

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 18, 2018
)	2:38 p.m.
AT&T, INC., ET AL.,)	
)	Afternoon Session
Defendants.)	
<hr/>		Day 16

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

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DEFENDANT'S:

JEFFREY BEWKES	3199	3145		
JOHN STANKEY	3204	3264		

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

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

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

9 THE COURT: The witness remains under oath. You
10 may proceed when you're ready.

11 MR. SCOTT: Thank you, Your Honor.

12 I have a couple of documents I would like to hand
13 up and get marked for use with the witness, if I may
14 approach the Clerk and the witness.

15 They will come into evidence.

16 MR. PETROCELLI: I'd like to see them before
17 they're shown to the witness, Your Honor.

18 THE COURT: Yes.

19 Give them to defense counsel, please.

20 MR. SCOTT: The first is PX552 and the second one
21 is PX63.

22 THE COURT: Okay. Take a look at them.

23 MR. PETROCELLI: 552.

24 Your Honor one second because it's on not on their
25 exhibit list, so I need to take a quick look at it.

1 THE COURT: Sure. Go ahead. No rush.

2 MR. PETROCELLI: Counsel, is this the attachment
3 to this document?

4 MR. SCOTT: Yes, yes. For both of them.

5 (Counsel conferred off the record.)

6 MR. PETROCELLI: No objection, Your Honor.

7 THE COURT: All right.

8 MR. SCOTT: To which?

9 MR. PETROCELLI: Either.

10 MR. SCOTT: Okay. All right. Your Honor, in that
11 case, we would move Exhibit 552 and 063 into evidence.

12 THE COURT: Well, I've got to see them. You've
13 got to tell me what they are.

14 MR. SCOTT: All right. Fair enough. I'm sorry.

15 THE COURT: I need some foundation for relevance.
16 I need something. I mean, I don't know what these are.

17 MR. SCOTT: All right.

18 MR. PETROCELLI: They need to go under seal if
19 they're going to be admitted, Your Honor.

20 (Pause)

21 MR. SCOTT: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 THE WITNESS: May I ask the Court a question?

25 THE COURT: Yes.

1 THE WITNESS: It would help if I had my glasses.

2 THE COURT: Yes. You can get them. Where are
3 they?

4 THE WITNESS: They're in my bag in that room.
5 They're in that bag.

6 MR. SCOTT: Your Honor, may I proceed?

7 THE COURT: You may.

8 JEFFREY BEWKES, WITNESS FOR THE DEFENDANTS, HAVING BEEN
9 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS
10 FOLLOWS:

11 CROSS-EXAMINATION

12 BY MR. SCOTT:

13 Q Mr. Bewkes, I'm Claude Scott with the Justice
14 Department. Good afternoon.

15 A How do you do?

16 Q You have in front of you what's been marked as
17 Exhibit 55 -- Plaintiff's 552.

18 Do you have that front of you?

19 A Yes. 552?

20 Q Yes, sir.

21 Please read through that. It's a couple-page
22 document there.

23 Familiarize yourself with it, and then I've got a
24 couple of questions for you.

25 You went through that?

1 A I read it.

2 Q The document in front of you is a document dated
3 January 13th, 2017, from you to the Board of Directors of
4 Time Warner, correct?

5 A Yes.

6 Q And the subject matter of that is the proposed
7 2017 long-range plan for Time Warner, correct?

8 A Yes.

9 Q And long-range plans for Time Warner's business
10 operations are something that are done on a periodic basis,
11 correct?

12 A Yes.

13 Q How often do you do them?

14 A Usually, every year.

15 Q And you're involved in the process of preparing
16 the long-range plans?

17 A Yes.

18 Q And people working with you and under your
19 direction pull together the information for your approval
20 before it's submitted to the board, correct?

21 A Yes.

22 Q And this memo is a memo covering the actual
23 long-range plan that was prepared in this time frame and was
24 sent along with the long-range plan to the board, correct?

25 A Yes.

1 Q And it explains the bases upon which the
2 long-range plan was established?

3 A Yes.

4 MR. SCOTT: Your Honor, we move exhibit
5 Plaintiff's 552 into evidence.

6 MR. PETROCELLI: No objection, under seal.

7 THE COURT: It will be admitted.

8 (Government's Exhibit PX552
9 received into evidence under seal.)
10 BY MR. SCOTT:

11 Q Now, Mr. Bewkes, your attorney has agreed to this
12 being submitted under seal, and it is. So if I ask any
13 questions that get to the area, in an area where I'm likely
14 to draw confidential information from you, please let me
15 know. I'll try to do this in a way that does not do that,
16 all right?

17 A Thank you.

18 Q Now, was this business plan, indicated -- that was
19 sent, the proposed long-range plan, was that done after the
20 merger was announced?

21 A Part of it -- this plan takes place over a period
22 of many months every year, and so some of it would have been
23 done starting in the summer.

24 We announced the merger in late October, and so
25 the early parts of the plan would be done then. And then
from end of October to the end of the year, we would be

1 finalizing the plan.

2 Q Well, for the purpose of this plan, although some
3 of it was done after the merger was announced, it was set up
4 as though the merger was not going to happen, correct?

5 A I believe so, yes.

6 Q And it was submitted the board in that fashion?

7 A Yes.

8 Q And the plan, it says it reflects the fundamental
9 strategy that you've been pursuing for several years,
10 correct?

11 A Yes.

12 Q And that strategy had not -- was not changing in
13 the course of this plan from what you had done before the
14 merger was announced?

15 A Can I ask a clarifying question?

16 Q Sure.

17 So the plan says it was put together based on the
18 assumption there was no merger, right?

19 A Yes.

20 Q And so -- and it incorporates the business
21 planning and strategies that had been in place before you
22 contemplated entering into the transaction?

23 A Yes.

24 Q And did that plan, that business plan -- and,
25 again, if we're getting into confidential information,

1 please let me know.

2 Did that plan contemplate pursuing digital
3 products to offer into the market on behest of the
4 Time Warner companies?

5 A Yes, it did.

6 Q And that's something that you had been, had in
7 place for some time before the merger was announced?

8 A Yes.

9 Q And by "digital properties," could you describe
10 what things had been put in place before the merger was
11 announced by Time Warner?

12 A Yes. I think that refers to things like HBO Now,
13 delivered over broadband. Some of our new subscription VOD
14 services at Turner, like FilmStruck and Boomerang, the
15 children's service.

16 Let me think of any others.

17 Efforts to try to get data for digital
18 advertising, those kind of things.

19 Q And it also continued your strategic plan. The
20 point is basically the heart of your business, which is to
21 produce highly desirable content to sell to distributors so
22 they could, in turn, sell it to their customers?

23 A Yes.

24 Q And you were looking at ways, before the merger
25 was -- happened and had invested and were pursuing ways to

1 deliver that content both over traditional means, as well as
2 through new platforms that were coming into the market,
3 right?

4 A Yes.

5 Q And by "new platforms," are we talking about
6 Internet delivery of content that you were creating?

7 A I think, yeah, we're talking about new bundles and
8 virtual MVPDs that go over the Internet. We're talking
9 about trying to make our own networks be able to go over the
10 Internet, yes.

11 Q And were you investing in those activities?

12 A Yes.

13 Q When the merger was announced?

14 A Before?

15 Q Yes.

16 A Yes.

17 Q Did you continue to invest in those platforms and
18 those new products after the merger was announced?

19 A Yes.

20 Q And till today, you're still pursuing them?

21 A Yes.

22 Q Now, prior -- well, strike that.

23 Did at some point in time Warner Brothers and
24 Turner jointly launch its own SVOD, Boomerang?

25 A Yes.

1 Q And SVOD means what in that context?

2 A It means subscription video on demand.

3 Q So this is a product where customers come directly
4 to you and subscribe to get access to the video that's on
5 there?

6 A Yes.

7 Q And what type of video is that product carrying,
8 have available to customers?

9 A That is family and children's programming.

10 Q And was offering, in your view, an SVOD product,
11 among other digital products, consistent and logical
12 extension of your current strategy in the market?

13 A Yes.

14 Q And the plan also called for strong financial
15 performance going forward into 2017, correct?

16 A For that product or for the whole company?

17 Q For the whole company.

18 A Yes.

19 Q And now this is an area we've got to be careful
20 because I don't want to reveal confidential information.

21 If you would look on the first page of the
22 document, bullet point 3, where it starts "third" and read
23 through that.

24 A Yes, sir.

25 Q Just read through it to yourself, that whole

1 paragraph, and then I'll have a question for you.

2 A Yes. I see that.

3 Q Now, the first sentence there, where it begins,
4 "third" -- and, again, let's not read it out loud -- and
5 going forward to the next page, where it ends in 2017 with a
6 footnote mark, that is what you were projecting your revenue
7 growth adjusted, operating growth, and adjusted EPS growth
8 to be, correct?

9 A Yes, sir.

10 Q And you were -- that also reflects the free cash
11 flow that you expected in 2017?

12 A Yes.

13 Q Did you hit those numbers?

14 A I believe we did, yeah.

15 THE COURT: All right. It doesn't say "expect."
16 It says "aiming for."

17 MR. SCOTT: "Aiming for." I'm sorry, Your Honor.

18 THE COURT: Let's make sure we keep that straight.

19 MR. SCOTT: Will do.

20 BY MR. SCOTT:

21 Q But you hit the numbers you were aiming for, yes?

22 A I believe we did, yes.

23 Q Now, the next sentence, again, read it to
24 yourself, which starts with "and" and ends with "cash flow."

25 A Yes, sir.

1 Q And it has there, it says there that you're
2 looking at specific numbers listed for CAGR, C-A-G-R.

3 What is that?

4 A That is compound annual growth rate.

5 Q All right. And there's a number there for that
6 revenue, correct?

7 A Yes.

8 Q And then another number for adjusted operating
9 income that we were looking for, correct? That was a
10 three-year plan?

11 A Yes.

12 Q And 10 percent -- and another number that I won't
13 mention what it is.

14 Do you see that?

15 A Yes, I do.

16 Q And then another number in free cash flow,
17 correct?

18 A Yes, sir.

19 Q Now, those numbers, are those numbers still good
20 today, from the standpoint of your plan and expectations, if
21 this deal is not approved?

22 A Are you asking those targets for 2017, which is
23 over, are they still good? Can I ask what you mean by
24 "good"?

25 Q Sure.

1 Well, it says here over the three-year plan,
2 you're looking for these.

3 A Oh, for the ones going outward?

4 Q Right. Are those numbers still good today, from
5 the standpoint of what performance you're looking for?

6 A I'm not -- I think so, but I'm not sure.

7 Q All right, sir.

8 Now, the next paragraph, bullet point there,
9 says -- indicates that you expect to achieve the financial
10 results described above, correct?

11 A Yes, it does.

12 Q And it goes on to say that those results would
13 place you at the top of our media peer group in a dynamic
14 and changing operating environment.

15 Do you see that?

16 THE COURT: Challenging.

17 BY MR. SCOTT:

18 Q Challenging operating environment.

19 Do you see that?

20 A I do, yeah.

21 Q And the terminology there, the top of your media
22 peer group, could you define what you believed your peer
23 group to be?

24 A I believe in that context, it means the other
25 media companies that have networks and studios, and they

1 compete doing what things we do.

2 Q And could you give us some examples of who you
3 consider to be in your peer group.

4 A Yes. Disney, Fox, Comcast, Universal, CBS,
5 Viacom.

6 Q All right, sir.

7 Now, further into the document, you told the board
8 you're not expecting any significant changes in the trends
9 we discussed in the past.

10 Do you see that?

11 A No, I don't -- oh, I see. Yes, I do. Yes, I do.
12 We aren't expecting significant changes in that period.
13 Yes.

14 Q All right, sir.

15 And what trends are you referring to there?

16 A Well, the increasing presence of the vertically
17 integrated advertising competitors, the increasing presence
18 of the digital direct-to-consumer subscription companies.

19 That would be, if you -- the first ones would be
20 Facebook and Google on the advertising side. On the
21 subscription side, it would be all of those, Disney, Fox,
22 Viacom, NBC companies, and then joined by Netflix, Amazon,
23 Hulu. That's in the United States.

24 Overseas, it would be Sky and companies like that
25 as you go around the world. Same thing in Latin America.

1 Just a number of those competitors.

2 And the trends were, as we've talked about, more
3 competition and advertising that was flattening or declining
4 our advertising revenue, growth, and more challenges in
5 subscription competition that was reducing what had been the
6 growth in subscription revenue.

7 Q All right, sir.

8 So, among other things, these are trends that you
9 discussed with Mr. Petrocelli, the growth of digital
10 advertising, which was, in your view, putting pressure on
11 your business, number one? That would be one.

12 A That was one, yeah.

13 Q And the other one being, you said a trend that was
14 putting pressure on subscribership?

15 A Well, you have --

16 Q Let me ask the question.

17 A -- you have a reduction in subscriber growth.

18 Q Let me finish the question.

19 A I'm sorry.

20 Q In the trend that you were talking about that was
21 affecting subscriber growth, is that the growth of MVPDs?

22 A Excuse me.

23 Q Sure.

24 The trend that you said was having an effect on
25 subscriber growth, is that trend the growth of MVPDs in the

1 market?

2 A Well, here it refers to the overall subscriber
3 growth for the networks across all distribution.

4 Q All right.

5 And was -- were the MVPDs having an effect on that
6 subscriber growth?

7 A Yes. They were slowing down or losing
8 subscribers.

9 Q The traditional MVPDs?

10 A Yes.

11 Q And in part, that was because of the presence of
12 vMVPDs that were taking business away from them?

13 A That's part of it.

14 Q All right.

15 A That's not most it, but that's a little bit of it.

16 Q Now, you go on in the document to state that you
17 expect to continue to see -- you expect to continue -- well,
18 "We continue to expect a continuing gradual decline in the
19 number of subscriptions to TV, network bundles in the U.S."

20 That's what we were just talking about?

21 A Yes.

22 Q And then after that, it says you had greater
23 visibility into some favorable trends with real potential,
24 such as the launch of virtual MVPDs, which has now become an
25 industry-wide development.

1 A Yes.

2 Q And why did you see that as a potential for your
3 business? Why did you see that as a potential, that trend,
4 the growth of the vMVPDs -- the vMVPDs, as a potential that
5 may benefit your business?

6 A Because it would be another place where we could
7 put our networks in front of consumers.

8 Q And from your perspective, being a content creator
9 and supplier to distributors, it really didn't matter to you
10 if the person was seeing it on one platform, a traditional
11 MVPD, or some new digital format, correct?

12 A Generally, correct.

13 Q Because generally, either way, you're going to get
14 paid?

15 A Yes, generally so.

16 Q And despite the trends that we've talked and you
17 discussed with Mr. Petrocelli, you were still expecting on a
18 going-forward basis, in this three-year plan, to hit the
19 numbers that are described in here for your financial
20 performance, correct?

21 A We were hoping. We set them as a target. And we
22 expected to achieve them. We weren't sure, but that was our
23 ambition.

24 Q And to the best of your recollection, you, in
25 fact, did hit the 2017 projections?

1 A I do believe we did.

2 Q All right, sir, if you would take a look at the
3 last paragraph or the bullet next to it.

4 And you indicate that the long-term financial
5 targets are pretty close to those that you provided to the
6 board last January, correct?

7 A Yes.

8 Q And despite the trends that you're seeing in the
9 market, you say here that you're expecting revenue to be
10 somewhat higher in 2019 than was reflected in the previous
11 plan that was given to them the previous January?

12 A Yes.

13 Q And you expect to have more cumulative cash flow
14 over the life period of this plan than you had projected the
15 year earlier, correct?

16 A Driven largely by lower taxes and interest
17 expense, yes, I think that was the reason for that.

18 Q All right, sir.

19 And in relation to this, this was -- this plan,
20 with the financial projections that are hoped-for numbers
21 that are laid out in it were based on you following the
22 business plan, the approach to market, that you had been
23 following 2015, '16 and on forward, correct?

24 A Well, generally, but we were always evolving it.
25 So, in general, you're right, but it does change every year

1 to some degree.

2 Q And one of the things that evolved over that time
3 period was you developing and investing and developing
4 digital products to move your content over different
5 platforms, correct?

6 A Yes.

7 Q All right. You can set that one aside.

8 And let me ask you to take a look at PX63.

9 Do you have that in front of you?

10 A Yes.

11 Q I'm not going to go through the whole document,
12 but just a few questions to establish what it is. And then
13 I'll direct you to a page or 2, okay?

14 A Yes.

15 Q Now, this document is headed "Time Warner 2017
16 long-range plan, budget and capital plan."

17 Do you see that?

18 A Yes, I do.

19 Q And the document has been marked for
20 identification as PX63, correct?

21 A Yes.

22 Q And this is dated January 2017, correct?

23 A Yes.

24 Q Is this the business plan that was put together
25 under your supervision and forwarded to the board under the

1 cover email that we just discussed?

2 A Yes.

3 MR. SCOTT: Your Honor, the government moves PX63
4 into evidence under seal.

5 THE COURT: Okay.

6 MR. PETROCELLI: No objection.

7 THE COURT: It will be admitted.

8 (Government's Exhibit PX63
9 received into evidence under seal.)

9 BY MR. SCOTT:

10 Q Now, again, this has been admitted under seal
11 because of confidentiality concerns. So if I ask a question
12 that delves into something you think is confidential and
13 raises any concern, let me know and we'll deal with it
14 another way, all right?

15 A Yes.

16 Q Now, in the context of this document, would you
17 look at page 63-020. It has the identification numbers from
18 TWI-LIT-00463312.

