to five months."

20 Line 24: Is that consistent with your  
21 recollection?

22 A It is.

23 Just because I recall making the statement at the  
24 time, that after six months, our video losses were less than  
25 they'd been in years prior.

1 Q Okay. So was it your experience that the  
2 permanent drop of Viacom, that the impact of it was felt and  
3 absorbed within about a four- to five- or six-month period?

4 A Yes, that's true.

5 Q Okay. And didn't continue past that to the best  
6 of your recollection?

7 A Yes, that is true.

8 Just because we put up some very viable  
9 replacement networks.

10 Q Line 22.

11 So through those mitigation efforts or efforts to  
12 address the absence of Viacom, you were able to confine any  
13 impact to the loss of Viacom to the four- or five- or  
14 six-month period.

15 A For the most part, yes.

16 Q Page 103, line 21.

17 So you heard that. You heard that a lot from  
18 programmers, didn't you?

19 A That's pretty much standard language, yes.

20 Q Yeah. And, I mean, did you hear from pretty much  
21 all programmers that, I mean, that's their job, right?

22 A Of course.

23 Q Did you hear from them kind of coming and pitching  
24 that their content was must-have content?

25 A Oh, absolutely, yes.



1 Q Okay. You would expect to hear that from all  
2 programmers?

3 A Pretty much, yeah.

4 Q And did you just kind of take that with a grain of  
5 salt?

6 A Of course.

7 Q Page 105, line 15.

8 Would you agree with me, though, that if any  
9 particular programmer, whether it was NBC or whomever or  
10 Turner, merely describing their product as must-have doesn't  
11 make it must-have?

12 A Not in my mind.

13 Q Page 106, line 8, this will be Exhibit 9. Go to  
14 the top of page 107, line 2.

15 In that he says -- Mr. Mite, in that he says,  
16 quote, "Residential linear video and phone for many reasons  
17 produce very modest operating cash flow today, and no free  
18 cash flow to speak of. That is, they have no real margin  
19 left and volumes are challenges. Consumers want to migrate  
20 to alternatives like smartphones and OTT video. That is,  
21 cutting, trimming, shaving, avoiding, or whatever, the  
22 cord," closed quote?

23 A Uh-huh.

24 Q Do you agree that as of March 2016, do you think  
25 Mr. Mite's statement there is a fair assessment -- is a fair

1 assessment, a fair statement?

2 A Yes, I do. I know there was definitely a  
3 migration going on, yes.

4 Q Okay. And for a traditional MVPD like you at  
5 Cable ONE, was it accurate that there really was no margin  
6 left in the product?

7 A Oh, yes. That's absolutely true, yes.

8 Q Top of page 108.

9 And that was -- that was in large part because at  
10 least as of this juncture, you had made the decision not to  
11 pass through a lot of those big programming cost increases  
12 and take it out of your own margin?

13 A That's true, because we were trying to protect our  
14 subscribers from excessive rate increases.

15 Q Sure. So you were taking the bullet yourselves?

16 A We were, for several years, yes.

17 Q Is Cable ONE -- Cable ONE is still, of course, in  
18 the video business today, isn't it?

19 A Correct.

20 Q And why is that, if there's no money to be made?

21 A Well, we're a full-service, full-service cable  
22 provider. And I think I mentioned, before we make the  
23 service available, we -- the video service available, we do  
24 not actively market the service, but it's there if a  
25 subscriber wants it.

1 Q Okay. It sounds like more of a convenience or an  
2 accommodation to customers who are your Internet customers  
3 to make it more attractive that they either stay or  
4 attracted to your Internet service; is that fair?

5 A It might be easier to bundle the service, yes.

6 Q And then line 13.

7 A More convenient for the subscriber.

8 Q Okay.

9 Next one is page 112, line 20.

10 Mr. Sejen, I think you said this earlier, but  
11 correct me if I have this wrong, but did you -- as  
12 competition for Cable ONE increased, including from  
13 telephone companies, cable overbuilders and OTT video  
14 providers, as well as DBS television providers, in other  
15 words, has competition at the distribution level increased  
16 over the last five, seven years?

17 A Yes, it has.

18 Q Line 14.

19 Just in terms of with the OTT providers, the  
20 Amazons, the Googles, the overbuilders, all of the things  
21 I just mentioned, would you say that the last five, seven,  
22 eight years, would you say that competition has increased  
23 substantially over the last five, seven, eight years for the  
24 traditional cable companies?

25 A I would, yes.

1 Q In your 31 years in the industry, have you ever  
2 seen it more competitive at the distribution level?

3 A No.

4 Q Top of 114.

5 And do you think that -- I mean, just looking in  
6 your crystal ball, particularly given the nature of the  
7 Internet and cost structure of the Internet, would you  
8 anticipate that it would continue to get even more  
9 competitive in these non-traditional providers?

10 A It seems to be heading in that direction,  
11 certainly.

12 Q Okay. Page 118, line 22.

13 But do you believe that because of these  
14 accelerating price increases from programmers, that we sort  
15 of reached a gag point with consumers that is causing,  
16 galvanizing a lot of this change, unbundling, OTT,  
17 fragmentation?

18 A In my opinion, yes.

19 Q Page 121, line 20.

20 But just at the programming level, would you agree  
21 that you've never seen it in your -- seen it in your time in  
22 the industry any more competitive and fragmented at the  
23 programming level?

24 A If you mean that there were more and more content  
25 providers out there, then, yes, there is more competition

1 and more providers.

2 Q Page 126, line 21.

3 So were you ever, through your MFNs, were you ever  
4 able to really learn anything about other terms that other  
5 distributors enjoyed with their programmers or programmers  
6 gave to distributors? I mean, was there any visibility into  
7 that just by virtue of MFNs?

8 A No, there really wasn't.

9 Q So just occasionally, twice in the 31 years, over  
10 the transom came a notice saying, we're going to adjust your  
11 rate based on something else?

12 A Yeah, exactly.

13 Q And you had to take that on faith?

14 A Pretty much.

15 MR. WALTERS: Your Honor, page 134, line 2.

16 BY MR. WALTERS:

17 Q Mr. Sejen, and is it fair to say that HBO is a --  
18 supports and advocates for using HBO as a promotional tool?

19 A Historically, within the cable business, they did,  
20 but Cable ONE certainly had moved away from promoting  
21 premium services such as HBO, just because it increased  
22 churn and it just wasn't worth the effort anymore.

23 Q So -- line 23.

24 So Cable ONE, if I hear you correctly, didn't  
25 really need or want HBO as a promotional tool?

1           A     That's essentially the case, yes.

2           Q     Line 13.

3                     Now, HBO itself has always pushed to have you as a  
4 distributor use HBO, has it not?

5           A     To use it as a promotional tool?

6           Q     Yes, sir.

7           A     They were always interested in that. They want  
8 to -- yes, they want to grow their subscriber base, of  
9 course.

10          Q     And is it your understanding that HBO has a pretty  
11 high churn rate so it really needs to keep pushing its  
12 product to replace that churn?

13          A     Uh-huh. I believe that's accurate, yes.

14          Q     Top on of page 136, line 3.

15                     And so at least from, in your experience in the  
16 industry, HBO, as a promotional device, was coming more from  
17 the HBO end than it certainly was from the distributor end,  
18 at least you as a distributor, Cable ONE?

19          A     Particularly in later years, yes.

20          Q     Was there any particular, even at the time you  
21 were using it as a promotional device, were there any  
22 particular restrictions as to how you would use it as a  
23 promotional device at Cable ONE that were onerous or  
24 difficult or somehow made it very difficult for you to use  
25 as a promotional device?

1           A     No. It was just -- it was more just surrounding  
2 the marketing effort and the operations effort, the call  
3 center time; and then knowing that, I don't know, 50, 60, 70  
4 percent of those subscribers would disconnect at the end of  
5 their three-month promo period or one-month promo period,  
6 whatever it was.

7           Q     Just wasn't wort the candle?

8           A     No, no.

9 BY MR. JONES:

10          Q     Continuing on the next page, page 137.

11                 Okay. And if you were to use a premium service  
12 hike HBO, would you be just as content to use Starz or  
13 Cinemax or some of the other ones?

14          A     Oh, I think HBO is the oldest, most-respected  
15 premium service out there. And it probably made sense to  
16 pony up with them as opposed to somebody else.

17 BY MR. WALTERS:

18          Q     Have you ever used Starz or Cinemax in any  
19 promotions that you know?

20          A     Starz, we have, yes.

21                 Cinemax, probably not. Cinemax is obviously owned  
22 by Time Warner and HBO, and tended to focus on HBO and not  
23 Cinemax.

24          Q     Fair enough.

25                 But Starz you have?

1           A     Yes, we have.

2           Q     Okay.  And did you have the same experience with  
3 Starz, that it just wasn't worth the candle in the same way  
4 as HBO?

5           A     Pretty much, yeah.

6                     Whenever you have a cliff that you fall off of at  
7 the end of the promotional period and someone goes from zero  
8 to \$5 to \$10, whatever, subscribers just aren't going to  
9 stand for that.

10          Q     Okay.  Bottom line, Cable ONE is a distributor,  
11 doesn't need HBO as a promotional tool?

12          A     Given our decreased focus on video business, yes,  
13 that's true.

14                     MR. WALTERS:  That's all we have, Your Honor.

15                     THE COURT:  All right.  You can step down.

16                     Let me see counsel.

17                     (Sealed bench conference)

18                     THE COURT:

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20                     MR. CONRATH:

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23                     THE COURT:

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12 MR. CONRATH:

13 THE COURT:

14 (Open court)

15 THE COURT: All right. We're going to take a  
16 15-minute recess and come back. We'll have some further  
17 discussions, probably at the bench, at least initially, with  
18 regard to the expert testimony the next two days.

19 DEPUTY CLERK: All rise.

20 This Honorable Court will now take a brief recess.

21 (Recess from 5:00 p.m. to 5:21 p.m.)

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

1 to order.

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

4 (Sealed bench conference)

5 THE COURT:

6 MR. PETROCELLI:

7 THE COURT:

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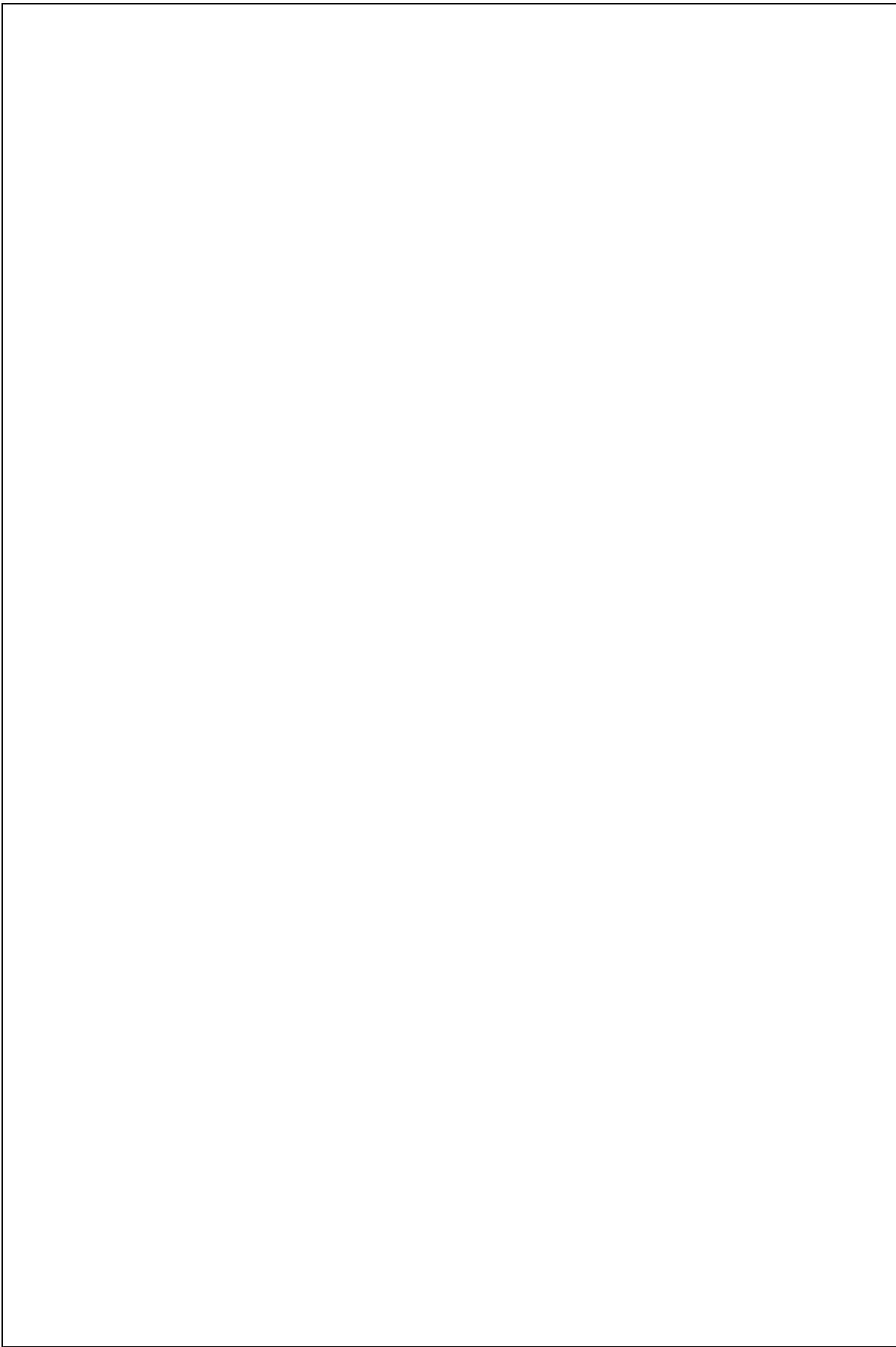
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(Open court)

THE COURT: All right. The parties, having worked out a number of issues that were causing concerns, happy to report that we can break now for the evening.

We will have the government's expert, Professor Shapiro, tomorrow. It will be a very full day. Each side is on the clock, two and a half hours each; that's all you're getting. If you don't finish, well, it's too bad.

1           There will be 15 minutes redirect and recross at  
2 the end of that.

3           So direct and cross, five hours. We'll probably  
4 be going late, probably won't break until 6:00, something  
5 like that.

6           It will be a long day, but I'm happy to say that a  
7 number of the issues that had to be ironed out prior to his  
8 appearing have been ironed out by some very hard work and  
9 some, I think, thoughtful negotiations. Let's just call it  
10 that.

11           So I appreciate that, and I applaud both counsel  
12 for making it a smoother transition to tomorrow and the next  
13 day when we'll have the witness, the expert witness for the  
14 defense, Professor Carlton.

15           So -- and they have the same ground rules for  
16 Thursday as well, I might add. So come Thursday night,  
17 you'll definitely need a break.

18           Have a nice evening.

19           DEPUTY CLERK: All rise.

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

22           (Proceedings concluded at 5:39 p.m.)

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

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

Date: April 10, 2018 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR