

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 17, 2018
)	2:50 p.m.
AT&T, INC., ET AL.,)	
)	Afternoon Session
Defendants.)	
<hr/>		Day 15

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

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DEFENDANT'S:

DAVID CHRISTOPHER	2996	3018		3046
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1 P R O C E E D I N G S

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

7 THE COURT: All right. The witness remains under
8 oath.

9 You may proceed when you're ready.

10 MR. CONRATH: Thank you, Your Honor.

11 - - -

12 JAMES HOLANDA, WITNESS FOR THE GOVERNMENT, HAVING BEEN
13 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS
14 FOLLOWS:

15 DIRECT EXAMINATION (CONTINUED)

16 BY MR. CONRATH:

17 Q Mr. Holanda, based on your experience in the
18 industry and your knowledge in the industry, do you have
19 concerns about this merger?

20 A We do.

21 Q And without revealing any confidential
22 information, is part of the reason for the concerns you have
23 about this merger based on past experience that you had
24 under the Comcast-NBCU vertical merger?

25 A Yes.

1 Q And does that include what you described for us
2 before lunch about NBCU conditions that limit your ability
3 to sell broadcast basic?

4 A Yes.

5 Q So let me ask you to explain in more detail.
6 Do you have concerns about the price at which you might be
7 able to get Turner programming?

8 A Yes.

9 Q And explain that in a little more detail.

10 A Right now, we are buying as members of the NCTC.
11 You know, we have had programmers who have not
12 allowed us to participate in NCTC deals in the past. And so
13 not allowing us to participate and having to negotiate
14 directly with Turner could put us at a disadvantage because
15 we have less customers and puts us at a disadvantage because
16 they could charge us more in the hopes of winning over
17 broadband customers, either through us passing those
18 increases on or us not carrying the programming.

19 Q So just to be clear, you don't, today, you don't
20 compete with Turner?

21 A For broadband customers and double- and
22 triple-play customers, we do not.

23 Q Or for video-service customers, right?

24 A Right.

25 Q You do compete with AT&T?

1 A Correct.

2 Q Do you have issues about the terms or conditions
3 on which you might be able to have access to Turner
4 programming?

5 A Yes.

6 Q And explain those for the Court, will you?

7 A Just in terms of some real-world analogies, we
8 have concerns that if HBO is only available through HBO Now
9 or over -- provided only over the Internet, that a
10 competitor could block IP addresses and prevent our
11 customers from getting those services over the top like we
12 saw Viacom do against Suddenlink and Cable ONE when they
13 dropped the Viacom programming along with some smaller
14 operators.

15 I think we are concerned --

16 Q And what would that mean for your customers?

17 MR. WALTERS: Objection, Your Honor. May we
18 approach?

19 THE COURT: Yes.

20 (Sealed bench conference)

21 MR. WALTERS:

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MR. CONRATH:

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MR. CONRATH:

MR. WALTERS:

(Open court)

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

BY MR. CONRATH:

Q So did you finish explaining to us the concerns you've got about whether there would be conditions on the availability of Turner programming after the merger that would affect your ability to compete?

A Yes.

Q Okay. Good.

Do you have concerns that relates about the merger -- without revealing confidential information,

1 do you have a concern that relates to RCN's future video
2 strategy?

3 A Yes.

4 Q All right. And would disclosing RCN's future
5 video strategies in public be harmful to RCN?

6 A Yes, I believe it would.

7 Q And can you explain to the Court why that is.

8 A We're investing in technology and partnerships
9 that I think are out of industry norm. And revealing the
10 specifics of those ahead of when we launch in a public forum
11 against our five top competitors is something I'd prefer not
12 to do.

13 THE COURT: I understand.

14 MR. CONRATH: All right. I'm not going to go
15 further into that topic at this point, Your Honor, but
16 I have one more topic to cover openly.

17 BY MR. CONRATH:

18 Q So are you aware that there is an arbitration
19 offer made by Turner in this case?

20 A Yes.

21 Q And in fact, at one point in earlier looking at
22 the merger, RCN itself recommended one of the conditions
23 that it proposed related to the merger included arbitration,
24 right?

25 A That's correct.

1 Q And have you looked at -- did RCN receive an
2 arbitration offer from Turner?

3 A We did.

4 Q And you're familiar with it?

5 A I am.

6 Q What is your view of that Turner arbitration offer
7 that you received?

8 A I think it very much resembled the basics of the
9 Comcast-NBC order, which I thought was a good start; but, at
10 the same time, I felt it was missing some very fundamental
11 things out of the Turner offer that we've learned through
12 our experiences with Comcast-NBC. And then just in terms of
13 scope, really didn't cover the scope of all the programming
14 that AT&T's proposing to buy.

15 Q Okay. So let's take each of those parts at one
16 time.

17 What about the scope? Tell us what your concerns
18 are about the scope of the arbitration offer, the Turner
19 arbitration offer that was sent to you.

20 A The Turner offer did not include HBO and did not
21 include their RCN.

22 Q And those are important products to you?

23 A Yes.

24 Q And you said there were concerns about the terms
25 of the Turner arbitration offer or what you thought were

1 problems. Can you explain those for us.

2 A It didn't go far enough to protect on technology
3 rights and some of the innovation that's going on.

4 We felt the term was not long enough.

5 And then we thought there was room for improvement
6 on the actual arbitration process itself, again, kind of
7 based on the real-world experience with Comcast and NBC.

8 Q And what term did you think -- the term of the
9 offer is seven years. Did you have -- you thought that was
10 not long enough?

11 A Correct.

12 Q And did you have another term in mind?

13 A Just -- not in -- just in terms of technology
14 rights and the scope of the agreement, including all the
15 programming.

16 Q Did you -- I'm sorry. Did you have a longer time
17 period than seven years in mind?

18 A Yes.

19 Q And what was it?

20 A Ten years.

21 Q And you said that there were some things about how
22 the arbitration process itself worked that were a concern
23 for you. And what were those?

24 A We had three basic concerns in the arbitration
25 process; one was just access to information. Usually, when

1 you go into baseball-style arbitration, you have a general
2 sense of what other players are making. We have no
3 information the way that that was constructed, so we would
4 be going blindly without knowing what other distributors of
5 similar size or scope would be paying upon which to make a
6 decision to arbitrate.

7 We felt that the NCTC, as our negotiating arm
8 through the buying group, should have an express right to
9 use the arbitration, which wasn't included.

10 And then in terms of just the arbitration process,
11 under Comcast, and my understanding under the Turner offer,
12 is that we were supposed to provide our best and final bid
13 first, with no information.

14 And if we had information and AT&T or Turner had
15 to provide their bid first, we just think that that would be
16 a better way to hold everyone more accountable and hopefully
17 avoid arbitration in the first place.

18 Q RCN has not signed the Turner arbitration offer at
19 this point, is that right?

20 A Correct.

21 Q And without disclosing any confidential
22 information, have you had some discussions about the letter
23 with anyone associated with AT&T or Time Warner?

24 A We have.

25 Q And with which company?

1 A We've talked to AT&T about the --

2 MR. WALTERS: Objection, Your Honor. May we
3 approach?

4 THE COURT: Yes.

5 (Sealed bench conference)

6 MR. WALTERS:

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MR. WALTERS:

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MR. CONRATH:

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THE COURT:

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(Open court)

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

23

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MR. CONRATH: Yes. So if there was a question
pending, I withdraw it.

25

1 And I don't have any more questions for this
2 witness, Your Honor.

3 THE COURT: Very good.

4 Cross-exam.

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

6 CROSS-EXAMINATION

7 BY MR. WALTERS:

8 Q Mr. Holanda, a couple things about RCN.

9 Now, RCN, I think you mentioned, is a
10 sixth-largest cable company in the United States and
11 11th-largest on video; is that right?

12 A Yes.

13 Q And you're actually opened by TPG group, the Texas
14 Pacific Group, which is one of the largest private equity
15 firms in the world, with some 75, \$100 billion under
16 management; is that right?

17 A 75 billion, yes.

18 Q And, in fact, you're also partially owned by
19 Google, are you not?

20 A Google Capital, also known as CapitalG, owns 10
21 percent of the company.

22 Q So there's been lot of discussion in this case
23 about a pricing model, okay? And I want to ask you about
24 your specific, real-world experience with some key
25 components to that pricing model.

1 So let me just start with this. You are not here
2 today and RCN does not know what percentage of its
3 subscribers would leave if Turner channels were not
4 available to them, fact?

5 A Correct.

6 Q And, in fact, you don't recall any drop analyses
7 that -- and I asked you about this in deposition -- that you
8 have done on Turner content, correct?

9 A Correct.

10 Q And so today, you're not offering this Court any
11 empirical data or any real-world evidence of subscriber
12 losses if RCN didn't have Turner, right?

13 A No, not our company.

14 Q And, in fact, if you were to understand, try to
15 understand as a distributor what the impact of not having
16 Turner would be, you obviously would have to account for
17 what kind of countermeasures, what kind of mitigants you, as
18 a distributor, would undertake to try to keep your
19 customers, wouldn't you?

20 A Yes.

21 Q And RCN's retention efforts, as it turns out,
22 you're pretty good at it. You've enjoyed pretty good
23 success at hanging on to customers who have told you they're
24 leaving. That has been a hallmark of your corporate
25 performance, has it not?

1 A I would say on the broadband side, yes, we've had
2 a lot of success. Not so much so on the video side.

3 Q But in all events, the last thing you would do is
4 sit on your hands. You would do everything you could to
5 hang on to those customers, fair?

6 A Correct.

7 Q Now, another issue that has come up as part of
8 this pricing model is that if you lose customers, where do
9 they go? Are you with me?

10 A Uh-huh.

11 Q Now, it's true, isn't it, that people who are
12 leaving the RCN video service, many of them are leaving to
13 go to OTT providers. They're leaving the traditional
14 ecosystem. They're going to OVDs or to the new vMVPDs or
15 elsewhere, correct?

16 A Yes.

17 Q And there's been a lot of discussion in this case
18 about what that rate is -- 10 percent, 20 percent, whatever
19 it might be.

20 In your experience at RCN, at least half of the
21 customers who leave just RCN's video services are leaving
22 for OTT providers. That has been your experience, has it
23 not?