19 A That's down at the bottom? The number is on the
20 bottom center?

21 Q Yes, sir.

22 A Okay.

23 Q All right, sir. If you would, there's a heading
24 there in the middle of the page, roughly, that says, "Expand
25 international SVOD and direct-to-consumer offerings."

1 Do you see that?

2 A Yes, I do.

3 Q And does that reflect, in addition to expanding
4 offerings, digital offerings, over-the-top type of
5 offerings, direct-to-consumer offerings in the United
6 States, you're also investing in doing that internationally?

7 A Direct-to-consumer internationally?

8 Q Yes, sir.

9 A Yes, we were.

10 Q And, again, was part of the impetus of making that
11 investment a desire on your part to be able to contact the
12 consumer directly and gather information that would help you
13 do the things that you talked about with Mr. Petrocelli,
14 market better to them, sell advertising more effectively,
15 those type of things?

16 A Yes, although -- yes.

17 Q And that's also true of the investments that you
18 made here in the United States for those type of services?

19 A Is what true?

20 Q That you made the investments for products to sell
21 here in the United States and make available to consumers in
22 part so that you could try to gather information regarding
23 those consumers to enhance your marketing generally and your
24 sales of advertising specifically?

25 A Yes.

1 But you can't put direct -- Internet delivered as
2 though it's direct to consumer. There are two elements to
3 it.

4 You need to deliver over the Internet, but you
5 have to be able to go directly and deliver through the
6 technology platform all the way to the consumer.

7 And in some of these, as we talked about in the
8 United States, HBO being the biggest, we couldn't get
9 information about the consumer because we had to use third
10 parties to deliver and to market that HBO service.

11 If you go overseas, the same thing is often true.
12 Where we need a tech partner or some helping company -- you
13 see here it talks about Tencent in China and that sort of
14 thing, where they have that capability and information and
15 we don't, even if we're trying to go direct subscription
16 VOD.

17 Q So you were contracting with tech companies to
18 help you deliver the content over the Internet?

19 A In overseas now?

20 Q Yes.

21 A Yes.

22 Q And you were also doing that here in the
23 United States?

24 A Yes.

25 No. Wait. Contracting with tech companies like

1 Apple and Amazon to help market and deliver the product.

2 Q All right, sir.

3 Were Apple and Amazon selling your SVOD product?

4 A At this time?

5 Q Yes, sir.

6 A Apple was selling HBO.

7 Amazon, in 2017, I believe, had just begun to sell
8 HBO in the United States.

9 Overseas it's a very different story. You have to
10 go country by country.

11 Q Well, is anyone, Amazon, for example, or Apple,
12 for example, selling your SVOD product, the Boomerang
13 product that you recently launched?

14 A No, I don't think so.

15 Q That's being done directly by you?

16 A I believe so.

17 Q Are you selling any other products digitally,
18 directly to consumers?

19 A In the United States?

20 Q Yes, sir.

21 A I believe FilmStruck.

22 Q And what is FilmStruck?

23 A FilmStruck is a classic movie service or art movie
24 service.

25 Q Meaning what?

1 A Well, it's kind of -- it's like an HBO but focused
2 on films that are classic films or more niche films. And
3 you pay a subscription fee for that. And we've started to
4 try to do that, and we have a few hundred thousand
5 subscribers.

6 THE COURT: Is it different than TCM?

7 THE WITNESS: Not -- it's similar to TCM, but TCM
8 we don't have direct.

9 BY MR. SCOTT:

10 Q Now, in addition to the products that are being
11 developed for you to offer directly to consumers for them to
12 consume video, is Warner Brothers developing any digital
13 products to take to market?

14 A Yes.

15 Q And are they developing products for you to take
16 to market or for others?

17 A I think both, but I'm thinking of the one that we,
18 Warner, would take to market or with Turner.

19 Q And what is that product, sir?

20 A That's DramaFever.

21 Q And what is DramaFever?

22 A I believe it was a Korean subscription VOD
23 service, and I think our reason for buying it had, in
24 addition to whatever it had on, was to try to get the
25 technical capability to deliver the subscription VOD

1 services like Boom and FilmStruck.

2 Q Are you familiar with the product -- and I may get
3 the pronunciation off here, but Machinima?

4 A Yes. Machinima it is called.

5 Q Machinima?

6 A Yes.

7 Q And what is that?

8 A That's another niche digital service that
9 Warner Brothers has. I don't think -- it's a small one.
10 And I'm not -- I think it has games and that kind of thing
11 on it. I'm not all that up on what it has.

12 Q Do you know if that's a direct-to-consumer
13 offering by your company?

14 A I don't. I think it either may be that and third
15 parties do it, or we maybe try to do it ourselves.

16 Q And is Warner Brothers in the process of preparing
17 an over-the-top service using DC Comics content?

18 A I'm not, you mean separately from the kids and
19 family Boom stuff?

20 I think they are trying to figure out if they
21 could do that, yes.

22 I'm not sure that's still going, but I think so.

23 Q All right, sir.

24 And are there sufficient projects going on, where
25 your people are trying to develop products to take digitally

1 to market through the Internet on a direct-to-consumer basis
2 that may be some that you're just not aware of?

3 A Might there be some digital products I don't know
4 about?

5 Q Yes, sir.

6 A I would like to say no, and I will say no; but
7 maybe I'll be proven wrong.

8 Q All right, sir.

9 A I hope not.

10 Q Prior to the merger, was this a significant push
11 on behalf of your company to try to develop these digital
12 products?

13 A Well, not in relation to what else we're doing,
14 no.

15 Q Well, how much -- you know, from your standpoint,
16 though, you had people who were trying to develop products
17 to let you go directly to consumers?

18 A Yes.

19 Q And you're investing money in doing that?

20 A Yes.

21 Q And you saw the benefit of that as being able to
22 get subscription money back from them, correct?

23 A Yes.

24 Q And also, to be in a position, where you could
25 start developing your own library of customer information?

1 A Yes.

2 Q You can set that aside.

3 In the course of your work at Time Warner, have
4 you run across the term "content intelligence"?

5 A No.

6 Q Never heard that?

7 A I don't remember it.

8 Q The information pertaining to customers that you
9 would like to have access to mine for various things,
10 do you have a term for that?

11 A Could you ask it again.

12 Q Sure.

13 You've indicated that there's a body of
14 information out there regarding customers that you think
15 would be useful to you for a variety of reasons, correct?

16 A Yes.

17 Q How do you refer to that? What do you call that
18 body of information?

19 A I don't -- that's what I call it. I don't have a
20 name for it.

21 Q All right, sir.

22 Do you have in front of you the exhibit that was
23 used with you by counsel, D122?

24 A Yes.

25 Q Okay. And do you also have the other exhibit that

1 he used with you, DX0746A?

2 A Yes. Yes, I do.

3 Q All right, sir.

4 Let's start with that one, DX046A.

5 And if you were to turn to the second page that
6 actually has the chart on it, the graph.

7 A Yes.

8 Q Now, had you seen this before counsel showed it to
9 you?

10 A Yes.

11 Q And in what context had you seen it?

12 A In our various meetings on advertising and how
13 we're doing in advertising.

14 Q All right, sir.

15 And the heading here says, "Digital Ad Spend
16 Expected to surpass TV in 2017."

17 And then under that it says, "U.S. Advertising
18 Share."

19 Do you see that?

20 A I do.

21 Q And then we have the graph here.

22 Are you familiar with the information that is
23 supposedly reflected by that graph?

24 A You mean, do I think I know what it's about?

25 Q Yes, what it means, what those percentages relate

1 to.

2 A Yes.

3 Q And what is that, sir?

4 A The share of U.S. advertising through these
5 respective outlets.

6 Q The share, as a percentage of the whole?

7 A Yes, I think so.

8 Q And how did you define, for this particular
9 document, the whole?

10 A Well, I didn't make the document, but I understand
11 it to be all the advertising spending, I think, at retail in
12 the United States.

13 Q All right, sir.

14 And does the document, where the percentages
15 change and whatnot, does it, in any way, account for any
16 changes in the total pie of advertising spend during this
17 period?

18 A I don't think -- maybe -- probably not.

19 Q So this would be reflecting percentages of
20 whatever the total number is, though the total number may
21 have fluctuated over time?

22 A Yes.

23 Q So, for example, where we're showing that you have
24 gone from -- to 32 percent of the U.S. advertising share,
25 that could be 32 percent of a bigger number than was being

1 spent in advertising years earlier?

2 A Yes, it could be, and probably is.

3 But I shouldn't speculate.

4 Q Sir?

5 A I shouldn't speculate, so I'll answer your
6 questions.

7 Q Now, with this document, I believe that you
8 indicated in your testimony -- and please correct me if I've
9 not this wrong -- that at least some period of time here,
10 that you thought that the TV revenues were pretty steady?

11 A TV ad revenues?

12 Q Ad revenues, yes.

13 A State -- well, I said steady as share of
14 advertising.

15 Q All right.

16 And so that would be in the years that we're
17 talking about from, say, 2000, until you peak in 2015 at
18 roughly 31 percent?

19 A It looks to me as though it peaks in 2012.

20 Q All right. As a total -- as a percentage?

21 A Yeah.

22 Q Whatever that spend happened to be?

23 A Yes.

24 Q And during that time period where your percentage
25 seems to go down and the online goes up, do you know whether

1 or not total spend in advertising for online and TV combined
2 increased?

3 A Yes, I think it did.

4 Q And did it --

5 A TV and online?

6 Q Yes, sir.

7 A Yeah, I think it went up.

8 Q For both?

9 A Yep, in total.

10 Q And do you know to what degree?

11 A A lot more in online than TV.

12 Q But you don't have -- you don't know what the
13 total numbers are?

14 A Not right here today.

15 Q And do you know whether, from a standpoint of
16 total dollars earned by traditional pay TV, whether those
17 dollars went up, down, or stayed flat during the period
18 shown on this chart?

19 A I think they were in the -- I think they were flat
20 and much flatter than they had been five years before, which
21 is what this other chart, I believe, shows.

22 Q So is it your understanding, then, from the period
23 2000 to 2019, while Internet advertising was increasing, the
24 advertising spend with traditional TV, pay TV, such as, you
25 know, with your company, stayed level or flat during that

1 period?

2 A No, that's not a correct statement.

3 Q And total amount of dollars spent?

4 A You're mixing a bunch of things here.

5 Q Okay. Well, let's back up and see if we can try
6 it again.

7 A If we're doing this chart, which we're not
8 supposed to show, this is about the total share of
9 television advertising. That's not cable TV. That's all
10 television. And it's about the share in relation digital.
11 It's not about the total numbers, so that's what it shows.

12 Q All right, sir.

13 MR. SCOTT: Your Honor, may I approach with
14 another document? We'll get it to counsel immediately.

15 THE COURT: Yes.

16 Give it to counsel first.

17 MR. SCOTT: We will.

18 Do you have a problem of me showing it to the
19 witness?

20 MR. PETROCELLI: This is a demonstrative from an
21 expert report, Your Honor. I don't think -- he can show it
22 to him, but I don't know how far he can go with it.

23 THE COURT: You can come up. I'll take a look at
24 it.

25 Sir, you have to step down and sit in that chair

1 over there.

2 (Sealed bench conference)

3 THE COURT:

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5 MR. SCOTT:

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11 THE COURT:

12 MR. SCOTT:

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15 MR. SCOTT:

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21 MR. PETROCELLI:

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23 THE COURT:

24 MR. PETROCELLI:

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THE COURT:

MR. SCOTT:

THE COURT:

(Open court)

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

BY MR. SCOTT:

Q If you want, sir, take a look at DXD0122, which is
the chart that counsel showed you.

THE COURT: DX746A?

MR. SCOTT: No, sir. This is the other one that
they showed, the bar chart.

THE COURT: The bar chart. Okay.

All right.

BY MR. SCOTT:

Q You remember discussing that with counsel a while
ago?

1 A Yes.

2 Q Do you know who prepared this?

3 A No.

4 Q Now, a couple questions about the document itself
5 to see if you can help illuminate a couple points.

6 I notice one of the companies on here is named
7 Baidu.

8 Do you see that?

9 A Yes.

10 Q Do you know who that is?

11 A It's a Chinese company.

12 Q And what do they do?

13 A They do what Amazon does.

14 Q In China?

15 A Yeah.

16 Q Do they have any presence here in the United
17 States?

18 A I'm not -- I don't know.

19 Q Do you know if they sell any pay TV?

20 A No, they don't sell pay TV. They may sell
21 advertising.

22 Q But do you know of them selling advertising here
23 in the United States?

24 A I'm not sure.

25 Q Now, the document itself is headed "Global

1 Advertising Revenue by Selected Companies."

2 Do you see that?

3 A I do.

4 Q Who picked the companies --

5 A I don't know.

6 Q -- to put on here?

7 A I don't know.

8 I don't know who made the chart.

9 Q When did you first see the chart?

10 A During, in the last month.

11 Q All right, sir.

12 And have you discussed that chart with anyone
13 other than your lawyers?

14 A No.

15 Q Now, this chart, down at the bottom here, has
16 Time Warner and shows it's -- well, strike that. Let me
17 back up a minute and ask another question here.

18 Do you know why global advertising revenue was
19 selected when we're talking about U.S. markets and a U.S.
20 merger?

21 A Well, that's -- I'm sorry. You're not correct
22 about that.

23 Our company competes all over the world, and we
24 are very concerned with international markets. They're
25 about a third of our revenue. So we compete all over the

1 world, so does AT&T.

2 Q All right, sir.

3 Now, the market shows here at the bottom,
4 beginning in 2000 -- well, strike that.

5 The chart contains both what would be TV-type
6 companies, you, CBS, those types of companies, as well as
7 companies that are more computer Internet plays?

8 A Well, I can't entirely agree with that
9 characterization because some of these, like Google, the
10 biggest one, they're a big television provider too.

11 Q How many television subscribers do they have?

12 A Viewers or subscribers.

13 Q Subscribers?

14 A They've got millions in their Google - YouTube
15 package. And they have, I think, over a billion connected
16 to their advertising platform.

17 Q How many people do they have that subscribe to
18 pay TV from Google? How many subscriptions?

19 A I don't know. It's in the millions.

20 Q And you know that from what document or what
21 source?

22 A Oh, I just know it from competing with them.

23 Q Now, do you know what percentage of Google's
24 advertising is from search engines being used, as opposed to
25 pay TV?

1 A No.

2 Q Would it surprise you to learn that it's over
3 85 percent of their advertising is related to search
4 engines, as opposed to anything related to delivering
5 television content?

6 A Well, I think, while it wouldn't surprise me,
7 I think you're making a false silo there, because I think
8 when they're doing search, they're merging into all kinds of
9 businesses, including media consumption and selling ads for
10 that.

11 Q Well, let me ask you this. If I go -- I'm a
12 subscriber of a content package that has your TV channels in
13 it, say -- let's pick TNT. And I turn on TNT and I see an
14 ad. That ad is going to be delivered to me linearly in a
15 break in the program, right?

16 A Yes.

17 Q And do you have the capability, through your
18 channels and allowing people to access ads, through doing
19 searches on the web?

20 A Do we?

21 Q Yeah.

22 A No.

23 Q And from the standpoint of your channels and
24 delivering advertising, do you have some limit on how much
25 advertising you can put through a particular program or

1 channel?

2 A In terms of the number of slots, number of
3 commercials that go on the channel?

4 Q Yes, sir.

5 A Yes. If you put only commercials on, too many,
6 then consumers won't watch the channel.

7 Q Is there a benchmark that you use on how many
8 commercials you're willing to sell on a particular station
9 or channel?

10 A Yeah. We're trying to get -- there's too many
11 now. We're trying to reduce the number of those; that's why
12 we want to make the commercials more valuable, so we don't
13 have to have as many commercials. And everything you watch,
14 you'd want to be interested in the commercial.

15 Q And how much time in a typical program, TV show,
16 is allotted for commercial slots?

17 A Prime time or daytime?

18 Q I'll take both.

19 A A little more in daytime. Prime time, somewhere
20 between 12 and 15 minutes an hour.

21 Q That's daytime?

22 A That was prime time.

23 Q Or prime time?

24 A 12 in prime time. 12 to 15 in daytime.

25 Q So the amount of commercials that you can sell is

1 limited by the amount of space that you're willing to
2 reserve within the programs in order to have it available
3 for the commercials?

4 A You're saying in terms of how many units of
5 commercials we sell --

6 Q Yes.

7 A -- or how much dollars we get for the commercial?

8 Q How many units?

9 A It's limited by, if we have too many, we hurt our
10 viewing of the commercials, yes.

11 Q And over the last five years, has the number of
12 slots available for commercials over your networks
13 increased?

14 A Yes.

15 Q And to what degree?

16 A I'm not exactly precise on it. But it's been
17 trending up, and that's part of the problem.

18 Q And so the 12 to 15 minutes for daytime and the 12
19 for prime time today is the top end of that, of what you've
20 been offering?

21 A Well, I'm thinking on our networks, I think that's
22 about the range of it, yeah.

23 Q And the fee that is paid for the commercial is
24 based on the number of eyeballs that you can deliver through
25 that program?

1 A Well, it used to be.

2 And now, less so.

3 Q All right.

4 But still eyeballs do come into play; your ratings
5 come into play with that?

6 A Well, the ratings come into play; that's the
7 eyeballs.

8 But the value that the advertisers see is, in
9 those eyeballs is a big fluctuating thing, because, as we
10 said this morning, advertisers don't want to put
11 advertisements in front of your eyeballs if they know you're
12 not interested in what the commercial is trying to sell you.

13 Q All right.

14 And in the context of that, though, is that true
15 of all advertisers? Are there, for example, some
16 advertisers who have a more generic product that want broad
17 coverage and want as many people to see the ads that they
18 place as possible?

19 A There's a spectrum, but I don't think any
20 advertiser has a product -- maybe I'll think of one that
21 they want everyone -- well, there probably are some they
22 want everybody to see.

23 I think what you're missing is that this
24 competition for advertising isn't just about television. If
25 the advertisers have a more efficient way to give you a

1 commercial message while you're searching, that takes away
2 revenue from television.

3 And I think the idea the TV ads only compete with
4 other ads in a TV program from a digital company is wrong.

5 Q Well, let's take a look at the numbers here in
6 examining what you just said.

7 If you look at, from 2012 to 2017, the global
8 advertising revenue that your attorneys put on here and show
9 from you start at 4.3 billion in 2012, go to 4.5 billion in
10 2013, 2.5 -- 4.5 billion in 2014, 4.6 in 2015, 4.7 in 2016,
11 and 4.7 in 2017.

12 So you've gone from a low of 4.3 billion in 2012
13 to 4.7 billion in 2017, correct?

14 A Yes. I would call that flat, roughly flat.

15 Q All right, sir.

16 And so does that -- from the standpoint of you
17 losing revenue, it's gone slightly up over that time frame,
18 correct?

19 A Absolute dollars?

20 Q Yes.

21 A Not inflation-adjusted.

22 Q Either way you want to do it.

23 A About flat.

24 Q Now, the document that we have here also reflects
25 Comcast's global advertising revenue over this time frame,

1 does it not?

2 A Yes, it does.

3 Q And Comcast's revenue over this time period goes
4 from 11.5 to 10.6 to 11.8 to 11.4 to 12.9 to 11.3.

5 Again, would you call that relatively flat?

6 A Yes.

7 Q And it's -- both of these are relatively flat,
8 when we have at the top showing -- information showing
9 Google and Facebook growing exponentially, right?

10 A Yes.

11 Q Now, in this time frame that we're showing here
12 where Comcast numbers are flat, this is after they did a
13 vertical merger where they melded distribution and content,
14 right?

15 A I think it must be, yes.

16 Q And is it your understanding that by doing so,
17 they got access to information about customers that you
18 think you'll get post-merger with AT&T?

19 A Well, there, I don't know, because I don't know
20 what they're allowed to do or what they're doing.

21 Q All right, sir.

22 So you don't know what data they've got. You just
23 know they have some data about customers?

24 A No. I know what data they've got at Comcast.

25 I don't know what use they can or do or are allowed to use

1 at NBC.

2 Q Based on what?

3 A I don't know.

4 Q Oh, okay.

5 A Whether they get that data. I don't know whether
6 they're allowed to use it. I don't know whether they're
7 using it.

8 It's really not what I do. I compete with them.
9 I don't run their company.

10 Q But you talked to them about trying to buy it from
11 them at one point, the data?

12 A The data at Comcast?

13 Q Yes.

14 A Yes.

15 Q And your people told you that they didn't think it
16 was useable to do what you wanted to do, right?

17 A No. Let me make sure -- please, if I could make
18 sure everybody understands this.

19 We think they do have very valuable data.

20 What they offered to us, we didn't think was what
21 they've got really. And we didn't think they're willing to
22 let us have what we thought would be useful. We never got a
23 chance to go in and talk with them about what they had to
24 see if we could make use of it.

25 Q So you think they have valuable data that could be

1 used to do the type of things that you claim you will do
2 post-merger, from the standpoint of dealing with customers?

3 A Well, they don't have certain things that AT&T
4 has, but they have other kinds of things like their Comcast
5 cable system has a lot of set-top boxes and a lot of direct
6 customers. They know what they're doing on television.
7 They know what they're doing through other set-top boxes.

8 Q And are you seeing any signs that they have
9 improved their sales of digital advertising by the use of
10 the data that you're sure they have regarding customers and
11 their likes and dislikes.

12 A I couldn't point it out to you.

13 I think that from what I hear from the Turner
14 people, the NBC network group that competes with Turner is
15 doing better at ad sales against Turner than they were three
16 years ago.

17 Q But we're not saying that there's any real uptick
18 in Comcast sales in the numbers your lawyers put together,
19 are you?

20 A Well, I don't know whether our lawyers put it
21 together. But whatever these numbers are for Comcast,
22 I'm not sure what other ad revenues are in there.

23 Q And sitting here today, you know of no prohibition
24 on NBCU of providing Comcast their data to use or Comcast
25 providing NBCU their data to use in pursuing advertising or

1 customer relations, do you, sir?

2 A I don't know what's in their Consent Decree, so
3 I don't know what they're allowed to use.

4 THE COURT: I'll see counsel.

5 (Sealed bench conference)

6 THE COURT:
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12 MR. SCOTT:

13 MR. PETROCELLI:
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15 THE COURT:

16 MR. SCOTT:

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19 MR. SCOTT:

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22 MR. PETROCELLI:

23 THE COURT:
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25 MR. SCOTT:

1 (Open court)

2 THE COURT: All right. We're going to take an
3 afternoon recess.

4 You remain a witness under oath. Refrain from
5 discussing your testimony with anyone so far or what it
6 might be when you return.

7 See you back in ten minutes, okay?

8 DEPUTY CLERK: All rise.

9 This Honorable Court will now stand in a brief
10 recess for -- he said 15 and then he said 10. So be
11 prepared to come back into the courtroom in about 5 minutes.

12 (Recess from 3:40 p.m. to 4:00 p.m.)

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

18 THE COURT: The witness remains under oath.

19 You may proceed when you're ready.

20 MR. SCOTT: Thank you, Your Honor.

21 BY MR. SCOTT:

22 Q Mr. Bewkes, if the merger is permitted, are the
23 channels that you have within TNT and Turner going to be
24 sufficient to generate enough customer data for you, the
25 merged company, to be able to successfully compete for

1 digital advertising with the Googles and Facebooks of the
2 world?

3 A With just those two channels?

4 Q Yes, sir.

5 A Well, we have more channels than that.

6 Q Well, all of your channels, then.

7 A Oh, okay.

8 I think it would be a good start.

9 Q Well, that wasn't the question.

10 The question is, are you, and if the merger is
11 permitted, with the channels that you have, going to be able
12 to generate with those channels, sufficient customer
13 information to actually compete for digital advertising with
14 the Googles and Facebooks of the world in a meaningful way?

15 A Well, I have to correct the question, because I
16 don't understand your question.

17 Your question -- I believe what you're asking is,
18 is there enough data generated at AT&T, with its 150 million
19 households, to give us a data set that we could use to sell
20 advertising on our channels that would be more successful
21 with advertisers than what we have today and make us able to
22 compete with Google and Facebook in selling ads? I believe
23 the answer to that is yes.

24 Q And in the digital world, you know AT&T has
25 broadband holdings, correct?

1 A AT&T has -- excuse me?

2 Q Has broadband holdings?

3 A Broadband --

4 Q Broadband holdings, yes. They have broadband
5 assets?

6 A Yes, they do.

7 Q Are they using the information that you've alluded
8 to as being so valuable in competing with Facebook and
9 Google of digital advertising with that data today, using
10 their current assets?

11 A Well, that's a bit different because they're
12 connecting people through those. They don't, I believe,
13 sell -- they do sell a certain amount of advertising. And I
14 think the answer is, yes, they do use that information in as
15 competitive of a way as they can at DirecTV and at other
16 parts of AT&T to sell advertising to advertisers with
17 digital capabilities to it. And I think they've improved it
18 a lot since they put DirecTV into AT&T when they acquired it
19 a few years ago.

20 Q If that's the case, can you explain why, in the
21 10K for AT&T, there's no reference, there's no line item to
22 having revenue from advertising of any kind?

23 A I don't -- I don't -- I'm not familiar with the
24 AT&T 10K.

25 Q All right., sir.

1 Let me ask you, if the merger doesn't happen,
2 do you have any concerns about or fear of being able to get
3 your programming, your content on AT&T's cellular networks
4 going forward?

5 A Well, I have some -- we'd have great hopes to get
6 them on their wireless platform if that wireless platform
7 became a robust video platform.

8 I'd have the same concerns I have about getting
9 our channels onto every distribution platform, whether it be
10 cable, satellite, TelCo, virtuals. We always have those
11 concerns.

12 Q And that's just being a supplier to AT&T?

13 A As a supplier to AT&T.

14 Q Yeah.

15 Would your concern be higher if you were also a
16 competitor for distribution of content with them about
17 whether you could get your materials on their cellular
18 Website?

19 A Could you say it again. I didn't --

20 Q Sure.

21 If you were, in addition to a supplier of content,
22 also a competitor of theirs for the delivery of content,
23 would that raise your concern higher about whether you would
24 eventually be able to get on the network?

25 A No.

1 Q So the concern you have as a supplier would not
2 carry over or be affected if you were also a competitor?

3 A I'm not sure I understand your question.

4 Q Well, I thought you said --

5 THE COURT: I don't get it either. Why don't you
6 restate it.

7 MR. SCOTT: Sure.

8 BY MR. SCOTT:

9 Q I thought you would have concerns as a supplier of
10 content as to whether you could get on their wireless
11 networks.

12 A What I'm saying to you, if I understand your
13 question, is we have concerns about keeping -- getting our
14 networks on and keeping them on for every distribution
15 platform there is. So if it has video and video networks,
16 we want to have our networks on it. That's a concern.
17 That's what we were talking about this morning.

18 Q But if you were a vMVPD, would you be concerned
19 about the possibility of being able to get on their wireless
20 networks?

21 A No.

22 Q All right, sir.

23 MR. SCOTT: One last document, Your Honor.

24 THE COURT: Yes.

25 MR. SCOTT: Provided to counsel has been marked as

1 PX0053.

2 May I approach, Your Honor?

3 THE COURT: You may.

4 MR. SCOTT: And may I approach the witness?

5 THE COURT: Yes.

6 BY MR. SCOTT:

7 Q All right, sir.

8 Now, I believe you testified at one point, you
9 rejected a merger overture from Fox, correct?

10 A Yes.

11 Q And that was for a variety of reasons, one of
12 which was that Fox didn't offer enough?

13 A I didn't testify to that yet, but are you asking
14 me that now?

15 Q Yes, sir.

16 A We thought it was not a good offer and not worth
17 what they said it was.

18 But the reason we rejected it was primarily that
19 it didn't accomplish the strategic games we've been talking
20 about.

21 Q And you stated publicly after that that you
22 weren't looking for a merger. But obviously if someone came
23 in with a financial package that was favorable to your
24 shareholders and a good deal for them, you'd have to
25 seriously consider it?

1 A Yes.

2 Q And AT&T came in with a number that was
3 significantly higher than what Fox offered, correct?

4 A About 50 percent.

5 Q And AT&T, for your company, is offering over
6 \$100 million?

7 A A hundred --

8 Q \$100 billion?

9 A \$100 billion.

10 Q \$100 billion?

11 A If you include the assumption of debt, yes.

12 Q And the per-share amount of this is \$107.50 per
13 share; is that correct?

14 A At the target price, yes.

15 But since some of the consideration is in AT&T
16 stock, the actual amount will depend on what the AT&T stock
17 price is when the merger closes, if it closes.

18 Q So give or take, it's about, what, the stock share
19 per price?

20 A The AT&T price?

21 Q Yes, sir.

22 A 36. That --

23 Q I'm sorry. Go ahead.

24 A No. I think it's around -- I'm not sure what it
25 is today.

1 Q In addition to the shares of AT&T stock, you're
2 going -- will be paid another cash amount for each share?

3 A Well, when we struck the deal, if AT&T stock was
4 in the collar, that the deal hoped that would be the value
5 of AT&T, half of the consideration would be stock in AT&T
6 for our shareholders and half would be cash.

7 Q And the final -- the amount at the time of the
8 deal was \$107.50 per share, but that may vary depending on
9 whether stock is at the time the deal closes?

10 A Yes.

11 Q Using -- now -- and that would have been -- using
12 the 107.5 per share, that would have been a 35 percent
13 premium over your trading price at that time?

14 A I think it was a little higher than that, but in
15 that neighborhood, yeah.

16 Q And the share price then, trading on October 19th,
17 2016, was \$79.24?

18 A That sounds right.

19 Q Now, let me ask you to take a look at the document
20 in front of you, which has been marked as PX0553. It's
21 headed "United States Securities and Exchange Commission
22 Statement of Changes and Beneficial Ownership."

23 Do you see that?

24 A Yes.

25 Q And at the bottom, it seems to have been signed by

1 you on February 28th, 2018?

2 A At the bottom?

3 Q Bottom right-hand corner there, right under the
4 boxes.

5 A Signed by me.

6 Q No. Signed for you, by Brenda Karickhoff for
7 Jeffrey L. Bewkes.

8 A Yes.

9 Q On February 28th, 2018?

10 A Yes.

11 Q And this reflects that you, I guess, cashed in
12 some options?

13 A No, I don't think. That's not right.

14 Q Well, what does it -- what did happen on that
15 date?

16 A These charts go -- I'll tell you what I think
17 happened.

18 So I had some options that were granted to me ten
19 years ago that were going to expire. And if they expired
20 and I did not exercise them, they would be gone. They're a
21 part of our incentive for all of our executives to try to
22 make the company more valuable.

23 So before they expired, I wanted to exercise them,
24 and I needed to pay for them. So you have to pay for the
25 price of them, which is listed here.

1 And then you have to pay for the tax that is
2 imputed on the gain between that historic price and the
3 price when you exercise.

4 So that's what I was doing and swapping shares to
5 pay for both the tax and for the exercise price.

6 Q All right, sir.

7 A I didn't sell any shares.

8 Q All right.

9 And this document reflects, after -- it appears to
10 reflect, and you can tell me if I'm wrong under
11 nonderivative securities acquired, disposed of, or
12 beneficially owned, that at the end of this, you owned
13 1,0294,302 shares of stock in Time Warner?

14 A I believe I did -- maybe. I'm not sure.

15 Q Well, that's what reflected on the document,
16 correct?

17 A Okay. Well, then that must be right.

18 Q Then below that, it also says you have another
19 40,000 shares that are in a savings plan, correct?

20 A Yes.

21 Q Do you own any additional stock in Time Warner?

22 A Yeah, I think I do.

23 Q Do you know how many shares?

24 A Maybe another million shares.

25 Q And then do you have any more outstanding options?

1 A I do.

2 Q All right, sir.

3 And when do those come due? When do they vest?

4 A Well, they have been granted every year for the
5 last ten years. So they vest over four years, generally,
6 and then they expire ten years after they were granted.

7 Q So based on the stock that you currently own, if
8 the deal closes, you will be -- have in hand stock valuing
9 somewhere north of \$200 million?

10 A When you say it would be worth that, after the
11 close?

12 Q If you get the amount that is in the contract,
13 yes.

14 A Probably true, yes. I suspect that's right.

15 Q And do you know how many more options you have
16 outstanding?

17 A I don't have it right here for precision, but at
18 least 3 million, maybe 4.

19 Q All right, sir.

20 And did those vest if you retire?

21 A They vest if I retire. They vest if I'm
22 terminated without cause. And they vest if I'm terminated
23 without cause regardless of whether there's a merger or not.
24 It's always the same whether there's a merger or not.

25 Q And with those shares, you will walk away, if you

1 cash in when the deal closes, with a premium of roughly 30
2 to 35 percent over the trade value as of the day the deal is
3 announced?

4 A I believe that's right.

5 Q And for the 1.3 million shares that are reflected
6 on the document, that would be a benefit to you of somewhere
7 around \$40 million over the trade price as of the day the
8 deal was announced?

9 A I think so, yes.

10 Q And then as -- more with the other shares that you
11 have, the other million or so?

12 A I hope so, yes.

13 Q All right, sir.

14 And when the deal, if the deal closes, are you
15 planning on staying around and help run the company?

16 A Well, we were talking about that. But
17 I understand, and I expect, that when the deal closes, I
18 will be terminated without cause.

19 MR. SCOTT: All right. No further questions,
20 Your Honor.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION

23 BY MR. PETROCELLI:

24 Q Why will you be terminated without cause?

25 A Well, as is common in these kinds of mergers,

1 although it doesn't happen every time, we're moving towards
2 a fairly long-term project to get Time Warner and AT&T
3 integrated and do all these things we've been talking about.

4 And I'm 65. My contract that I have, as
5 Time Warner right now as an independent company, runs for
6 another two and a half years, roughly. And I had planned to
7 leave at that point, unless the board were to remove me or
8 relieve me before that, which they can always do.

9 So I'm really on the older side to take this out
10 for another five or ten years. And because of what we're
11 undertaking, because we have a new company and we have all
12 these new capabilities at AT&T we'd like to harness, we've
13 all decided -- Randall, me, John Stankey, who's sitting in
14 the courtroom -- that we need a new management team that can
15 go for this next era.

16 And so our expectation, which we've announced, is
17 that John Stankey will take over what is currently my job
18 running the Time Warner companies.

19 Q If you're terminated, then, without cause in the
20 event the merger closes, will you then earn less or more
21 money than had you not been terminated and your contract was
22 performed to its natural expiration?

23 A Well, if I'm terminated without cause, either by
24 Time Warner as an independent company or by Time Warner-AT&T
25 as a merged company, the same result occurs. I get the same

1 severance and amount of stock bonus, whatever it is.

2 All of that, because I'm -- if I'm terminated
3 without cause, is less than what I would earn if I were able
4 to complete my contract.

5 If I complete my contract, which probably would
6 happen if we didn't do the merger, I would earn more money
7 for 2019 and 2020. Roughly, I would get about -- I'm going
8 to lose about half of what that will be between now and
9 then.

10 Q So you'll lose about half of what you otherwise
11 would earn if the merger closes and you're then terminated
12 without cause?

13 A Yes.

14 Q And in terms of your stock ownership, that's been
15 acquired over how many years?

16 A Ten years. There was another ten years before
17 that, but those things have -- I've got -- some of the
18 shares I own, I got 20 years ago.

19 Q So just over the course of your long career as
20 part of your compensation incentive?

21 A Yes, because the idea --

22 Q Right.

23 A -- is you try to get your executives to have the
24 same interests as the shareholders so they serve the
25 shareholders and try to get the shareholders the best

1 long-term return that you can give.

2 Q And if the merger does not close, you still have
3 those stock shares, and they'll be worth whatever the market
4 says they're worth, right?

5 A Yes.

6 Q And are you getting any special kicker if this
7 merger closes?

8 A No.

9 Q One other question.

10 On these new digital properties, Machinima -- what
11 else did we talk about? FilmStruck, Boomerang, was that it?

12 A Boom, I think it's called.

13 Q How many total subscribers do you have for all of
14 those, just ballpark?

15 A Probably less than half a million.

16 Q In all?

17 A Yes.

18 Q So an insignificant number?

19 A Yes.

20 Q And given your testimony about all the things your
21 company has been doing to try to meet the competitive
22 challenges, is it fair to say that, absent the merger, it
23 will take longer, be harder, and cost more money?

24 A Yes. That's why we judge this merger to be in the
25 interests of our shareholders and our companies going

1 forward.

2 MR. PETROCELLI: Okay. Thank you.

3 Nothing further.

4 THE COURT: Recross, limited to redirect, do you
5 have any?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: Okay. You're excused.

8 THE WITNESS: Thank you, sir.

9 THE COURT: You may step down.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 MR. PETROCELLI: We call John Stankey.

13 THE COURT: All right.

14 DEPUTY CLERK: Please raise your right hand.

15 (Witness is placed under oath.)

16 DEPUTY CLERK: Please be seated.

17 MR. PETROCELLI: Thank you.

18 May I approach, Your Honor?

19 THE COURT: You may.

20 MR. PETROCELLI: Hand some to clerk and to
21 counsel.

22 Thank you.

23 JOHN STANKEY, WITNESS FOR THE DEFENDANTS, HAVING BEEN DULY
24 SWORN, TESTIFIED AS FOLLOWS:

25

1 DIRECT EXAMINATION

2 BY MR. PETROCELLI:

3 Q State your full name for the record, please.

4 A John Thomas Stankey.

5 Q Mr. Stankey, by my count, you testified in
6 deposition leading up to today five days for a total of
7 1,900 pages. I can assure you that we won't be replicating
8 that today. I'm going to try to get through this more
9 quickly so we can try to complete your testimony. Okay?

10 A I would appreciate that.

11 THE COURT: You can count on it. And he knows.

12 MR. PETROCELLI: Take the words out of my mouth,
13 Your Honor.

14 BY MR. PETROCELLI:

15 Q Okay. So can you just tell His Honor what your
16 current position is.

17 A I'm currently responsible for the planning and
18 integration of the Time Warner merger.

19 Q And if the merger closes, what will you be doing?

20 A As you heard Mr. Bewkes say, I'll be following in
21 his footsteps to run the Time Warner company.

22 Q Okay.

23 How long have you been working at AT&T?

24 A About 33 years.

25 Q And can you briefly describe your roles at the

1 company over the years.

2 A Sure.

3 I started out doing things that people do at the
4 telephone company, including handling requests to repair
5 people's telephone service and requests to install telephone
6 service, worked through a whole bunch of other jobs in
7 various operating roles, to increasing levels of
8 responsibility.

9 Sometime around probably 1993, I took my first
10 turn at trying to get into the pay-TV business. And it was
11 really one of my first experiences trying to build a product
12 by committee through, we had literally a network being built
13 and, through contract, a separate, independent affiliate
14 trying to build the product and do that. It didn't turn out
15 so well. It failed. And ultimately, I had to move on.

16 I've done a variety of things since then. I've
17 run the wholesale business, which is the part of AT&T that
18 sells AT&T's network to our competitors to basically
19 complete their networks.

20 I've run all of our business sales organization,
21 where we sell parts of our network to support companies like
22 Bank of America or General Motors or a local barber shop.

23 I ran the regional telephone companies at one
24 time. These are the companies before the divestiture of the
25 Bell system that were the operating companies like Pacific

1 Telesis, Ameritech, Southwestern Bell.

2 Took my second turn at the pay-TV business
3 sometime in 2003 as the Chief Technical Officer of the
4 company and built the capability to actually deliver TV
5 service over phone lines.

6 I've been the CIO. I've been the Chief Strategy
7 Officer. I've run corporate development. I ran all of
8 operations and administration for the company.

9 And then right in 2015, took over the DirecTV
10 company, which was effectively the consumer market segment
11 of AT&T that had our pay-TV product, our fixed broadband
12 product that goes into homes, and our wireless service for
13 consumers.

14 Q Prior to acquiring DirecTV in 2015, what was your
15 pay-TV business?

16 A We had a product called U-verse, which, as I said,
17 I started sometime in 2004 developing. And we went to
18 market in 2006. And it delivers TV service over plain old
19 telephone lines. It was a relatively new technology that
20 enabled us to do that.

21 And by the time we bought DirecTV in 2015, we had
22 about 6 million customers on that service.

23 Q And where does U-verse provide service?

24 A It only provides service in parts of our, what
25 used to be our former telephone company operating territory.

1 It's effectively parts of 21 states.

2 Q Were you involved in a decision to acquire
3 DirecTV?

4 A I was.

5 Q And what were the reasons?

6 A We'd been trying to get into pay TV for quite some
7 time, and the reality is it's a scale business. And even at
8 6 million customers, going from a dead start of zero to
9 6 million, we still hadn't achieved the kind of scale we
10 wanted to achieve.

11 And we felt that buying DirecTV was a way that we
12 could get that scale.

13 And the scale specifically in this case was to be
14 able to improve our cost structure on buying programming
15 content that we've talked a lot about in this courtroom, and
16 that by getting to that scale, we would substantially change
17 our cost structure.

18 In addition, we intended to pick up a lot of new
19 customers that we could work on migrating into newer ways to
20 serve them with new products.

21 We weren't terribly enamored with the satellite
22 business. In today's mobile world where people are moving
23 around, putting a satellite Dish on somebody's house and
24 having to be stationary to watch video isn't the optimal
25 going-forward technology.

1 But we did like the customers, so we felt like we
2 can invest to migrate them into newer ways of serving them.

3 Q So when you talked about achieving scale, did you
4 mean by that by having more subscribers adding DirecTV to
5 U-verse, you could give bigger volume discounts and pay less
6 for the programming?

7 A Correct.

8 We went from being a 6-million-customer company to
9 roughly 25 million and change. And that made us one of the
10 largest pay-TV providers in the United States and gave us
11 some flexibility on our content and programming cost
12 structure to be able to do things like offer the DirecTV Now
13 product.

14 Q And was it one of the objectives in acquiring
15 DirecTV, which, as you said, is a satellite business, to
16 essentially be able to provide television programming in the
17 mobile environment.

18 A Yeah.

19 It was -- when I came in, one of the clear
20 objectives was to start to transform the way we deliver
21 video to customers, make the video far more portable, start
22 to emphasize the fact that we could use our 100 million
23 wireless subscribers to be able to do things differently,
24 which is dramatically different than Comcast.

25 One of the reasons our data is different is we

1 have a lot of mobile subscribers who do lot of things that
2 generate data, and we started investing very heavily to do
3 that.

4 Q And when you acquired DirecTV, did you understand
5 that it was a mature and, to a certain degree, declining
6 asset?

7 A Absolutely.

8 In fact, all the estimates we did for the board
9 talked about the fact that the pay-TV industry, as we knew
10 it today at that time, was peaked and it was going to start
11 coming down.

12 And we knew that we were in a foot race to
13 basically start to change the product to be able to catch
14 the next wave, whatever that next wave was going to be. And
15 we didn't expect that we were going to continue to see
16 traditional pay-TV subscribers going like this.

17 And so we fully understood this was kind of a
18 renovation project.

19 Q And did, after you acquired DirecTV, did you take
20 DirecTV out to the mobile environment?

21 A We did.

22 We really did that in a couple of steps. One is,
23 we immediately began negotiating rights to get the content
24 that DirecTV bought licensed to be able to deliver it to
25 people over their mobile phones, their tablets, their PCs,

1 in addition to their TVs.

2 Q To be clear, DirecTV, as well as U-verse, already
3 had contracts with these programmers to offer their
4 programming through your pay TV systems, right?

5 A That's correct.

6 Q Did you need to get new contract rights from them
7 in order to essentially offer the same programming through
8 DirecTV Now?

9 A Well, in the case of DirecTV, to get mobile
10 rights, we needed to do a fair amount of work on the old
11 DirecTV contracts just to be able to deliver the content to
12 the mobile phones.

13 The second phase was to be able to do DirecTV Now,
14 which was a whole new set of contracts entirely, on top of
15 that.

16 So there was quite a bit of contract work going on
17 in tandem right after the close of the transaction in 2015.

18 Q And how long did it take for your company, after
19 you acquired DirecTV, to launch DirecTV Now?

20 A It -- when we started the effort -- we closed
21 DirecTV in July of 2015. Probably by about October of 2015,
22 I had set the direction on what we were going to do with the
23 organization. And we launched DirecTV Now about a year
24 later, early November of 2016.

25 Q And how's that business going?

1 A It's going well. We're over a million, million 2
2 subscribers. So for a year's worth of work, little over a
3 year, that's pretty good scaling.

4 But, look, it's starting. I mean, there's things
5 we'd like to have seen gone better. And frankly, the
6 platform we built to deliver DirecTV Now on was intended for
7 a first product. We'd like to do several other products,
8 and we have not had the opportunity to start offering new
9 iterations beyond what the initial product was.

10 Q Did you try, after you acquired DirecTV, to go get
11 additional rights from programmers to do innovative things
12 for the benefit of consumers?

13 A We've been -- yes, we did.

14 I spent -- at the time we closed the DirecTV
15 transaction in July of 2015, one of the immediate things I
16 started to focus my time and attention on, investing a
17 significant amount of money to build this new platform
18 I just talked about, but also meeting directly with many of
19 the large programmers to try to figure out whether we could
20 get rights to do some things differently.

21 The rights for DirecTV Now were one set of
22 discussions. But we were also trying to build opportunities
23 to do some more unique things, scale content into the mobile
24 environment, change the size of packages, see if we could
25 build products on a win-win basis that allowed us to use our

1 data to help them change their advertising.

2 There was a whole host of things that were
3 discussed, and I immediately started having those
4 conversations with programmers after we closed that
5 transaction.

6 Q Can you identify some of the programmers that you
7 met with?

8 A The most frequent -- it was real clear, if we
9 didn't get Fox and Disney going the right way, it was going
10 to be difficult to kind of get the momentum we wanted to get
11 on this.

12 So I spent lot of time with Fox and Disney. I
13 then ultimately spent time with Discovery, Scripps, Viacom,
14 but I really wanted to see if we could get the two leaders
15 moving.

16 Q And what was the reaction of the programmers to
17 what you wanted to accomplish in securing of additional
18 rights?

19 A After several cycles of these conversations, it
20 became apparent to me -- well, in some cases the
21 conversations were courteous and maybe even slightly
22 constructive.

23 I can recall a dinner that I was having with an
24 unnamed Fox executive early in 2016. And after the dinner,
25 I walked out of the restaurant, realized the path to

1 cooperation of innovation was not going to come through AT&T
2 with these particular companies.

3 Q What did you do after coming to that view?

4 A I started asking myself, what should the business
5 do to respond to the changing environment that we've heard
6 about in this courtroom, the dawn of these new services
7 coming from the likes Netflix and Google? The fact that
8 there were new virtual MVPDs coming into the market,
9 competition was at an all-time high.

10 And I literally started spending some quiet time
11 understanding, was this the trigger? Was this the time that
12 AT&T was going to have to reconsider its longstanding view
13 of, we'd rather not be in the content development business,
14 and did we need to do that to get to the level of innovation
15 we were going to have to achieve out in the market.

16 Q And in terms of the industry headwinds and the
17 changes that we have heard, including just now from
18 Mr. Bewkes, did you make similar observations about Google
19 and Facebook on the advertising side, for example?

20 A There's no -- Mr. Bewkes did a very nice job
21 earlier, and I'm not going to belabor if it lining up the
22 dynamics that were going on in advertising and clearly the
23 dynamics that were going on in how products were changing.

24 One thing I would probably add on is how I was
25 thinking about things at that time and still think about it

1 today, is the market that we're competing in is the market
2 for the customers' time and attention.

3 And the entertainment services that they consume
4 command a lot of their time and attention. And
5 historically, it's been through traditional TV services.
6 The phrase "couch potato" comes from people sitting on a
7 couch and watching TV.

8 The time-and-attention competition now from the
9 likes of Facebook, from the likes of Google, from the likes
10 of Netflix, they're distracting people from other things
11 they used to do.

12 And somehow, we have to build products that
13 continue to command customers' time and attention. That's
14 the battle here.

15 Q Is this what ultimately led to a recommendation by
16 you to your boss that you should consider purchasing a
17 content company?

18 A That exploration process, a couple weeks of quiet
19 study of my own, some analysis, trying to understand what it
20 would mean to put a media company together with a
21 distribution company, thinking about the talent that was
22 required, a variety of other things, I put a framework
23 together that caused me to start those discussions with
24 Mr. Stephenson.

25 Q Mr. Randall Stephenson was your boss?

1 A That's correct.

2 Q And still is, right?

3 A Yes, he is.

4 Q What was Mr. Stephenson's reaction?

5 A We, over the course of a couple weeks, engaged on
6 a lot of different ideas and thoughts, talked about a
7 variety of different options of how we could go about doing
8 that, looked at some broad-scale numbers in the industry.
9 And he felt like the time was now for us to start thinking
10 about what those steps are.

11 THE COURT: You can approach.

12 (Sealed bench conference)

13 MR. WELSH:

14

15

16

17 MR. PETROCELLI:

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1 THE COURT:

2 MR. PETROCELLI:

3 THE COURT:

4

5 (Open court)

6 THE COURT: All right. You may proceed.

7 MR. PETROCELLI: Yeah.

8 BY MR. PETROCELLI:

9 Q So what was Mr. Stephenson's reaction to your
10 point of view?

11 A He was receptive to it, and we talked about a
12 couple of options. And he and I started doing some work to
13 start socializing and preparing the board for some steps we
14 were going to take to explore things further.

15 Q And was it your thought and idea conveyed to
16 Mr. Stephenson that you should go out and buy a company like
17 Time Warner?

18 A No, that wasn't the, where we initially started.

19 We had laid out a couple of different options.
20 And our initial discussions were about how could we maybe
21 move and do something that will oftentimes be referred to in
22 the M&A game as a string of pearls.

23 Q What does that mean?

24 A One small transaction, another transaction,
25 another transaction over time, possibly.

1 Q Why didn't you pursue that?

2 A Well, we did. We actually did start to kind of
3 explore whether or not that made the most sense.

4 And as we were in the front end of that process
5 and looking at it, things in the industry continued to move
6 incredibly quickly.

7 And, frankly, I think the board was incredibly
8 supportive of the direction, given what they were seeing
9 going on in the market and was encouraging us, as is not
10 uncommon, with the AT&T board to lean in and try to be a
11 little bit more aggressive.

12 And I think Mr. Stephenson took that to heart.
13 And at that point, he started to explore whether or not a
14 more significant step would be the right step for us to
15 take.

16 Q And that step was ultimately the acquisition of
17 Time Warner?

18 A That's correct.

19 Q And that effort was led by Mr. Stephenson?

20 A Right.

21 He went and started to frame some of that --
22 I think Mr. Bewkes characterized the time frame in his
23 testimony and started to have some discussions to see if he
24 could frame that and what made sense and started to move
25 that forward.

1 Q And did you work closely with Mr. Stephenson in
2 that regard?

3 A I did.

4 Q Okay. I'm going to let Mr. Stephenson take it
5 from here when he testifies tomorrow. So let me just sort
6 of skip a little bit of this story and ask if you were
7 involved in the meetings with the board in which the
8 acquisition was proposed and discussed.

9 A I was.

10 Q And the board reacted with a vote of approval?

11 A It did, with lot of deliberation and discussion,
12 yes.

13 Q A number of meetings and calls and discussions?

14 A Correct.

15 Q And Mr. Stephenson can help walk us through some
16 of that.

17 But can you just summarize for the Court what the
18 principal reasons were for recommending the transaction to
19 the board?

20 A Sure.

21 Let me build off of what Mr. Bewkes said.

22 AT&T has customers. We have technology and
23 distribution platforms to get content out to customers.

24 We have the knowledge of how to manage a customer
25 cycle, how to find them, how to recruit them, bring them in.

1 What we don't have is, we didn't have programming.
2 We didn't have the flexibility to change the product, and
3 that's what the guys on the other side had.

4 And they were looking at it saying, well, we don't
5 have customer data. We don't have customer arrangements and
6 information. And so it was bringing this together with this
7 that was the fundamental discussion with the board.

8 And the intent of doing that was to yield exactly
9 what Mr. Bewkes alluded to in his frustration that I alluded
10 to when I was talking about the difficulty getting
11 programmers to adjust, was to build a better product, was to
12 get in and innovate faster and quicker, not do it by
13 contract.

14 And that's where we chartered our course.

15 Q And was advertising part of the objectives and
16 motivations for doing the deal?

17 A We absolutely believed -- going all the way back
18 to the time I was in corporate strategy in 2012, I started
19 doing work for the company on the importance of having a
20 more-robust advertising revenue stream in the business.

21 We do a great job of selling subscriptions to
22 customers. We're not as strong at putting advertising in
23 place. We felt like we had to diversify our revenue streams
24 significantly for a variety of reasons, one being that many
25 of our new competitors, like Google, don't charge anybody

1 anything for what they do. They do it all on advertising.

2 We have an entire generation coming up -- my
3 children are a good example, my young adult children -- who
4 they don't believe they should pay anybody for what they do.
5 They should get it all for free.

6 So we knew we were going to need to have the
7 capability over time to be able to market and sell products
8 with advertising-supported models.

9 Q Now, if the court approves this merger, you
10 indicated your role will be to run the company, right?

11 A That's correct.

12 Q Can you give the Court just a couple of examples
13 of the kinds of things that you envision doing by owning,
14 controlling the Time Warner content that you can't do now?

15 A Sure.

16 First of all, I would put the caveat on this that
17 once teams come together, I think the right ideas will come
18 out and the right collaboration will occur.

19 But I give you some very simple examples of how we
20 think about extending assets.

21 So there was a discussion around CNN earlier and
22 how many advertising slots you can get in to CNN. I think
23 there's a way to expand that. There's a way to expand that
24 by taking CNN out to the mobile device and re -- there's
25 very high-quality content at CNN that a lot of people don't

1 have a chance to see because they don't sit around in their
2 living room. They've got to work during the day. They've
3 got to do things.

4 Now, what can we do to re-stack that and re-edit
5 it and get it out to mobile phones so that during a
6 15-minute break, you can get your set of news clips and
7 information that's tailored to you and what you like to see
8 in your particular geography that you find compelling and
9 interesting.

10 And that actually expands the amount of
11 advertising that can be sold. It isn't capped and fixed, as
12 was being suggested in Mr. Bewkes' cross-examination.

13 It's a new customer at a new moment doing
14 something that wasn't being done otherwise. And it's your
15 interaction with CNN at that time, which means that that can
16 be a highly targeted and directed ad that could be very,
17 very profitable but very tuned to your likes and dislikes.

18 So that would be an example of something we could
19 do on a foundation of capabilities that the two businesses
20 have together.

21 Q You mentioned couch potato, and I plead guilty to
22 the charge. Is there anything in this for people like me?

23 A Sure. Absolutely.

24 So for somebody like you and being
25 sports-oriented, you probably want to see more content

1 that's higher resolution in sports programming. So in the
2 case of that, we want high-resolution television in our
3 distribution business, selling TV to customers.

4 Customers want what they call 4K. It's the next
5 step in visual clarity for TV.

6 Higher resolution means it's easier to watch. You
7 can see more things. Unfortunately, the industry has been
8 very slow to adopt it. We've been working very hard with
9 different programmers to try to get what's called 4K content
10 to take out to the customers.

11 By the controlling the source of it now in some
12 cases, like the NBA games, like the NCAA games that we've
13 been talking about in this courtroom, and controlling the
14 distribution, we can move more 4K out to enjoy that couch
15 potato experience with better visual examination.

16 Q How does owning Time Warner content help you do
17 that?

18 A Well, we get to control both sides to that. We
19 get to make the decisions on how the content is either
20 produced or how the games are shot and then move it out over
21 a distribution platform that we control the technology on so
22 that we can do more of that.

23 Q And these are the kinds of things that you would
24 encounter bargaining friction in attempting to do by
25 contract with unaffiliated companies?

1 A These are the things that traditionally move very,
2 very slowly in the media and distribution business, yes.

3 Q And can you give, perhaps, one more example of an
4 innovative use of content, for example, involving
5 interactivity?

6 A Sure.

7 And probably not up Your Honor's alley, certainly
8 not up my alley, necessarily, but we've got a lot of people
9 who are watching content now and using social networks with
10 them. They're watching content, and they like to integrate
11 things so that they can share their experiences over
12 Facebook.

13 Maybe they're watching something in particular
14 that they like and they to clip it and send it to their
15 friends. And it's a funny scene from a comedy sketch the
16 night before, share it with people, put it on there. Maybe
17 even while they're watching it, they want to have a social
18 conversation, texting back and forth.

19 Or possibly while they're watching an NBA game,
20 they want to have a second screen experience while they're
21 watching on the big screen. They want to be able to
22 interact with a simulcast that goes on with stats and
23 information on their mobile phone so that they're getting
24 information about the play calling in the game.

25 These are all interactive and social opportunities

1 that, as you control the entire distribution stream and you
2 actually have the content, that you can begin to prove in so
3 that the industry can start to implement many of those
4 things.

5 Q Okay.

6 So I'd like to now turn to some more specific
7 benefits that you believe will accrue to the company.

8 You were here when Dr. Shapiro testified, right?

9 A I was.

10 Q And you heard his testimony that except for the
11 elimination of double marginalization, he assumed, for
12 purposes of his bargaining model, that there would be no
13 efficiencies or benefits as a result of the merger?

14 A Yes. I think he said the number was zero.

15 Q Zero.

16 And he also said he was relying on other
17 government experts to address those issues, right?

18 A He did.

19 Q Okay.

20 Now, do you agree that the number is zero?

21 A I do not. I've been involved in eight major
22 merger integrations and transactions during my career with
23 AT&T, directly involved. And my experience is that putting
24 two companies of this stature and size together does yield
25 efficiencies and benefits.

1 Q Okay. So can we talk -- that's what I want to
2 turn to now is the identification and description of what
3 we'll call merger synergies, okay?

4 A Okay.

5 Q And have you been involved, since the announcement
6 of the merger back in 2016, in identifying and even
7 quantifying some of these merger efficiencies?

8 A I have. I've been involved in a number of
9 different ways since the initial announcement on up to
10 today, but I've been involved consistently throughout that
11 time.

12 Q And at some point during the last year and a half,
13 have -- you actually were named the head of the integration
14 process?

15 A In August of 2017, I became primarily responsible
16 for that as my sole responsibility.

17 Q And can you describe to the Court how this process
18 works, where you identify and quantify synergies.

19 And I want to be clear. These are predictions of
20 what might happen as a result of the merger, right?

21 A Yes. By default, they have to be predictions
22 because the businesses haven't come together yet. But
23 they're predictions that are built on our past experience
24 and the knowledge of individuals who have oftentimes done
25 things like this.

1 Q And how many times have you done this before, did
2 you say?

3 A I personally have been directly involved in the
4 leadership and execution of eight transactions, I hate to
5 say.

6 Q And they pursued this same type of process that
7 you're now about to describe?

8 A We've -- every time we've done a major
9 transaction, we worked this process.

10 It's been fine-tuned and honed a little bit over
11 the years, but it's ostensibly the same process.

12 Q So can you describe for His Honor the process that
13 you have been involved with in directing for estimating or
14 predicting the kind of synergies that will result as a
15 result of the merger.

16 A Sure.

17 The process -- I'll abridge this.

18 But it starts before the transaction is even
19 announced to the public.

20 Part of the due diligence process of deciding to
21 do the transaction is evaluating whether or not there are
22 benefits to putting the two companies together. Are the
23 benefits significant enough that there's going to be value
24 returned to the shareholder?

25 And so when the M&A groups that are doing the

1 study are actually evaluating the target company, they build
2 models around where there can be benefits and efficiencies.

3 And they take their best shot at doing that in a
4 very short period of time. An M&A process is usually a
5 small number of people, very contained to a couple of weeks.

6 I think you heard Mr. Bewkes say they started
7 talking in August; they closed the transaction in October.
8 So it's a confined period of time.

9 But they take their best shot at that. They're
10 generally very conservative at the first run, because you're
11 representing to the board: Is there some minimum threshold
12 that we can hit that we know we're going to get a return to
13 the shareholder and benefit?

14 And that's called version one, but it's generally
15 sometimes ten iterations or so will be done during that
16 period of time. But it keeps its iterating.

17 You then announce the transaction. You close it.

18 And now, you can do more, a little bit more. You
19 still have limits on gun jumping, but we've set up a process
20 that allows us to work collaboratively with the other
21 company that we're acquiring, under legal supervision, to
22 begin to do some more joint planning so you can get more
23 information and data.

24 Q Is that called a parlor room process?

25 A Parlor rooms are part of that process.

1 It allows you to exchange certain information that
2 has been legally reviewed and scrubbed.

3 It allows you to have exploratory meetings between
4 experts on both sides.

5 In this catchball goes on back and forth.

6 In this case, with this transaction, over 15,000
7 manhours of work went into this; 2000 documents, roughly,
8 being produced; probably similar number of meetings were
9 held, about 2,000 meetings.

10 And these iterations are done on what these
11 benefits can be.

12 So it's a naturally evolving process, as more data
13 and more information is collected.

14 And then we'll -- hopefully, at some point, we'll
15 close this transaction.

16 When we close it, we'll iterate again, because now
17 we don't have to have legal separation on lot of this stuff.
18 We can get in and look at operating data and get more people
19 involved.

20 So we'll do yet more revisions and more versions
21 to this plan.

22 Q And when you have estimated synergies through this
23 process in the past, have you been able to achieve them?

24 A We have a really strong track record of delivering
25 on what we commit. Frankly, our shareholders wouldn't

1 tolerate us doing more transactions, if we didn't do that.

2 Our track record, especially on what I would call
3 expense-oriented synergies is very, very strong.

4 The most recent transaction with DirecTV, we
5 generated over \$2 billion of value and expense savings. By
6 the time we got to the end of 2017 -- that's a run rate,
7 recurring every year -- that was higher than what we had
8 predicted.

9 So we do very well on that.

10 On the revenue side, sometimes it's a little bit
11 more challenging. They're a little bit harder to predict.
12 There's a little more variability and products and services
13 that we don't exactly know. But we still do reasonably well
14 on those types of things.

15 But we're also fairly conservative in how we
16 provide guidance and information, both on expense and
17 revenue synergies out to our investors as part of the
18 process that Mr. Petrocelli [sic] was asking me about.

19 Q What is a revenue synergy?

20 A A revenue synergy would be selling a product, some
21 business opportunity to do something, to sell a product or
22 service that we're not able to sell today with the
23 businesses separate.

24 Q What is a cost synergy or savings?

25 A Removing an expense from the business.

1 If we have two accountants and we only need one
2 and a body comes out because of that, then there's an
3 expense savings.

4 Q And is there anybody responsible for tracking and
5 being accountable for the synergies that you estimate?

6 A Yes.

7 Part of the process that we use is these estimates
8 are all built into business plans. So they go from being
9 estimates to, once the transaction closes, they're
10 decomposed and installed into people's operating plans.

11 Executives like myself who have financial
12 objectives associated with them, our performance and our
13 bonuses are based on achieving them.

14 And there's an organization, a group of
15 individuals that, in this case in a post-close environment,
16 would report to me that literally go out monthly and track
17 our performance to those objectives, roll up our performance
18 around them, report out to the senior leadership team, roll
19 them up quarterly, and report out to the board on what our
20 progress has been on achieving those. And that's been our
21 rigor that we've used in every transaction to ensure we
22 achieve our objectives.

23 Q So will you be ultimately responsible for the
24 synergies and reporting them to Mr. Stephenson and to the
25 board?

1 A I will.

2 Q And what happens if you don't achieve them?

3 A Not very good things, so...

4 Q Okay.

5 A It obviously directly impacts my compensation
6 because it goes into my financial targets that I'm paid on.
7 And if it's really, really ugly, it will impact my longevity
8 with the company.

9 Q Well, hopefully, that won't happen.

10 Let's take a look at the one exhibit that I'm
11 going to show you, which is Exhibit 658 --

12 MR. PETROCELLI: -- which is what has been
13 referred to, Your Honor, as version 41 of this process of
14 estimating and describing costs and revenue synergies.

15 But because it's a lengthy document and I want to
16 move the whole document into evidence, I'm only going to
17 address the witness to one page. That's page 92. And
18 I have that in the binder as a separate document marked as
19 Exhibit 658A, since it's just easier to look at that one
20 page than this big, thick document.

21 And I'm going to move this document into evidence
22 right now, Your Honor. We discussed this prior to the
23 commencement of evidence in this case. We had -- there was
24 an objection. We had argument. And Your Honor ruled that
25 this comes in to demonstrate the company's belief in these

1 predicted synergies.

2 So with that, I move all of Exhibit 658 into
3 evidence, but I only want to address the witness to 658A,
4 which is the single-page handout in the binder.

5 THE COURT: Mr. Welsh, do you have any objection?

6 MR. WELSH: I want to make sure that it's clear
7 from the prior hearing on this that the document is being
8 admitted not for the truth of the matter but just for state
9 of mind.

10 Is that correct?

11 MR. PETROCELLI: The way Your Honor put it was for
12 the truth of the company's belief in the matters estimated
13 and predicted. But not for the truth that they were -- that
14 they will, in fact, occur.

15 THE COURT: State of mind of the company.

16 MR. PETROCELLI: Yeah.

17 THE COURT: Time of the deal.

18 MR. WELSH: We would continue to believe and
19 maintain our objection that there's hearsay and double
20 hearsay within the document. It does not qualify as a
21 business record. So I just wanted to make sure the record
22 was clear on that.

23 THE COURT: All right.

24 MR. WELSH: Just for clarification purposes,
25 because I was not following the single page, is the whole

1 document coming in?

2 MR. PETROCELLI: Yes. I move the whole document
3 in.

4 MR. WELSH: But you're only asking about one page?

5 MR. PETROCELLI: Correct.

6 MR. WELSH: Thank you, Your Honor.

7 MR. PETROCELLI: Under seal, Your Honor, the whole
8 document?

9 THE COURT: Yes. Under seal and for the limited
10 purpose stated.

11 MR. PETROCELLI: Yeah.

12 (Defendants' Exhibit DX658
13 received into evidence
under seal.)

14 BY MR. PETROCELLI:

15 Q And now, can you pull out Exhibit 658A. You have
16 that there?

17 There's also one in the -- you have it.

18 A I'm with you.

19 Q You're with me.

20 So what I'd like you to do now is I want you to
21 walk through the different categories for the Court on both
22 the cost side and the revenue side. And can you begin by
23 telling the Court what the total amount of synergies is
24 that's estimated and when they will begin to occur.

25 A Sure.

1 And I'm going to move in and out of some material
2 that's public and nonpublic. So I'm going to go from
3 numbers to obtuse here.

4 Q Okay.

5 A So let's start on the left side of your page where
6 you see it says, "Estimated Cost Synergies."

7 And you'll notice that the, there's an initial and
8 a current estimate. The current estimate is from the
9 iterations of the work. So it's the most current view we
10 have, and it shows \$1.5 billion of run-rate cost savings by
11 the year 2020.

12 Q What does that mean exactly?

13 A So once we hit the year -- it's actually three
14 years after close of the transaction. Since we assume we'd
15 close this in 2017, it will probably be a little bit later
16 in 2020 or 2021.

17 But it means that by that period of time, there
18 will be one and a half billion dollars of expenses removed
19 from the run rate of the combined businesses as a result of
20 the transaction.

21 Q Does that mean each year?

22 A That means each and every year succeeding.
23 So it's in -- it goes on and on.

24 Now, there are several categories.

25 Q Before you go to the categories, could you give

1 the total on the revenue side.

2 A Sure.

3 If you go to the right side of the page, you'll
4 see those other bars over there. And you'll notice that
5 we're going to talk about the black ones, because those are
6 net of implementation costs.

7 There is a current estimate of \$1 billion of
8 revenue synergies that will occur, again, three years after
9 close, and they will recur every year after that.

10 Q So that comes to a total of what?

11 A 2.5 total billion dollars of improved annual run
12 rate.

13 Q Starting?

14 A Three years after close of the transaction.

15 Q So for now, that would be approximately?

16 A 2021, I'm going to guess, by the time we get
17 through this drill.

18 Q Okay.

19 Now, could you then describe, generally, for the
20 Court, what the categories of cost savings are, starting
21 with the first one, marketing?

22 A So we'll work on the left side of the sheet first,
23 and I'm going to go obtuse here because these are not broken
24 out publicly. So I will point you to the first one, which
25 is marketing.

1 Obviously, you move to the second column to see
2 what the amount is that's in that particular category. It
3 starts with the dollar sign and the 5.

4 And that particular category on cost savings is
5 primarily driven by the fact that as we put the two
6 businesses together, we have two very large companies that
7 buy a lot of advertising in the marketplace today. AT&T,
8 you probably as you sit at home, you see advertising for
9 mobile phones and pay-TV services to promote our products
10 and services.

11 And if you're at home, you might see things like
12 Warner Brothers advertising new movies that they're putting
13 out or new series that are premiering on HBO to drive
14 subscriptions.

15 AT&T has had experience of late working down
16 advertising costs by buying at scale.

17 We've worked with advertising agencies to look at
18 what we can do on that combined spend, and we believe
19 there's a substantial amount of money that can be driven out
20 of the total combined spend of the two companies because of
21 the scale that comes from bringing those together.

22 In addition, there are some other categories that
23 include some more effective buying, some more effective
24 production of advertising work, et cetera, that round out
25 that amount.

1 Q In by "scale," you mean because you're buying in
2 such volume, you can get lower prices?

3 A That's correct.

4 Q Okay. What's the next one?

5 A The second category there is labeled as content
6 and OTT. Again, go to the second column for the dollar
7 amount that's associated with that, which there's largely
8 two drivers here.

9 One is that the current AT&T company spends money
10 on building content that's specific for some of its products
11 that it sells.

12 There's an opportunity to unlock the cost of that
13 content, not incur it, by using fallow content that's in the
14 library of the Time Warner companies. And that fallow
15 content will avoid having to expend the money that AT&T
16 would normally spend to do that work.

17 The second part of that is Mr. Bewkes referred
18 earlier to the fact that the Time Warner company is trying
19 to build platforms to get their services direct to consumer
20 out to their customers, like HBO, and he said it would
21 crash.

22 AT&T has platforms like that, and we've invested
23 in scaled platforms like that. And we believe, when you
24 look at the combined businesses and bring them together,
25 that there's efficiencies that will accrue to having one or

1 two platforms to get that done and concentrating that spend
2 or removing some of the elimination or duplication of it.

3 Q The next category?

4 A The next category is corporate spend. Gave an
5 example of this earlier.

6 When we put the two companies together, both
7 companies have corporate overheads. They both have legal
8 departments. They both have accounting departments. They
9 both have tax departments.

10 We don't need all of those after we put the two
11 together.

12 And so the corporate entities will actually have
13 fewer people involved in them to run both combined
14 businesses.

15 And the head count that's associated with that
16 largely drives that number in that column.

17 Similar example would be after we completed the
18 DirectTV transaction, about 250 million came out of corporate
19 overheads. So you can see that it's the same kind of play
20 we'd be running here.

21 Q The next category, vendor.

22 A Both companies buy a lot of equipment from third
23 parties, about \$16 billion of third-party spend with the
24 Time Warner company. We looked at what parts of that
25 16 billion overlap was similar spends that the current AT&T

1 company makes.

2 So, for example, maybe we both buy copy machines.
3 Maybe we both use delivery services.

4 And then looked at the relative cost per units of
5 what each company is paying for those particular vendor
6 contracts and evaluated how much could be saved by bringing
7 those spends together.

8 So savings on third-party contracts that are in
9 place, and that's the number that's represented in that
10 column.

11 Q And the last category, network IT?

12 A So one of AT&T's businesses is providing network
13 services to people.

14 I mentioned earlier that we provide data networks
15 for Bank of America or General Motors or the Federal
16 Government so phones and computers can talk to each other.

17 The unfortunate part is that Time Warner uses
18 another company other than AT&T for some of their network
19 services and will be able to replace that provider with an
20 AT&T network that will actually reduce the costs associated
21 with their data networks and telecommunications services.

22 In addition, AT&T runs a very, very large and
23 scaled information technology company and organization. And
24 some of the costs that we have bringing the two together
25 will drive some efficiencies on the vendors, the licenses,

1 and the infrastructure that's used to support that.

2 Q Now, can you go to the revenue side.

3 A Sure.

4 Q What's the first one, ad growth?

5 A So this is the hardest one on the page, and
6 I'm sure there will be a fair amount of discussion on this
7 over the next hour or two.

8 You heard Mr. Bewkes talk about the importance of
9 advertising.

10 Again, let's look at the far right-hand column.
11 You'll see the number that's expected there.

12 That number in that far right-hand column has two
13 parts. The first part is what I'll call the easy part, and
14 it will generate a little less than a half of that amount of
15 money on that sheet of paper.

16 Let me pick up where Mr. Bewkes left off. He
17 talked to you about the fact that there are advertising
18 slots in their current programs that they have out there,
19 and they want to be able to sell them for more money.
20 Here's how that might work.

21 If Your Honor was in a situation where he had a
22 relationship with maybe an online provider for gentlemen's
23 clothing, let's say, and you bought things online or you
24 bought -- you went to a retail store and the store knows
25 about your purchasing habits. And that gentlemen's

1 retailer, for example, decided they wanted to advertise on a
2 particular to Time Warner channel.

3 We have first-party data at AT&T where we can come
4 in and that retailer may say, I'm going to give you a list
5 of all the people who have done business with me in the
6 United States. We go and take that list that they provide
7 us and we can go match it back against our customer base.
8 And we can say, how many people do you have on this list
9 that we have as customers?

10 We can then look at that customer list and go say,
11 how many of those customers watch something in common?

12 And lo and behold, we find out that a bunch of
13 people who buy from this gentlemen's clothing distributor
14 watch *Law & Order*.

15 And so we go and say, there's a very obvious
16 thing. If you want to sell bow ties, you can go buy
17 advertising on *Law & Order*. That may be great. We know
18 that there's numbers there. It's probably not all that
19 counterintuitive.

20 But then we also go look and say what we didn't
21 know is we look at these people and we also find out that
22 one of their other favorite shows is *American Gangster*, and
23 *American Gangster* actually sells at a lower price in the
24 market than *Law & Order*. But we can prove to you you're
25 going to get the right number of customers because we have

1 verifiable evidence that that list matches the people who
2 watch that show.

3 And so we can provide value for them in that data
4 that they can't get today because they have no knowledge of
5 that, as Mr. Bewkes said.

6 That raises the value of the advertising we sell,
7 and that's what drives higher yield and improves the
8 advertising business.

9 These are the kind of straightforward things we
10 can do, and there's other subtle things we can do, like we
11 know whether or not you actually watched it, so we can see
12 if you actually tuned in, and tell the advertiser about
13 that.

14 That's the low-hanging fruit.

15 The harder part, you heard Mr. Bewkes mention the
16 fact that there's advertisements that are actually going to
17 specific households.

18 So if somebody is watching the football game, one
19 person may get the beer commercial because they're a beer
20 drinker; the other person may get the Coke commercial
21 because they drink soft drinks.

22 How do you know that? Can you do that?

23 Yes, you can.

24 And the question is, can you do that more
25 dynamically now?

1 Our intent is to invest to build a capability to
2 do that. And you heard Mr. Bewkes allude to the fact that
3 there's the data there. But nobody has built the capability
4 of the platform in the industry.

5 To do what Google and Facebook are doing on the
6 Internet to TV advertising, there's no reason why, when a
7 unique TV stream is showing up on a mobile phone or
8 somebody's TV that you can't put a unique advertisement in
9 there. And that's what Mr. Bewkes talked about in terms of
10 trying to get specific ads to specific people.

11 That's the second part of that that's going to
12 require more time and several years to put in place, but our
13 intent is to invest to do that.

14 Q Is that called the programmatic platform?

15 A It's called the programmatic marketplace or the
16 programmatic platform, and it has a couple different
17 components to it.

18 Q And is the Turner inventory from all the Turner
19 channels, all the commercial slots available for all the
20 Turner channels, of sufficient scale to make this happen?

21 A It's a sufficient scale to get started and
22 demonstrate that, in fact, these improvements can be made in
23 the market and effectively work.

24 It has a broad enough exposure to different
25 demographic profiles, different people.

1 At the end of the day, we need to ultimately get
2 others to come in and want to do the same thing with their
3 advertisement, but prove it on ourselves, demonstrate it
4 works, and then encourage other companies, like Disney, to
5 come in and maybe give some of their inventory in, or Fox to
6 come in and give some of their inventory into the platform.

7 Ultimately, we want to incent others into this
8 programmatic platform.

9 Q Okay. Can you turn to the next category called
10 combined assets.

11 A Sure.

12 Briefly, I think Mr. Bewkes also mentioned that
13 one thing Time Warner didn't have are things like retail
14 stores. They don't have call centers. They don't have
15 applications that they actually support that have customer
16 interaction with them.

17 And by butting the two companies together, we can
18 actually sell more products and services.

19 So an example would be AT&T has lot of customers
20 that use our apps when they're in DirecTV Now. Time Warner
21 has lot of pay-per-view movies. By working through search
22 algorithms and placement on the different screens that
23 customers scroll through, we can sell more movies on demand,
24 more products and services.

25 We can use our retail stores, over 5,000 retail

1 stores at AT&T, to put Time Warner products and services,
2 merchandise, branded merchandise, actually use it to promote
3 the sale of those. We can incorporate Time Warner
4 characters and figures into our advertising that help raise
5 customer awareness of new movies that are coming out to sell
6 more movie tickets and raise attendance at movies.

7 So it's, by putting the two businesses together,
8 one of the types of things we can do to sell more product
9 and drive more revenue.

10 Q And finally the last category, content
11 intelligence?

12 A This is the one that's probably the hardest to
13 pinpoint when. You know, Mr. Petrocelli [sic] says
14 "prediction," there's no doubt there's a degree of
15 prediction in this.

16 It's a new area of the industry that's occurring.
17 We read about how Netflix, for example, is using information
18 on what customers are watching to figure out what content to
19 charter and make and build, what stars to put in shows, when
20 to schedule things.

21 This is a new area. But we have a lot of data now
22 when we put the two businesses together.

23 What we do know is that the businesses separately
24 can't do this today. We don't do programming and content
25 development at AT&T. And as you heard am Bewkes say, they

1 don't have the information on what people are watching.

2 So now, for the first time, this comes together.

3 We can see what folks are doing.

4 Folks who are in the creative process can look at
5 this data and start making decisions around how to avoid
6 making movies that people don't want to watch or putting the
7 wrong stars in or scheduling in a more optimal fashion that
8 ultimately yields better financial results for the business
9 because of that.

10 Q When you use the data, is it done on an anonymized
11 basis?

12 A The data at AT&T, everything is done based on a
13 very explicit privacy policy.

14 Data is handled, depending on the customer's
15 wishes, as to whether they choose to opt in or opt out.

16 It's managed based on those preferences. And
17 there's a very transparent approach to it.

18 We aggregate and anonymize the data for purposes
19 of this work. And in the cases of our approach, this is for
20 our internal use. We're not brokering the data out.

21 Q What do agree of confidence do you have in these
22 predictions?

23 A We have a high degree of confidence. As I said,
24 we've done these transactions many times before. Obviously
25 with this many unique projects, some have highest

1 probability; some have slightly lower probability.

2 But in terms of the abilities of our company to
3 execute on this and adjust to the uncertainties that come
4 up, high degree of probability that we'll work through this.

5 Q When you say "high degree of probability," do you
6 think it's more probable than not that you will be able to
7 achieve these \$2.5 billion in annual synergies?

8 A It is more probable than not.

9 Q Turning to a different subject but related, can
10 you describe to His Honor how the company is going to be
11 structured if this merger occurs.

12 A Sure.

13 There will be four unique operating groups.

14 The one that I'll be responsible for, which is the
15 former Time Warner company or the media company.

16 The legacy core AT&T business, which will be
17 called the communications company. There will be a peer of
18 myself who will have responsibility for all of the
19 telecommunications services, the pay-TV services that we
20 sell to our retail customers like DirecTV. That will all be
21 in the communications company.

22 In between those two, there will be an advertising
23 company. You may have heard that we hired an executive from
24 the advertising industry by the name of Brian Lesser, who
25 will be coming in to run that. He came out of WPP, a large

1 advertising agency, because he's interested in building
2 these new capabilities that we just talked about.

3 And then the fourth entity will be all of our
4 international operations, everything outside of the
5 United States.

6 So those four operating entities will be the core
7 operating entities of AT&T.

8 Q So Turner and HBO will be in, what you called the
9 MediaCo, the business unit that you will be running;
10 is that right?

11 A Turner, HBO, and Warner Brothers.

12 Q And Warner Brothers, yes.

13 And where will DirecTV be?

14 A DirecTV will be in the communications company.

15 Q DirecTV will not be under your jurisdiction?

16 A That's correct.

17 Q That's another executive?

18 A That's correct.

19 My job will be to run the media company and the
20 media assets to their fullest potential.

21 Q Do you anticipate that these companies will
22 operate independently?

23 A They each will have an independent P&L. They'll
24 each have independent responsibilities back to the corporate
25 profit plan and the corporate business plan.

1 Q But if they're operating independently, how will
2 they be able to achieve the synergies as a result of the
3 merger?

4 A So as I said earlier, we have a fairly rigorous
5 process around how we break these objectives out into the
6 company. So when things get built into the plans, action
7 gets taken, many of these objectives will be put down into
8 people's operating plans. And those that require
9 cooperation amongst the groups, the fact that it's in their
10 operating plan will drive that level of cooperation.

11 However, the bulk of these synergies actually rest
12 into the media company to actually make the changes. So
13 there's a substantial amount of them that are contained
14 within the media company, and there's a substantial amount
15 that are between the media company and the advertising
16 company. And we've built the process around how we're going
17 to actually work between the two entities to cooperate to
18 build the right products so that we can ultimately achieve
19 these.

20 MR. PETROCELLI: Okay. We're heading into our
21 stretch run here, Your Honor.

22 THE COURT: What's that mean?

23 MR. PETROCELLI: Well, probably have 15 minutes,
24 1-5. How am I doing on my time?

25 THE COURT: You've done an hour.

1 MR. PETROCELLI: Okay. Well, I'm going to come in
2 below my estimate, unlike my last witness.

3 THE COURT: Okay.

4 MR. PETROCELLI: Okay.

5 BY MR. PETROCELLI:

6 Q We've heard some suggestion in witness testimony
7 that if the merger occurs, Turner and DirectTV might be able
8 to share competitive information.

9 MR. PETROCELLI: Bless you.

10 THE COURT: Thank you.

11 BY MR. PETROCELLI:

12 Q Can you speak to that?

13 A That won't happen. It won't happen on a couple of
14 different fronts.

15 First of all, in existing contracts, customers
16 have, in many instances they have non-disclosure agreements
17 in them, and they restrict the movement of information.

18 Secondly, the reason we separately structure
19 entities within AT&T is we firewall that kind of thing.

20 We have sensitive information all over AT&T today.
21 We sell -- I mentioned I ran the wholesale business, as an
22 example. And I would sell to competitors who compete with
23 our business services group that sells out directly to
24 retail customers like Bank of America and GM. There were
25 hard firewalls. My contracts could never be seen by anybody

1 else in the business.

2 There will be no Turner employees that can gain
3 access to DirectTV carriage agreements and vice versa.

4 Q Let's talk a little bit about some of the
5 government claims since you're going to be the person
6 running Turner and HBO, as well as Warner Brothers.

7 I don't want to have to describe it to you because
8 you've been here in court every day, but you've heard this
9 testimony about a bargaining model and how it could be used
10 to increase leverage and increase prices.

11 Do you think that's likely to happen?

12 A No.

13 Q And you've been on the distribution side, unlike
14 Mr. Bewkes, who has spent his career on the programming
15 side?

16 A Correct.

17 Q And have you been in charge and involved in
18 content negotiations during your tenure on the distribution
19 side?

20 A I have.

21 Q And do you believe that what you heard in this
22 bargaining model, there's any reality to your experiences?

23 A There is no reality to it.

24 The -- as you've heard, there's already very
25 intense and aggressive negotiations occur out of that

1 process. And I expect them to be the same way in the
2 future, and I don't think there's going to be any change.

3 Q In your experience, do you think that distributors
4 will be thinking that Turner has more leverage because
5 Turner and DirecTV are owned by the same ultimate parent?

6 A No.

7 Q And what about with respect to virtual MVPDs?
8 We've heard testimony about virtual MVPDs. And the claim of
9 the government is that post-merger, the company will
10 coordinate with Comcast to harm virtual MVPDs.

11 Can you speak to that?

12 A Yeah.

13 Mr. Bewkes hit the nail on the head. If you're
14 running a media company and you need broad distribution, the
15 last thing you want to do in a business that's got a
16 challenged advertising model is to stop putting customers in
17 front of the advertising product.

18 And so when I talked about buying DirecTV and our
19 need to figure out how to get a very mature product in the
20 right place, part of the way you're going to see content
21 distributed in the future is virtually, over the Internet.
22 You've got to build content that can be distributed that way
23 and seen that way.

24 And if you take that category of individuals and
25 say you're not going to distribute to them, you're not going

1 to have a very relevant media business moving forward,
2 especially a relevant advertising business.

3 Q Is the virtual business model very important to
4 the future of AT&T?

5 A We launched DirecTV Now because we think you've
6 got to be in a position to distribute virtually -- I
7 indicated, have a strong desire to offer another set of
8 products beyond the current bundles and packages we offer on
9 DirecTV Now to do other combinations of content. But some
10 of the bargaining friction is what prevents combining that
11 content with other types of content to sell that way.

12 So we're very interested in starting to push the
13 dynamics on that.

14 Q Does the fact that you're also a wireless company
15 and one of the biggest in the country, does that factor into
16 whether the growth of virtuals is good for your business?

17 A What is underneath everything we do here -- why do
18 we want people to engage in content? We want people to
19 engage in content because, first of all, they like it. But
20 if they like it, they use networks more. They connect to
21 our network. They use their wireless device more. The more
22 you watch, the more you use. The more you use, the more
23 indispensable it is.

24 If we can build really good content and attach it
25 to our network and you think about AT&T as saying, that's a

1 place I not only go to get connectivity, to get my cell
2 phone, but I also get great content, that's going to be good
3 for our business over time.

4 If a virtual MVPD drives one of our customers who
5 buys a wireless phone to use it more because they can take
6 their content on the go, that's what a virtual allows them
7 to do, they can watch it wherever they go and they use their
8 AT&T phone more, that's not bad for us either. We like
9 that.

10 At the core, our biggest business is our wireless
11 business. It's almost two times what we do in the
12 entertainment side of things. It's huge to us. We've got
13 to do things that keeps growing the engagement with our
14 network and our wireless business.

15 Q So following up on that, if a customer is a Sling
16 customer, for example, okay, not a DirectTV Now customer, but
17 subscribes to Sling, is that potentially good for your
18 wireless business?

19 A If they put more usage on the wireless network and
20 it causes them to buy up on data plans or get more devices
21 and connect more things to the network to do that, that's
22 good for our business.

23 Q So does AT&T post-merger have any incentive to
24 slow down the growth of virtual MVPDs?

25 A No. The media company, in particular, wants to

1 get everything out there, and we'll continue to do that.

2 Q Now, what about Comcast? You've heard as part of
3 this theory that your interests would be aligned with
4 Comcast to impede virtuals.

5 Can you speak to that, please?

6 A I really can't.

7 I mean, I can't even imagine it, to be honest with
8 you.

9 Q Why is that?

10 A I don't like Comcast. I haven't liked Comcast.

11 Q Why is that?

12 A I've been competing with Comcast for years. And
13 to the notion that we're going to align with them -- you
14 know, we do battle with them all the time.

15 And I think I mentioned earlier, we're different.
16 And we have a mobile network; that's what different about
17 us.

18 We don't want to cooperate with Comcast to play
19 their game. We want to figure out how we use our mobile
20 devices and our mobile network to change the game and do
21 things differently, not do it the same way they want to do
22 it.

23 Q Didn't you have a dispute with them when they ran
24 a commercial on you that wasn't truthful?

25 A It happens like every quarter. I mean, we're

1 constantly trying to play Whac-A-Mole with them. I'm not
2 going to cooperate with somebody I don't like.

3 Q You heard some testimony from some witnesses,
4 I think one witness in particular, Mr. Schlichting, that
5 post-merger, he -- there would be concern that you might
6 want to blow up their skinny bundle.

7 What do you think about that?

8 A Well, we kind of expected that they might we
9 concerned about that.

10 And when we put the arbitration offer out there,
11 we picked a date that included bundles that were in the
12 market prior to when the Dish Sling bundles went into the
13 market so that they can make sure that those are still
14 preserved and out there in the market. I mean, we're -- I
15 put out money where our mouth is. So --

16 Q We've heard testimony that programmers like to get
17 all of their networks in these offerings. What about a
18 distributor. Is a distributor more open to smaller bundles?

19 A Distributors love smaller bundles. I mean, they
20 prefer smaller bundles, yes.

21 Q And what about post-merger; what does AT&T and
22 your MediaCo see with regard to thinking about smaller
23 bundles?

24 A As I said earlier, when I did the introduction of
25 DirecTV Now, I expected there needed to be additional

1 products and services coming behind it. And most of those
2 aren't getting bigger. They're about how to get smaller
3 chunks together.

4 And I think the future of this industry is going
5 to be a little bit smaller compilations of different types
6 of services. And that's the reality of where we're headed.

7 Q And again, that can inure to the benefit of your
8 wireless network?

9 A It's good for the wireless network.

10 As we structure the offer, if somebody's concerned
11 it happening first at AT&T, we make whatever bundles are
12 available in the AT&T distribution side available as part of
13 the arbitration offer as well.

14 Q Yesterday we heard a witness, Mr. Holanda from
15 RCN, raise a concern that, post-merger, his basic broadcast
16 package could somehow be harmed.

17 You heard that testimony?

18 A I did.

19 Q Can you please speak to that.

20 A Well, I can speak to it from the perspective of
21 how I understand the industry to work. I don't know that
22 I can speak to it from the perspective, per se, of
23 Mr. Holanda's contracts.

24 Q Well, from the former.

25 A So in every contract that we have, every

1 programmer that we buy content from has what's called a
2 penetration requirement.

3 When you agree to pay for content, there's two
4 parts to the price. There's the price that you pay per
5 unit, and there are the percentages of customers that have
6 to get the content. So the price per unit and the
7 percentage of customer.

8 The obvious reason why somebody does that is they
9 don't want to sell you something that you choose not to put
10 out in the market. So they require you to get a certain
11 percentage of customers to use the service.

12 And every distributor on the market deals with
13 price and penetration.

14 We all have, all distributors have a cheap bundle
15 or cheap offer in the market that has fewer programmers in
16 it.

17 We all fight this battle that because there's a
18 penetration requirement, that a minimum number of customers
19 need to get the content, that you bump up against that
20 penetration requirement, that you start to hit it.

21 And when you bump up against it, you can't sell
22 any more of the small packages.

23 So we have a small package. It's not a broadcast
24 package like Mr. Holanda was talking about. But we have a
25 small package that, from time to time, we have to take out

1 of the market, because we've hit the penetration
2 requirement. We've used the 15 percent cushion that you
3 have not to include a basic off-air broadcast network. It's
4 actually even less than that. I'll just use 15 percent here
5 in the room.

6 So what I don't get is, we have a contract with
7 NBCU. We have a contract with CBS. We have a contract with
8 Fox. We have a contract with Disney-ABC. They're all of
9 the same. They have a broadcast network. And other than
10 CBS, they all have basic cable bundles under -- attached to
11 them.

12 Those penetration requirements are all roughly the
13 same on every single one.

14 NBCU doesn't do anything more egregious to us than
15 Fox or than Disney. And we bump up against those pen
16 requirements. Every carrier has that problem.

17 Q So does -- first of all, Turner doesn't have
18 broadcast networks, right?

19 A Turner doesn't have a problem. In that dynamic
20 yesterday, they weren't even part of the bundle.

21 Q You mean the bundle that Mr. Holanda was talking
22 about does not include the Turner network?

23 A No. It's only -- there's no Turner content in
24 that bundle.

25 Q Okay.

1 And speaking of bundling, we've heard some
2 questions about bundling the DirecTV video product with your
3 wireless service. Have you, has your company attempted to
4 do that?

5 A We have. Right after I closed the DirecTV
6 transaction, part of that set of discussions I had with the
7 programmers was about trying to structure programming rights
8 differently for just receiving them on wireless devices at a
9 better price point.

10 And a variety of things prevented that from
11 happening. In some cases, it was MFNs allegedly. In some
12 cases, it was people weren't willing to do it. In some
13 cases, there were some willing players, but we just couldn't
14 get the right group of channels and product together that
15 would make a difference.

16 Q But in terms of selling to consumers, have you
17 attempted to bundle the wireless phone service with video?

18 A We have. Yeah, we have.

19 Q Has that's been successful?

20 A Not as much as we'd like.

21 This is when we sell pay TV, can we get somebody
22 to buy pay TV and wireless together? You know, that would
23 be really good for us if we get new customers for both.

24 When I left the business in September of 2017,
25 August of 2017, less than 3 percent of our inbound customers

1 were buying both together. It was a very small percentage.

2 The problem is, when a customer is thinking about
3 buying pay TV, it doesn't necessarily align for when they're
4 thinking about buying a cell phone or changing their cell
5 phone carrier. They tend to buy pay-TV services -- when
6 they move -- you have your cell phone all the time.

7 Q So you would refer to that as an unnatural bundle?

8 A It's an unnatural bundle. It just doesn't have
9 the same triggers.

10 Q Final subject is arbitration.

11 You allowed Turner to state in its arbitration a
12 binding offer to distributors that AT&T would stand behind
13 it?

14 A Yes.

15 Q Why?

16 A Well, first of all, when this whole thing went
17 down, we clearly had no intention whatsoever to do any of
18 the things that the government alleged, specifically using
19 this merger to raise prices on the Turner content, as you
20 heard Mr. Bewkes talk about.

21 And this isn't a remedy. The arbitration isn't a
22 remedy, because we don't believe that's going to happen.

23 Effectively, we said we're going to put our money
24 where our mouth is. So it's really clear while we're
25 sitting here and everywhere else, that just isn't going to

1 happen.

2 So take away the blackout provision and make sure
3 that everybody understands that we're sincere about that.

4 Q And you heard some testimony about a concern that
5 if a distributor elects arbitration with Turner, that the
6 company might retaliate with HBO.

7 What's your reaction to that?

8 A It's -- I think Mr. Bewkes dealt with that very
9 well.

10 It's not an economically sound decision to make.
11 There's a variety of reasons.

12 We want broad distribution on HBO. After the
13 close of the transaction, trust me, that'll be even a more
14 important focus of this business, to get broader
15 distribution of HBO.

16 You also heard Mr. Sutton talk about that there's
17 certain programming agreements where if you retaliate and
18 you were to do it by going dark, that's not a good outcome
19 for HBO. It could be really problematic to work the
20 customer base back in.

21 But it just doesn't make any sense that you're
22 going to go and take an 85 percent penetrated product and
23 try to use a 30 percent elective premium that only certain
24 customers get that, also, the contracts don't align and try
25 to use that as a way to retaliate against somebody.

1 Q Last question. The government has also alleged,
2 with respect to HBO, that post-merger, the company might
3 want to restrict its use as a promotional tool to harm other
4 distributors.

5 Can you speak to that?

6 A I just said it earlier.

7 I mean, absolutely want to incent broader
8 distribution. And that's our goal, is to put more of it out
9 there, and these distributors are incredibly important to
10 us.

11 I have absolutely no concerns whatsoever that
12 we're going to continue to push HBO to anybody who wants to
13 sell it moving forward.

14 MR. PETROCELLI: Thank you. No further questions.

15 THE COURT: All right. We're going to take a
16 ten-minute recess.

17 You remain a witness under oath in the case.
18 Refrain from discussing your testimony with anyone. You've
19 heard me say it a million times.

20 THE WITNESS: I have.

21 THE COURT: You can step down.

22 All right. We'll come back in ten minutes.

23 DEPUTY CLERK: All rise.

24 This Honorable Court will now take a brief recess.

25 (Recess from 5:32 p.m. to 5:47 p.m.)

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

6 THE COURT: The witness remains under oath.

7 Cross-examination.

8 All right.

9 MR. WELSH: Good afternoon, Your Honor.

10 May I proceed?

11 THE COURT: You may proceed till 6:30 --

12 MR. WELSH: Thank you, Your Honor.

13 THE COURT: -- the witching hour.

14 MR. WELSH: We'll hope the air conditioning
15 cooperates with us.

16 THE COURT: It's already stopped.

17 MR. WELSH: Oh. We won't tell --

18 THE COURT: That's why it has to be 6:30.

19 MR. WELSH: We won't tell anyone.

20 THE COURT: Oh, believe me, I know.

21 CROSS-EXAMINATION

22 BY MR. WELSH:

23 Q Good afternoon, Mr. Stankey.

24 A Good afternoon.

25 Q It's good to see you again.

1 A Likewise.

2 Q Mr. Stankey, let's start off with some
3 preliminaries here.

4 Now, in this trial, you've been AT&T's corporate
5 representative; is that correct?

6 A Yes.

7 Q Okay. So you've been able to sit in court for
8 every day of this trial and listen to the testimony, right?

9 A I have.

10 Q All right. And you've done that, right? You've
11 been here every day listening to the testimony of the
12 witnesses, correct?

13 A I can't promise I heard it all, but I heard most
14 of it.

15 Q Okay. I saw you had pretty good attendance, so
16 I wanted to point that out.

17 Now, Mr. Stankey, previously, you were the CEO of
18 AT&T's entertainment group; is that correct?

19 A Correct.

20 Q Okay. And you moved out of that role. I think
21 you testified about that on direct, right?

22 A Yes.

23 Q And if I heard you correctly, that happened in
24 August of 2017, correct?

25 A Yes.

1 Q So for the past eight months, approximate, you've
2 been working on preparing for the close of this merger; is
3 that true?

4 A Yes, to the extent we could, given the
5 circumstances.

6 Q Right.

7 And I think you talked about them in the
8 deposition that I took of you, and you said that there were
9 things that you couldn't do after a while. So what you
10 ended up doing is working on this litigation, right?

11 A I've been spending time supporting the litigation,
12 yes.

13 Q Yeah.

14 So a big part of your job for the last eight
15 months has been to get this merger proved, right?

16 A My job hasn't been to get the merger approved,
17 per se. I've been working the operational integration
18 issues.

19 Q Well, if it is approved, you're going to be
20 responsible for running the, what's the Time Warner part of
21 the business, if I heard that correctly from
22 Mr. Petrocelli's questions to you; is that right?

23 A That's correct.

24 Q And, again, if the merger goes through and that
25 happens, your compensation is going to increase fairly

1 significantly; isn't that right?

2 A My compensation changes and increases, yes.

3 Q And as it stands now in the recent proxy
4 statement, which I think was March 12th, 2018, that had your
5 compensation at approximately \$10 million; is that right?

6 A It's somewhere in that range; that's about right.

7 Q And, again, if this merger goes through, you'll
8 see a bump with that, right?

9 A A bump?

10 Q An increase in your compensation.

11 A Yes.

12 Q Your total compensation.

13 A My compensation will increase, yes.

14 Q Now, I know we talked about this in your
15 deposition, and I know you made a little bit of a passing
16 joke that you didn't want us to tell your wife about what
17 your compensation was.

18 So we're going to try -- I think your counsel
19 heard it because they've designated that information as
20 being confidential.

21 But I want to hand to you a document that we
22 prepared that would have the figure of your increase in
23 compensation on it, okay, so that we can keep it
24 confidential, under seal?

25 MR. WELSH: Your Honor, this is PX554.

1 May I approach, Your Honor?

2 THE COURT: You may.

3 MR. WELSH: Your Honor, PX554 has been handed to
4 opposing counsel.

5 May I approach the witness?

6 THE COURT: You may.

7 BY MR. WELSH:

8 Q All right. Mr. Stankey, you have --

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

10 THE COURT: You may.

11 BY MR. WELSH:

12 Q Mr. Stankey, you have PX554 in front of you. And
13 you see there's a figure listed there, correct?

14 A I do.

15 Q And is that the amount of your compensation that
16 would be increased by if this merger were to go forward?

17 A I actually couldn't tell you if that's the amount,
18 given the number of moving parts, including the changes to
19 accrued pensions, et cetera. I don't know.

20 Q We spoke in February at your deposition;
21 is that correct?

22 A Yes, we did.

23 Q Let's see if I can help you out with your
24 testimony.

25 THE COURT: This number is the amount of the

1 increase --

2 MR. WELSH: Just the increase.

3 THE COURT: -- of the incentive?

4 MR. WELSH: Yes, the increase. That's correct,
5 Your Honor.

6 May I approach, Your Honor?

7 THE COURT: You may.

8 MR. WELSH: May I approach the witness,
9 Your Honor?

10 THE COURT: Yes, you may.

11 BY MR. WELSH:

12 Q Mr. Stankey, you've been handed the transcript of
13 your depositions, these are for the individual depositions.

14 I'm going to ask you to look at the second of
15 those tabs. This is the transcript of the deposition I took
16 of you on February 16 --

17 MR. WELSH: -- which has been marked for
18 identification as PX581, Your Honor.

19 BY MR. WELSH:

20 Q Mr. Stankey, I'm going to direct you to page 44.
21 Tell me when you're there, sir.

22 A Okay.

23 Q And I'm going to -- I can't say this out loud
24 because it's been designated as confidential by your
25 employer, but I'm going to direct you to page 44, line 24,

1 through 45, line 5, which is my question.

2 And then line 45 -- page 45, line 6 and 7, is your
3 answer. Would you please read those to yourself.

4 A Okay.

5 Q Does that refresh your memory that the number that
6 we have listed here is on -- on PX554 is the number that you
7 provided to me in your deposition on February 16, 2018 as
8 the amount of increase in your compensation if this merger
9 were to go forward? Did you tell us that that day, on
10 February 16th?

11 A For the portions of my compensation that include
12 my base and my short-term bonus --

13 Q Yes.

14 A -- and my long-term compensation, yes, not for the
15 portions of my compensation that include pension
16 calculations.

17 Q Right.

18 So for the portion we're talking about here, the
19 increase amount, which I can't say publicly, though, that
20 was the amount that you testified to that day, right?

21 A Correct.

22 Q And that's what's listed on PX554, correct?

23 A Correct.

24 MR. WELSH: Your Honor, I move for admission of
25 PX554 into the record under seal.

1 MR. PETROCELLI: It's not a document, Your Honor;
2 but if it comes in under the rule of testimony, I have no
3 objection.

4 THE COURT: It will be admitted.

5 (Government's Exhibit PX554
6 received into evidence under seal.)
7 MR. WELSH: Thank you, Your Honor.

8 BY MR. WELSH:

9 Q So, Mr. Stankey, you were asked some questions
10 about the corporate structure of AT&T if this merger goes
11 through. I want to come back to that topic now.

12 If the merger were consummated, I think you said
13 that there was going to be four operating companies and you
14 would be over the media, which was the Time Warner
15 companies, Warner Brothers, Turner, and HBO; is that right?

16 A Correct.

17 Q And then there would be a communications company.
18 That would be led by Mr. John Donovan; is that right?

19 A That's correct.

20 Q Now, again, if the merger were to be consummated,
21 there's nothing, though -- moving forward, there's nothing
22 that would prevent -- that you're aware of that would
23 prevent AT&T from changing course in terms of how it would
24 structure the business; isn't that fair?

25 A Within the guidelines of whatever legal or tax
structures or things we have in place, there's nothing that

1 prevents us from changing.

2 Q Right.

3 So there's no prohibition that you're aware of
4 today that, say, six months after the merger were
5 consummated, if it were, that AT&T would say, you know what?
6 Not such a great idea. Let's just change the structure
7 around?

8 A If there's one thing I know, organizations change.

9 Q Now, again, I'm going to ask you these questions,
10 assuming that the merger were to go forward. You would
11 expect that there will be collaboration -- even under this
12 structure that you've testified about, you would expect that
13 there would be collaboration between the media business and
14 the communications business let led by Mr. Donovan isn't
15 that true?

16 A In what regard?

17 Q Well, I asked you in your deposition whether there
18 would be collaboration between -- you would expect there to
19 be collaboration.

20 Do you remember that?

21 A I would expect that there will be communication;
22 and within the context of how we run the broader AT&T
23 company, there will always be things that we have to team
24 and work on.

25 Q And if in that context, if Mr. Donovan decided he,

1 for his groups, his communications group he wanted to push a
2 certain agenda that he thought was both valuable for his
3 group, that communications group, and valuable for AT&T as a
4 whole, you would consider that as part of what you're doing
5 for the media group, isn't that right?

6 A If Mr. Donovan wanted to talk to me about
7 something he thought was a good idea, of course, I'd sit
8 down and talk with him.

9 Q And you would also consider that if Mr. Donovan
10 came to you with a proposal, even if it were disadvantageous
11 to your media group, if it was good for the overall aspect
12 of AT&T; isn't that right?

13 A Well, the way the business is set up is that our
14 particular organizations are incented to achieve their
15 objective for the good of overall AT&T.

16 Q That wasn't my question.

17 My question is that if Mr. Donovan came to you as
18 head of communications and said, I'd like you to consider
19 doing this, even if that were disadvantageous for your
20 group, if it was good for the overall of AT&T, beneficial in
21 that respect, it's something that you would consider; isn't
22 that true?

23 A Always we're going to listen to what he has to
24 say. And depending on the horizon and time frame and what
25 the initiative is, we'll weigh that.

1 Q What you told us in your deposition was that what
2 matters is the long-term value creation for the shareholder
3 of AT&T. That's the issue, right?

4 A There's no question my fiduciary responsibility is
5 the long-term value creation of the shareholder at AT&T.

6 Q Now, you also -- I think you told us at the time
7 of your deposition that it was your understanding that,
8 again, looking at where things, the planning that's been put
9 in place for post-merger for the structure of this
10 organization, that there would be compensation adjustments
11 made going post-merger for Mr. Donovan and for yourself
12 based on the overall performance of AT&T; isn't that true?

13 A There are compensation elements that we get paid
14 at that are relevant to the overall performance of AT&T, and
15 those numbers are being changed from how we do it today to
16 what we would do in a post-close environment. And it's
17 moving financial amounts into short-term compensation for
18 salary and bonus to be higher tied to an individual business
19 unit.

20 Q Okay. But the point is that a portion of the
21 compensation that you would obtain, that Mr. Donovan would
22 obtain, a portion of that is not tied just to how your
23 group, your media group, operates and succeeds or doesn't
24 succeed, but it's also tied to the overall performance of
25 AT&T as an organization, as a company, right?

1 A Yeah. We're paid in stock for a portion of our
2 compensation, and that obviously tracks to how AT&T
3 corporation does.

4 Q And in your deposition, we talked about this
5 subject.

6 Do you recall that?

7 A I recall talking about compensation, yes.

8 Q And we talked about what the overall compensation
9 for the success of AT&T would be and whether there was a
10 percentage that was attributed to that at that point in time
11 in February of 2018.

12 Do you remember that?

13 A I don't.

14 Q If you would take a look at your deposition. Let
15 me see if I can help refresh you.

16 So same binder in front of you, same deposition,
17 if you look at page 219.

18 And if you would start at line 11 and read through
19 219, line 24.

20 Actually, you can go to 220, line 4.

21 And then tell me when you're done reading that,
22 sir, and I'll ask you some questions.

23 Now, the figures there, I want us to be careful
24 because your employer has designated the figures as
25 confidential, so I'm not going to say that out loud.

1 But having read that, do you recall now that we
2 discussed what the thinking was at the time about the
3 compensation figures for short-term compensation bonus that
4 would occur for you and your colleagues at your level
5 post-merger if the merger were to occur?

6 A Sorry. We were talking past each other because
7 you hadn't said it was the short-term bonus you're referring
8 to.

9 There's a portion of the short-term bonus where my
10 boss has discretion around how he allocates money based on
11 what we call corporate citizenship, how we work within the
12 company for the betterment of AT&T, represent the brand, do
13 the things that we need to do in the business to his
14 judgment.

15 It's a relatively small percentage of that total
16 bonus overall, and in comparison to what I get paid in
17 equity is a very small percentage.

18 Q Your boss being Mr. Stephenson --

19 A Correct.

20 Q -- in that situation?

21 MR. WELSH: Okay. Your Honor, I have another
22 exhibit which is confidential. The purpose of it is just to
23 put that figure in that we've just been dancing around in
24 open court, just so that we can get that into the record.

25 And this is PX555 for identification.

1 May I approach, Your Honor?

2 THE COURT: You may.

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

5 THE COURT: Yes.

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

7 THE COURT: You may.

8 BY MR. WELSH:

9 Q Mr. Stankey, you have PX555, which is the
10 confidential exhibit. I just want to see if the number
11 that's attached there -- you see a percentage. Is that the
12 percentage that we've been talking about that's in your
13 deposition and is also related to this short, the short-term
14 bonus?

15 A It is the percentage of the amount of the
16 short-term bonus.

17 Q And that's the amount, just so it's clear and
18 we're all talking the same thing, that's the amount that
19 Mr. Stephenson has discretion in terms of how he would
20 compensate you at the end of the year related to the overall
21 performance of AT&T as an organization, correct?

22 A That percentage that's on that sheet of paper?

23 Q That's right. That's what I'm talking about?

24 A Yes.

25 Q Is that right?

1 Okay. Thank you.

2 Now, Mr. Stankey, you talked to the Court earlier
3 about what you see as being the benefits of this merger, so
4 I want to come back and talk about this.

5 And I think I heard Mr. Petrocelli ask you whether
6 you were making predictions.

7 And I think you said, yes, this is a --
8 predictions is something we have to protect.

9 Do you remember that testimony?

10 A I do.

11 Q Now, and I think you also testified that you've
12 been involved in other mergers, right?

13 A I have.

14 Q So you were involved in the AT&T-DirectTV merger;
15 is that right?

16 A I was.

17 Q At the time you were AT&T -- at the time of that
18 merger, you were AT&T's group president and chief strategy
19 officer; is that true?

20 A Yes.

21 Q And you led the due diligence for AT&T in that
22 transaction, right?

23 A I did.

24 Q And I know you submitted an affidavit to the FCC
25 where you talked about how you were familiar with the

1 significant synergies associated with the DirecTV
2 acquisition.

3 Do you remember that?

4 A Yes, I do.

5 Q And that's factually true; you were familiar with
6 those synergies, right?

7 A Yes.

8 Q And so let's talk about your predictions there in
9 the AT&T-DirecTV merger.

10 AT&T there, in your leading up that charge, you
11 predicted revenue synergies from the DirecTV merger;
12 isn't that true?

13 A We did.

14 Q And one synergy that AT&T, you, predicted was that
15 the merger would help it add new pay-TV subscribers by
16 bundling pay TV with other products, like broadband.

17 Do you remember that?

18 A I do.

19 Q Now, AT&T fell short of that prediction, didn't
20 it?

21 A It did.

22 MR. WELSH: Your Honor, if I can ask
23 Mr. Petrocelli, we can approach?

24 THE COURT: Sure.

25 (Sealed bench conference)

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12 MR. WELSH:

13 (Open court)

14 THE COURT: Come on back.

15 All right, you may proceed, consistent with the
16 discussion at the bench.

17 MR. WELSH: Your Honor, I have what we have
18 identified, marked for identification as PX556.

19 May I approach?

20 THE COURT: Yes.

21 MR. WELSH: Copy of 556 is being given to opposing
22 counsel.

23 May I approach the witness?

24 THE COURT: You may.

25

1 BY MR. WELSH:

2 Q Mr. Stankey, you have what we've marked as 556 and
3 this is for confidentiality reasons, so I'm just going to
4 ask you these questions.

5 Do you see that, if you turn to the second page,
6 there's an A and B, okay? The synergy miss that we were
7 just talking about on DirectTV, that merger in 2015, was the
8 amount of subscribers associated with that, is that
9 correctly listed at point A on this exhibit?

10 A Can you give me a time frame or a specific period
11 of time you want to reference this to.

12 Q Sure. If we can look at January of 2016, that
13 time frame, would that be the approximate number?

14 A That the results at that period of time.

15 Q That this is the number of subscribers that were
16 in that miss.

17 A For traditional pay-TV prescribers or all video
18 subscribers or --

19 Q Do you recall that the -- let's see if we can talk
20 about the number.

21 Do you recall what the size of the miss was in
22 terms of the dollar amount?

23 A Well, that depends on what products you're talking
24 about, unfortunately.

25 Q I'm going to hand you a different transcript.

1 MR. WELSH: Actually, we'll move on, Your Honor,
2 and we'll come back to this if we need to.

3 THE COURT: This was covered in his deposition,
4 right?

5 MR. WELSH: Yes, it was.

6 THE COURT: These numbers are in his deposition,
7 right?

8 MR. WELSH: They are.

9 THE COURT: Okay.

10 BY MR. WELSH:

11 Q Let's talk about Defendant's Exhibit 658. Can you
12 pull that binder over, if you would, sir.

13 I think you were shown that exhibit by defendants,
14 correct?

15 MR. PETROCELLI: Counsel, what exhibit?

16 MR. WELSH: It's your exhibit, 658.

17 BY MR. WELSH:

18 Q Now, this is a document. It's called version 41,
19 right?

20 A Yes.

21 Q And you were asked about by Mr. Petrocelli during
22 his examination on direct, right?

23 A Yes.

24 Q And this is essentially a PowerPoint presentation
25 that was put together, right?

1 A Well, there's a lot of Excel in here too.

2 Q Combination of the two.

3 A But there's some PowerPoint sheets too, some Word
4 documents.

5 Q And this document is the basis of AT&T's view,
6 which you testified about that one page as to the summary of
7 its claimed synergies; is that correct?

8 A Correct.

9 Q Now, let's flip through this document, Defense
10 Exhibit 658 a little bit.

11 On the cover of the document, it says "Preliminary
12 Draft" in red letters; is that right?

13 A It does.

14 Q And if you flip through the document, almost every
15 single page says "Preliminary Draft," doesn't it?

16 A It does.

17 Q "Figures subject to change based on diligence,"
18 right?

19 A Yes.

20 Q And in the footer of the document, if you look,
21 it's small, but at the footer, it says it's for discussion
22 purposes only, doesn't it?

23 A That's what it says, yes.

24 Q And if I can direct you to page 74 of the deck,
25 which is called "Expense Synergies" -- tell me when you're

1 there.

2 A Okay.

3 Q Now, on that page, it's expense synergies.

4 Do you see that?

5 A I do.

6 Q And then we have that red box with a preliminary
7 draft.

8 And then underneath that, there's another box,
9 right, on the right?

10 A Yes.

11 Q And it says there "Draft view of expense synergy
12 allocations," right?

13 A It says, "Draft view of expense synergy
14 allocations, more detail. Final view to be determined
15 during budget process."

16 Q So the document that you've been testifying about
17 today, this version 41, Defendants' Exhibit 568, this is a
18 draft that's occurred in this merger work that you've been
19 working on, right?

20 A As I said, yeah. It's a draft that we'll continue
21 to iterate as we move through the process and close and get
22 more work and more information.

23 Q Let's talk about what you know and your
24 involvement with this draft.

25 Now, you did not personally create any of the

1 slides that are in that exhibit; isn't that true?

2 A No, I didn't actually develop the PowerPoint
3 slides.

4 Q And you didn't personally do any of the Excel
5 spreadsheets that are in there; isn't that true?

6 A I did not.

7 Q And you didn't personally work up the numbers that
8 are in that exhibit; isn't that true?

9 A On page 74?

10 Q In the document. You didn't personally work up
11 the numbers in that exhibit?

12 A I provided input to certain numbers, assumptions,
13 certain information that might go into a model that
14 generated things, but I didn't personally write them down on
15 a sheet of paper here.

16 Q The synergy model, there was a model used for the
17 document that we're looking at, right?

18 A There's a variety of models that are used.

19 Q And the synergy model, though, for the document,
20 is produced by a merger planning team, is that right?

21 A That's correct.

22 Q And you saw this document, this version 41, only
23 after it was in its current form; isn't that's true?

24 A I'm not sure I understand your question.

25 Q You didn't see the draft, this version 41, before

1 it was finalized and became version 41, right?

2 A No, I've seen other versions of this document as
3 it's matured.

4 Q Right.

5 But as to version 41, you hadn't seen the workings
6 of that version before it got finalized, true?

7 A Can you describe to me what you mean by
8 "workings."

9 Q Well, we'll move on.

10 Look at page 7 of the exhibit, if you would.

11 Now, this is called "Synergy Revenue and OI
12 Detail."

13 Do you see that?

14 A Yes.

15 Q And this is a roll-up for the synergies,
16 is that correct, for the document?

17 A It is.

18 Q And the middle column there, it says "Merger
19 Planning July 2017," right?

20 A It does.

21 Q Those are the synergies that you're talking about
22 here for ad growth, for combined assets, and for content
23 intelligence, right?

24 A No. Those are the July numbers.

25 This was their -- those numbers have been revised

1 into this October final.

2 Q What you have here, though, you have ad growth,
3 you have combined assets, you have content intelligence,
4 correct?

5 A Yes.

6 Q And then the middle column is talking about the
7 merger planning for July 2017, right?

8 A Yes.

9 Q And in July of 2017, you were over the
10 entertainment group at AT&T; you were not in your position
11 on the integration; isn't that true?

12 A I was not in my current position on the
13 integration. I was going through some of this material in
14 my role within DirectTV or as CEO of entertainment group.

15 Q That wasn't my question, sir. And your counsel
16 will have time to ask you questions if he so chooses.

17 My question to you is: In July of 2017, you were
18 over the entertainment group at AT&T, correct?

19 A Yes, correct.

20 Q And you did not assume your responsibilities for
21 the integration until August of 2017 when you then headed it
22 up, correct?

23 A That's correct.

24 Q Thank you.

25 Now, at this point in July of 2017, had the

1 integration effort been underway for some time?

2 A Yes. As I described, the integration effort
3 starts before we announce the acquisition.

4 Q And it actually had started about eight-or-so
5 months before, is that right, before you got involved as
6 head of the integration effort?

7 A Well, the first version of something like this or
8 the foundation of this would have been done in October,
9 finished in October of 2016.

10 Q And this is version 41, and there were other
11 versions of the document. And I think you testified in your
12 deposition that you had seen that the last version of the
13 document that you saw before version 41 was roughly version
14 22, correct?

15 A Sounds about right.

16 Q And you placed that -- in your deposition, you
17 placed that in May of 2017, that you saw it around then,
18 correct?

19 A I think that's correct, yes.

20 Q And then you were asked a lot of questions. You
21 gave lot of depositions, I know, in February of this year.
22 And you were the corporate representative on a lot of these
23 synergies and efficiencies issues, correct?

24 A Yes.

25 Q Okay. And you were asked about version 41, DX658,

1 during the deposition in February of this year, correct?

2 A Yes.

3 Q And I think at that time, you testified that you
4 were, even as you were preparing to be deposed, that you
5 still had questions about how some of the numbers in
6 version 41 were actually derived; isn't that right?

7 A There's always questions about numbers and how
8 they're derived, yeah, sure.

9 Q Well, you, to prepare, you actually looked at
10 version 41, right, to prepare for your deposition?

11 A Yes, I did.

12 Q And then in looking through that, you actually
13 noticed that one of the numbers had an assumed 200 percent
14 increase in viewership for cross-promotions.

15 Do you remember that?

16 A I do.

17 Q And next to that number, that 200 percent
18 increase, you wrote "large" next to it, didn't you?

19 A I did.

20 Q And that was because -- you weren't sure how they
21 got to that, how that number was derived, right?

22 A It was a note to myself to go and do some
23 follow-up and understand some things.

24 Q And there's another synergy when you went through
25 this -- again, to try to familiarize yourself to prepare for

1 the deposition, there was another synergy that AT&T was
2 claiming involving bundling of wireless and OTT products.

3 Do you remember that?

4 A Not off the top of my head, I don't.

5 Q Well, do you remember -- and I can help refresh
6 your memory if it --

7 THE COURT: We'll have to do that in the morning.

8 MR. WELSH: Okay. Thank you, Your Honor.

9 THE COURT: It's 6:30.

10 All right. We're going to take the evening
11 recess. You remain a witness under oath in the case,
12 Mr. Stankey. You're not at liberty to discuss your
13 testimony with anybody so far or what it might be when you
14 return.

15 See you 10:30 tomorrow morning.

16 THE WITNESS: I'll be here.

17 THE COURT: You can step down.

18 I'll see counsel.

19 (Sealed bench conference)

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22 MR. CONRATH:

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MR. CONRATH:

MR. PETROCELLI:

THE COURT:

(Open court)

DEPUTY CLERK: All rise. This Honorable Court
will stand in recess until the return of court.

(Proceedings concluded at 6:42 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 18, 2018 /S/ William P. Zaremba

William P. Zaremba, RMR, CRR