24 A It has.

25 Q And this number is likely to grow in the future as

1 Millennials become more and more prominent in the
2 marketplace, isn't it?

3 A Yes.

4 Q Let's talk about, then, the third leg of this
5 pricing model stool, which concerns competition and the
6 effect on your profitability.

7 Now, today, Mr. Holanda, consumers have many, many
8 more options to -- for where they can get their video; is
9 that fair?

10 A Yes.

11 Q And this intensified competition. It's led to an
12 increase in the types of products that are available to
13 consumers from distributors, fair?

14 A Yes.

15 Q And this intensified competition has led to more
16 lower-cost, skinny bundles available to consumers, OTT,
17 right?

18 A Yes.

19 Q And, in fact, you have never seen a better time
20 for consumers in terms of choice and availability in your 30
21 years in the industry, fair?

22 A Yes.

23 Q And also in your 30 years of the industry, the
24 consumers have more price points available to them than ever
25 before, fair?

1 A Yes.

2 Q And so in the course of this 30 years that you
3 have been in the business, the video distribution market
4 today is more competitive than at any point that you can
5 recall, true?

6 A True.

7 Q And this increased competition has been great for
8 consumers, right?

9 A Yes.

10 Q But what's good for consumers has also been a
11 challenge, has it not, for RCN and other MVPDs; would you
12 agree with that?

13 A Yes.

14 Q And, indeed, for the last five, seven years or so,
15 your video margins have continued to decrease, both for you
16 and for your competitors, because of the intensity of that
17 competition, fair?

18 A I think that's one of the reasons, but yes.

19 Q It's put a squeeze on margins over the past
20 several years, right?

21 A I wouldn't call it a "squeeze," but margins are
22 gradually going down, yes.

23 Q Well, in fact -- and I don't want to get into the
24 specific numbers, but over the last five, seven years, your
25 margins at RCN on the video product have decreased by over

1 half, haven't they?

2 A Yes.

3 Q And so on this pricing model, we have three basic
4 conclusions.

5 One, you're not telling this Court that -- of any
6 empirical data of what would happen if Turner leaves, right?

7 A Right.

8 Q Two, your diversion is over 50 percent for your
9 video customers who leave, right?

10 A Yep.

11 Q And, No. 3, your profitability has plummeted as a
12 consequence of a number of things, including this increased
13 competitiveness, fair?

14 A "Plummeted" is not the word I would use.

15 Q Okay.

16 A It's slowly decreased over time.

17 Q And importantly, with no relief in sight, fair?

18 A Fair.

19 Q Now, you spoke to Mr. Conrath about your
20 conversations or your approach to DOJ with regard to this
21 merger.

22 Do you recall that discussion?

23 A Yes.

24 Q And you have spoken with DOJ with or without your
25 counsel, what, maybe, on this merger, a half-dozen times

1 now?

2 A Yes, including preparation for this, yes.

3 Q And this is not something new for RCN. I mean,
4 you have, as matter of -- habit might be a little strong.
5 But as a matter of routine, you have weighed in on different
6 mergers in the media industry, have you not, over the last
7 several years?

8 A Yes.

9 Q You certainly weighed in on Comcast-NBCU, right?

10 A Yes.

11 Q You weighed in on
12 Comcast-Time Warner-Bright House-Verizon.

13 You weighed in on that merger, didn't you?

14 A Yes.

15 Q You weighed in on the Comcast-Time Warner merger,
16 right?

17 A Yes.

18 Q And you weighed in on the Comcast-Charter
19 transaction as well, didn't you?

20 A I believe so.

21 Q Yeah.

22 And, in fact, you, with your staff and your
23 outside counsel, actually prepared a presentation to DOJ on
24 this transaction.

25 You recall that, don't you?

1 A Yes.

2 Q And so you, as a competitor, you inject yourself
3 into this regulatory and review process in order to air your
4 concerns but also to attempt to approve your competitive
5 life, do you not?

6 A Yes; to maintain a level playing field as we move
7 forward.

8 Q And -- but in the course of weighing in on those
9 issues, you have also urged the DOJ, you have urged them to
10 move on and insist on conditions that really have nothing to
11 do with this merger, haven't you?

12 A I don't think so.

13 Q Well, the issue that you were just speaking to
14 Mr. Conrath about, the so-called -- the Comcast issue and
15 the penetration rates, right? You urged the DOJ that they
16 exclude broadcast basic from any Turner penetration rates,
17 didn't you?

18 A Yes.

19 Q Yeah.

20 So let's talk about that for a second.

21 Every major company has penetration rates,
22 vertically integrated or not vertically integrated. Turner
23 has them. Disney has them. Fox has them. CBS has them.
24 NBCU has them. Right?

25 A Yes, but not all of them are tied -- that you add

1 are tied to broadcast basic.

2 Q Well, Turner today, without regard to this merger,
3 it is tied to broadcast basic, isn't it?

4 A Yes.

5 Q And that's been the case for a long time before
6 there was even any talk of a merger, right?

7 A Yes.

8 Q And so that complaint about Turner has nothing to
9 do with the broadcast -- with broadcast basic, or it has
10 nothing to do with this merger. You were just trying to
11 improve your live video to Turner as a consequence of this
12 merger process, weren't you?

13 A I think it has everything to do with this merger
14 in that you're allowing a company with the two largest wired
15 and wireless distribution platforms to own significantly
16 viewed programming that they can use contractual terms to
17 disadvantage us in the market for broadband customers, not
18 just video customers.

19 Q Well, that's --

20 A And that -- you know, it's important. Broadband
21 customers are two to four times more profitable today than
22 video customers.

23 And so using programming to gain an advantage in a
24 more profitable line of business that the people that have
25 programming today aren't in is of great concern to us.

1 Q And that's just by linking penetration rates to
2 this broadcast basic. That's what you're talking about,
3 right?

4 A That's what we saw Comcast do, yes.

5 Q Yeah. Well, and you've seen Turner do that. To
6 date, they've always had that in place, right?

7 A True. But they don't compete us against us for
8 double- and triple-play and broadband households.

9 Q That's the point. They do it without regard to
10 competing with you, don't they?

11 A Right.

12 Q All right.

13 Let's just talk for a couple minutes about this
14 arbitration proposition that you did weigh into with
15 Justice.

16 For starters, you know that Turner has offered to
17 all distributors, small and large alike, both a standstill
18 and an arbitration opportunity.

19 Do you understand that?

20 A Yes.

21 Q Let's talk about the standstill first.

22 I want to be clear about this.

23 The standstill itself actually affects, changes
24 the negotiating dynamic between a content provider and a
25 distributor, does it not?

1 A Yes.

2 Q It does.

3 And, in fact, the standstill -- and I think you
4 described this to me in your deposition -- is actually
5 helpful to the distributor, is it not?

6 A Yes.

7 Q Yeah, because the standstill changes the dynamic
8 in the distributor's favor. You recall that, don't you?

9 A Yes.

10 Q And because before a standstill, the distributor's
11 principal source of -- excuse me, the programmer's principle
12 source of leverage was the ability to go dark. And with the
13 standstill, it no longer has that, right?

14 A I wouldn't characterize -- it's one of many
15 weapons a programmer has. And, yes, it's a very valuable
16 one, and giving it up helps the distributor.

17 Q Helps the distributor.

18 Okay. So if it's DOJ's contention here in this
19 lawsuit, in this pricing model we've been talking about, is
20 that a programmer can raise prices from an increased threat
21 of blackout, that possibility just disappears with a
22 standstill, does it not?

23 A It doesn't disappear.

24 Q Well, let me try it again.

25 A Okay.

1 Q In your view, sir, a standstill agreement would
2 eliminate the ability of a content provider like Turner to
3 raise prices by threatening blackout; isn't that true?

4 A If it's Turner pre-AT&T, I agree with that
5 statement. If it's Turner post-AT&T and owned by AT&T,
6 their actual incentive is to raise my pricing, make me drop
7 the services, and steal my broadband and video customers.

8 Q Yeah. I'm not sure we're connecting on this.

9 A Okay.

10 Q My question is simply this -- and we talked about
11 it in your deposition, okay -- is that, in your view, a
12 standstill agreement that Turner has offered to you at RCN,
13 okay, it would eliminate the ability of a content provider
14 like Turner to raise prices by threatening a blackout,
15 because it has no threat of blackout.

16 A That's correct.

17 Q That's correct. Okay.

18 And on this standstill, I think you mentioned the
19 subject of OTT providers and maybe how -- or vMVPDs and how
20 you might do business with them in the future, and without
21 getting into the specifics of that.

22 Now, you understand, don't you, that Turner has
23 made this very same offer of guaranteed content through this
24 standstill and arbitration? It's made that offer to the
25 virtual MVPDs.

1 Do you understand that?

2 A Yes.

3 Q And so to the extent you have any concern about
4 not getting the content from a virtual MVPD, that standstill
5 commitment, that would take care of that concern, would it
6 not?

7 A I'm not sure it takes care of the concern that I'm
8 worried about. And maybe we can discuss that more in a
9 closed session.

10 Q Now, let's go on to the arbitration piece of this
11 that you spoke to Mr. Conrath about.

12 And I think you said this, that AT&T's arbitration
13 offer is actually modeled on the Comcast standstill
14 arbitration agreement.

15 You appreciate that, don't you?

16 A Yes.

17 Q And you know that DOJ, in other contexts, has
18 advocated in this Court and elsewhere for that very kind of
19 arbitration mechanism. You appreciate that, don't you?

20 A Yes.

21 Q And, in fact, you came down to DOJ in March of
22 2017. And RCN recommended, okay, a baseball-style
23 arbitration commitment. It said, "Following the precedent
24 established in the approval of Comcast-NBCU deal, competing
25 distributors should be able to enforce this right by

1 requiring that AT&T submit to binding, baseball-style
2 arbitration.

3 Do you recall making that recommendation to these
4 very folks?

5 A Yes.

6 Q And then later in the year, a few months later,
7 that's precisely what AT&T and Turner did as -- in the fall
8 of 2017, right?

9 A It was December, late December when we saw the
10 Turner offer for the first time.

11 Q So later in 2017, correct?

12 A And it contained none of the fixes that we had
13 proposed in that presentation --

14 Q I want to get to --

15 A -- in terms of the baseball-style arbitration.

16 Q All right. I want to get to those fixes.

17 But your point in making that recommendation to
18 DOJ is that baseball arbitration would be a reasonable
19 solution because it would allow a third-party arbitrator to
20 decide whether the terms and conditions of the agreement are
21 fair without the distributor losing programming in the
22 process. That was the inherent logic of it, right?

23 A Yes.

24 Q And that's because baseball arbitration, it
25 presents a binary proposition to an arbitrator, which

1 creates significant uncertainty and, thus, encourages a
2 party to negotiate as hard as they can to reach an
3 agreement.

4 You recall telling me that, don't you?

5 A Yes.

6 Q And so in your judgment, RCN, you would agree that
7 a baseball-style arbitration provision, combined with a
8 standstill guarantee, would level the playing field. You
9 recall describing that to me, don't you?

10 A I recall talking about that that was a good place
11 to start, but our real-world experience suggested that there
12 needed to be some slight modifications --

13 Q All right.

14 A -- to the proposal --

15 Q All right.

16 A -- which we have been consistent about now for
17 13 months in terms of our advocacy of the merger under the
18 right set of conditions.

19 Q Good. And I want to get to those slight
20 modifications in a second, okay?

21 Now, one of the things you mentioned to
22 Mr. Conrath is that you have not tried to arbitrate under
23 the Comcast arbitration provision, right?

24 A Correct. We have not formally arbitrated against
25 Comcast.

1 Q You have not.

2 And the problem is that, for some reason, NCTC
3 believes that it doesn't have the right to arbitrate or to
4 use the standstill arbitration of that -- under that consent
5 decree, correct?

6 A Yes.

7 Q And so what RCN has recommended here is that that
8 baseball arbitration provision should allow NCTC to employ
9 that provision on behalf of its members, right?

10 A Yes.

11 Q And you know -- you know that Turner has actually
12 extended that standstill in arbitration to NCTC just as you
13 recommended. You know that, don't you?

14 A Actually, I don't.

15 Q Well, let me just show you to see whether this
16 refreshes -- let me just show you what we'll mark for
17 identification.

18 Let's mark this -- may I approach, Your Honor?

19 THE COURT: Yes.

20 MR. WALTERS: May I approach the witness?

21 THE COURT: Go ahead.

22 THE WITNESS: It's the first time I've seen this.

23 BY MR. WALTERS:

24 Q All right. Well, you're on the board of NCTC, are
25 you not?

1 A I am.

2 Q And this letter is addressed to Mr. Richard
3 Fickle, who's the President and CEO of National Cable
4 Television Cooperative.

5 Do you see that?

6 A Yes. Yep.

7 Q And this letter was sent on November 28, 2017, to
8 Mr. Fickle, extending the standstill and arbitration
9 opportunity to NCTC.

10 Do you see that?

11 A Yep.

12 MR. WALTERS: Your Honor, we'd move admit
13 Defendants' Exhibit 785.

14 MR. CONRATH: No objection.

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

16 (Defendants' Exhibit DX785
17 received into evidence.)

17 BY MR. WALTERS:

18 Q So at least in terms of NCTC and that issue,
19 problem solved, fair?

20 A Just putting my CEO hat, I think you're
21 acknowledging in writing that you're willing to do it, but
22 the devil is in the details. And when you're dealing with
23 over 750 member companies, we would just want to make
24 sure -- and I'm putting my NCTC board hat on -- that
25 everybody within NCTC is covered by this.

1 Q All right.

2 A Provided it is, yes, that would be issue checked
3 off the page.

4 Q Check off that box?

5 A Yep.

6 Q And by the way, in the time you spent with DOJ
7 before you testified, did nobody at DOJ tell you that this
8 had been offered to NCTC and its members?

9 A I don't recall.

10 Q Now, if that's check the box on that issue, you
11 raise a second issue, Mr. Conrath, and that was something
12 about the information flow available as part of the
13 arbitration process.

14 Do you recall that?

15 A Yes.

16 Q Now, I want to unpack that a little bit and be
17 clear about that.

18 In a commercial arbitration -- excuse me.

19 I misspoke.

20 In a commercial negotiation, RCN wouldn't know the
21 specific terms, distributor terms, with -- other
22 distributors would have with Turner, right?

23 A Correct.

24 Q And conversely, Turner would not know of your
25 specific terms with other programmers, correct?

1 A Correct.

2 Q And for purposes of a commercial negotiation,
3 that's rough justice, isn't it? They don't know; you don't
4 know, right?

5 A Yes.

6 Q And, again, the point of baseball arbitration is
7 to try to achieve a result that most closely resembles
8 commercial negotiation, fair?

9 A Okay.

10 Q Okay.

11 So if you then go to the next step, which is RCN
12 actually has discovery rights as part of what Turner has
13 proposed to it in the arbitration -- you're aware of that,
14 aren't you?

15 A I don't know the extent of the discovery rights.

16 Q Have you ever read the arbitration agreement
17 itself, multi-page arbitration agreement?

18 A I read the whole thing back in December.

19 Q Back in December.

20 And you're not aware that paragraphs 4 and 5
21 provide extensive discovery rights for you as a distributor
22 to learn what the terms of Turner's terms are with other
23 distributors; you're not aware of that?

24 A No.

25 Q Nobody at DOJ apprised you of those discovery

1 rights that you would have as part of this process?

2 A If I thought the discovery rights covered our
3 concern, yeah; I would not have continued to advocate for
4 that.

5 Q And you haven't studied that language since
6 December, even read it, have you?

7 A No.

8 Q Now, in this arbitration process, the truth of the
9 matter is it's really the programmers that is at a
10 disadvantage, don't you think?

11 A I don't think so.

12 Q Well, one, it gives up its right -- it's
13 opportunity to threaten a blackout, right?

14 A Yes.

15 Q And, two, they've got this little nettlesome
16 problem called MFNs, don't they?

17 A Some programmers do. I'm not -- I don't know who
18 does and who doesn't.

19 Q Well, you know they're pretty pervasive in the
20 industry. You've been in the business for 30 years. You
21 know they're out there, don't you?

22 A I know they're out there and that I don't get
23 them.

24 Q Well, that's a function of your size.

25 Well, you have -- you have MFNs, don't you?

1 A Not very many.

2 Q And by the way, that's just a function of your
3 size, right? I mean, volume discounts are a reality in this
4 marketplace, are they not?

5 A They are.

6 Q And that doesn't have diddly to do with this
7 merger, does it?

8 A It does. They're the largest distributor of video
9 programming and have the cheapest costs for programming in
10 the marketplace, DirecTV and AT&T U-verse group.

11 Q And that's true today, to the best of your
12 knowledge?

13 A Correct.

14 Q Okay. And the other piece of this is, you know
15 that -- and the point of that MFN is that if the programmer
16 bets wrong in this baseball-style arbitration, it could have
17 knock-on effects to its other distributors that you don't
18 have, right?

19 A I'm not in the content business. I'm not sure how
20 the mechanics of that would work.

21 Q All right.

22 So however that might raise the stakes for a
23 programmer, you can't say, fair?

24 A I can say I think it helps raise the stakes, but
25 I don't know by what degree.

1 Q And then I think the one other issue you raised,
2 maybe one of two more issues you raised, was the
3 arbitration, was this idea -- I think I heard this
4 correctly -- that the programmer should have to make its
5 offer first before you, the distributor, do.

6 Did I hear that correctly?

7 A Yes.

8 Q Now, that would be, to the best of your knowledge,
9 unprecedented in baseball arbitration, would it not? You've
10 never seen anything like that before, have you?

11 A Yeah. I've seen the exact opposite, where I have
12 to make the first offer with no information today.

13 Q But the programmer doesn't know about the terms of
14 that proffer. They just both go to the arbitrator, right?

15 A I'd have to go back and look at the mechanics of
16 the Comcast order, but --

17 Q I want to make sure I heard you correctly.

18 What I heard you saying is you want to take a peek
19 at the programmer's offer before you make your offer.

20 Did I hear that correctly?

21 A Yes.

22 Q Well, have you ever played poker?

23 A It's been long time, but I used to.

24 Q Well, aren't you, in effect, saying, I don't want
25 to bet until I see your cards? Isn't that what you're

1 saying?

2 A What I'm saying is, is I think you get the most
3 honest and market-based outcome based on the programmer,
4 knowing that we have the information and knowing that they
5 have to go first, to your very point: They are not going to
6 want to do something that busts an MFN or leaves them
7 vulnerable in whatever other way possible.

8 So our point of view is it's the most direct way
9 to that outcome.

10 Q Well, what you have suggested is that you get to
11 look at the bid, the offer from the programmer before you
12 make yours. That's what you suggested, right?

13 A Uh-huh.

14 Q And your chances of winning that baseball
15 arbitration go up, way up if you get to look at their cards
16 before you bet, true? Isn't that right?

17 A I don't think it is.

18 Q How could it not be?

19 A Because Turner knows what they're charging
20 everybody else.

21 Q Yeah. And they have no idea what others are
22 charging you, right?

23 A True.

24 Q Let me turn to a couple final subjects.

25 One is, you mentioned technology, and I want to be

1 clear about this. RCN's ability to negotiate for technology
2 rights has been absolutely frustrated, has it not,
3 Mr. Holanda? It has absolutely frustrated your ability to
4 innovate and provide customers with more of what they want,
5 your inability to negotiate those technology rights; isn't
6 that true?

7 A No, I wouldn't characterize that as true. There
8 is one area of technology rights that has been frustrating
9 to us, versus our competition, as it relates to the delivery
10 of our TV Everywhere service.

11 MR. WALTERS: Well, I don't want to make a big
12 deal about this, but may I approach, Your Honor?

13 THE COURT: Yes.

14 BY MR. WALTERS:

15 Q We discussed this in your deposition, did we not?

16 A Yes.

17 Q Okay. Let me just approach and ask you if you'll
18 look at it so we can get square on this.

19 If you'll look at page 141, line 12.

20 THE COURT: What date?

21 MR. WALTERS: I'm sorry, Your Honor? Page?

22 THE COURT: What date?

23 MR. WALTERS: The date of this deposition is
24 February 15, 2018.

25 THE COURT: 141, what line?

1 MR. WALTERS: Page 141, line 12.

2 BY MR. WALTERS:

3 Q And I asked you the question, "Have these -- these
4 inabilities to negotiate these rights, these bargaining
5 frictions, if you will, have they frustrated RCN's ability
6 to innovate further in the marketplace and provide
7 customers -- or consumers, excuse me, what you perceive you
8 would like?"

9 Do you see that?

10 A Yes.

11 Q And go to line 21, and your answer is what?

12 A "Absolutely."

13 Q And that was true then, right?

14 A Right.

15 But go to line 5 on the same page. And I thought
16 I had clarified prior to that question that in this example
17 that I'm thinking of, which is specifically to the
18 TV Everywhere innovation, the content owners told us it had
19 to do with controlling the viewership experience. And so
20 they were not giving us the same technology rights as they
21 were giving some of our competitors.

22 Q Sure. TV Everywhere was an example of what we're
23 talking about, right?

24 A Yes.

25 Q And what happened there is it made TV Everywhere,

1 I think you described it as kludgy and difficult.

2 Do you remember that?

3 A Yes.

4 Q And as a consequence of that, you at RCN believed
5 that you were several years behind Comcast in providing
6 these services to consumers as a consequence of them having
7 access to that in their vertical integration.

8 You recall that, don't you?

9 A Yes.

10 Q And so not having these bargaining frictions has
11 allowed Comcast to innovate more effectively than you have
12 because of your inability to secure those rights. That's
13 the conversation we were having, right?

14 A As it related to TV Everywhere, that's correct.

15 Q One last subject, HBO.

16 Now, you will sometimes use HBO, will you not, as
17 a promotional tool when HBO incentivizes RCN to do so by
18 offering economic incentives; is that right?

19 A Yes.

20 Q And I want to be clear about that. Without these
21 economic incentives, RCN would not use HBO as a promotional
22 tool, correct?

23 A Correct.

24 Q And you've also used other premium services,
25 Showtime, Starz, as promotions tools, right?

1 A Yes.

2 Q And you actually employ a wide array of
3 promotional devices. It could be higher broadband speeds,
4 additional telephone lines, free equipment, video-on-demand
5 movies. It's one of the tools in the toolbox, right?

6 A Yes.

7 Q And, in fact, the use of premium channels as a
8 promotional tool is not the most or the least important
9 promotional tool. It's somewhere in the middle of the pack,
10 right?

11 A Yes.

12 Q So in that sense, it's just one tool. And it
13 doesn't exercise tremendous clout and power over you. It's
14 just in the middle of the pack, fair?

15 A Fair.

16 Q And HBO, to this day, has never refused to supply
17 you, RCN, or, to your knowledge, any distributor, with the
18 opportunity to use its product as a promotional tool, right?

19 A Right.

20 Q And, in fact, it would be antithetical to HBO's
21 entire business model, where it has a high churn rate and it
22 needs to keep pushing its product to gain subscribers.
23 You understand that's the way HBO works, don't you?

24 A Well, I understand the churn and the push point.
25 From an overall business perspective, I'm not sure

1 I agree with what you just said.

2 Q All right. But, in fact, today, HBO really has
3 less influence with you than ever before because a consumer,
4 if it really wants HBO, it can just pop on the app and go
5 get HBO Now and head on down the road, right?

6 A Yes.

7 MR. WALTERS: That's all I have, Your Honor.

8 Thank you.

9 THE COURT: All right.

10 I'll see counsel.

11 (Sealed bench conference)

12 THE COURT:

13 MR. CONRATH:

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(Open court)

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THE COURT: All right. Redirect.

21

REDIRECT EXAMINATION

22

BY MR. CONRATH:

23

Q Mr. Holanda, a couple topics to cover things you

24

discussed about with Mr. Walters.

25

He asked you some questions about whether you had

1 done empirical studies about the importance of Turner
2 programming. I think you told us you evaluate what of the
3 time your viewers spend watching Turner programming, right?

4 A Correct.

5 Q Does that inform your opinion about how important
6 Turner programming is to your viewers?

7 A It does.

8 Q To your customers?

9 A It does.

10 Q And you have a concern about access to Turner
11 programming. Is that because you're concerned that you
12 might lose some customers if you didn't have Turner
13 programming?

14 A Yes.

15 Q You don't know exactly how many?

16 A We do not.

17 Q You had some questions from Mr. Walters about the
18 people who leave RCN; a large proportion -- a substantial
19 proportion of them go to over-the-top or virtual MVPD
20 companies.

21 Do you remember that discussion?

22 A Yes.

23 Q Now, as an overbuilder, RCN is often -- one of the
24 main ways it offers service is in apartment or condo
25 buildings, multiunit buildings, right?

1 A Correct.

2 Q As a result, does your customer base skew a little
3 bit towards Millennials?

4 A It does.

5 Q You had a question about whether your
6 profitability had plummeted. I think you corrected the
7 "plummeted" word. But is video service still profitable for
8 RCN?

9 A Yes.

10 Q And you had some questions about discussions with
11 the DOJ involving various transactions. I take it there's
12 nothing surprising to you that, if Department of Justice
13 lawyers are trying to learn about a transaction in a
14 marketplace, that they'd reach out and talk to people who
15 are actually in the marketplace?

16 A And competitors of those doing the deals, yes.

17 Q Now, you had some questions that went to the
18 broadcast basic issue and some questions about whether other
19 companies don't have penetration requirements.

20 Do you remember that series of questions?

21 A Yes.

22 Q Right.

23 So which are the stringent penetration
24 requirements that prevent you today from offering broadcast
25 basic? From which company do they come?

1 A Right now, they're entirely from Comcast-NBCU.

2 Q And is that because the other companies in one way
3 or another don't count some things against broadcast basic
4 or otherwise give you opportunities to still be able to
5 offer broadcast basic without getting in the way of it?

6 A I think that -- I'm trying to think of a way to
7 answer the question without divulging confidential
8 information about the structure of these agreements.

9 But, yes, even where there are penetration
10 requirements, none of the contracts today are prohibiting us
11 from selling more broadcast basic bundled with broadband,
12 other than a few select NBCU agreements.

13 Q You had a question, some questions about the
14 specific conditions that you recommended to the Department
15 of Justice to be associated with this merger.

16 Do you remember that line of questions?

17 A Yes.

18 Q And, Mr. Walters asked you about the arbitration
19 recommendation that you made. That was just one of five
20 conditions that you recommended, right?

21 A That's correct.

22 Q And what you recommended was a package, right?

23 A That's correct.

24 Q And the other issues that were covered were
25 included -- included obligations to make -- to provide

1 competing distributors access to key content at a fair
2 market value?

3 A Yes.

4 Q And there are other conditions that you weren't
5 recommending just the arbitration as a solution to
6 everything associated with this merger; is that right?

7 A Correct.

8 Q Then you had some questions about the exact terms
9 of the arbitration offer.

10 You remember that?

11 A Yes.

12 Q Now, the question that an arbitrator would have to
13 resolve would be, what's the value or what's the value of or
14 the fair market value of Turner programming to RCN, for
15 example, if there were an arbitration, right?

16 A Yes.

17 Q And which is more relevant to the price of -- or
18 the value of Turner programming to RCN, the value of Turner
19 programming to other distributors or the value of other
20 programming RCN?

21 A I would think it's the value of Turner to the
22 almost thousand other distributors that are out there in the
23 United States.

24 Q And that's the information that you don't have
25 access to before you have to put in your offer; is that

1 right?

2 A Correct.

3 Q And Mr. Walters asked you some questions about the
4 discovery rights under the arbitration offer.

5 Do you understand that?

6 A Yes.

7 Q The one that Turner has made.

8 And do you understand that those discovery rights
9 kick in only after you've made your offer?

10 A No. Clearly, when he brought them up, I wasn't --
11 I am not --

12 Q You don't know one way or the other?

13 A -- an expert on the detail of the discovery rights
14 contained within the Turner offer. And I --

15 Q You don't know.

16 But the discovery rights that come after you've
17 already put in your offer don't help you make an informed
18 offer, do they?

19 A That may be why we didn't -- I don't remember them
20 as being in the offer.

21 Q And, finally, you had some questions from
22 Mr. Walters about the TV Everywhere and the access to some
23 technology there.

24 Was a problem that you had there involving
25 Comcast?

1 A Yes.

2 MR. CONRATH: No further questions.

3 Renewing my request for closed session,

4 Your Honor.

5 THE COURT: Recross limited to redirect?

6 MR. WALTERS: No, sir, Your Honor.

7 THE COURT: All right.

8 We're going to take the afternoon recess now.

9 You're a witness under oath in the case. You're
10 not at liberty to discuss your testimony with anyone,
11 including the counsel in the case.

12 You know that?

13 THE WITNESS: Okay.

14 THE COURT: When we return, we'll be in Executive
15 Session briefly, for about approximately a half hour or so.
16 And we have a motion that we have to hear argument on anyway
17 outside the presence of the parties -- the public.

18 So I would say, for those of you in the viewing
19 audience, you should probably be -- the doors will be open
20 again at about, after the break and then another half hour
21 or so, so sometime around 5:00.

22 We'll be going until 6:00 today. So sometime
23 between the quarter of 5:00 and 5:00, the doors will be
24 opening again. And we'll be going until 6:00 today.

25 Stand in recess. I'll see you in 15 minutes,

1 counsel.

2 (Recess from 3:51 p.m. to 4:19 p.m.)

3 (Closed session)

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MR. OPPENHEIMER :

THE COURT :

MR. PETROCELLI :

THE COURT :

1 MR. PETROCELLI:

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5 MR. PETROCELLI:

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7 MR. PETROCELLI:

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10 DEPUTY CLERK:

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13 (Recess from 4:37 p.m. to 4:46 p.m.)

14 (Open court)

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

20 THE COURT: All right. The government has rested.

21 And the defense is ready to call its next witness,
22 is it not?

23 MR. PETROCELLI: We are, Your Honor.

24 The defendants call David Christopher.

25 THE COURT: All right.

1 He can come in and be sworn.

2 DEPUTY CLERK: Mr. Christopher, please raise your
3 right hand.

4 (Witness is placed under oath.)

5 You may be seated, sir.

6 MR. PETROCELLI: May I proceed?

7 THE COURT: When you're ready.

8 MR. PETROCELLI: Thank you.

9 DAVID CHRISTOPHER, WITNESS FOR THE DEFENDANTS, HAVING BEEN
10 DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. OPPENHEIMER:

13 Q Mr. Christopher, would you state your name for the
14 record.

15 A David Ames Christopher.

16 Q All right. So, Mr. Christopher, we're going to do
17 a bit of the lightning round this afternoon. It's the end
18 of the day. We're going to try to cover topics regarding
19 LTV pretty quickly here.

20 So let's start with: By whom are you employed?

21 A AT&T.

22 Q And what's your title?

23 A President, AT&T mobility and entertainment.

24 Q And what are your responsibilities as president?

25 A General responsibilities for revenue and

1 profitability for our consumer mobility, video, and
2 broadband businesses.

3 Q How long have you had that responsibility?

4 A Since August of 2017.

5 Q And what did you do before that?

6 A I was Chief Marketing Officer for largely the same
7 businesses.

8 Q And what were your responsibilities in that
9 capacity?

10 A Marketing responsibilities, advertising,
11 retention, acquisition.

12 Q All right. So we've talked a bit in this case
13 about lifetime subscriber values, what we've been calling
14 LTVs. What would you tell us briefly, what are LTVs?

15 A Sure.

16 LTVs capture the value of new subscribers. It is
17 calculated simply by how long a new group of customers will
18 stay with us, times the margin we get from those customers,
19 minus the cost to acquire those customers.

20 Q So I'll represent that Professor Shapiro, the
21 government's economist in this case, used second-quarter
22 2016 LTVs or lifetime values for his analysis. Do you have
23 that in mind?

24 A Yes.

25 MR. CARSON: Objection, Your Honor. May we

1 approach?

2 THE COURT: You may.

3 Sir, you'll have to step down and sit in that
4 chair against the wall there.

5 (Sealed bench conference)

6 MR. CARSON:

7 THE COURT:

8 MR. CARSON:

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14 THE COURT:

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16 MR. OPPENHEIMER:

17 THE COURT:

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22 MR. CARSON:

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MR. OPPENHEIMER:

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MR. CARSON:

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THE COURT:

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(Open court)

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THE COURT: Come on back up, sir.

18

You may continue, consistent with the discussion
at the bench.

19

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MR. OPPENHEIMER: Yes, Your Honor.

21

BY MR. OPPENHEIMER:

22

Q So now, having mentioned the second-quarter 2016
LTVs, I want to ask you, are the second-quarter 2016 LTVs
the most recent LTVs?

23

24

25

A No.

1 Q Was your team asked to provide updated LTVs to
2 defendants' expert in this case, Professor Carlton?

3 A Yes.

4 Q And what did you do in response to that request?

5 A We provided the latest LTVs, which were June of
6 2017, as well as the LTVs that we had for January and April
7 of the same year.

8 Q All right. So June 2017 was the most recent?

9 A Yes.

10 Q Now, was the information that you provided in that
11 update different from the 2016 LTV data Professor Shapiro
12 used?

13 A Same information; just updated.

14 Q Okay. Now, I want to get clear on a couple of
15 facts today.

16 Did you or your team cherry-pick the June 2017 LTV
17 data provided to Professor Carlton so he would have a lower
18 LTV number in his analysis?

19 A Absolutely not. We provided the latest
20 information.

21 Q Were you asked to pick among the lowest LTVs from
22 among options?

23 A No.

24 Q And to be clear, were the LTVs you provided in
25 both 2016 and 2017 prepared in the same manner as you

1 prepare them in the normal course of your business?

2 A Yes.

3 Q When did you provide the June 2017 LTV to the
4 economist?

5 A In February of 2018.

6 Q All right. Now, why was the June 2017, 2017 LTV,
7 the most recent LTV in February of this year? It seems like
8 you'd have a more recent LTV.

9 A It takes about seven to nine months to generate
10 the LTVs. We take a new incoming class of customers. We
11 follow those customers for four bill cycles. After that
12 team, we run our models.

13 We also, in that process, we match those customers
14 and compare them to millions of customers in our existing
15 base. And that generates an LTV value that's then
16 quality -- it's then discussed amongst the team and
17 eventually goes to our finance team for approval.

18 Q So you take a look at a group of folks that come
19 in in June of 2017, and you go through all of that analysis
20 over that period of time so that by February of this year,
21 you have an understanding of the subscriber value of that
22 group of people to you; is that right?

23 A Yes.

24 Q All right. So as of today, are there any newer
25 LTVs? As of today, sitting in this courtroom now, here in

1 April?

2 A No, but we're getting close.

3 Q Can you explain that to the Judge.

4 A Sure.

5 We have -- the latest final LTVs are June. We
6 have July --

7 Q Excuse me for interrupting. June 2017?

8 A 2017.

9 We have July of 2017 that we should be final with
10 this month.

11 We have August that we'd be final with next month,
12 in May.

13 And we have early data for September, and we
14 should be done with that in June of this year.

15 Q All right. It's a time-consuming process.

16 Were you deposed on Valentine's Day this year in
17 this case?

18 A Yes.

19 Q And were you asked questions by the government
20 during your deposition about LTVs?

21 A Yes.

22 Q And during the course of your answers to those
23 questions, did you provide the June 2017 video LTV to the
24 government during your deposition?

25 A Yes.

1 Q And we're not going to go into the amount of that
2 for confidentiality reasons for a minute, but we'll come
3 back to it.

4 So let's talk about how we're using LTVs in this
5 case.

6 In his work, Professor Shapiro used the average
7 LTV from the second quarter of 2016.

8 Professor Carlton used the updated 2017 LTVs.

9 MR. CARSON: Objection, Your Honor.

10 MR. OPPENHEIMER: Just asking for the difference.

11 THE COURT: All right. If that's all you're going
12 to ask.

13 MR. OPPENHEIMER: That's all I'm going to ask.

14 BY MR. OPPENHEIMER:

15 Q So without mentioning, for confidentiality
16 reasons, the specific values of the June 2016 LTV data and
17 the June 2017 LTV that you updated to, what is the amount of
18 the drop from the 2016 LTV value to the 2017 LTV value that
19 Professor Carlton used?

20 A It's approximately 40 percent.

21 Q Does that surprise you?

22 A No.

23 Q Why not?

24 A Our traditional video business is under
25 significant transformation. We are acquiring fewer

1 customers. We are paying more to get those customers. The
2 revenue that those new customers pay us is down.

3 Our content costs are going up. We're paying more
4 to retain the customers that we do have to keep them. And
5 even after-that, we are losing a large amount of customers.

6 In 2016, our traditional video business lost
7 133,000 customers. In 2017, we lost 1.2 million. So those
8 trends are significant pressure. They pressure LTVs. They
9 pressure general margins on the business.

10 Q When you say "pressure LTVs," what impact do those
11 trends you've described have on the LTVs?

12 A They pressure them downward.

13 Q And that LTV is a measure of the value of new
14 customers in the video business to the company, correct?

15 A Yes.

16 Q This obviously sounds like a challenge. Can you
17 describe for His Honor, what is the company doing? What are
18 you doing to deal with this?

19 A Sure.

20 Our job is to balance new customers, acquiring new
21 customers, keeping those customers, and profitability.

22 We're working on that every single day to improve
23 that equation. That's a balancing act. But that is the job
24 of the entire team.

25 Q In attempting to deal with dropping LTV values

1 that you see, do you make investments in various efforts to
2 deal with that? And if so, how do those affect the value of
3 the LTVs?

4 A Sure.

5 We're constantly making investments, again, to
6 acquire customers or retain customers and improve
7 profitability.

8 If we launch a promotion, for example, to acquire
9 new customers, it pressures LTVs. If we launch retention
10 efforts to keep customers, keeping them longer helps LTVs,
11 but the cost of doing that has a negative effect.

12 So it's a balancing act, but we're constantly
13 working on it.

14 Q Have you prepared a chart to help describe the LTV
15 trend that you're discussing with us and to go through it
16 and to enable you to do so without having to disclose the
17 actual LTV values publicly?

18 A Yes.

19 MR. OPPENHEIMER: Your Honor, may I approach?

20 MR. CARSON: May I approach, Your Honor?

21 THE COURT: Yes.

22 (Sealed bench conference)

23 MR. CARSON:
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MR. OPPENHEIMER:

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MR. OPPENHEIMER:

THE COURT:

MR. OPPENHEIMER:

MR. CARSON:

MR. OPPENHEIMER:

THE COURT:

MR. CARSON:

(Open court)

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

1 BY MR. OPPENHEIMER:

2 Q So, Mr. Christopher, I've put before you what's
3 been marked for identification as DX0942, a chart.

4 And I'd asked you earlier if you prepared a chart
5 to help walk through the testimony you were giving today
6 about LTVs and their values and the trends.

7 Is this that chart?

8 A Yes.

9 Q All right. So, again, we're going to use this to
10 avoid calling out these numbers in open court.

11 But to begin with, in looking at DX0942, are the
12 numbers in the column marked LTV actuals that go from
13 January 2017 down through September 2017, are those the
14 numbers of actual, and in the case starting with July
15 through September, draft LTVs as you know them from your
16 work?

17 A Yes.

18 Q And if you were to be asked to express the values
19 for each of those LTVs, those are the numbers you would give
20 in open court?

21 A Yes.

22 Q Now, let's walk through this chart fairly quickly.

23 Can you explain, generally, what this chart shows
24 and walk His Honor through the labels on the columns and
25 what those labels mean.

1 A Sure.

2 We take the first row --

3 THE COURT: Hold on a second. Hold on a second.

4 Did you take my copy?

5 MR. OPPENHEIMER: I may have Your Honor. Here,
6 let me give you another one.

7 THE COURT: Sharp practices.

8 Keeping an eye on them.

9 MR. OPPENHEIMER: Now, I notice, Your Honor, that
10 the government has not asked whether I gave you back the
11 same chart we started with, but I can represent to you that
12 I did.

13 THE COURT: It looks the same.

14 MR. CARSON: May we approach, Your Honor?

15 THE COURT: No.

16 It looks the same.

17 Back to the witness.

18 THE WITNESS: Okay.

19 So if you take the first row, what that's saying
20 is the new customers that we, excuse me, acquired in January
21 of 2017, that analysis and that process I talked about,
22 that's roughly seven to nine months, that was done and that
23 was finalized in October of 2017.

24 THE COURT: Right.

25 THE WITNESS: The value that we consider finalized

1 of those LTVs is what's in the third column.

2 THE COURT: Okay.

3 THE WITNESS: The fourth column is a relatively
4 new process.

5 BY MR. OPPENHEIMER:

6 Q Just for the record, that's identified as LTV
7 projections?

8 A Correct.

9 The LTV projections in the fourth column is really
10 a new process that the team does, trying to pick the things
11 that we know are likely to happen; but we don't know what's
12 really going to happen until those seven to the nine months
13 after the fact. So it's just the best guess of the team.

14 THE COURT: Okay.

15 BY MR. OPPENHEIMER:

16 Q And on that topic, comparing the LTV projections
17 to the LTV actuals, have you -- has your team had as much
18 experience with the LTVs projections as they have with the
19 LTV actuals?

20 A No. The LTV actuals is a very robust analytical
21 process. Again, it takes seven to nine months to complete.
22 Again, very scientific.

23 The projections are as I described.

24 Q All right. And the LTV projections often change
25 over time for the same period?

1 A Yes. As we learn more, they change. And as you
2 can see, the trend is -- the trend is similar, but they
3 change.

4 Q So to illustrate for His Honor, if we look at LTV
5 projections, the last three in that far right-hand column,
6 for January 2018, do we see, in effect, three different
7 projections for three different months for 2018?

8 A Yes, that's right.

9 Q And they're all changing?

10 A Correct.

11 Q So walking through the column that pertains to the
12 June 2017 LTVs that Professor Carlton used, does this show
13 that they were finalized in February 2018; they are the
14 value that is listed under LTV actuals; and at or about the
15 same time, there was an associated projection that is listed
16 in the LTV projection column on the far right?

17 A Yes.

18 Q All right. Now, would you explain to His Honor
19 the -- in the last three entries for the LTVs, the upcoming
20 LTVs, the one for July 2017, August 2017, and September
21 2017, it says "draft" in the date finalized.

22 Would you explain that to the Judge and what
23 status each of those is.

24 A Sure.

25 Those are the ones I mentioned were getting close.

1 So the July one that's listed as July 2017, we
2 should be done with that analysis in April, this month.

3 The August one, we should be done next month, in
4 May.

5 And the September one, where we have early data,
6 we should complete that analysis in June.

7 Q Now, again, I'm doing this so we don't read
8 numbers into the record. But His Honor has them, and
9 they're available to him.

10 The LTV actuals, starting with January 2017 and
11 going through April 2017, June 2017, July 2017 -- pardon me.

12 Going from January 2017, April 2017, June 2017,
13 each, in each consecutive month, the LTV is going down;
14 is that correct?

15 A Yes.

16 Q And then in July 2017, there's a slight uptick
17 from June; is that correct?

18 A Yes.

19 Q And then in August 2017, a slight uptick from
20 July?

21 A Yes.

22 Q And in September, a slight downtick now again from
23 August; is that correct?

24 A Yes.

25 Q Would you explain to us how that relates to the

1 trend you were describing, the downward pressure on and
2 downward trend of LTVs.

3 A Sure.

4 The downward trend is the same.

5 The month-to-month variability that we see could
6 be the result of promotions that we're doing, it could be
7 the result of retention spend that we have.

8 In the case of the fall, we do see some
9 seasonality with NFL Sunday ticket, where customers opt in
10 and buy that product. And that affects the LTVs. We see
11 that every fall, generally.

12 Q Now, in terms of the trend you were describing, we
13 see some variability here, some variation. Would you
14 describe for us how that variability and variation from
15 month to month affects your view of the overall trend of
16 LTVs and subscriber value in your business.

17 A The overall trend is the same. I look at -- I
18 consider these month to month or I look at the trend. It
19 doesn't change my general opinion of what I spoke of
20 earlier.

21 Q Which was a downward trend?

22 A Which was a downward trend, correct.

23 Q Would an apt analogy perhaps be to a downward
24 period in the stock market where you can see the stock
25 market going up and down but the overall trend is down?

1 A That's a good analogy.

2 Q If today, Mr. Christopher, you wanted to get the
3 best view of the value of a new subscriber to your company,
4 what would you look at?

5 A I would look at the latest approved, and, in this
6 case, it would be June of 2017.

7 Q LTV?

8 A LTV, yes.

9 MR. OPPENHEIMER: No further questions.

10 THE COURT: Let me ask you this.

11 The number in the column LTV actuals for July '17,
12 August '17, and September '17, the first column, you say
13 these are draft numbers, right?

14 THE WITNESS: Yes, they're draft -- they're
15 just -- the analysis has not completely run its course.

16 THE COURT: So the numbers in those three columns,
17 in that same column but those three lines, those could all
18 be changing when this is finalized, right?

19 THE WITNESS: They could.

20 In the case of July, '17 that, again, I expect to
21 be done this month, I really don't expect that to change.

22 THE COURT: Not much, if at all?

23 THE WITNESS: Correct.

24 THE COURT: The other two might change more?

25 THE WITNESS: They could, and that's why we follow

1 the process through and ultimately have finance review it.

2 THE COURT: But those are still draft numbers, all
3 three of those, as of right now?

4 THE WITNESS: They are draft. July I would
5 consider -- again, I think we'll finish it this month. The
6 other will follow the process.

7 THE COURT: All right.

8 Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. CARSON:

11 Q Good afternoon, Mr. Christopher.

12 A Good afternoon.

13 MR. CARSON: Oh, sorry. Dylan Carson for the
14 United States, Your Honor.

15 May I proceed?

16 THE COURT: You may.

17 BY MR. CARSON:

18 Q Mr. Christopher, you joined AT&T in 2004, correct?

19 A Yes.

20 Q And you worked in the wireless business for about
21 12 years before you joined the entertainment group?

22 A Yes.

23 Q And you've worked in the video business for about
24 two years now?

25 A Yes, although in -- for a period of about two

1 years, in twenty -- I believe it was 2012 time frame, we had
2 one consumer organization where we also had, I had a
3 responsibility for U-verse product marketing. And then
4 eventually -- and then so for a period of time, I had that
5 as well.

6 Q So in February of 2016, you became the chief
7 marketing officer for the entertainment group?

8 A Yes.

9 Q And we met at your deposition a few days ago,
10 right?

11 A Yes.

12 Q Thank you for your time, sir.

13 Let's look at your chart here in front of you and
14 talk about lifetime value.

15 Lifetime value is a prediction into the future,
16 correct?

17 A Yes.

18 Q And within AT&T, you have a team of Ph.D. experts
19 who help you calculate lifetime value, true?

20 A Yes.

21 Q And those experts don't have a crystal ball, do
22 they?

23 A No.

24 Q They use sophisticated statistical models, right?

25 A Yes.

1 Q And they take lots and lots of data over many
2 months, and they plug it into their models, right.

3 A Yes.

4 Q And they've got over 100 models that they use to
5 try to calculate lifetime value, right?

6 A There's one core lifetime value model, and there
7 other models that feed into that.

8 Q And there's a lot of variables that go into the
9 lifetime value calculation, correct?

10 A There are many variables. The core principle is
11 as I described.

12 Q And so I think you testified lifetime value
13 calculation is the expected life of a customer times the
14 profit margin that you want to use, minus the acquisition
15 costs; is that true?

16 A Yes.

17 Q And so expected life of a customer, that's called
18 survivorship, right?

19 A Yes.

20 Q And when your Ph.D. experts model survivorship,
21 they use data for a new cohort, a cohort of new customers
22 over multiple months, right?

23 A They track -- I'd say it slightly differently.

24 They track actual bills for bill cycles. Then
25 they run their models. Then they -- and in that, they

1 compare it to other customers in our database looking for
2 customers that have similar traits.

3 Q And so for that new cohort of customers, they take
4 multiple months of data, right?

5 A Correct.

6 Q And they compare that new cohort data to data for
7 existing customers, for established customers, over multiple
8 months, right?

9 A Yes, they do.

10 Q And your Ph.D. experts within AT&T, they use many,
11 many months to do that comparison and come up with LTV,
12 right?

13 A Yes. They take, again, actuals for four months;
14 then they run their models; then they do analysis.

15 Q And by having many months of data, that allows a
16 more representative sample, true?

17 A The reason we watch multiple months is -- the
18 reason why we watch multiple months is because within the
19 first several, first four months of a customer's life, they
20 could change their package; they could churn; they could add
21 a premium, drop a premium. So we learn quite a bit that
22 then goes into the models.

23 Q But that wasn't my question.

24 My question was, by using multiple months of data,
25 your Ph.D. experts can understand whether they have a more

1 representative sample, true?

2 A By using multiple months of the same gross adds,
3 gross add group, we have a more-accurate view of what that
4 value is, is the way I would say it.

5 Q And so according to the Ph.D. experts within AT&T,
6 using three months of data for a cohort analysis is better
7 than using one month, correct?

8 A In the case of how the calculation works, which is
9 four months, using four months is better.

10 Q And that's what you testified to this Saturday,
11 right?

12 Using three months is better than one month,
13 right?

14 A No. Those were -- that was a different question
15 from -- what I'm answering is, in the seven to nine months,
16 there are four months we track actual bills, actual usage.
17 And that is a very accurate way to start the process of the
18 modeling.

19 Q You could explain -- and I know you're in a hurry
20 and you need to catch a plane.

21 THE COURT: He's not acting like he's in a hurry.

22 BY MR. CARSON:

23 Q So let me try to focus you again.

24 Did you not testify this weekend, according to the
25 experts within AT&T who do this analysis, using three months

1 of data is better than using one month? Wasn't that your
2 testimony?

3 A No, not for this question.

4 The way I understand your question, we're talking
5 about the four months of how the -- tracking actual bills.
6 That's the question I thought you were asking.

7 Q Sorry. Maybe I wasn't clear.

8 In trying to understand the survivorship, the
9 prediction that the Ph.D. experts at AT&T make about how
10 long a customer will stay with the company, using three
11 months of data is better than using one month, correct?

12 A For the sur -- for the survivorship model, which
13 was a different question, yes, we used three -- we used
14 three months of data.

15 Q And that's better than one month, true?

16 A It depends on what question you're asking.

17 Q Maybe I can refresh your recollection and give you
18 your deposition transcript.

19 MR. CARSON: May I approach, Your Honor?

20 THE COURT: You may.

21 MR. CARSON: May I approach, Your Honor?

22 THE COURT: You may.

23 MR. OPPENHEIMER: I'm sorry, Your Honor. What
24 line?

25 MR. CARSON: Page 28, lines 17 through 23.

1 THE COURT: Which deposition?

2 MR. CARSON: This is the April 14th deposition,
3 2018.

4 THE WITNESS: I'm sorry, what page?

5 BY MR. CARSON:

6 Q Page 28, lines 17 through 23.

7 THE COURT: What page are you on?

8 MR. CARSON: Page 28 of the April 14th, 2018
9 deposition, lines 17 through 23.

10 THE COURT: April 14th or February 14th?

11 MR. CARSON: I'm sorry. April 14th. Is it at the
12 end, Your Honor? I'm sorry.

13 THE COURT: All right.

14 BY MR. CONRATH:

15 Q If you can read that to yourself, sir, and let me
16 know when you're there.

17 A Yes, I see it.

18 Q So you were asked, "So using three months is more
19 representative, because it can take away vagaries that might
20 apply to any one month in the sample; is that right?

21 And you answered, "I think using three months
22 is -- using three months is better than one month is what
23 the conclusion was."

24 MR. CARSON: Your Honor, I move for admission of
25 this deposition as impeachment and for the truth of the

1 matter asserted.

2 THE COURT: You've got to ask him the question
3 whether he remembers saying that and if it's true or not.

4 MR. CARSON: Okay.

5 BY MR. CARSON:

6 Q Did I -- were you asked that question, and did you
7 give that answer?

8 A Yes. Can I explain?

9 Q You could explain with your counsel. I just
10 wanted to clarify that.

11 MR. OPPENHEIMER: Your Honor, for completeness, we
12 would have the request that he read on.

13 THE COURT: Request what?

14 MR. OPPENHEIMER: For completeness, Your Honor.

15 THE COURT: Requested what?

16 MR. OPPENHEIMER: Requested additional read of the
17 deposition.

18 THE COURT: Well, you can do that on your
19 redirect.

20 All right. So is that the testimony you gave?

21 THE WITNESS: Yes.

22 THE COURT: Now, is it true that you gave it?

23 THE WITNESS: Yes. We -- I understood you asking
24 a different question. So for the survivorship model, it is
25 true. I thought you were asking me about the overall LTV

1 model.

2 THE COURT: Which is it, survivorship or overall
3 model?

4 MR. CARSON: It was survivorship, but I thought I
5 made that clear.

6 THE COURT: Survivorship?

7 THE WITNESS: Yes.

8 THE COURT: Okay. Fine.

9 BY MR. CARSON:

10 Q Thank you, Mr. Christopher.

11 You also get LTV information on a quarterly basis,
12 correct?

13 A I get LTV information on a more regular basis, so
14 not just on a quarterly basis.

15 Q Did you testify this weekend that often I see LTV
16 calculations on a quarterly basis?

17 Do you remember that?

18 A I do often see it on a quarterly base. I also get
19 information more regularly than just that.

20 Q And you look at multiple months of LTVs to
21 determine the trend in LTVs, true?

22 A To determine a trend? Yes.

23 Q And you want to know the trend in LTVs, because
24 LTVs can go up or down from month to month, based on a
25 number of factors, true?

1 A Yes.

2 Q All right. Let's look at your chart.

3 Now, these are 2017 LTVs, draft and final, right?

4 A Yes.

5 Q Now, you change your calculation -- or you change
6 your methodology for calculating LTVs for 2017, true?

7 A We updated our ability to better take into account
8 churn and bundling. So it is an improvement in how we
9 calculated it.

10 Q So you changed your methodology of calculating LTV
11 from 2016 to 2017, correct?

12 A No. I wouldn't say it that way.

13 We've -- the overall methodology is the same. The
14 inputs of how we capture churn and bundling has been
15 modified and improved.

16 Q So you updated how you use inputs in your
17 methodology for calculating LTV, correct?

18 A Yes; to better capture churn and to better capture
19 whether a customer is in bundles or not.

20 Q Now, on your chart here, there's no LTV for
21 February, March, or May of 2017, right?

22 A Correct.

23 Q And so you don't have the whole trend in LTVs
24 through June of 2017, do you?

25 A We are -- no. I think I had the trend.

1 But those months you mentioned are not there.

2 Q You don't have a single quarter of official
3 approved LTVs for 2017 on your chart, do you?

4 A If you phrase it that way, no.

5 Q You're not offering to this Court the whole
6 picture of what the LTVs were for 2017, are you?

7 A No. I disagree. There's a trend, if you --
8 again, a trend, by definition, we have multiple points,
9 obviously. We have January. We have April. We have June.

10 Q And you chose not to provide LTVs for February,
11 March, and May, right?

12 A No, that's not accurate.

13 Q You're not offering those LTVs to the court, are
14 you?

15 A No. Those LTVs were not done.

16 Q You don't have them, do you?

17 A No, we don't have them.

18 Q And so if you wanted to know the whole trend for
19 LTVs in 2017, you'd need those data points, right?

20 A I think the trend would be similar, but we don't
21 have those data points.

22 Q And LTVs can change dramatically from month to
23 month, but you don't have them all for 2017, do you?

24 A We don't have all of them. I think the trend is
25 the same.

1 Q So the LTVs for June of 2017, that's kind of an
2 outlier here, isn't it?

3 A I don't believe it's an outlier when you look
4 at -- when you look at the entire trend here.

5 Q And they're LTV actual column, June 2017 is by far
6 the lowest; isn't that true?

7 A Yes.

8 Q Now, you don't know if June 2017 is representative
9 of the rest of these 2017 cohorts, do you?

10 A As I said, July, we are very close, I don't expect
11 that number to change. I think it's very similar and
12 directional to June.

13 Q Well, if you took an average of the official
14 approved LTVs for 2017, these top three, that's going to be
15 in the quadruple digits, right, four figures?

16 A Yes, if you took an average.

17 Q And so that's going to be higher than June, right?

18 A Yes, it would be higher than June.

19 Q And based on these draft numbers that you have for
20 July, August, September, LTVs are trending back up;
21 isn't that true?

22 A They are trending up for July and August. They
23 are back down in September.

24 Q Now, if you have multiple months of LTVs, you
25 wouldn't just focus on one cohort and go tell your boss,

1 Mr. Donovan, that your entire business fell off a cliff
2 because you got one lower cohort, would you?

3 A No.

4 Q You wouldn't go to tell investors that AT&T's
5 video business was 40 percent less profitable because of one
6 month's lower cohort, would you?

7 A No, but that's not what this measures.

8 Q Well, isn't -- aren't LTVs a measure of
9 profitability?

10 A They're a measure of new customer profitability.
11 They are not a measure of the entire company profitability.

12 Q Because the entire company, which has video
13 customers who have been there for a long time, their
14 average, that's ACV, average customer value, is much higher,
15 true?

16 A The ACV is higher.

17 Q So -- and, in fact, AT&T's video profit margins
18 have not fallen 40 percent, have they?

19 A No. And that was never represented.

20 The LTVs have fallen 40 percent.

21 Q You've never talked to defendants' expert,
22 Professor Carlton, to explain to him how profitability works
23 at AT&T, have you?

24 A No.

25 MR. CARSON: Your Honor, I've marked for

1 identification PX551.

2 May I approach?

3 THE COURT: Take a look at it.

4 Does counsel have it?

5 Yeah, you better approach.

6 MR. CARSON: May I approach?

7 (Sealed bench conference)

8 THE COURT:

9 MR. CARSON:

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14 THE COURT:

15 MR. CARSON:

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MR. CARSON:

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MR. OPPENHEIMER:

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MR. OPPENHEIMER:

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10 MR. CARSON:

11 (Open court)

12 THE COURT: What else have you got?

13 BY MR. CARSON:

14 Q Mr. Christopher, let me ask you -- you can put
15 that aside, sir.

16 The lifetime value that you calculate, that's
17 based on a small cohort of subscribers, correct?

18 A It's based on new subscribers that come in a given
19 month.

20 Q And you get about, say, a couple hundred thousand
21 new subscribers every month?

22 A We get about a million video gross adds in a
23 quarter, new customers in a quarter.

24 Q So in a monthly cohort, there will be about a
25 third of that?

1 A Roughly.

2 Q And AT&T has approximately 25 million video
3 subscribers today?

4 A Slightly lower than that.

5 Q AT&T's had approximately 25 million video
6 subscribers for each of the last three years, correct?

7 A No. Last year, we lost a million two of those
8 subscribers.

9 Q At the end of 2017, AT&T reported that it had over
10 25 million video subscribers, correct?

11 A That included over the OTT product; it was not the
12 traditional business which I'm referring to.

13 Q So all of the video subscribers that AT&T has, you
14 count those, right?

15 A We do.

16 We do. We were talking about -- the LTVs we're
17 talking about measures the health of the traditional video
18 business.

19 Q And all of the subscribers that you have at AT&T
20 for video has stayed roughly flat for each of the last three
21 years, true?

22 A If you count all lines of business, yes.

23 If you look at traditional, it's down.

24 Q And if you count all lines of business, you have
25 roughly a little over 25 million subscribers today, true?

1 A Yes.

2 Q Now, your counsel has told this Court that Google,
3 Facebook, Amazon, Hulu, and Netflix are running away with
4 the pay-TV industry; but all of those companies have not
5 stopped AT&T from making billions of dollars in the pay-TV
6 business, true?

7 A True.

8 The amount we're making is less each year.

9 Let me -- the amount we're making is less in 2017.
10 And we expect that to -- the traditional business to go
11 down.

12 Q Is the amount that you're making, the lifetime
13 value for new subscribers on bundled, multi-product service
14 subscribers increasing?

15 A I've seen recent data -- no. I've seen recent
16 data that shows the bundled customers are going down.

17 Q Aren't bundled customers -- I'm sorry.

18 AT&T is gaining more subscribers today that have
19 what you call multi-product bundles, true?

20 A Yes.

21 Q And the LTVs for those multi-product bundles are
22 significantly higher than just video LTVs, true?

23 A Yes.

24 Q They can be up to ten times higher for a -- the
25 LTV can be ten times higher for a subscriber who has video

1 bundled with wireless and broadband, true?

2 A Comparing to what?

3 Q Versus a video stand-alone customer, true?

4 A Yes, directionally.

5 Q And the LTV for a customer who has wireless and
6 DirectTV video service can be several times higher than -- or
7 several hundred times higher than the LTV for just a
8 stand-alone video subscriber, correct?

9 A It can be higher.

10 Q And higher by several hundred percent, correct?

11 A It can be higher. I'd have to go do the math.

12 Q Going by your chart here, if LTVs are in the, say,
13 four-digit arrange, the -- an LTV for a wireless plus
14 DirectTV subscriber can be several thousand dollars more than
15 a stand-alone video subscriber, correct?

16 MR. OPPENHEIMER: Your Honor, objection.

17 THE COURT: Yeah. We'll strike the question.

18 Rephrase it.

19 BY MR. CARSON:

20 Q In general, multi-product households have higher
21 lifetime values, correct?

22 A Yes.

23 Q And AT&T has a strategy of building out its 5G
24 mobile broadband network, correct?

25 A Yes.

1 Q And with that strategy, you expect to have more
2 customers who have mobile broadband with video, correct?

3 A Yes, that's our hope.

4 Q And with that build-out of the 5G network and more
5 customers who have multi-product bundles, you expect the
6 LTVs for those multi-product customers to increase, true?

7 A No, I don't know if I agree with that.

8 I don't know.

9 Q Didn't you tell investors at a Barclay's
10 conference in December of 2017 that there's a flywheel
11 effect for LTVs. As you gain more multi-product customers,
12 AT&T will get higher LTVs?

13 A That's the strategy. It doesn't always -- we
14 don't know the future LTVs.

15 It's higher than what?

16 Q Now, churn is one of the important components that
17 goes into calculating these LTVs, true?

18 A It's one component.

19 Q Now, every month, a small percentage of AT&T's
20 video subscribers leave, true?

21 A I don't think it's a small percentage.

22 Q Well, what percent of AT&T's video subscribers
23 stay every month? It's around 98 percent, right?

24 A Yes, but -- yes, but 2 percent leave a month,
25 which means 25 percent leave in a year before you do

1 anything.

2 Q And subscribership is -- has been flat for the
3 last three years, so you're replacing the customers that
4 leave with new customers, right?

5 A No.

6 Subscribership has been down in our traditional
7 video business.

8 Q But in your overall video business, you're
9 replacing subscribers with new ones, and subscribership is
10 flat, true?

11 A For the traditional video business, no.

12 For --

13 Q That was that was my question.

14 Overall, all your video subscribers -- you care
15 about all of your video subscribers, right?

16 A Yes.

17 Q And all of those video subscribers together, the
18 subscribership has been flat for AT&T, around 25 million,
19 for each of the last three years, right. Roughly.

20 Now -- and this is despite the annual price
21 increases, a vast majority of customers stay with AT&T,
22 true?

23 A No, not for the traditional video business.

24 So, again, we lost 1.2 million last year.

25 Q And so 98 percent of your customers stay every

1 month, true?

2 A It's the inverse of the 2 percent. Yes.

3 Q And in his opening statement, your counsel told
4 this Court, it's hard to cancel your pay-TV thing, because
5 it's a big pain and many people don't do it. He was right,
6 right?

7 A From the seat I sit in, no.

8 Again, roughly 5 -- think about it this way:
9 1.2 million left last year. Roughly, 5 percent of the
10 traditional video base left last year.

11 Q In the second half -- in the first half of 2017,
12 AT&T experienced an increase in churn, right?

13 A Yes.

14 Q And that's what's reflected on your chart with
15 these -- that was the big contributor to some of the
16 decline, at least for some of these months, in the first
17 half of 2017, right?

18 A I don't agree with how you phrased that.

19 It's one contributor.

20 Q Okay. It was a factor. You had some hurricanes,
21 some storm impact that increased your churn, right?

22 A And we had competition that increased churn.

23 Q And so you saw this churn, and you did something
24 about it. You took action to lower churn, right?

25 A We have spent roughly -- in the fourth quarter as

1 an example, we spent roughly 90 percent more on a
2 year-over-year basis. We're spending heavily to try to
3 adjust churn.

4 Q That wasn't my question.

5 In the second half of 2017, you took action to
6 lower churn, true?

7 A Yes.

8 Q And you created a churn task force, right?

9 A Yes.

10 Q And they have a motto, that drive to 1.5, right?

11 A Yes.

12 Q And 1.5 is the historical average of churn, the
13 monthly churn that AT&T has had, right?

14 A It's the historical average from DirecTV years
15 ago.

16 Q How about as recent as 2015?

17 A Yes.

18 Q And AT&T wants to do everything it can to keep
19 profitable DirecTV customers on satellite with retention
20 credits, right?

21 A Within reason, we --

22 Q And so you mentioned that you increased your
23 retention span to reduce that churn, right?

24 A We did.

25 Q And your efforts to reduce churn are working,

1 true?

2 A They are reducing churn.

3 They're coming at a very large price to do so.

4 Q And your, the entertainment group had, what, about
5 \$50 billion in revenue last year?

6 A Roughly.

7 Q And the efforts to, the spending, you've -- strike
8 that.

9 You've historically used retention credits to
10 reduce churn, right?

11 A It's one tool.

12 Q And so when you see the LTVs coming back up in the
13 second half of 2017, that's a reflection of the reduced
14 churn that that credit spending has caused, true?

15 A It is part of that. But, again, churn is one, but
16 one measure in the LTV calculation.

17 THE COURT: Let me see counsel.

18 (Sealed bench conference)

19 THE COURT:

20 MR. CARSON:

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10 THE COURT:

11 MR. CARSON:

12 (Open court)

13 BY MR. CARSON:

14 Q Mr. Christopher, in November of 2017, your boss,
15 Mr. Donovan, went to the AT&T board to tell them that you
16 had been successful in your efforts to reduce churn, true?

17 A I don't know that I was at that meeting.

18 Q Well, did you help prepare slides for Mr. Donovan
19 as presentation to the board?

20 A I'm sure my team helped prepare information for
21 him.

22 Q And you had meetings with Mr. Donovan on AT&T's
23 efforts to reduce churn, correct?

24 A Of course.

25 Q Now, going back to your chart real quick, you've

1 got one final for June 2017 in -- you got that in -- at
2 11:00 p.m. the night before your deposition, right?

3 MR. OPPENHEIMER: Objection, Your Honor. May we
4 approach?

5 THE COURT: Yep.

6 (Sealed bench conference)

7 THE COURT:

8 MR. OPPENHEIMER:

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MR. CARSON:

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MR. CARSON:

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THE COURT:

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(Open court)

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BY MR. CARSON:

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Q Mr. Christopher, you got the June LTV number the day before your deposition, right?

15

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A Yes.

17

Q And that was on February 13th?

18

A Yes.

19

Q And then no final approved LTV since then, right?

20

A Yes.

21

Q So a month later, March 13th came; no final for July?

22

23

A No.

24

Q And then April 13th came and still no final for July?

25

1 A No.

2 Q So you've got no new final LTVs in the two months
3 since you received the June LTV, right?

4 A Correct.

5 Q And did you rush those June numbers to get them in
6 time for your deposition?

7 A No.

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

9 THE COURT: Okay. One minute.

10 MR. OPPENHEIMER: One minute, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. OPPENHEIMER:

13 Q Mr. Christopher, why are there some months missing
14 from this collection? Quickly explain to the Court why
15 that's the case.

16 A Sure.

17 We have an LTV team that relocated from Atlanta to
18 L.A. There were some transition in personnel.

19 We also had some management changes where I was in
20 a new role; I had a new boss. We had new executives. We
21 frankly got behind.

22 Q I want to be really clear about this.

23 As president of the company, was anything done out
24 of the normal course of business with respect to the LTVs
25 that are being calculated up to this present time in any

1 way, shape, or form related to this litigation or impacted
2 by this litigation?

3 A Absolutely not.

4 Q All right.

5 There were discussions about driving down churn.
6 You explained that can increase costs. I just want to be
7 really clear here.

8 When that happens, when you have to make
9 investments to keep folks -- to avoid churn and that sort of
10 thing, does it have an effect on the LTV? And what is that
11 effect?

12 A Sure.

13 If you're spending more to reduce churn, it
14 impacts -- so the fact that customers stay longer helps the
15 LTV. The fact that you're spending more on a consistent
16 basis hurts the LTV.

17 But churn is only one part of -- one part of the
18 LTV. We're spending heavily on acquisition.

19 Last year, our -- the new customers that came to
20 us, not only did we lose 1.2 million; the new customers that
21 we acquired was down double digits.

22 We're spending heavily to compete. That is also
23 impacting these LTVs, in addition to the spending on churn.

24 Q And you were asked a couple of questions about
25 would it be better to have three of this or two of that.

1 Let me just cut to the chase.

2 If you wanted to understand the value of a new
3 customer today to the company, would it be better to look at
4 some average of LTVs or the most recent LTV?

5 A If I were looking at what is the value of new
6 customers, I would use the latest approved LTV.

7 Q Is that partly because that single LTV contains a
8 lot of data that's been used to arrive at that figure?

9 A Absolutely.

10 MR. OPPENHEIMER: No further questions,
11 Your Honor.

12 THE COURT: All right.

13 You're excused.

14 Let me see counsel.

15 (Sealed bench conference)

16 MR. CARSON:

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18 THE COURT:

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20 MR. CONRATH:

21 THE COURT:

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23 MR. PETROCELLI:

24 THE COURT:

25 MR. PETROCELLI:

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THE COURT :

MR. PETROCELLI :

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MR. WELSH:

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MR. CONRATH:

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MR. CONRATH:

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MR. PETROCELLI:

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MR. PETROCELLI:

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(Open court)

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THE COURT: All right. 10:30 tomorrow morning.

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Stand in recess.

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DEPUTY CLERK: All rise.

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This Honorable Court stands adjourned.

(Proceedings concluded at 6:02 p.m.)

C E R T I F I C A T E

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

Date: April 17, 2018 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR